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Tax Analysis

New legislation on city maintenance and construction tax and deed tax passed

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On 11 August 2020, China's Standing Committee of the 13th National People's Congress passed legislation superseding tax regulations regarding the city maintenance and construction tax (CMCT) and the deed tax, which will take effect as from 1 September 2021. The CMCT was introduced in 1985 and the deed tax in 1997; the new legislation contains certain modifications to the original rules. Set forth below is an overview of the new CMCT and deed tax legislation.

CMCT

The CMCT is a surtax levied on and collected along with the value-added tax (VAT) and consumption tax. The local governments are the primary beneficiaries of the CMCT revenue.

The tax is computed as a percentage of the amount of the VAT and consumption tax, with rates of 1%, 5%, or 7% depending on the taxpayer's location (generally the place of domicile or business operations, although provincial authorities may provide more specific rules).

Taxation scope

The new law excludes the following from the scope of CMCT:

- VAT and consumption tax arising from the import of goods; and
- VAT and consumption tax arising from the provision of services or intangible assets by foreign suppliers.

Currently, CMCT is imposed on foreign suppliers providing services or intangible assets to China through withholding (along with any applicable VAT withholding) when payment is made to a foreign supplier. The Chinese purchaser then pays the CMCT to the tax authorities on behalf of the foreign supplier. The new law, therefore, appears to narrow the scope of the CMCT. However, there exists under the new law another provision that requires a VAT withholding agent (e.g., a Chinese purchaser of services or intangible assets from a foreign supplier) to withhold CMCT along with VAT. This seems to conflict with the exclusion described above, and further clarity is needed.

Tax base

The new law simply states that the tax base of the CMCT is the VAT and consumption tax actually paid but authorizes the State Council to formulate further regulations in this regard.

Areas of uncertainty in the current law for the State Council to address in future regulations include:

- Whether CMCT should be imposed on the VAT payable that arises from domestic sales but offset by the refundable VAT from the export of goods; and
- Whether CMCT should be refunded when a VAT refund is granted due to the export of goods or other tax incentives.

Tax point

The new law clearly provides that the CMCT obligation arises simultaneously with the corresponding VAT and consumption tax obligations. Under current law, the language as to the tax point is ambiguous, with taxpayers arguing that the CMCT obligation only arises upon actual payment of (rather than upon the obligation to pay) the VAT and consumption tax. This is no longer the case under the new law; in fact, the tax authorities may impose late payment surcharges on underpaid CMCT back to when the obligation to pay arose on an underpayment of VAT and consumption tax.

Tax incentives

The new law authorizes the State Council to grant CMCT reductions or exemptions to encourage the construction of significant public infrastructure, support certain industries or groups, or promote notable events.

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Deed tax

The deed tax is a tax levied on a transfer of real estate (including a land use right), which is payable by the transferee. The local governments are the primary beneficiaries of the deed tax revenue.

The tax is computed as a percentage of the value of the real estate or land use right being transferred, with rates ranging from 3% to 5%.

Tax base

The new law states that the deed tax must be based on the amount of consideration paid for the real estate or land use right, which is consistent with current regulations. The new law further provides that the amount of the consideration includes cash, non-cash assets, and other economic benefits that are payable by the transferee.

Where the amount of the consideration (as reported by the taxpayer) is significantly lower than the market level (without apparent justification), the new law still provides that the tax authorities have the authority to make reasonable adjustments to such amount.

Tax incentives

The new law contains several tax incentives including an exemption for non-profit transferees that are schools, colleges, and universities that will use the real estate for purposes of providing educational services, and authorizes the State Council to formulate and introduce other tax incentives according to social and economic development needs. Several deed tax incentives that are not specifically listed in the new law are included in current tax regulations (e.g., tax exemptions for qualifying corporate reorganizations) and the State Council is expected to issue guidance as to whether these current incentives under the regulations will continue.

Refund of deed tax

Deed tax generally is due before a transferee registers the new legal title of the real estate or land use right. In certain instances, after a taxpayer has paid the deed tax, the relevant transfer agreement may be cancelled or become invalid prior to registration of the legal title. The new law allows a refund of the deed tax in this situation. However, the new law is silent as to whether a refund of deed tax occurs if the transfer agreement is cancelled or becomes invalid after the taxpayer registers the legal title.

Information protection

The new law has introduced a separate article confirming the obligation of the tax authorities and other relevant personnel to protect taxpayers' personal information acquired in handling deed tax matters.

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