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Insight: VAT Taxability of Service Fees for Withholding and Remittance, Collecting and Remittance, and Entrusted Tax Collection

By Ben Lu

Under the previous Business Tax (BT) system, there was occasional debate on whether service fees obtained by taxpayers for withholding and remittance, collecting and remittance, and entrusted collection were subject (hereinafter referred to as the “three tax services”) to BT. However, in practice, most tax authorities generally leaned towards exempting such fees from BT. With the implementation of the VAT reform, inconsistencies have emerged among local tax authorities regarding whether VAT should be imposed on these service fees.

In determining the taxability of any transaction and its corresponding income, unless there are explicit provisions in tax laws, administrative regulations, or official interpretations issued by the Ministry of Finance (MOF) and the State Taxation Administration (STA) within their respective competencies, the matter should be assessed based on tax system principles, the spirit and objectives of relevant tax laws, and the intrinsic nature of the transaction. Even when the MOF and STA provide clear guidance, if tax laws and administrative regulations do not explicitly define the issue, further examination of the underlying tax principles, legislative intent, and transaction characteristics is still necessary to ensure an accurate, fair, and reasonable determination of taxability.

I. Examination of the VAT Treatment of Service Fees for the “Three Tax Services”: Current Tax Enforcement Practices

According to the "Notice of the MOF, STA, and the People's Bank of China on Strengthening the Management of Service Fees for Withholding, Collection, and Entrusted Collection of Taxes" (Caihang [2019] No. 11):

- Article 1(1) defines "withholding and remittance" as the act of entities or individuals, obligated by tax laws and administrative regulations to withhold tax, deducting the tax amount from payments made to taxpayers and remitting it to the tax authority.
- Article 1(2) defines "collection and remittance" as the act of entities or individuals, obligated by tax laws and administrative regulations to collect tax, collecting tax from taxpayers when receiving payments and remitting it to the tax authority.
- Article 1(3) defines "entrusted collection" as the act of entities or individuals, entrusted by tax authorities in accordance with the Tax Collection and Administration Law and its implementing rules, to collect scattered and out-of-area taxes under principles of voluntariness, efficiency, and legal compliance.

Additionally, Article 30(3) of the Tax Collection and Administration Law provides that tax authorities shall pay service fees to withholding agents for tax withholding and collection.

Based on these provisions, service fees for the “three tax services” refer to remuneration paid by the state treasury to taxpayers for fulfilling tax withholding, collection, and

entrusted collection obligations. This includes "withholding and remittance service fees," "collection and remittance service fees," and "entrusted collection service fees."

Currently, neither tax laws and regulations nor formal interpretations from the MOF or STA explicitly address whether service fees for the "three tax services" are subject to VAT. Consequently, different tax authorities have adopted varying positions in tax enforcement, often clarifying their stance through policy interpretations or consultation responses. These positions generally fall into three categories:

1. Treating the "Three Tax Services" as "Brokerage and Agency Services" Subject to VAT

This is the most common approach. For instance, Article 34 of the "Chongqing State Taxation Bureau VAT Reform Policy Guide (II)" (issued on August 4, 2016) states that, under Caihang [2005] No. 365, service fees for the "three tax services" should be accounted for separately and included in the entity's revenue, such fees can be used for management expenses and as incentives for relevant personnel. According to Cai Shui [2016] No. 36, the "three tax services" fall under "brokerage and agency services" in the modern service category and are subject to VAT at a 6% rate. Similar interpretations have been adopted by tax authorities in Shanghai, Shenzhen, Inner Mongolia, Xiamen, Fujian, Dalian, Anhui, Liaoning, and other regions.

2. Transitioning from Non-Taxability to Taxability

Some tax authorities initially did not impose VAT on service fees for the "three tax services" but later shifted to a taxable approach. For example, Article 8 of the "Hubei State Taxation Bureau VAT Reform Policy Execution Guidelines (Fourth Edition)" (issued on November 24, 2016) stated that service fees earned by enterprises for withholding individual income tax (IIT) were not subject to VAT. However, this position was overturned when the "Hubei Province VAT Reform Q&A Collection" (effective January 1, 2018) repealed the earlier guideline and stipulated in Article 63 that all service fees earned by enterprises for withholding taxes should be subject to VAT as "brokerage and agency services," following Cai Shui [2016] No. 36.

3. Exempting Service Fees from VAT

This approach is less common in practice. For example, Article 23 of the "Hunan State Taxation Bureau VAT Reform Policy Guide (IV)" (issued on December 26, 2016) states that service fees earned by insurance companies for collecting and remitting vehicle and vessel tax, as well as by enterprises for withholding IIT, are not subject to VAT since such activities constitute the fulfillment of statutory tax withholding obligations rather than the sale of services, which are subject to VAT.

On May 8, 2021, the STA published a response on its official website titled "Are Enterprises Required to Declare VAT on Service Fees Earned from Withholding IIT?" The response referenced Cai Shui [2016] No. 36 and the "Interpretation on Sales of Services, Intangible Assets, and Real Estate," stating that brokerage, intermediary, and agency services include financial agency, intellectual property agency, freight forwarding,

customs brokerage, legal agency, real estate brokerage, employment agency, marriage agency, bookkeeping agency, and auctioneering. Consequently, service fees earned by enterprises for withholding IIT fall within the VAT tax base and should be taxed under "business support services - brokerage and agency services."

Although this response was issued as a policy interpretation rather than a legally binding regulatory document, its authority as an STA-issued statement provides significant guidance in practice.

