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Editor-in-Chief of This Issue: Ryan Yan

Editorial Board Member of This Issue: Daisy Gu, Xueying Chen

Insight: Future Trends from VAT Law

By Ryan Yan

The Value-Added Tax Law of the People's Republic of China (hereinafter referred to as the VAT Law) was passed by the 13th Meeting of the Standing Committee of the 14th National People's Congress on December 25, 2024, and will come into effect on January 1, 2026. Although the law consists of only 38 articles, it should not merely be viewed as a direct adoption of core provisions from the *Provisional Regulations on VAT* and the *Implementation Measures for the Pilot Program of the Business Tax-to-VAT Reform* (Finance and Tax [2016] No. 36). The VAT Law introduces a fundamentally different legislative philosophy and approach. The underlying logic and shifts in approach will inevitably have a profound impact on future updates and refinements of VAT-related laws.

I. A Pioneering Approach to Element-Based Legislation in the VAT Law

Element-based legislation, which lies between enumerative and generalized legislation, identifies taxable transactions by identifiable and connectable elements extracted from different scenarios. This method runs through almost every part of the VAT Law, avoiding over-reliance on specific transaction scenarios or abstract principles.

1. Spatial Elements

As a core foundational concept of the VAT law, taxable transactions are not identified through an intrinsic definition or a listing method in the legislation. Instead, it is characterized by spatial elements. According to Article 3, Paragraph 1 of the VAT Law,[1] taxable transactions are initially distinguished by geographic factors, such as domestic versus import transactions. These spatial elements then link four types of items: goods, services, intangible assets, and real estate, thus identifying taxable objects. Within domestic transactions, additional spatial identification factors are applied, including place of departure, place of destination, place of issuance, consumption place, and residence. [2]Through the connection of the elements mentioned above, the content and boundaries of taxable transactions are clearly presented.

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[1] Article 3, Paragraph 1 of the Value-Added Tax Law of the People's Republic of China stipulates that "legal entities and individuals (including individual businesses) engaged in the sale of goods, services, intangible assets, and real property (hereinafter referred to as taxable transactions) within the territory of the People's Republic of China, as well as those importing goods, shall be taxpayers of value-added tax and shall pay value-added tax in accordance with the provisions of this law".

[2] Article 4 of the Value-Added Tax Law of the People's Republic of China stipulates that taxable transactions occurring within China refer to the following circumstances:

(1) Sales of goods: The place of departure or the location of the goods is within China;

(2) Sales or lease of immovable property, or transfer of natural resource usage rights: The location of the immovable property or natural resources is within China;

(3) Sales of financial products: The financial products are issued within China, or the seller is a legal entity or individual within China;

(4) Sales of services or intangible assets: The services or intangible assets are consumed within China, or the seller is a legal entity or individual within China.

However, listing and summarizing methods are not completely excluded in the VAT Law. For example, in the case of "deemed taxable transactions," the VAT law lists specific scenarios such as "collective welfare" and "personal consumption."[3] Similarly, for mixed or combined business situations, the VAT Law follows previous legislative practices by using general expressions. [4]

Although listing and summarizing methods are used in the VAT Law, it still differs from other tax laws in legislation. In recent tax legislation trends, the general approach is to first define principles, then norms, and finally provide a list.[5] The principle-based provisions are located at the foundational or core concept level, and the structure expands sequentially from top to bottom. In contrast, the new VAT law places the element-based norms at the core, taking a central approach that connects the preceding and extends to the following.

"Connecting the preceding" refers to linking the established and definitive principled clauses or general norms, such as the legislation practices for mixed and combined business situations mentioned previously. "Extending to the following" reflects a cautious approach, where issues that are not yet mature or are more forward-looking or exploratory are left intentionally undefined or left blank. For example, regarding the clause on "deemed taxable transactions," except for financial goods, it almost entirely avoids discussing service categories. This not only reflects a limitation of authority but also demonstrates a cautious attitude.

