MMLC Group

北京铭辉达知识产权代理有限公司

China Update

Lawyers and Consultants

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BEIJING
709, Tower W3
The Towers
No.1 East Chang An Avenue
Dongcheng District 100738
Beijing, China
北京东城区东长安街 1 号东方广场东方经贸城
西三办公楼 709 室, 邮编 100738
writer's p: +86 10 8515 1091
f: +86 10 8515 1089
w: mmlcgroup.com

Intellectual Property

Latest international patent and trademark filings stats released

International patent applications filed under WIPO's Patent Cooperation Treaty (PCT) grew by 1.7% to 218,000 in 2015, setting a new annual record. Part of this is due to the United States, which has extended its long-standing position as the top source of international patent and trademark applications. Also, large increases in patent-filing activity by China-based innovators accounted for much of the overall growth. While United States maintains its premier position, the geography of innovation continues to shift and evolve, with Asia, and in particular Japan, China and the Republic of Korea, forming the predominant geographical cluster.

Patent infringement disputes increased by nearly 80% in China

The State Intellectual Property Office of the People's Republic of China has reported that there were 35,844 cases of administrative law enforcement related to patents in total across China in 2015, which is an increase of 46.4% from the previous year. 14,607 cases involved patent disputes, including 14,202 cases of patent infringement disputes, which is an increase of 77.7% from the previous year, and 21.237 cases involved the investigation and handling of patent counterfeits, an increase of 30.6% from the previous year.

The number of annual invention patent applications in China broke through the 1 million mark for the first time in 2015 by receiving a total number of 1,102,000 invention patents applications, an increase of 18.7% from the previous year, and is the leader of invention patent applications for the fifth consecutive year. In total, 359,000 invention patents were granted in 2015, where 263,000 were filed by domestic applicants. At the end of 2015, the total number of valid invention patents that represents as an indicator for highest patent quality and reflects the technical and market values of patents were 872,000.

Suning Holdings and Wuliangye Group to form alliance to tackle counterfeits

Suning Holdings Group Ltd, China's largest electronic home applicant Internet retailer, have signed a collaboration agreement with liquor brand Wuliangye Group Co Ltd to help ensure fewer counterfeit goods enter the marketplace, as well as cut transport costs for both companies, which will overall develop further Wuliangye Group's e-commerce distribution channels. The agreement allows for Suning Holdings to collect products directly from Wuliangye's factories and warehouses, and transport them to its own distribution centres, thus reducing the need for any middleman and reducing the risk of counterfeits.

Introduction of New Convenient for Applicant measures

The China Trademark Office (CTMO) has recently announced its introduction of new practical measures in order to provide more efficient and convenient services for the brand owners in their trademark application procedures. For the first time, CTMO is making the effort to take convenient-for-applicant measures to meet the needs of brand owners and trademark agencies. The following may be areas where improvements appear:

1. the publishing of 'Guidebook for Trademark Application', which covers various issues and FAQs concerning trademark applications ever since the new Trademark Law came into force on May 1 2014. For example, it clarifies that applications filed before the use of the new Manual of Identification of Goods/Services shall be examined based on the previous Manual in terms of the classification of goods and services, and the application date will not be retained for a multi-class application when an office action arises even concerning the amendment of goods/services in respect of one class only;
2. the openness of green channels to expedite the administrative process for some after-registration services. For example, in case of emergencies, applicants may submit a written application together with the relevant documentary evidence requesting CTMO to expedite the corresponding process like trademark assignment and renewal;
3. the use of explanatory content to refine of Notices for Amendment of Goods/Services to guide applicants in making amendments in line with the official requirements;
4. the abandonment for the rule that notarization is required for services such as applications for registration of a portrait or famous person's name, including the applications for its assignment, removal, name and address correction;
5. the allowance for sharing of evidence for multiple oppositions provided the oppositions are filed within the same month and the evidence is the same;
6. the extension of the scope of combined examination on oppositions, such as combining the examination of opposition if the parties involved, marks opposed and the evidence is the same; and
7. the optimisation of CTMO website users' experience.