II. VAT Is Levied Solely on Business Activities (Transactional Conduct)

The fundamental principle of VAT is that it applies exclusively to business activities and the income generated therefrom. According to Article 10 of the "Provisional Measures on the Pilot Reform of Business Tax to VAT," sales of services, intangible assets, or real estate refer to the provision of services or transfer of intangible assets or real estate for consideration, except in the following non-business scenarios:

1. Government funds and administrative fees collected by administrative units that simultaneously meet the following conditions:
 - Established with approval from the State Council or the Ministry of Finance (MOF) for government funds, or with approval from the State Council, provincial-level governments, or their finance and pricing authorities for administrative fees;
 - Collected using fiscal invoices issued or supervised by provincial or higher-level finance departments;
 - Fully remitted to the state treasury.
2. Services rendered by employees of a legal entity or sole proprietorship to the entity or employer in exchange for salaries.

Salaries paid to employees for services provided to their employer.

3. Services provided by a legal entity or sole proprietorship to their employees.
4. Other scenarios specified by the MOF and STA.

Additionally, Article 1(2) of the "Provisions on Issues Related to the Pilot Reform of Business Tax to VAT" explicitly lists five non-taxable transactions, including government-mandated free transport services, interest on deposits, insurance indemnities, residential maintenance funds collected by designated entities, and the transfer of assets in restructuring transactions.

III. The VAT Taxability of Service Fees for the "Three Tax Services" Should Be Treated Differently Based on the Nature of the Tax Service

Although the provisions under Cai Shui [2016] No. 36 do not include service fees for the "three tax services" among the exempted items, whether specific behaviors not listed in the aforementioned provisions should fall within the scope of VAT taxation remains unclear. Before any explicit legal, regulatory, or policy-based guidance from competent

authorities, taxability should be determined based on the nature of the transactions and the principles of VAT tax law.

As previously discussed, most tax authorities currently categorize all "three tax services" under "modern services" and specifically as "brokerage and agency services" within "business support services."

According to Article 951 of the Civil Code of the People's Republic of China, "A commission contract is a contract under which a commission agent acts in their own name to engage in trade activities for the principal, who pays the commission." Commission services only apply to "trade activities." However, services such as "withholding and remitting" and "collecting and remitting" clearly do not constitute "trade activities," so they cannot be classified as "brokerage services." Therefore, if VAT is levied under the "brokerage and agency services" category, it must be recognized as "agency services."

The author believes that, in reference to Article 29 of the "Tax Collection and Administration Law of the People's Republic of China," which states that "no entity or individual, except for tax authorities, tax officials, and those entrusted by tax authorities according to law or administrative regulations, shall carry out tax collection activities," and Article 89, which allows taxpayers or withholding agents to entrust tax agents to handle tax matters, the term "agency" in the Tax Collection and Administration Law, borrowed from civil and commercial law, has not been specially defined in tax laws, regulations, or by the Ministry of Finance (MOF) or the State Taxation Administration (STA). Therefore, the concept of "agency" in tax law should be consistent with the civil and commercial legal field, with no significant distinction between the two.

According to Article 163 of the Civil Code of the People's Republic of China, "Agency includes both entrusted agency and statutory agency. An entrusted agent exercises the agency rights based on the principal's authorization. A statutory agent exercises agency rights according to law." Articles 161 of the Civil Code states that "Civil subjects may engage in civil legal acts through agents," and Article 162 specifies that "An agent's civil legal acts, conducted within the scope of their authority and in the name of the principal, have binding legal effect on the principal." This defines entrusted agency, whereas statutory agency is defined in Articles 19, 20, 21, 22, and 61, which refer to situations such as a guardian acting as a statutory agent for individuals with no or limited capacity to act or the legal representative of a legal entity acting on behalf of the entity.

1. "Withholding and Remitting" and "Collecting and Remitting" are Essentially Different from Civil and Commercial Law's "Agency Behavior," and Their Classification as "Brokerage and Agency Services" for VAT Imposition Contradicts the Substance of the Behavior

1.1 "Withholding and Remitting" and "Collecting and Remitting" Are Statutory Obligations of Withholding Agents without Discretion to Choose

According to Article 5 of the Civil Code of the People's Republic of China, "Civil subjects shall follow the principle of voluntariness when engaging in civil

activities, and establish, alter, or terminate civil legal relationships in accordance with their own will." If the withholding agent's actions of "withholding and remitting" or "collecting and remitting" were considered agency tax collection behavior, the withholding agent, based on the principle of autonomy of will, should have the right to refuse to accept such a commission. However, according to Article 4(2) of the Tax Collection and Administration Law of the People's Republic of China, which stipulates, "Entities and individuals that are obligated by laws and administrative regulations to withhold and remit, or collect and remit taxes, shall be withholding agents," and Article 4(3), which states "Taxpayers and withholding agents must pay taxes, withhold and remit, or collect and remit taxes in accordance with the provisions of laws and administrative regulations," as well as Article 30(1), which specifies, "Withholding agents shall perform the obligations of withholding and collecting taxes as prescribed by laws and administrative regulations," withholding agents are required to fulfill their withholding duties without the discretion to choose, and thus cannot be considered as voluntary agents in the sense of civil and commercial law.

So, does the withholding agent qualify as a statutory agent? While the establishment of a statutory agency does not depend on the will of the statutory agent but rather on the identity relationship between the statutory agent and the principal (such as position, kinship, etc.), a statutory agent's actions still rely on their free will when exercising agency, including whether, how, and when the specific act is carried out. However, in the case of "withholding and remitting" or "collecting and remitting" taxes, the withholding agent is legally required to perform the withholding duty within a prescribed time, manner, and form. In other words, the withholding agent has no discretion over their identity as an agent and their actions are constrained by clear legal mandates.

Furthermore, regarding statutory agency, current civil and commercial law provisions and judicial practices refer only to the statutory agency for individuals who are incapable of civil action or have limited civil capacity, as well as to the statutory agency for the legal representatives of companies or other organizations. A withholding agent, however, is neither an agent of the tax authority nor an agent of the state or government. Therefore, the withholding agent clearly does not qualify as a statutory agent.