2. Monetary Elements

Monetary elements distinguish between taxable and non-taxable transactions based on compensation and non-compensation, as well as the amount of transaction value. Article 3, Article 5 and Article 6 of the VAT Law outline how paid transactions are used to identify taxable transactions, while certain unpaid transactions correspond to deemed taxable transactions.[6] Article 20 states that for transactions with sales

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[3] Article 5 of the Value-Added Tax Law of the People's Republic of China states that "Any of the following circumstances shall be deemed as taxable transactions and shall be subject to value-added tax (VAT) in accordance with the provisions of this Law:
(1) Legal entities and sole proprietorship use self-produced or entrusted processed goods for collective welfare or personal consumption;
(2) Legal entities and sole proprietorship transfer goods without charge;
(3) Legal entities and individuals transfer intangible assets, real estate, or financial products without charge."

[4] Value-Added Tax Law of the People's Republic of China, Article 12: "If a taxpayer engages in more than one taxable transaction involving different tax rates or levy rates, the sales amount for each transaction should be separately accounted for according to the applicable tax rate or levy rate. If not separately accounted for, the higher tax rate shall apply." Article 13: "If a taxpayer engages in a single taxable transaction involving two or more tax rates or levy rates, the tax rate or levy rate applicable to the main business of the taxable transaction shall apply."

[5] Article 8 of the Corporate Income Tax Law of the People's Republic of China (2018 Amendment): "The actual expenses incurred by an enterprise that are reasonable and related to the income earned, including costs, expenses, taxes, losses, and other expenditures, are allowed to be deducted when calculating the taxable income."

[6] Article 3, Paragraph 2 of the Value-Added Tax Law of the People's Republic of China stipulates that "sales of goods, services, intangible assets, and real estate" refers to the transfer of ownership of goods or real

amounts that are significantly low or high without a legitimate reason, the tax authority may assess the sales amount in accordance with the Tax Collection and Administration Law of the People's Republic of China and relevant administrative regulations.

Compared with previous tax law, there is a deliberate avoidance of abstract or theoretical concepts in VAT Law. Identifying taxable transactions based on compensation can also be found in Article 10 of the *Implementation Measures for the Pilot Program of Business Tax-to -VAT Reform* (Finance and Tax [2016] No. 36), [7]but it is linked directly to business activities, which seems to be influenced by the definition of economic activity in Article 9 of the EU *VAT Directive* (2006/112/EC).[8] The use of business activities as a criterion inevitably leads to a series of theoretical questions, such as whether there is continuity, whether there is a counterparty, or whether there is profit. In contrast, the business activity criterion is deliberately avoided by the VAT Law. Non-business activities are even listed alongside business activities. For example, in the enumeration of non-taxable items under Article 6 of the VAT Law, non-business activities like "administrative and institutional fees" are listed alongside activities that may involve business, such as "interest income from deposits." [9]

Similarly, in Article 44 of the *Implementation Measures for the Pilot Program of Business Tax-to-VAT Reform* (Finance and Tax [2016] No. 36),[10] although

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estate for consideration, the provision of services for consideration, or the transfer of ownership or usage rights of intangible assets for consideration".

Article 5 of the Value-Added Tax Law of the People's Republic of China states that "Any of the following circumstances shall be deemed as taxable transactions and shall be subject to value-added tax (VAT) in accordance with the provisions of this Law:

(4) Legal entities and sole proprietorship use self-produced or entrusted processed goods for collective welfare or personal consumption;
(5) Legal entities and sole proprietorship transfer goods without charge;
(6) Legal entities and individuals transfer intangible assets, real estate, or financial products without charge."

Article 6 of the Value-Added Tax Law of the People's Republic of China: "Transactions under the following circumstances are not taxable transactions and shall not be subject to value-added tax:

(1) Services provided by employees to their employers or clients in return for wages or salaries;
(2) Collection of administrative fees, public institution charges, and government funds;
(3) Compensation received due to expropriation or requisition in accordance with laws;
(4) Income from deposit interest.

[7] Article 10 of the *Implementation Measures for the Pilot Program of Business Tax-to-VAT Reform* (Finance and Tax [2016] No. 36): "Sales of services, intangible assets, or real estate refer to the provision of services for consideration, or the transfer of intangible assets or real estate for consideration, except in the case of the following non-business activities: ..."