Landmark cases changes the OEM landscape in relation to trademark infringement

The issue of trademark infringement has recently surfaced in relation to OEM practices, involving the question if OEM is guilty of trademark infringement if goods manufactured in China are only offered for sale overseas. Two cases in late 2015, namely *Focker Security Products International Limited v Pujiang Ya Huan Locks Co., Ltd* (the 'Pretul Case') and *Shanghai Diesel Engine Co., Ltd (SDEC) v Jiangsu Changjia Jinfeng Dynamic Machinery Co., Ltd (Changjia)* (the 'Dong Feng Case), have clarified and made several key points in relation to the use of trademarks in OEM practices.

In the Pretul Case, Focker's trademark 'PRETUL' was registered in China in 2003 for household metal products and locks. The Mexican company Truper, on the other hand, has owned the 'PRETUL' mark in Mexico and in various other countries since 2002. Truper instructed Ya Huan, an OEM manufacturer based in Pujiang, to produce locks, keys, instructions and packaging bearing the 'PRETUL' mark. The packaging and the instructions produced by Ya Huan contained the description in Spanish that Truper was the importer of the goods in Mexico, and that the goods were made in China, therefore there was no mention of Ya Huan. In China's Supreme People's Court, it was stated that a trademark, affixed on OEM products exclusively designated for exportation, where the person who ordered the goods has a valid trademark, does not function as a badge of origin of those products in China. In the Supreme People's Court opinion, the mark is not used as a trademark in China, and consequently cannot infringe upon a Chinese trademark. Therefore, it held that Ya Huan only affixed the 'PRETUL' mark on OEM products exclusively designated for exportation, and that it therefore never functioned as a badge of origin in the Chinese market, since those OEM products never entered China for retail or trade. Therefore, the Court reversed the decisions by the lower courts and held there was no trademark infringement.

In the Dong Feng Case, the Plaintiff, SDEC, is the owner of the registered trademarks composing of 'DONG FENG in Chinese characters and pinyin' (the 'Cited Marks') in Class 7. However, an Indonesian company PT ADI PERKASA BUANA (PT ADI) also registered the trademark 'DONG FENG in Chinese characters and pinyin' in Indonesia in Class 7. The Defendant, Changjia, is an OEM manufacturer of diesel engines, and signed with the Indonesian company to manufacture diesel engines for exclusive distribution in Indonesia. In the Jiangsu High People's Court, although it recognised the activity involved OEM practices, it ruled that there is infringement where the OEM manufacturer should know that the Chinese registered trademark is a well-known mark and the foreign brand owner may have hijacked the Chinese trademark and registered the same in the relevant foreign country. Therefore, based on this judgment, the OEM manufacturer has the burden to ensure that the company entrusting it with the manufacturing has the rights to do so, which involves good faith principles and a reasonable duty of care. According to the Jiangsu High Court, whether OEM export constitutes trademark infringement shall be adjudicated on a case-by-case basis, according to the circumstances. Therefore, the Jiangsu High Court ordered Changjia to immediately cease trademark infringement and indemnify the Plaintiff RMB 100,000 as damages and a further RMB 116,750 to cover reasonable costs.

In consideration of both the Preful Case and the Dong Feng Case, there are now numerous issues to consider when undertaking OEM practices involving goods manufactured in China but for exclusive sale overseas to ensure the avoidance of trademark infringement. Prima facie – according to the Pretful Case – there is no trademark infringement where goods are manufactured in China but are designated for exportation. However, other factors must be considered, such as good faith and reasonable duty of care in relation to the use of a registered trademark in China, and whether such obligations have been complied with. It must be considered that the use and fame of the local trademark, as well as the obligation of due diligence, will play a decisive role in the Courts' deliberation in future cases.

TMT/IT

China looks to tighten control over China based websites

The Ministry of Industry and Information Technology has recently posted a draft revision to the 2004 Chinese Internet Domain Name Management Rules, which will be available for public comment until April 25, 2016. If passed in its current form, the new regulations would require all websites to register their domain names with local Internet Service Providers and authorities. The regulations also propose that Internet domain names offering domestic access, such as .net or .cn, should only be provided by services supervised by the government. However, the regulations will not be applying beyod China's borders, indicating that websites hosted outside the country and administered by The Internet Corporation for Assigned Names and Numbers (ICANN), the quasi-governmental gatekeeper for Web addresses, would not be subject to the regulations.