1.2 The Legal Consequences of "Withholding and Remitting" and "Collecting and Remitting" Are Significantly Different from the Legal Consequences of Agency Actions

Whether in the case of an entrusted agency or statutory agency, the consequences of the agent's actions directly affect the principal or the party legally represented, and the responsibility for failure to fulfill the agent's duties falls under the scope of civil liability. According to Article 164 of the Civil Code of the People's Republic of China, "If the agent fails to perform or incompletely performs their duties, causing damage to the principal, they shall bear civil

liability. If the agent and the counterparty collude maliciously to harm the legal rights and interests of the principal, the agent and the counterparty shall bear joint liability.” and Article 62, which states, “If the legal representative causes damage to others while performing their duties, the legal person shall bear civil liability. After the legal person bears civil liability, it may seek compensation from the legal representative who was at fault, in accordance with the law or the legal person's articles of association”, in cases of entrusted agency or statutory agency, if the agent neglects their duties or colludes maliciously to harm the interests of the principal, they are only liable for loss compensation or other civil liabilities in accordance with the law. Unless the act itself constitutes an administrative violation or a crime, it will not lead to administrative penalties or administrative responsibility, nor will it result in criminal responsibility.

However, in the case of "withholding and remitting" or "collecting and remitting" taxes, according to the State Taxation Administration's notice on specific issues regarding the Tax Collection and Administration Law of the People's Republic of China (Guo Shui Fa [2003] No. 47), Article 2(3), “If the withholding agent fails to withhold or collect the tax that should be withheld or collected, the tax authority, in addition to imposing penalties according to the relevant provisions of the Tax Collection and Administration Law and its implementation rules, shall require the withholding agent to make up the tax that should have been withheld or collected within the prescribed time.” Furthermore, according to Article 69 of the Tax Collection and Administration Law states, “If the withholding agent fails to withhold or collect the tax that should be withheld or collected, the tax authority shall recover the tax from the taxpayer and impose a fine on the withholding agent ranging from 50% to 300% of the tax that should have been withheld or collected.”

This clearly illustrates that the legal consequences of "withholding and remitting" or "collecting and remitting" taxes are significantly different from the consequences in entrusted or statutory agency.

1.3 The Severe Disproportion Between the Service Fees for "Withholding and Remitting" and "Collecting and Remitting" and Their Legal Consequences

The specific standards for the service fees for withholding and remitting, as well as collecting and remitting taxes, are determined by clear legal, regulatory, and normative provisions, and statutory standards, with no room for arbitrary negotiation as in agency situations. Moreover, there is a severe disproportion between the service fees earned by the withholding agent and the responsibilities they bear.

According to Article 30(3) of the Tax Collection and Administration Law of the People's Republic of China, “The tax authorities shall pay withholding agents service fees for withholding and collecting taxes according to the regulations.” Furthermore, Article 3 of Caihang [2019] No. 11, "(i) For taxes that are required to be withheld and remitted as stipulated by laws and administrative regulations, the

tax authorities shall pay a service fee not exceeding 2% of the tax withheld, with a maximum annual limit of 700,000 yuan per individual withholding agent. Any amount exceeding this limit shall not be paid. For taxes where the service fee percentage is specifically stipulated by laws and regulations, the fee shall be paid according to the prescribed percentage. (ii) For the collection and remittance of vehicle and vessel tax as stipulated by laws and administrative regulations, the tax authorities shall pay a service fee not exceeding 3% of the tax collected. (iii) For the collection and remittance of excise tax for entrusted processing as stipulated by laws and administrative regulations, the tax authorities shall pay a service fee not exceeding 2% of the tax collected. No service fee shall be paid if the principal and the agent have a related party relationship, as defined by the Corporate Income Tax Law of the People's Republic of China and its implementation regulations. (iv) For the collection and remittance of other taxes as stipulated by laws and administrative regulations, the tax authorities shall pay a service fee not exceeding 2% of the tax collected.”

As a result, the service fees that a withholding agent receives for fulfilling their legal duties of withholding and remitting or collecting and remitting taxes are generally capped at 2% of the tax withheld or collected, with a maximum of 3%, and may also be subject to annual limits. Moreover, according to Article 69 of the Tax Collection and Administration Law, if the withholding agent fails to fulfill or inadequately fulfills their withholding obligations, they may face fines of up to three times the amount of the tax that should have been withheld or collected. This indirectly confirms that withholding and remitting or collecting and remitting taxes are not entrusted agency actions, but rather mandatory legal obligations imposed on withholding agents by clear laws and administrative regulations.

2. **“Entrusted Tax Collection” Behavior Aligns with the Essential Characteristics of “Entrusted Agency” in Civil and Commercial Law, and Its Classification as “Brokerage Agency Service” for VAT Purposes is Legally Justified**

According to Article 29 of the Tax Collection and Administration Law of the People's Republic of China, “no entity or individual, except for tax authorities, tax officials, and those entrusted by tax authorities according to law or administrative regulations, shall carry out tax collection activities,” and Article 44 of the Implementation Regulations of the Tax Collection and Administration Law states, “Tax authorities may, in accordance with the principle of facilitating tax control and taxpayer convenience, entrust relevant entities and individuals to collect scattered and out-of-area taxes, and issue entrusted tax collection certificates. The entrusted entities and individuals shall collect taxes on behalf of the tax authorities in accordance with the requirements of the entrusted tax collection certificate, and taxpayers shall not refuse to pay.”