[8] Yang Xiaoqiang et al.: "On Business Activities in VAT Legislation," Taxation and Economic Research, 2023, Issue 4 (Total Issue No. 140).

[9] Article 6 of the Value-Added Tax Law of the People's Republic of China: "Transactions under the following circumstances are not taxable transactions and shall not be subject to value-added tax:

(1) Services provided by employees to their employers or clients in return for wages or salaries;
(2) Collection of administrative fees, public institution charges, and government funds;
(3) Compensation received due to expropriation or requisition in accordance with laws;
(4) Income from deposit interest.

[10] Article 44 of the *Measures for the Implementation of the Pilot Program for the Business Tax-to-VAT*

"significantly low or high prices" as a criterion is also raised, it is directly linked to "legitimate commercial purposes," pointing to anti-avoidance measures. The tax authorities are granted the power to determine the sales amount, leaving room for anti-avoidance adjustments. In contrast, in Article 20 of the VAT Law,[11] "significantly low or high sales amounts" are linked to "no legitimate reason," which is aligned with Article 35 of the *Tax Collection and Administration Law of the People's Republic of China*. The expression "no legitimate reason" is more general, leaving room for future legislative adjustments or for the tax authorities' discretion. In addition, the handling method is more lenient, the authorization granted to tax authorities is assessing, instead of determining, the sales amounts, which implies no late fees or tax interest. Therefore, the VAT Law does not contain anti-avoidance provisions.

The deliberate avoidance of qualitative issues and principles reflects a significant shift in legislative thinking: focusing on key elements, giving priority to quantitative elements over qualitative ones, emphasizing on clearly identifiable and measurable factors over abstract or theoretical concepts.

II. Background and Rationale for Element-Based Legislation

The shift towards element-based legislation in the VAT Law addresses the complexity and inefficiencies that have arisen in the tax system. The integration of Western principles, such as the "reasonable commercial purpose" doctrine from common law and the "economic substance" principle from civil law, has resulted in conceptual confusion and inconsistent enforcement, especially as China’s rapid economic development does not always align with these principles. For example, if taxable activities arise from business operations, it leads to questions such as whether investment activities should be considered business activities. If not, it raises the issue of whether financial products constitute investment activities, and so on. If different tax enforcement agencies have varying interpretations, it will directly result in taxpayers being uncertain and unable to comply. The VAT Law seeks to avoid theoretical disputes by grounding its approach in tangible and recognizable elements, which enhances clarity and reduces ambiguity. This practical approach simplifies the tax system, making it more understandable and actionable for businesses and taxpayers.

Value-added tax (VAT) is the most important type of turnover tax. Its key function is to maintain neutrality and indirectness (or transferability), which requires the tax burden to be effectively and quickly shifted from the resource and product stages to the

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Reform [C (2016) No. 36]: "If a taxpayer engages in taxable behaviors at prices that are significantly lower or higher than market rates, and the transaction does not have a reasonable business purpose, or if the behaviors listed in Article 14 of these measures occur without sales revenue, the competent tax authority has the right to determine the sales revenue in the following order: …Reasonable business purpose" refers to actions primarily aimed at obtaining tax benefits, including arrangements designed to reduce, exempt, or delay the payment of value-added tax, or to increase the refund of value-added tax."

[11] Article 20 of the Value-Added Tax Law of the People's Republic of China: "For transactions with sales amounts that are significantly low or high without a legitimate reason, the tax authority may assess the sales amount in accordance with the Tax Collection and Administration Law of the People's Republic of China and relevant administrative regulations."

consumption stage.

However, the single VAT rate system which commonly used in Western countries encounters significant resistance in China's specific tax law practices, which reflecting the issue of inefficiencies in tax system. China's national conditions, including its industrial structure and sectoral distribution, which makes it difficult to implement a single tax rate across all industries. Not only does this fail to reconcile with the historical tax system, but it also risks making certain industries unsustainable due to excessive tax burdens. For example, if the banking sector, which previously faced a 5% business tax rate, were to shift to a 17% VAT rate, it would be particularly harmful to banks already struggling with bad debts. Additionally, as a developing country, China places paramount importance on development, which necessitates the preservation of tax incentives. This leads to an excessive number of tax rate levels, akin to a river with numerous dams of varying heights, creating layers of blockages and congestion. This results in the loss of the VAT's intended characteristic of smooth tax shifting.