China employs one of the world's most exhaustive Internet censorship regimes to suppress dissent and information deemed dangerous by the Communist Party. Social media posts can be deleted and search term blocked, while local Web users cannot access foreign websites including those of Facebook and Twitter. Therefore, the envisioned rules have triggered alarm among Internet observers, as they give the government further power and access to monitor users' activity and strengthen their control over what content is accessible.

Competition Law

In 2014, the National People's Congress authorised the State Administration for Industry and Commerce (SAIC) to issue a draft revision of the Anti-Unfair Competition Law of the People's Republic of China, which has been released for public comments due 25 March 2016. Some of the key following changes include:

1. Article 5 has been extended to reflects current market realties by defining 'commercial mark' extensively to include acts done online to enable any additional conduct not otherwise specified to be captured under the Anti-Unfair Competition Law, such as defining commercial mark as a mark distinguishing commodity producers or business operators, including but not limited to a unique name, package, decoration, shape of a product, trademark, name or its abbreviation of an enterprise and enterprise group, tradename, the main part of a domain name, website name, webpage, person's name, pseudonym, stage name, or channel program's name or logo and so on, in terms of famous enterprises' products;
2. Article 6 compared to its current form has been further defined and extended, and provides that a business operator shall not implement the following acts of unfair trading, by using its relative dominance to restrict the transaction partners of the other party in the trade without proper reasons, restrict the other party in the trade to purchasing the commodities designated by it without proper reasons, restrict the transaction conditions between the other party in the trade and another business operator without proper reasons, overcharge or unreasonably demand the other party in the trade to provide other economic benefits, or attach other unreasonable trading conditions;
3. Article 13 provides for the use of network technology or application service to engage in acts that may affect user choices, which further emphasises the advanced approach taken by the drafters of the revised Anti-Unfair Competition Law, as it has adequately recognised and addressed modern issues; and
4. Administrative enforcement penalties have increased considerably in order to significantly increase deterrence – for example, Article 18 states that the supervision and inspection department shall order cessation of the illegal acts and confiscate illegal merchandise, and impose a fine of less than five times the amount of illegal revenue if the illegal revenue is more than RMB 50,000, and in serious cases, may revoked the business' license; impose a fine of less than RMB 250,000 if there is no illegal revenue or if the illegal revenue is less than RMB 50,000; impose a fine of more than RMB 100,000 and less than RMB 1,000,000 according to circumstances, if the illegal revenue cannot be calculated.

The revised Anti-Unfair Competition Law illustrates its advanced approach towards recognising and addressing issues within its current form, such as extending the types of conduct constituting unfair competition, including additional provisions dedicated towards addressing acts done online to reflect contemporary society, and increasing penalties to increase deterrence. This illustrates China's consistent effort in working towards the establishment of a comprehensive legal system to protect competition and intellectual property in its economy.

Draft Guidelines on Cartel Leniency in China

In February 2016, the National Development and Reform Commission (NDRC) released the *Draft Guidelines on Application of Leniency to Horizontal Monopoly Agreements* (the "Draft Guidelines") seeking public comments due February 22, 2016. The Draft Guidelines aims to provide more guidance to leniency applicants, therefore it includes information on the requirements for leniency applications, further details on disclosure and confidentiality rules so as to make the application process a fairer and more transparent procedure, and introduces a marker system to fix the time sequence of various leniency applicants. Therefore, the leniency policy can assist the Anti-Monopoly Enforcement Agencies in discovering monopoly agreements, which contributes to saving administrative law enforcement resources, improving efficiency, and safeguarding the interests of consumers.