According to the Caihang [2019] No. 11, Article 1, Subparagraph (3), and the Announcement by the State Taxation Administration on the Release of the "Measures for the Administration of Entrusted Tax Collection" (State Taxation Administration Announcement No. 24, 2013), Article 3, Paragraph 2, “The term ‘entrusted collector’

refers to the entities or individuals who are entrusted by the tax authorities to exercise the right to collect taxes and bear the obligations specified in the 'Entrusted Tax Collection Agreement',” and Article 22, “If the entrusted collector fails to collect or under-collect taxes, the tax authorities shall recover the taxes from the taxpayer and may impose a penalty for breach of contract on the entrusted collector at a rate of 0.05% per day of the under-collected tax, as stipulated in the 'Entrusted Tax Collection Agreement', except where the taxpayer has refused to pay and the entrusted collector reports to the tax authorities within 24 hours. If the entrusted collector over-collects taxes, the tax authorities shall bear the corresponding legal responsibility and order the entrusted collector to refund the excess amount. If the tax has already been deposited, the tax authorities shall handle the refund procedures as per regulations; if the over-collection results in damage to the taxpayer’s legitimate rights, the tax authorities shall compensate the taxpayer, and the tax authorities have the right to pursue recovery from the entrusted collector.”

Although the specific limits for "entrusted tax collection" service fees depend on the explicit provisions of relevant normative documents and cannot be arbitrarily agreed upon by the tax authorities and the entrusted collector, there are several points to consider:

- The service fee for “entrusted tax collection” is generally significantly higher than that for “withholding and remitting” or “collecting and remitting” taxes.
- The entrusted collector has the right to refuse to establish an entrusted tax collection relationship with the tax authorities if negotiations fail.
- The legal consequences of the entrusted collector’s actions directly fall under the tax authorities’ responsibility.
- If the entrusted collector fails to fulfill or adequately fulfill their tax collection obligations, they are only required to bear civil liabilities such as breach of contract or compensation to the tax authorities, and do not face administrative or criminal penalties.

Therefore, "entrusted tax collection" possesses the typical characteristics of an entrusted agency. The actions performed by the entrusted collector in tax collection constitute “brokerage agency services,” which are taxable behaviors under the current VAT-related laws. The service fees earned by the entrusted collector, although coming from fiscal subsidies or rewards, are clearly paid by the tax authorities within their departmental budget, as specified in Article 4, Subparagraph (1), Item 2 of Caihang [2019] No. 11: "The service fees for the ‘three tax services’ shall be settled annually. Withholding agents, collecting agents, and entrusted collectors shall submit relevant materials for the service fee application to the tax authorities by March 30 each year... Each level of tax authority shall strictly review the application for service fees and use it as the basis for preparing the next year’s departmental budget," and Item 4: "Each level of tax authority shall include the application for ‘three tax services’ service fees in the next year’s departmental

budget, according to the procedures and requirements of the Budget Law of the People's Republic of China and the State Council's decisions on deepening budget management system reform." Therefore, this portion of the service fees is clearly part of the consideration under the entrusted agency contract of the entrusted collector and should be subject to VAT according to the law.

Case Analysis: Whether the international freight forwarding services provided by an overseas company entirely outside of China constitute a taxable event for VAT purpose?

By Summer Qu

[Case Background]

Company A commissioned an overseas company B to provide an international freight forwarding service that was carried out entirely abroad. Company A paid B for the service but did not withhold VAT and associated surtaxes. The competent tax authority believes that Company A's failure to withhold VAT and its associated surtaxes violates relevant tax laws.

[Case Analysis]

The focal issue in this case is whether the sale of the international freight forwarding service should be considered "domestic sales of service." If the transaction is deemed to constitute a "domestic sale of service," then company A, as the withholding agent, is obligated to withhold VAT and its associated surtaxes in accordance with the law. Otherwise, company A would have no such obligation.

I.VAT Liability Arising from Domestic Sales of Services

The tax obligation for VAT in China arises from the premise of "domestic sales of services." According to Article 1 of the Pilot Implementation Measures for the Transformation of Business Tax to VAT (Cai Shui [2016] No. 36) stipulates, "any entity or individual selling services, intangible assets, or real estate within the territory of the People's Republic of China shall be considered a VAT taxpayer..." This means that entities and individuals conducting taxable behaviors such as selling services within China are required to pay VAT on the consideration received for those services.

II. If the Buyer of the Service is Located within China, Even If the Service is Performed Abroad, It May Still be Considered Domestic Sales of Service

Article 12 of the Pilot Implementation Measures for the Transformation of Business Tax to VAT (Cai Shui [2016] No. 36) defines "domestic sales of services, intangible assets, or real estate" as follows: "(1) The seller or buyer of services (excluding rental of real estate) or intangible assets (excluding natural resource usage rights) is located within the territory of China..." Therefore, under current VAT laws, "domestic sales of services" is not limited to services physically performed within China. If the buyer of the service is located within China, even if the service is carried out abroad, it may still be recognized

as a domestic sale of service, and VAT would thus be levied.

III. Services Purchased by a Buyer Located in China, but Performed Entirely Abroad, May Not Constitute Domestic Sales of Services – Restrictive Provisions in Regulatory Documents

Article 13 of Cai Shui [2016] No. 36 stipulates, "The following circumstances do not constitute domestic sales of services or intangible assets: (1) Services provided by overseas entities or individuals to domestic entities or individuals, where the services are entirely performed outside of China..." This provision implies that even if the service purchaser is located within China, as long as the service is entirely performed abroad, such a sale would not be considered a "domestic sale of services" under the current VAT laws and, therefore, would not be subject to VAT.

Furthermore, Article 1 of the "Announcement on Several Tax Administration Issues Concerning the Pilot Program for the Transformation of Business Tax to VAT" (State Taxation Administration Announcement No. 53, 2016) lists specific scenarios that are not considered "domestic sales of services." These include postal services, collection and delivery services, construction services, project supervision services, engineering survey and exploration services, and conference and exhibition services provided by overseas entities or individuals abroad. Even if the buyer is located within China, such sales do not constitute "domestic sales of services" and are therefore not subject to VAT.