The root of the issue lies in the previous legislative path, which started by classifying industries and then determining tax rates. This approach has resulted in the failure to eliminate these pain points in the current VAT law. Reflecting on past legislative practices, lawmakers have been prompted to reconsider whether the essence of a turnover tax lies in the flow of capital or in the tax contribution of different industries and transactions. This is why the author argues that measurement factors should outweigh qualitative factors. On the surface, this issue appears to be about whether to prioritize measurement factors or qualitative factors, but fundamentally, it is about whether the development space of market entities or the financial interests of the state should take precedence. The VAT law gives a clear answer, as evidenced by the repeated emphasis on development in Articles 1 and 2 of the VAT Law.

III. Implications of Element-Based Legislation for the Future

Building on the above analysis, the defining characteristic of the VAT Law can be summarized as "quantification first, acceleration of flow." This approach will influence future VAT regulations and their application.

1. **VAT Law Principles**

   The VAT Law prioritizes the flow of funds, aiming to accelerate the transfer of tax burdens and ensuring that taxes move efficiently to the final consumer. This operational focus takes precedence over abstract theoretical debates. For example, the law avoids adopting the "destination principle" or "consumption principle" commonly debated in VAT theory and instead uses spatial elements, such as the place of departure and place of issuance, to determine taxability. Regarding mixed or combined operations, the law does not attempt to distinguish between one or two taxable transactions but rather addresses the issue with somewhat blunt measurement methods, applying tax rates based on the primary business or the higher rate. As for out-of-pocket expenses, the concept is almost entirely ignored, and instead, it is referred to as 'the price related to taxable transactions,' focusing

solely on the price rather than its nature.

Measurement standards are precise and easily identifiable, whereas qualitative standards are generalized and vague, which can lead to ambiguity or even disputes, ultimately hindering smooth flow. By prioritizing quantitative criteria, the VAT Law simplifies the tax system, promoting smoother tax burden transfer and ensuring taxes flow efficiently to consumption. Therefore, the absence of principle provisions in the VAT Law should not be viewed as a legislative approach of initial transition followed by improvement, but rather as a deliberate decision to prevent taxpayers from being trapped in a legislative maze. If the legislative approach of the VAT Law can be consistently adhered to, it is foreseeable that future VAT regulations will not include principled provisions but will instead rely on identifiable and operational measurement elements and are more likely to be supplemented by enumerative legislation.

Issues that are temporarily difficult to identify or technically challenging to regulate, such as the issue of providing services without charge, are left blank in the VAT Law, leaving all the space for market participants. Only by doing so can resources flow efficiently and rapidly to the consumption end, thus promoting social development. As society develops, tax sources will be more abundant, compensating for some of the earlier tax losses. In contrast, catch-all provisions are not advisable, as judicial practice should focus more on how to apply the element-based provisions rather than creating principles. If the VAT law is to incorporate principled regulations, such provisions should be introduced only after the country has undergone significant development over a prolonged period and is fully equipped to do so, rather than being a matter to be addressed in the near future.

2. **Implementation Regulations**

Unlike previous tax laws, such as the *Corporate Income Tax Law* or *Individual Income Tax Law*, and *Vehicle and Vessel Tax Law*, the VAT Law does not explicitly authorize the State Council to formulate implementation regulations at the end of its provisions. This is particularly significant given that the scope of authorization granted to the State Council is limited to very specific matters, such as deduction items, taxation methods, and agent declaration and payment obligations. Moreover, the VAT Law explicitly refers to the State Council's regulations on “the method for levying VAT on personal items brought into or mailed into the country” and “the detailed rules for export tax refunds (or exemptions)” as measure. Therefore, the author believes that there will not be an Implementation Regulation of the VAT Law in the future. Furthermore, the VAT Law grants the State Council the authority to define standards for small-scale taxpayers, determine the scope of zero-rate applicability, set thresholds for tax exemption, and create specific preferential policies. These are all closely tied to industrial policies and economic development, which require timely adjustments, making legislative action in the form of implementation regulations unsuitable.