To increase maximum efficiency, early applications are encouraged. Therefore, the Draft Guidelines provides different treatment for leniency applications before and after the launch of an investigation. According to Article 1 of the Draft Guidelines, the law enforcement authorities may grant the application ranking the first full immunity or may reduce the fine by no less than 80%. The AMEA will further determine the chronological order of multiple leniency applications in connection with a monopoly agreement, and may adjust or cancel the ranking if an applicant fails to fulfill any of its obligations under the Draft Guidelines. Under Article 11, when a ranking is adjusted or cancelled, other applicants may be moved up in the queue. At the conclusion of the investigation, the AMEA will, in an investigation report, determine the penalty for each entity involved based on the severity of its wrongful conduct, and provide proposed reductions of, or exemption from, penalties based on each applicant's ranking. The amount of leniency and the reductions available is under Article 12 of the Draft Guidelines, which provides for a single monopoly agreement where the number of entities may enjoy the following type of leniency:

1. Normal case: 3 entities – the reduction of penalty received from the leniency program:
    a. The first in: 80%-100%;
    b. The second in: 30%-50%; and
    c. The third in: ≤30%
2. Special case: more than 3 entities can enjoy leniency, with the following conditions:
    a. the case is complicated and significant;
    b. numerous undertakings are involved; and
    c. applicants have provided different and substantial evidence.

Also, Article 9 of the Draft Guidelines introduces a marker system, which means an applicant can make preliminary report on the monopoly agreement first and supplement the report with details within a set time period. The marker system will fix the position among various applicants to whom different fine reduction rates will apply. Under Article 9, it is provided that after submitting a leniency application or preliminary report, the law enforcement authority should record and confirm the application and send written feedback, specifying the time of acceptance and list of materials, to the applicant within 7 workdays. Under Article 7, the deadline to perfect the marker sis a period of time generally not exceeding 30 days, which may be extended to 60 days. Therefore, this allows applicants to secure a marker in a certain period of time, encouraging efficiency and successful reports on monopoly agreements.

According to Article 6 of the Draft Guidelines, the entity should confess explicitly that it has been engaged in monopoly agreement that violates the Anti-Monopoly Law, and elaborate information regarding entering into and implementing the monopoly agreement. The following information should be included in the formal report:

1. participants of the monopoly agreement and their basic information (name, address, contact information and representatives);
2. communication of the monopoly agreement (time, venue, contents, and participants);
3. products or service, price and quantity in the monopoly agreement;
4. geographic scope and market scale that might be influenced;
5. duration; and
6. explanation about the evidence provided by the entity.

Finally, a leniency applicant generally will not be granted leniency unless it:

1. promptly stops the violations (unless the agency requires the entity to continue in order to assist the investigation;
2. reports any leniency applications submitted by the entity to agencies in other jurisdictions;
3. cooperates with the AMEA in a rapid, continuous, comprehensive, and sincere manner;
4. maintains and provides the agency with evidence and information;
5. does not conceal, destroy, or transfer evidence, or provide false materials or information;
6. without the consent of the agency, does not disclose the application; and
7. does not engage in any other conduct that may impede the investigation.

Chinese Price Cartel Case in the Pharmaceutical Sector

Recently, the National Development and Reform Commission fined five Chinese pharmaceutical companies a total of RMB 4 million for price fixing, which is illegal under the Anti-Monopoly Law of the People's Republic of China. The case revolved around the drug, allopurinol, which is listed as an essential medicine and is needed in a basic health system. Since 2014, Chongqing Qingyang, Jiangsu Shimaotianjie and Shanghai Xinyi were the only pharmaceutical companies which manufactured the drug, allopurinol. The investigations revealed these three companies had reached a monopoly agreement with two distributors, Chongqing Datong and Shangqiu Huajie. Through the monopoly agreements, NDRC found the price of allopurinol had increased almost four times during the period between 2014 and 2015. Additionally, the companies were found to have divided the Chinese market for the drug between them. This is the first price cartel case in the pharmaceutical sector in China, which indicates an increased focus on the pharmaceutical sector due to the important role it plays.