However, there is significant debate regarding whether the provisions of Article 1 in Announcement No. 53 of 2016 represent a restrictive interpretive explanation of Article 13(1) of Cai Shui [2016] No. 36, or simply a listing of specific scenarios under that provision.

If the former interpretation is correct, then scenarios not listed in Announcement No. 53 of 2016 would be considered "domestic sales of services" and subject to VAT, unless otherwise explicitly specified by the Ministry of Finance, the State Taxation Administration, or other relevant departments. If the latter interpretation is correct, then when determining whether scenarios not listed in Announcement No. 53 fall under "domestic sales of services," a comprehensive assessment should be made, taking into account the spirit and objectives of Article 13(1) of Cai Shui [2016] No. 36.

IV. Interpretation of Article 13 of Cai Shui [2016] No. 36 and the State Taxation Administration Announcement No. 53, 2016

1. The Spirit and Purpose of Cai Shui [2009] No. 111 Still Applies

Although the provisions of Cai Shui [2009] No. 111 are directed at business tax regulations, after the business tax-to-VAT reform, services that were previously subject to business tax are now subject to VAT, and the nature of these services has not changed. Therefore, the spirit and purpose of Cai Shui [2009] No. 111 still applies when determining whether specific services are taxable.

Article 4 of the former "Implementation Rules for the Interim Regulations of the Business Tax of the People's Republic of China" stipulates: "For the purposes of

Article 1 of these Regulations, the provision of services, transfer of intangible assets, or sale of real estate within the territory of the People's Republic of China (hereinafter referred to as 'within the territory') refers to the provision or receipt of such services by an entity or individual within the territory."

Article 4 of the "Notice of the Ministry of Finance and the State Taxation Administration on Several Exemption Policies for Business Tax on the Sale of Personal Financial Products" (Cai Shui [2009] No. 111) provides: "Services provided by overseas entities or individuals to domestic entities or individuals, where the services are prescribed by the Interim Regulations on Business Tax (State Council Order No. 540, hereinafter referred to as the 'Regulations') and are entirely performed outside of China, do not constitute services provided within the territory as defined in Article 1, and are therefore not subject to business tax... According to the above-mentioned principles, services provided by overseas entities or individuals to domestic entities or individuals, such as those in the cultural and sports industries (excluding broadcasting), the entertainment industry, the hospitality, catering, and warehousing sectors within the service industry, as well as other services like bathing, hairdressing, laundry, framing, transcription, engraving, photocopying, and packaging, are not subject to business tax."

Regarding the specific types of services listed above, a common feature is that the domestic entity or individual receiving the services must be physically present abroad when the overseas entity or individual provides the service, either through a representative of the unit or the individual themselves.

2. Authoritative Interpretation

On March 31, 2016, the State Taxation Administration (STA) published an article on its official WeChat account titled "Authoritative Interpretation: Pilot Implementation Measures for the Transformation of Business Tax to VAT (Part 1)" (originally by Shanghai Taxation), which provided an interpretation of Article 13 of Cai Shui [2016] No. 36. The interpretation outlined three key requirements to be met for determining a service not sold within China:

- The seller of the service is an overseas entity or individual;
- The domestic entity or individual purchases the service abroad;
- The service must be fully used or consumed outside of China.

The Fujian Provincial Taxation Bureau addressed the issue of "services fully performed abroad" in its publication, "Key Issues and Difficult Problems Collection of 12366 Consultation in February 2020," with the following explanation: "The term 'fully performed abroad' refers to a business transaction where all elements of the sales act must occur outside China. Specifically, the following conditions must be met:

- The seller (either an entity or an individual) of the service (excluding real estate leasing services) or intangible assets (excluding natural resource usage rights) must be located abroad;

- The buyer (either an entity or an individual) of the service (excluding real estate leasing services) or intangible asset (excluding natural resource usage rights) must receive the service abroad;
- The address, phone number, bank location, place of payment, and other elements related to the payment made by the buyer for the service must be located abroad."

Therefore, the author believes that Article 13(1) of Cai Shui [2016] No. 36 should be interpreted with reference to the explicit provisions, spirit, and purpose of the [2009]111 Document. Specifically, determining a service purchased by a domestic entity or individual from an overseas entity or individual as not sold within China requires not only the service carried out entirely abroad but also that the representative of the domestic entity or the individual receiving the service must directly enjoy the service abroad. Otherwise, even if the service provided by the overseas entity or individual is carried out entirely abroad, if the domestic entity or individual receives the service within China, the transaction will still be considered a "domestic sale of services" and subject to VAT.

Additionally, the author believes that the State Taxation Administration (STA) 2016 No. 53 Announcement is a specific elaboration and refinement of the circumstances under which services do not constitute "domestic sales of services" under the principles of Article 13(1) of the [2016]36 Document, rather than a restrictive application. It should not be concluded that, except for the situations specified in STA 2016 No. 53, any situation where the service purchaser is located within China constitutes a "domestic sale of services." Instead, the determination should still be based on the provisions of Article 13(1) of Cai Shui [2016] No. 36, the provisions of Cai Shui [2009] No. 111, and their legislative spirit. For the circumstances listed in the [2009]111 Document, they should naturally be recognized as not constituting a "domestic sale of services." For specific situations outside the scope of the State Taxation Administration's 2016 Announcement No. 53 and the [2009]111 Document, it is necessary to assess whether they align with the criteria in Article 13(1) of the [2016]36 Document and the legislative intent of the aforementioned [2009]111 Document. If they do, these situations should also be deemed not as "domestic sales of services." Otherwise, they should be recognized as services provided within China and subject to VAT tax.