3. **Tax Incentives**

If all the provisions of value-added tax were limited solely to the VAT Law itself, it would undoubtedly establish a long-term stable market expectation. The elements that hinder the flow of tax burden will be adjusted within the scope of authority granted by the State Council in the future. For instance, it is foreseeable that interest paid by enterprises on loans will inevitably be deductible. If such deductions are not allowed, then, in the case of rediscounting businesses, since the State Taxation Administration would find it difficult to formulate tax incentives for discount-related matters, the lack of tax incentives would lead to the cessation of such businesses.

Tax incentives policy is one of the elements distorting tax neutrality or impacting the speed of tax burden circulation. Even small-scale taxpayers, in essence, are a form of tax incentives. The large-scale issue of issuing false invoices is also closely linked to the excessive number of tax incentives. In response, the current VAT law addresses this issue.

Looking ahead, the author believes that some tax incentives will likely be eliminated, while others, in line with social development, will be introduced but strictly within the scope defined by the current VAT Law. However, since tax incentives are issued by the State Council, their legislative scope and speed will lag behind those of the State Taxation Administration, it is unlikely that excessive tax incentive policies will be introduced.

IV. Conclusion

The VAT Law is a tax law with Chinese characteristics. It does not adopt the case law system of common law countries, which has a listing effect, nor does it rely on the so-called legal principles of the civil law system. Instead, it takes a more pragmatic road by summarizing the experience generated by China's practice. The long process of VAT reform and the myriad issues encountered along the way have generated rich practical cases, which provide the foundation for the accuracy of identifiable and measurable elements. Where elements can be identified, there is no need for enumeration; where they can be clearly defined, there is no need to express them through principles. The appropriateness of these elements directly determines the quality of the legislation.

China's tax law practice is both developmental and open, and thus, it does not apply rigid principles. While principles contribute to the integrity of a system, enforcing legal uniformity at the expense of vibrant tax law practice would undermine the dynamic nature of the system. This is why the VAT law places particular emphasis on developmental expressions. Over the years, instead of blindly following foreign tax laws, China has actively participated in international rule-making, proposed its own views and adhere to the logic of China's own approach. It is hoped that this element-based legislative approach will not be limited to VAT alone, but will also expand to other tax laws and even to other legal systems. This would give market participants greater room to operate, which would undoubtedly be beneficial for China's economic and social development.

Q&A: How do Foreign-Law Entity LPs in a QFLP pay taxes?

By Daisy Gu & Ryan Yan

Question:

For foreign-law entity LPs in a Qualified Foreign Limited Partner (QFLP), should their income be taxed at 10% or 25%? If the foreign entity is a Hong Kong resident, can it enjoy the CEPA tax preferential treatment, and would the tax rate be reduced to 5% after the preferential treatment?

Answer:

1. Tax Rate Applicability

Whether a 10% or 25% tax rate is applied depends on whether the foreign-law entity LP's investment in the QFLP in China constitutes a Permanent Establishment (PE) in China.

(1) Standards for Determining a Permanent Establishment (PE)

a) **Fixed Place PE**

According to the *United Nations Model Double Taxation Convention Commentary*, the *OECD Model Tax Convention Commentary*, and the notice issued by the State Taxation Administration (STA) regarding the interpretation of the *Agreement between the People's Republic of China and the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (Guo Shui Fa [2010] No. 75), a fixed base or place of business established in China conducting business activities will be deemed a PE, unless the activities are preparatory or auxiliary in nature.

b) **Agency PE**

If an agent in China has the authority to frequently enter into contracts on behalf of a foreign enterprise, the agent will be regarded as an agency PE.