<u>Environment and Social Welfare</u>

China's first charity bill

Recently, the draft of charity law, the first ever bill to regulate charity activities, was submitted to China's national legislature to realise the 2020 poverty alleviation target. The new law is expected to encourage more ordinary citizens, enterprises and social organisations to engage in charity programs. The 2020 poverty alleviation target includes a target to lift out of poverty all rural residents who fall below the current poverty line by 2020, with the number at approximately 70 million at the end of 2015 under a standard of per capita net income of RMB 2,800 a year. The bill consists of 12 chapters and 112 articles, defines charity activities and charity organisations, and regulates under what criteria charity organisations should be founded and how they should be registered. It also addresses the internal management of charity organisations, the obligation of disclosing information, fund-raising and policies to encourage charity donations, such as tax deductions. Therefore, formulating such a charity law can help nongovernmental sources to work together in taking targeted measures to alleviate and eliminate poverty, making contributions to achieve the goal of building a moderately prosperous society in all respects.

Dispute Resolution

Enforcement of Foreign Award Between PRC Domestic Parties

The recent case of *Siemens International Trading (Shanghai) Co., Ltd vs. Shanghai Golden Landmark Co., Ltd* [2013] Hu Yi Zhong Min Ren (Wai Zhong) Zi No. 2 [27 November 2015] (the 'Golden Landmark Case') is the first reported case where a People's Republic of China (PRC) Court has recognised and enforced a foreign award made in an arbitration between PRC domestic entities.

In the case, the Shanghai First Intermediate People's Court enforced a Singaporean award even though both parties to the arbitration were WFOEs incorporated in China Pilot Free Trade Zone and the contract was to be performed in China. The dispute arose from a sale of goods contract governed by PRC law and providing for arbitration in Singapore, which resulted in favour of the Seller. Because the Buyer only satisfied part of the award, the Seller sought enforcement of the foreign award in Shanghai for the outstanding amount. The court investigated what constitutes "other circumstances" under the 2012 Interpretation when determining whether a dispute is foreign-related. Prior to the Golden Landmark Case, there had been limited practical application of the 2012 Interpretation that provided guidance to foreign companies entering into contracts in China through FIE's on the scope of what might be "foreign-related".

In deciding to enforce the foreign award, the court identified the following facts that made the dispute foreign-related:

- Both parties were incorporated as WFOEs in the Shanghai FTZ which aimed at facilitating foreign investment trade, including a connection between the source of the companies' capital and interests ownership with foreign investors; and
- The contract had features of an international sale of goods contract because the goods had to be imported from abroad to the Shanghai FTZ; they had to pass through Chinese custom procedures.

The decision in the Golden Landmark Case is a welcome development. The Shanghai court interpreted the "other circumstances" limb of the 2012 Interpretation broadly, and provided some indication of the type of circumstances a court might consider when deciding whether a dispute is foreign-related. Therefore, the Golden Landmark Case is a good reminder of the rule under PRC law that domestic disputes must be arbitrated in China, while parties are permitted to arbitrate their disputes outside China only if the dispute is 'foreign-related'. Foreign investors who prefer offshore arbitration should obtain specialist legal advice when contracting through FIEs with other PRC entities, to determine whether there are sufficient foreign elements to make their contractual relationship foreign-related.

Increase in foreign-related disputes

As the country opens wider to international relations, the legal environment of the handling of disputes involving foreigners should be improved to cater to the different interests and situations involved. In 2015, 10 Chinese marine courts concluded 1,030 cases involving foreign litigation, which was a 6.85% increase year-on-year; 15,348 civil and commercial cases involving foreigners were recorded; and 649 criminal cases involving foreigners was concluded. Therefore, the increase each year brings a further urgency to create and improve the legal environment for such disputes in order to establish China as a place of fair dispute resolution.

Employment

Reducing dispatch employees to ten percent

In 2014, the Ministry of Human Resources and Social Security issued the *Interim Provisions on Labor Dispatching* (the 'Provisions'), which required that dispatch employees be limited to temporary, auxiliary, or substitute positions and comprise no more than 10% of the total number of employees of the employer. The Provisions provided for a two-year grace period to comply with the 10% limitation, which expired on February 29, 2016. However, several cities and provinces have issued notices in the past few months to reiterate the deadline, including Sichuan, Suzhou, and Guangdong, and it is expected that local labour authorities will carry out more frequent inspections to ensure compliance with the limitation during the first half of 2016.