V. Conclusion

In conclusion, in this case, the author believes that although Company B provided the freight forwarding service entirely abroad to Company A, Company A accepted the service within China, which does not meet the criteria that the domestic entity must directly enjoy the service abroad. Therefore, the transaction should be regarded as "domestic sales of services" and subject to VAT and its associated surtax. Company A, as the withholding agent, is obligated to withhold the tax.

Regulatory Updates

Notice of the State Taxation Administration on Implementing and Refining Tax and Fee Preferential Policies with the Launch of the Third Batch of Measures under the "Convenient Tax Spring Breeze Action" (State Taxation Administration Notice [2023] No. 38)

To:

Taxation Bureaus of all provinces, autonomous regions, municipalities directly under the central government, and municipalities with independent planning status;

Special Commissioner Offices of the State Taxation Administration;

Units within the State Taxation Administration:

In order to thoroughly study and implement the spirit of the 20th National Congress of the Communist Party of China, conscientiously follow the deployments of the Central Economic Work Conference, the National Two Sessions, and the State Council Executive Meetings, and to rigorously implement the extended and optimized tax and fee preferential policies, the State Taxation Administration has launched the third batch of 20 measures under the "Convenient Tax Spring Breeze Action." These measures aim to ensure the timely and accurate implementation of tax and fee policies, boost market confidence, stabilize market expectations, drive the continued overall improvement of economic operations, and actively support high-quality development. The details are as follows:

I. Accelerating Policy Implementation

1. Improve and perfect the unified tax and fee policy guidance mechanism, continue to release timely policy Q&A to enhance the certainty and consistency of tax and fee policies, providing guarantees for their effective implementation.
2. Systematically review various tax and fee preferential policies, create clear and concise thematic policy lists, and push related policies to taxpayers and payers according to the applicable subjects, striving to ensure "policies find their recipients" and "delivering policies to the door."
3. In conjunction with the 32nd National Tax Awareness Month, widely utilize media and online platforms to strengthen policy publicity, offer targeted promotional guidance, and help taxpayers and payers accurately understand and timely apply various tax and fee preferential policies.
4. Track and evaluate the implementation of the tax and fee preferential policies introduced this year, analyze the policy impact, identify issues promptly, and propose optimization and improvement suggestions when necessary.

5. Continue to expand the scope of the tax reduction and fee exemption benefit statements, optimize the notification model, enhance information verification for the benefits, expand notification channels, and improve taxpayers' and payers' experience in receiving tax reduction and fee exemption benefits.

II. Enhancing Key Services

6. Conscientiously implement the "Regulations on Promoting the Development of Individual Industrial and Commercial Households," and further optimize the procedures for changes in individual industrial and commercial household operators by improving information sharing, fully releasing the benefits of tax and fee preferential policies for individual industrial and commercial households.
7. Organize nationwide service activities for individual industrial and commercial households, taking targeted actions to help operators understand policies, master operational procedures, and enjoy benefits, continually alleviating difficulties and optimizing the business environment for individual industrial and commercial households.
8. Collaborate with the All-China Federation of Industry and Commerce to carry out the "Spring Rain Nurturing Seedlings" special action, ensuring that tax and fee preferential policies and innovative service measures are delivered to small and micro businesses in a timely manner, further supporting their healthy development.
9. Ensure that for Category I and Category II export enterprises, the average processing time for export VAT refunds (exemptions) in 2023 remains within 3 working days, further stimulating the vitality of export enterprises and supporting stable foreign trade development.
10. Develop guidelines for the R&D expense deduction policy, conduct extensive promotional guidance based on policy enjoyment conditions, and help enterprises fully benefit from the policy, encouraging increased investment in R&D.

III. Improving Response to Appeals

11. Through methods such as "process walkthroughs and listening to suggestions," strengthen research and investigation efforts, comprehensively collect issues, difficulties, and demands encountered by taxpayers and payers in enjoying policies, and promptly address, research, and respond, ensuring more effective policy implementation and safeguarding taxpayers' and payers' rights to fully enjoy policy benefits.
12. Deepen the application of big data in taxation to identify the potential needs of

taxpayers and payers in relation to tax and fee preferential policies and services, explore personalized, collective policy pushes, and use tax credit prompts to help taxpayers avoid risks of non-compliance and encourage tax law adherence.

IV. Enhancing Convenience in Processing

13. Continue promoting the “Reduction of Certificates for the Convenience of the Public” policy, deepen the implementation of the tax certification commitment system, and provide convenience for taxpayers to declare and enjoy tax and fee preferential policies.
14. Further optimize the functions of the electronic tax bureau, enrich application scenarios, and promote the automation of tax reduction calculations and pre-filling of tax returns for policies such as half-tax for individual industrial and commercial households and tax preferential policies for small and micro enterprises, improving taxpayer experience and ensuring the stable implementation of tax and fee policies.
15. Automatically exempt enterprises with fewer than 30 employees from the employment-related social security fees, ensuring that the preferential policy is fully applied.
16. Proactively remind and promptly process refunds for contributions already paid in the first quarter for those eligible for preferential social security policies, ensuring that the benefits reach the recipients.
17. Facilitate the retrospective enjoyment of VAT refunds for logistics enterprises' large commodity storage facilities under the urban land use tax preferential policy; in regions where the urban land use tax is declared monthly, create a list of VAT refund claimants, and send pre-filled tax refund applications to expedite review and enhance refund efficiency.
18. Further expand online processing channels for real estate tax registrations, using tax apps, WeChat mini-programs, and other platforms to provide richer services on mobile devices, better meet taxpayers' personalized needs, and strengthen inter-departmental information sharing to improve processing efficiency.

