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China

New Stamp Duty Law

On 10 June 2021, China adopted the Stamp Duty Law ("SDL"), which is effective as from 1 July 2022 and replaces the Interim Stamp Duty Rule ("Interim Rule") which was issued on 6 August 1988. The new law generally maintains the framework of the previous stamp duty system, while tax items and rates have been simplified and updated.

I. Overview of the SDL

Entities and individuals that conclude or receive certain documents ("taxable documents") or enter into securities transactions in China must pay stamp duty on such documents or transactions. Taxable documents that were concluded outside of China but used in China also are subject to Chinese stamp duty. The table below compares the tax items and tax rates under the SDL and the Interim Rule:

Stamp Duty Law		Interim regulations	
Item	Tax rate and basis	Item	Tax rate and basis
Contract			
Loan contract	0.005% of the loan amount	Loan contract	0.005% of the loan amount
Financial leasing contract	0.005% of the rent		
Purchase and sales contract	0.03% of the price	Purchase and sales contract	0.03% of the purchase and sales amount
Contractor agreement	0.03% of the remuneration	Processing and contracting agreements	0.05% of the income from processing or contracting
Construction project contract	0.03% of the price	Survey and design contract in construction projects	0.05% of the fees charged
		Construction and installation contract	0.03% of the contract amount
Transportation contract	0.03% of the transportation fees	Cargo transportation contract	0.05% of the transportation fees
Technology contract	0.03% of the price, remuneration, or user charges	Technology contract	0.03% of the contract amount

Rental contract	0.1% of the rent	Property leasing contract	0.1% of the lease amount
Storage contract	0.1% of the storage fees	Warehousing and storage contract	0.1% of the warehousing and storage fees
Warehousing contract	0.1% of the warehousing fees		
Property Insurance contract	0.1% of the premium	Property Insurance contract	0.1% of the premium
Documents transferring property rights			
Grant of land use rights	0.05% of the price	Documents transferring property rights	0.05% of the contract amount
Transfer of land use rights, houses, buildings, and structures	0.05% of the price		
Transfer of equity	0.05% of the price		
Transfer of exclusive use rights of trademarks, copyrights, patent rights, and use rights of technical know-hows	0.03% of the price		
Business account books			
Business account books	0.025% of the sum of paid-in capital (stock) and capital reserve	Business account books	Share capital account book: 0.025% of the sum of paid-in capital (stock) and capital reserve Other account books: RMB 5 per document
		Certificate of rights and licenses	RMB 5 for each certificate
Securities transactions			
Securities transactions	0.1% of the transaction price	Securities transactions	0.1% of the transaction price

1. Main changes:

- 1) Under the new SDL, the description of certain tax items are more consistent with contract definitions in the Civil Code in order to reduce disputes that may arise due to ambiguous definitions, such as Contractor agreement, Transportation agreement, etc..
- 2) The tax rates for contractor agreements, certain construction project contracts, and transportation contracts have been changed from 0.05% to 0.03%.
- 3) Documents for the transfer of property rights have been classified into the following categories: grant of land use rights; the transfer of land use rights, houses, buildings, and structures; the transfer of equity; and the transfer of exclusive use rights of trademarks, copyrights, patent rights and use rights of technical know-hows.
- 4) The tax rate for documents for the transfer of exclusive use rights of trademarks, copyrights, patent rights and use rights of technical know-hows has been changed from 0.05% to 0.03%.
- 5) The categories of “Certificates for rights” or licenses and “other account books” have been removed from the list of taxable elements.

2. Other items identified in the SDL

1) Tax basis:

Based on Article 5 of the SDL, the tax basis for documents for contracts and transferring property rights must be the amount listed in such document, excluding the listed VAT amount. In addition, the SDL stipulates that if a document does not specify an amount, then the tax basis must be determined according to the actual settlement amount. If the tax basis still cannot be determined based on the actual settlement, then the tax basis must be determined based on the market price of the date the document is concluded, or based on the relevant regulations when it comes to a government-determined price or government-guided price.

2) Payment location:

The SDL states that an entity must declare and pay the stamp duty to the in-charge tax authority in the place where the entity is located. Individuals must declare and pay the stamp duty to the in-charge tax authority in the place where the taxable document was obtained or in their resident place. For transfers of real estate, the taxpayer must declare and pay the stamp duty to the tax authority in the place where such real estate is located.

3) Tax collection:

According to the SDL, where the taxpayer is a foreign entity or individual with an agent in China, the domestic agent must be the withholding agent. Where there is no agent in China, such taxpayer must declare and pay the stamp duty itself.

II. Our analysis

Though New SDL stipulates the tax items more precisely and clarifies several issues, the following aspects still need to be specified in practice:

1. Article 5 of the SDL stipulates that the tax basis for documents for contracts and transferring property rights must be the amount listed in such document, excluding the listed VAT amount. However, if VAT amount is not listed in the documents, will the tax basis include the VAT amount? To avoid the discrepancy in the future, it is suggested to list the price amount in the document and the VAT amount separately when drafting documents.
2. Article 14 of the SDL stipulates that where the taxpayer is a foreign entity or individual with an agent in China, the domestic agent must be the withholding agent. Where there is no agent in China, such taxpayer must declare and pay the stamp duty itself. However, clarification should be made as to how to determine if a taxpayer has an agent in China. Furthermore, for taxpayers that do not have domestic agents, the tax authorities should clarify and provide efficient means for them to declare and pay stamp duty by themselves.

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