(2) Scenarios where the Foreign Entity LP’s Investment in a QFLP is Considered a PE in China

a) **Fixed Place PE**

Pursuant to Article 2, Paragraph 1 of the Partnership Enterprise Law of the People's Republic of China (2006 Revision), which provides that a partnership enterprise refers to a general partnership or a limited partnership established within China by natural persons, legal persons, or other organizations in accordance with this Law, a QFLP qualifies as a commercial entity lawfully established in China and possesses an independent legal status as such. Accordingly, when foreign investors invest in domestic companies, non-profit organizations, or partnerships, these entities, by virtue of their independent legal personality conferred by law, are generally not regarded as a natural extension of

the foreign investor's own functions or structure within China. Furthermore, given the passive nature of an LP, a QFLP is generally not classified as a fixed-place permanent establishment in China.

b) **Agency PE**

If the foreign LP does not have the authority to manage the partner affairs of a QFLP and cannot control the QFLP, or the General Partner (GP) conducts business on behalf of the LP in its name, then the QFLP or GP is generally not deemed to constitute an agency PE of the LP in China.

However, certain exceptions may apply. For instance, if under the partnership agreement or other arrangements, the LP holds a veto power over major matters such as the QFLP's investment decisions, the disposal of its assets, or the use of its assets as collateral, or if the LP influences investment decisions through decision-making committees or joint committees, the tax authorities may consider the foreign LP to effectively control the domestic GP, thus establishing a PE in China.

(3) Application of Tax Rates

a) **If a PE is established**:

Generally, dividends received by a foreign LP from a resident enterprise through a QFLP may qualify for the dividend tax exemption under Article 26(3) of the *Corporate Income Tax Law*, subject to specific procedural requirements. However, capital gains from the transfer of equity are subject to a 25% corporate income tax rate in China.

b) **If no PE is established**:

Pursuant to Article 91, Paragraph 1 of the *Implementing Regulations of the Corporate Income Tax Law of the People's Republic of China (2019 Amendment)* [State Council Order No. 714], "income derived by a non-resident enterprise as specified in Article 27(5) of the *Corporate Income Tax Law* shall be subject to corporate income tax at a reduced rate of 10%." Accordingly, a 10% withholding tax rate applies.

2. Preferential Tax Rate

To implement the avoidance of double taxation agreements signed by the People's Republic of China, the State Taxation Administration issued the *Announcement of the State Taxation Administration on Issues Concerning the "Beneficial Owner" in Tax Treaties* (STA Announcement No. 9, 2018), which clarifies that, regarding dividends, interest, and royalties, the "beneficial owner" is a person who has ownership and control over the income or the rights or property generating such income.

Further, the STA issued an interpretation of this announcement, including an example where a Hong Kong resident investor A invests in a mainland resident and receives dividends. In this case, A is considered the "beneficial owner" if A is the Hong Kong

government, a company listed in Hong Kong, or an individual resident of Hong Kong. It is important to note that, according to Article 10 (Dividends) of the Mainland-Hong Kong Tax Arrangement, if the Hong Kong resident A is a company listed in Hong Kong holding more than 25% of the shares of the applicant, A can enjoy a reduced tax rate of 5%. If A is a Hong Kong individual resident, A may be eligible for the 10% preferential tax rate under the same provision.

As the "Closer Economic Partnership Arrangement" (CEPA) between the mainland and Hong Kong is a general framework agreement, whether the 5% preferential tax rate applies needs further analysis in combination with the Mainland-Hong Kong tax arrangement and the specific circumstances of the LP.

Regulatory Updates

Interim Measures for Law Enforcement and Coordination in Online Transactions

Effective from January 20, 2025

In order to further implement the law enforcement and coordination requirements set forth in the *E-Commerce Law of the People's Republic of China*, the *Measures for the Supervision and Administration of Online Transactions*, and other relevant laws and regulations, to improve the law enforcement coordination mechanism for online transactions, and to promote the healthy development of the platform economy, the State Administration for Market Regulation has issued the *Interim Measures for Law Enforcement and Coordination in Online Transactions*. The key contents of these measures are as follows:

1. **Clarification of the Scope of Law Enforcement Coordination**

   The scope of application is clarified to include the requirement for platform operators to provide information on the operators within the platform and related transaction information when market regulatory authorities carry out law enforcement activities. This also includes the need to verify, confirm, and respond to coordination matters, assisting in law enforcement actions.