Additionally, many employers have moved from a dispatch to a service outsourcing model as a result of the Provisions. The *Meeting Minutes of the Shanghai Municipal Human Resources and Social Security Bureau and the Shanghai High People's Court on Several Issues Concerning the Application of Law in Labour Dispatching 2014* stipulate that outsourcing is a new concept in the market and that some forms of outsourcing may constitute dispatch. However, this depends on various factors, including the application of employing companies' internal policies to such workers and management power over work conducted by such workers. The greater the management control over outsourced workers for the purposes of fire control, work safety, product quality, or workplace order, the more likely that there will be a deemed dispatch arrangement.

Rules for National Social Security Fund

The State Council has recently published a document on the regulation of social security fund. The majority of social security fund comes from central government budget, state-owned capital and the fund's investment return. The fund, managed by the National Council for Social Security Fund, will supplement and regulate social security expenditure including pensions, as well as regulate over multiple risk prevention, control measures for the fund's operation and management, provide the range of the fund's investments, internal control systems and management of fund managers. The central government's finance and insurance authorities will supervise the fund's operation.

Corporate and Finance

China establishes better information-sharing mechanism

In a joint statement released by the Ministry of Industry and Information Technology, China Banking Regulatory Commission, and the People's Bank of China, it was announced China will further boost financing for the industrial sector by establishing a better information-sharing mechanism. Furthermore, a list of key enterprises and projects seeking investment will be created, allowing financial institutions to provide credit support based on individual cases, and platforms to connect enterprises and lenders will also be established with the help of advanced technologies such as big data and cloud computing.

China relaxes capital control on QFIIs

The State Administration of Foreign Exchange (SAFE) has relaxed its regulatory regime on qualified foreign institutional investors (QFIIs) in order to encourage an inflow of foreign funds.

Therefore, the new regime lowers the quota restrictions and provides greater flexibility for QFIIs' capital mobility.

The QFII scheme is the primary channel for foreign institutional investors to invest in China's securities market. Previously, each QFII had to apply to SAFE for approval for an investment quota after obtaining a license from the China Securities Regulatory Commission (CSRC). However, these rules have been relaxed by the *Foreign Exchange Administrative Measures on Investment in Domestic Securities by Qualified Foreign Institutional Investors*. The following provisions have been relaxed:

1. previously a QFII had to apply for SAFE approval for each quota application regardless of the amount, however the new regime has changed this scheme by introducing a concept of Basic Quota, whereby if the quota being applied for is within the range of the Basic Quota (capped at USD 5 billion), a QFII only needs to complete a record-filing with SAFE;
2. repatriation of investment principal is no longer subject to SAFE approval, instead SAFE will monitor QFII's quota based on their net capital inflows;
3. the lock-up period for an investment principal of a QFII has been shortened from one year to three months; and
4. the removal of the deadline for the injection of the full investment amount within six months after obtaining SAFE's approval on its quota.

QFIIs are expected to benefit from the relaxed regime in developing their investment strategies and managing their fund flows. Therefore, these regulatory changes indicate the Chinese government's desire to increase foreign funds in China's capital market amid recent market volatility.

Company delisted for violating disclosure rules

For the first time, the Shanghai Stock Exchange delisted a company for breaching rules on information disclosure. The company, Zhuhai Boyuan Investment Co, forged bank's acceptance bills to cover up RMB 380 million in earnings its controlling shareholders had failed to play, as well as inflating assets, revenues and profits. The delisting highlights China Securities Regulatory Commission's zero tolerance of major violations, and also was a welcome move as it demonstrated a willingness to punish for fraud. It is hoped the move will encourage listed companies to disclose information in accordance with rules, which could help protect better investor's legitimate rights and interests and promote the stable and healthy development of the capital market.

Taxation

China expands VAT reform to new sectors

In the Annual Government Working Report to the National People's Congress held in March, it was announced by China's Premier Li Keqiang that Value Added Tax (VAT) reforms will be fully implemented and expanded from 1 May 2016 to include the construction, real estate, financial and consumer services industries. The VAT reform will be submitted to the State Council executive meeting for approval, thereafter the Ministry of Finance and the State Administration of Taxation will jointly announce a detailed policy reform by April 2016. It is expected that once China's VAT reform is fully implemented nationwide, China will have one of the most advanced VAT regimes in the world.

