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The Legal Hierarchy of China's Tax System

At present, the state organs with the power to enact tax laws, regulations and policies mainly include the National People's Committee (NPC) and its Standing Committee, the State Council, the Ministry of Finance, the State Administration of Taxation (SAT), the General Administration of Customs and the Customs Tariff Commission of the State Council.

1. Law and normative document by the NPC and its Standing Committee.

According to the Constitution of People's Republic of China, legislative power is reserved for the NPC and its Standing Committee. In the 8th article of the Legislation Law of People's Republic of China (PRC), the NPC and its Committee are the only legislatures that have the right to define the Basic Tax System of China.

Resolution, normative resolution devised by the NPC and its Committee, as well as legal interpretation shall share the equal legal power as law.

2. Administrative regulation and relevant normative document by the State Council

The majority of the current tax regulations in China comes from the administrative regulation and relevant normative document published by the State Council. Types as follows:

(1) Basic Tax System

In the 9th article of the PRC's Legislation Law, NPC and its Committee empower the State Council to formulate laws, when lack of suitable tax laws in practice. Such as Consumption Tax, Vehicle Purchase Tax and Land Appreciation Tax (土地增值税).

(2) Legislative practice regulation or practical bylaws

The State Council is responsible for defining the legislative practice regulations or practical bylaws of any laws published by the NPC and its Standing Committee. Such as Personal Income Tax, Enterprise Income Tax.

(3) Non-basic tax system

Non-basic tax system is formulated out of the considerations of practical situations. It includes notices and decisions made by the State Council and its general office. Such as

Business Tax during House and Land Transaction real estate transactions, in “Notice of Adjustment of House Supplemental Structure and Stabilise Housing Price Advice”. Which the State Council forwards it from the Ministry of Construction, Ministry of Finance and SAT.

(4) Interpretation of specific Tax Administrative Regulation

Such as the reply to the 5th article of “Provisional Urban Maintenance and Construction Tax of PRC” by the State Council.

(5) Documents published by affiliated departments of the State Council and approved by the State Council, have equivalent legal power as documents published directly by the State Council.

Such as “Notice of Adjustments and Improvement of Consumption Tax Policy of PRC”.

3. Rules and normative document devised by fiscal and tax authorities of the State Council

The underlying fiscal and tax authorities are the Ministry of Finance, SAT, the General Administration of Customs and the Customs Tariffs Commission of the State Council. Such authorities can publish tax laws and regulations within the departmental scope with reference to tax laws and administrative regulations. In which includes but not limited to order, notice and announcement.

(1) Lay down practical bylaws of administrative regulation according to its approval.

(2) Form specific regulations as supplements or clarifications during specific applications of tax law or administrative regulations.

(3) Publish tax policy and Tax Collection and Management Law within the departmental scope.

4. Regional law and normative document defined by regional NPC and its Standing Committee, governance rule and normative document devised by regional government

Provincial, autonomous regional, municipalities NPC and their Standing Committees; provincial, autonomous regional government located cities, as well as, certain individual cities approved by the State Council, have the right to formulate regional law.

Provincial, autonomous regional, municipalities government; provincial, autonomous regional government located cities and certain individual cities approved by the State Council, have the right to set regulations with reference to law and administrative regulation of the State Council.

5. Normative documents formulated by tax authorities below the provincial level

The provincial tax authorities or below shall formulate specific tax regulations within the limits of authority, which should be applicable to the area under their jurisdiction. Normally they are regulations for tax collection and management, effective within a specific area. The normative

documents are formulated in light of tax laws, administrative regulations and normative documents of higher tax authorities.

6. Tax treaties between the Chinese government and foreign governments(regions)

Tax treaties are agreements or conventions signed by two or more sovereign states with the aim to coordinate in dealing with the taxation affairs of transnational taxpayers and other tax-related matters in accordance with norms of international relations. Tax treaties belong to the category of “treaty law” in international law. They are important basis for the division of international tax jurisdiction and have the same legal binding force to the countries as the domestic law.

According to the Provisions of Tax Collection and Management Law, if treaties or agreements concerning tax concluded between the People's Republic of China and foreign states with different provisions from it, the international tax-related affairs shall be governed by the provisions of those treaties or agreements.

7. Special Administrative Region

At present, China does not levy taxes in Special Administrative Regions, the regions enact laws on its own to stipulate taxation types, rates, tax allowances & exemptions and other taxation matters with reference to the tax policies previously practised in Hongkong and Macao. The Legislative Council is the legislature of Special Administrative Region, whose tax laws are second only to the Basic Law in the region. Laws of Special Administrative Region shall be reported to the Standing Committee of the NPC for the record, but such filing shall not affect its effectiveness.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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