V. Standardizing Law Enforcement

19. Standardize the provision of personalized services by tax professional service agencies to taxpayers and payers in accordance with market principles, helping taxpayers enjoy tax benefits in a fast and legal manner; strictly punish bad tax intermediaries who induce or mislead taxpayers into tax violations, protect taxpayers' credit, and safeguard national tax security.

20. Further advance the electronic delivery of tax documents, gradually reduce the need for taxpayers to sign paper documents, and reduce the tax burden on taxpayers.

Tax authorities at all levels should further enhance their sense of responsibility and urgency, strengthen systematic thinking and scientific planning, creatively carry out work based on local conditions, and ensure the comprehensive and effective implementation of the extended and optimized tax reduction and fee exemption policies. They should work diligently to resolve difficulties for taxpayers and payers, reduce burdens, and improve efficiency, effectively supporting the implementation of the decisions of the Central Committee of the Communist Party of China and the State Council.

State Taxation Administration
Ministry of Industry and Information Technology
April 4, 2023

Attachment: Work Task Schedule for the Third Batch of "Spring Breeze Taxation Convenience Action"

No.	Category	Measures
1	Policy Implementation	Improve and standardize the unified tax and fee policy framework, continuously publish timely policy Q&A, and enhance the certainty and consistency of tax and fee policies, providing assurance for the effective and detailed implementation of various tax and fee policies.
2		Systematically review various tax and fee preferential policies, create a concise and easily understandable policy list categorized by themes, and classify and push relevant tax and fee preferential policies to taxpayers and fee-payers according to the applicable subjects, striving to achieve "policies finding people" and "delivering policies to the door."
3		In conjunction with the 32nd National Taxation Publicity Month, widely utilize media and online platforms to strengthen policy advocacy, conduct targeted promotional guidance, and help taxpayers and fee-payers accurately understand and apply tax and fee preferential policies in a

		timely manner.
4	Accelerating Policy Implementation	Follow up on the various tax and fee preferential policies introduced this year, conduct in-depth evaluations of policy execution, promptly identify issues, and offer recommendations for optimization and improvement.
5		Further promote the distribution of tax reduction and fee reduction benefit bills and expand the scope of distribution. Optimize the delivery mode, improve the verification level of benefit bill information, and expand delivery channels to enhance taxpayers' and fee-payers' sense of gaining from tax reductions and fee reductions.
6	Enhancing Key Services	Thoroughly implement the "Regulations on Promoting the Development of Individual Industrial and Commercial Households," strengthen information sharing, further optimize the process for business operator changes in individual industrial and commercial households, and fully unleash the tax and fee preferential policy benefits for individual industrial and commercial households.
7		Organize a national service month for individual industrial and commercial households within the tax system, take targeted measures to help individual industrial and commercial households understand policies, know how to operate, and enjoy the benefits, continuously alleviating difficulties and optimizing the business environment.
8		Collaborate with the All-China Federation of Industry and Commerce to carry out the "Spring Rain Nourishes Seedlings" campaign, ensuring that various tax and fee preferential policies and innovative service measures promptly benefit small and micro enterprises, continuously supporting their healthy development.
9		Ensure that the average processing time for export tax rebates (refunds and exemptions) for Class 1 and Class 2

		export enterprises in 2023 remains within 3 working days, further stimulate the vitality of export enterprises, and support steady foreign trade development.
10		Develop guidelines for R&D expense additional deductions, conduct comprehensive policy promotion and guidance based on the use of preferential policies, help enterprises fully enjoy policy benefits, and encourage greater R&D investment.
11	Improving Response Efficiency to Requests	Conduct thorough research and gather feedback through methods like "process walkthroughs and listening to suggestions," comprehensively collect issues, difficulties, and requests faced by taxpayers and fee-payers in enjoying policies, process them in a timely manner, provide feedback, and promote more effective and efficient policy implementation to ensure that taxpayers and fee-payers fully enjoy policy benefits.
12		Deepen the use of big data in taxation to identify potential needs in tax and fee preferential policies, services, and other areas for taxpayers and fee-payers. Explore personalized and integrated policy push notifications and tax credit reminders, helping taxpayers prevent risks of dishonesty in a timely manner, correct credit issues, and enhance tax compliance.
13	Improving Convenience of Service	Continue promoting the "Reducing Certificates for Convenience" initiative, implement a commitment-based system for informing and promising tax certification matters, and make it easier for taxpayers to apply for and enjoy tax and fee preferential policies.
14		Continue optimizing the electronic tax bureau functions, expand application scenarios, promote the automatic calculation of tax reductions and automatic pre-filing of declarations for policies like the reduced taxation for individual industrial and commercial households and small-scale micro-profit enterprises, improving taxpayers'

		experience and ensuring that tax and fee preferential policies are accurately and steadily implemented.
15	Improving Convenience of Service	Automatically exempt enterprises with fewer than 30 employees from the disability insurance fund, ensuring that eligible enterprises fully enjoy the preferential policies.
16		Actively remind and promptly refund fees paid in the first quarter for fee-payers eligible for the disability insurance fund preferential policies to ensure the policies are effectively implemented.
17		Handle the retroactive application of urban land use tax preferential policies for logistics enterprises' large commodity storage facilities and accelerate the tax rebate review process by forming a list of tax rebate applicants in areas with monthly urban land use tax filings, targeting the delivery of pre-filled tax rebate application forms.
18		Further expand online channels for property registration tax and fee handling, using tax apps and WeChat mini-programs to offer more comprehensive mobile services, better meeting taxpayers' personalized needs, and strengthening inter-departmental information sharing to improve processing efficiency.
19	Enhancing Regulatory Enforcement	Standardize the promotion of tax-related professional service agencies to provide personalized services to taxpayers and fee-payers based on market principles, helping them enjoy tax benefits quickly and in compliance with regulations. Strictly punish tax intermediaries who induce or mislead taxpayers into committing tax violations, protect taxpayers' credit, and maintain national tax security.
20		Further advance the electronic delivery of tax documents, gradually reduce the need for taxpayers to sign paper documents, and alleviate the burden on taxpayers in

		handling taxes.
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Notice of the Ministry of Finance and the State Taxation Administration on Adjusting the List of Branches of Railway and Air Transport Enterprises for the Unified Payment of VAT (Finance and Tax [2023] No. 15)