The new reform sectors include the following:

1. Construction services: construction, installation, repairs, decoration and other construction projects, with a current business tax rate at 3% to change to the applicable VAT rate of 11%;
2. Real estate: sales of buildings and other structures built on land, assignment of land-use rights and natural resources use rights, real estate leasing, with a current business tax rate at 5% to change to the applicable VAT rate of 11%;
3. Financial and insurance, with a current business tax rate at 5% to change to the applicable VAT rate of 6%; and
4. Consumer services: hospitality, food and beverage, healthcare and entertainment, with a current business tax rate at 5% to change to the applicable VAT rate of 6%.

Due to the significance of the VAT reform and its estimate impact on at least 10 million taxpayers in China, the State Administration of Taxation has issued an internal circular, the *Shuizongfa* [2016] No.32, regarding implementation plans and a timetable to be followed by the local tax bureau at provincial and municipal levels. Circular 32 sets out several important steps, including the following:

- Fix the working plans for each level of the tax bureau;
- Transfer taxpayers from the local tax bureau to the state tax bureau;
- Complete preparation work for conversion of business tax to VAT;
- Organise internal training for tax officers;
- Organise external training for taxpayers; and
- Conduct trial run of VAT reform.

Update on high and new technology enterprise (HNTE) tax rules

The Ministry of Finance, the State Administration of Taxation, and the Ministry of Science and Technology jointly issued the new *Administrative Measures for Certification of High and New Technology Enterprises Circular*, which significantly changed the high and new technology enterprise certification rules. Basically, the Circular lowers the criteria for qualifying as an HNTE, but at the same time enhances the requirements for intellectual property ownership as well as compliance. The main implications for HNTEs are the following:

1. a qualified HNTE shall maintain ownership of the technological intellectual property that is essential to the enterprise's production of products or provision of services. Such ownership may derive from proprietary research and development, purchase, donation, acquisition or other means, but intellectual property made available to an enterprise through an exclusive licensing arrangement would no longer qualify;
2. the requirement that a company have a minimum percentage of research and development is lowered to 10% of the enterprise's total employees;
3. the research and development expense ratio requirement is lowered to 5% for small and medium sized enterprises with an annual sales revenue less than RMB 50 million;
4. the required application documents remain similar to those set out in the previous rules, but now includes income tax filing records from the last three years; and

   certified HNTEs are now required to conduct an annual recordal with the authorities, providing the year's intellectual property status, research and development personnel, research and development expenses, sales revenue and other information. Where a HNTE fails to meet the prescribed criteria in a particular year, or where a HNTE fails to conduct the annual recordal for two years, the HNTE qualification will be revoked and the income tax benefit received in the relevant years may be clawed back.

New online import tax rules

From April 8 2016, the tax rules on online retail goods will be changed to level the playing field for e-commerce platforms and traditional retailers and importers. Retail goods purchased online will no longer be classified as 'parcels', which enjoyed a parcel tax rate, lower than that on other imported goods. The parcel tax was not originally for trade purposes, with China's levying on parcels of imported goods worth less than RMB 1,000. However, as the demand for overseas goods have grown, online purchasing agents have taken advantage of the parcel tax and used new methods such as repackaging and mailing products to avoid tax. The new policy only allows a maximum of RMB 2,000 per single cross-border transaction and a maximum of RMB 20,000 per person per year. Therefore, goods that exceed these limits will be levied the full tax for general trade.

Measures for Non-Tax Revenues

The Ministry of Finance has recently issued the Measures for the Administration of Government Non-Tax Revenues, which specifies that non-tax revenues shall be incorporated into the fiscal budget management scope as an important component of governmental fiscal revenues. The Measures also seeks to enhance the administration over government non-tax revenues, regulate the government revenues and expenditure, perfect the function of public finance, and protect the legitimate rights and interests of citizens, legal persons and other organisations. Specifically, the Measures state that the non-tax revenues shall be subject to the classified and graded administration, the establishment and collection of non-tax revenues shall be approved by legal means or relevant administration authority, and the revenues can be directly collected either by financial departments or departments and entities authorised by the financial departments.