2. **Further Standardization of Law Enforcement Coordination Subjects**

   It is clarified that market regulatory authorities at or above the county level can legally require platform operators to assist in investigations. For products or services within specific timeframes, categories, or regions, the State Administration for Market Regulation or its authorized provincial-level market regulatory authorities may request platform operators to assist in providing relevant information.

3. **Further Specification of the Content of Law Enforcement Coordination**

   It is specified that market regulatory authorities may legally and in accordance with regulations require platform operators to provide information such as operator identity within the platform, product or service information, payment

records, logistics and delivery details, returns and exchanges, and after-sales transaction data. To standardize the actions of grassroots market regulatory authorities and enhance data security management, the **Measures** also stipulate that if special information outside of the standardized fields is required for case handling, the request must be approved by the provincial-level market regulatory authorities.

4. **Clarification of the Subjects of Law Enforcement Coordination**

   The **Measures** identify three categories of business entities involved in law enforcement coordination: (1) online transaction platform operators, (2) online service providers offering platform services such as network operating spaces, product browsing, and online payments, and (3) operators providing services to online transaction operators such as publicity and promotion, payment settlements, and logistics and delivery.

Regulations on the Management of Cyber Data Security

Effective from January 1, 2025

In order to regulate online data processing activities, safeguard the security of online data, and protect the legitimate rights and interests of individuals and organizations, these regulations are formulated in accordance with the **Cybersecurity Law of the People's Republic of China** and other relevant laws. The key contents of these regulations are as follows:

1. **Provisions on the Protection of Personal Information**

   1.1 The regulations clarify the requirements for fulfilling the obligation of notification through the establishment of rules for the processing of personal information, including the content, form, and other aspects.

   1.2 The regulations specify the basic requirements for processing personal information based on individual consent.

   1.3 The regulations outline the rights of individuals to access, copy, correct, supplement, and delete their personal information, and elaborate on the specific conditions for transferring personal information.

   1.4 The regulations require the establishment of specialized institutions or the appointment of representatives within China, in accordance with **Article 53 of the Personal Information Protection Law.

   1.5 The regulations stipulate additional obligations for network data processors who handle personal information of over 10 million individuals.

2. **Provisions on the Security of Important Data**

   Important data refers to data from specific sectors, groups, regions, or with a certain level of precision and scale, which, if tampered with, destroyed, leaked, illegally obtained, or misused, could directly endanger national security, economic operations,

social stability, public health, and safety. To ensure the security of important data, the regulations:

2.1 Clarify the requirements for establishing a directory of important data and the obligations of network data processors to identify and declare important data.

2.2 Define the responsibilities of the network data security officers and the network data security management institutions.

2.3 Require risk assessments to be conducted before providing, entrusting, or jointly processing important data, and clarify the key areas to be assessed.

2.4 Mandate that data processors of important data carry out an annual risk assessment of their data processing activities, and specify the contents of the risk assessment report.

3. Provisions on the Establishment of a Mechanism for Cross-Border Data Flow

3.1 The regulations specify that the national cyberspace administration will coordinate relevant departments to establish a specialized mechanism for the safety management of outbound data, research and formulate policies related to the security management of cross-border data, and coordinate the handling of major matters concerning the security of outbound data.

3.2 The regulations stipulate the conditions under which network data processors may provide personal information to foreign countries, clarifying that data which has not been identified or publicly declared as important data by relevant regions or departments does not require a security assessment for outbound data.

3.3 The regulations specify that network data processors may provide personal information and important data to foreign countries only after passing a security assessment for outbound data, and the data provided must not exceed the purpose, methods, scope, type, and scale defined in the assessment.

Furthermore, the regulations provide that the government will adopt measures to prevent and address cross-border data security risks and threats.

Revised Anti-Money Laundering Law

Effective from January 1, 2025

On November 8, 2024, the 12th meeting of the Standing Committee of the 14th National People's Congress approved the revised **Anti-Money Laundering Law of the People's Republic of China** (hereinafter referred to as the “Anti-Money Laundering Law”), which will come into effect on January 1, 2025. The main provisions are as follows:

1. Introduction of a “Risk-Based” Regulatory Concept

The revised **Anti-Money Laundering Law** requires financial institutions to adopt appropriate risk management measures based on the money laundering risks posed by their customers. It emphasizes that financial institutions' money laundering risk

management measures should be limited to their business scope.