To:

Financial Departments (Bureaus) of all provinces, autonomous regions, municipalities directly under the central government, and municipalities with independent planning status;

Taxation Bureaus of all provinces, autonomous regions, municipalities directly under the central government, and municipalities with independent planning status of the State Taxation Administration:

This notice provides adjustments regarding the list of branches of railway and air transport enterprises for the unified payment of value-added tax (VAT). The details are as follows:

I. Railway Transport Enterprises

1. The “Notice of the Ministry of Finance and the State Taxation Administration on the Unified Payment of VAT by Railway Transport Enterprises” (Finance and Tax [2020] No. 56) Annex 2, “List of Branches of the National Railway Group for Unified VAT Payment (Part II),” has been supplemented, canceled, and amended as set out in Annex 1 of this notice.
2. The newly added or amended railway transport enterprise branches shall, from the time of the unified tax payment or change as specified in Annex 1, comply with the VAT payment provisions set forth in Finance and Tax [2020] No. 56.
3. The canceled railway transport enterprise branches shall, from the time of cancellation as specified in Annex 1, no longer comply with the VAT payment provisions set forth in Finance and Tax [2020] No. 56.

II. Air Transport Enterprises

1. The “Notice of the Ministry of Finance and the State Taxation Administration on the Unified Payment of VAT by Air Transport Enterprises and Their Subordinate Branches” (Finance and Tax [2020] No. 30) Annex, “List of Branches of Air Transport Enterprises,” has been supplemented with additional branches listed in Annex 2 of this notice.
2. The newly added air transport enterprise branches shall, from the time of unified

tax payment as specified in Annex 2, comply with the VAT payment provisions set forth in Finance and Tax [2020] No. 30.

Attachments:

1. List of Branches of China National Railway Group for Unified VAT Payment
2. List of Branches of Air Transport Enterprises
(<http://www.chinatax.gov.cn/chinatax/n359/c5192606/content.html>)

Ministry of Finance
State Taxation Administration
April 7, 2023

Notice on Tax Incentive Policies for Imported Exhibits Sold During the 2023 China Import and Export Fair Exhibition Period (Cai Guan Shui [2023] No. 5)

To:

Guangdong Provincial Department of Finance,
Guangdong Branch of the General Administration of Customs, Guangzhou Customs,
Guangdong Provincial Tax Service of the State Taxation Administration,
China Foreign Trade Centre:

In order to support the successful organization of the China Import and Export Fair (hereinafter referred to as the "Canton Fair"), and with the approval of the State Council, the following tax policies are hereby announced:

1. Imported exhibits sold within the duty-free quota during the exhibition period of the 2023 Canton Fair, as determined by the Ministry of Commerce, will be exempt from import duties, VAT on imports, and consumption tax. The categories of exhibits, sales volume, or value limits for each exhibitor that are eligible for tax incentives within the exhibition period shall be in accordance with the attached regulations.
2. Exhibits that are eligible for tax incentives do not include goods prohibited from importation by the state, endangered plants and animals and their products, tobacco, alcohol, automobiles, and goods listed in the "Catalogue of Major Technological Equipment and Products Not Eligible for Import Duty Exemption."
3. Exhibits sold by each exhibitor that exceed the categories or sales limits eligible for tax incentives, or exhibits that were not sold during the exhibition period and are not re-exported after the exhibition period ends, will be subject to taxes in accordance with relevant national regulations.
4. The exhibitor list and the list of imported exhibits sold during the exhibition period shall be submitted to Guangzhou Customs by the organizing entity, China Foreign Trade Centre or China Foreign Trade Centre Group Co., Ltd.
5. For imported exhibits sold during the exhibition period that are eligible for this policy,

Customs will no longer conduct subsequent supervision as specific tax reduction and exemption goods.

6. Within six months after each exhibition, China Foreign Trade Centre is required to submit a report on the implementation of the policy to the Ministry of Finance, the General Administration of Customs, and the State Taxation Administration.

Attachment: List of Imported Exhibits Eligible for Tax Incentives at the 2023 China Import and Export Fair (Canton Fair

(<http://www.chinatax.gov.cn/chinatax/n377/c5192467/content.html>)

Ministry of Finance
General Administration of Customs
State Taxation Administration
April 15, 2023

Fortran News

1. On April 6, 2023, Attorney Edward Gao was invited to Shanghai University of Political Science and Law to give a lecture to students on the practical aspects of "International Tax Law and Cross-Border Equity Structure Design."
2. On the morning of April 6, 2023, Attorney Ben Lu was invited to Shanghai Jiaotong University Minhang Campus to deliver a lecture to tax officials from Licang District, Qingdao.
3. On April 8, 2023, Attorney Hann Wu participated as one of the representatives of the Huangpu District Lawyers' Team in the Shanghai Lawyers' Debate Contest.
4. On the evening of April 9, 2023, Attorney Ben Lu was invited to Shanghai University of Finance and Economics to give a lecture to postgraduate students on practical issues related to tax-related criminal law.
5. On April 27, 2023, Attorneys Summer Qu and Wendi Zhou participated in the Huangpu District Judicial Bureau Youth League's "Fun Orienteering Race" event to commemorate the May Fourth Movement.