2. **Strengthening the Anti-Money Laundering Obligations of Financial Institutions**

   New provisions include the establishment of internal control systems for anti-money laundering, as well as regular assessments of money laundering risks. The law further details the obligations of financial institutions to conduct customer due diligence for anti-money laundering purposes, stresses the need for institutions to establish risk management measures for money laundering, highlights the application of technology in anti-money laundering management, and clarifies the mechanisms for information sharing related to anti-money laundering.

3. **Penalties and Enforcement Period**

   3.1 In accordance with the principle of proportionality between violations and penalties, the law sets different levels of legal responsibility for financial institutions and responsible personnel for relevant illegal activities. A variety of enforcement measures, including orders to rectify, warnings, fines, and restrictions on business operations, may be applied.

   3.2 The law significantly increases the upper limit of fines.

   3.3 Administrative penalties are also strengthened for directors, supervisors, senior management, and other directly responsible personnel.

4. **Improvement of International Cooperation Provisions on Anti-Money Laundering**

   The new law clarifies that the **State Council's Anti-Money Laundering Administrative Authority** is responsible for organizing and coordinating international cooperation on anti-money laundering. It further stipulates that relevant national authorities may require foreign financial institutions meeting specific conditions to cooperate with domestic authorities in investigating money laundering and terrorist financing activities. Additionally, it states that foreign countries or organizations that directly request financial institutions to submit information or seize funds and assets must not take such actions unilaterally.

Notice on Issues Concerning Participation of Older Unemployment Insurance Beneficiaries in the Basic Pension Insurance for Enterprise Employees

Effective from January 1, 2025

On October 26, 2024, the Ministry of Human Resources and Social Security, the Ministry of Finance, and the State Taxation Administration issued the **Notice on Issues Concerning Participation of Older Unemployment Insurance Beneficiaries in the Basic Pension Insurance for Enterprise Employees**, which will take effect on January 1, 2025, and remain in force until December 31, 2039. The key provisions are as follows:

1. **Clarification of the Scope of Eligible Persons**

   Older unemployment insurance beneficiaries (hereinafter referred to as "older

beneficiaries") are defined as unemployed individuals who are receiving unemployment insurance benefits and are less than one year away from reaching the statutory retirement age. This includes individuals whose unemployment insurance benefits have expired but who continue to receive the benefits until they reach the statutory retirement age, as they have not found employment.

2. **Payment Standards**

   Older beneficiaries, who participate in the basic pension insurance for enterprise employees as individuals in the region where they receive unemployment insurance benefits, must make contributions. The portion of the contribution equivalent to the local minimum payment standard for flexible employment individuals will be covered by the unemployment insurance fund.

3. **Optimizing Service Procedures**

   The policy will be implemented under a “pay first, reimburse later” model. Eligible older beneficiaries who participate in the basic pension insurance for enterprise employees and make the required contributions can apply to the local handling agency for reimbursement of the contributions paid by the unemployment insurance fund. After verification by the handling agency, the reimbursement will be promptly paid to the individual’s social security card bank account.

4. **Suspension of Benefits**

   The payment of pension insurance contributions by the unemployment insurance fund will cease when the older beneficiary reaches the statutory retirement age or if any statutory condition for the cessation of unemployment insurance benefits occurs.

Fortran News

1. On January 9, 2025, Attorney Susan Yang was invited by the Shanghai Bar Association's Tax and Customs Law Committee to participate in the Legal Practice Training Session of Tax and Customs. Attorney Susan Yang chaired the session and delivered a presentation on the second topic, "Tax Issues in Fund Lending."
2. On January 11, 2025, Attorney Ryan Yan attended the 6th Financial Tax Law Conference in Haikou. He gave a speech on the topic, "Regulatory Risks in Cross-Border Financial Product Transactions and Tax Compliance — A Case Study of Total Return Swaps."