

2024 (No. 02 issue)

February 2024



## Shanghai launches tax advance ruling procedures

### In brief

- » Shanghai goes the extra mile to launch the tax advance ruling measures for taxpayers seeking certainty over tax issues for transactions in the pipeline. The new measures have taken effect from 29 December 2023, and apply only to Shanghai entities.

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**In detail**

Shanghai Municipal Tax Service has issued the "*Trial Measures for Tax Advance Ruling Operations of Shanghai Municipal Tax Service*" to formalize the tax advance ruling administration. The *Measures*, billed as a trial practice, have taken effect from 29 December 2023, the same date of its issuance.

**» Nature of tax advance rulings**

The *Measures* aim at advancing the trust and communication between tax agents and taxpayers and uplifting the quality of tax services. It thus mandates that it is a service practice to explain how a tax issue should be addressed under the existing tax codes, and that an advance ruling is unique in the application, issued on a one-to-one basis, which cannot be used for replication, appeal, or litigation purposes.

**» Development of tax advance rulings**

Despite the absence of national legislation, a tax advance ruling practice is never primitive in China but has been burgeoning locally under different names. A glimpse into the history reveals that some local and occasional attempts were staged in growing frequency and scale, as summarized below.

Events of tax advance rulings	
2012	State Administration of Taxation (STA) came into a tax compliance cooperation agreement with three groups, China National Oil Corporation, China Life Insurance, and Siemens, which contains a tax advance ruling arrangement.
2013	Anhui STA issued a tax advance ruling on the reorganization of Masteel Group.
2014	STA included tax advance rulings in its uplifting service plan for large enterprises
2020	Nansha District Tax Bureau in Guangzhou started practicing tax advance rulings.
2021	Guangzhou and Shenzhen issued provisions for tax advance rulings.
2022 ~	Various tax bureaus in the Yangtze River Delta Region coordinated tax advance ruling practices for large enterprises.

**» Conditions for tax advance rulings**

The *Measures* have confined tax advance rulings to the following conditions:

- The new practice applies only to Shanghai entities;
- The case must be a possible event impending within two years, with reasonable commercial purposes, and be legitimate;
- The case needs clarification on a tax position not yet covered by the tax laws; and
- The case does not concern transfer pricing (otherwise, the existing advance ruling procedures for transfer pricing should prevail).

Based on the said conditions, it can be inferred that any cases in implementation, in assumptive concept, concerning transfer pricing, or clarifiable by existing laws are not admissible for a tax advance ruling. In addition, non-Shanghai entities are not covered by the *Measures*.

Another intriguing arrangement of the *Measures* is the authority put in charge of tax advance rulings. They are the Large Enterprises Management Departments (LEMDs) at the district and city level in Shanghai – a body responsible for tax affairs of shortlisted large corporations. It may imply that the mechanism is meant for sophisticated and substantial tax issues but not minor ones. It remains to be seen how the mechanism is readily available to taxpayers in general.

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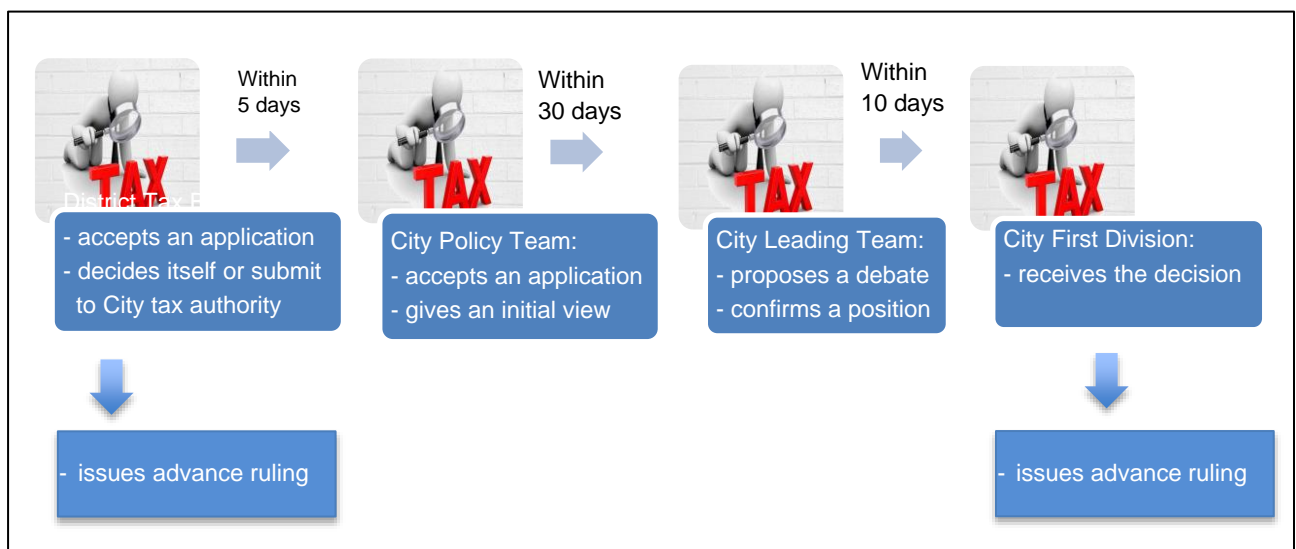
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## » Deliberation process

For an advance ruling, a taxpayer can apply to a district- or city-level tax bureau in Shanghai. The highest authority in charge is the city-level LEMD. An application should contain the following documents:

- Application form;
- Declaration form (committing on factual presentation, risk comprehension, and legal obligation);
- Other pre-approvals or rulings ever granted (where applicable);
- Agreements, meeting minutes, or feasibility study reports;
- Other documents if required by the tax bureau.

Unless a district-level tax bureau can determine a ruling, otherwise the case will be forwarded to Shanghai's city-level LEMD (involving its Policy Team and Leading Team), and finally to the First Division Bureau which will issue the ruling. The whole process is depicted below.



The *Measures* have stopped short of committing how soon an advance ruling can be expected. By examining the internal processing depicted above, a ruling may come by promptly if issued by a district-level tax bureau, or much later (at least a month or above) if a city-level tax bureau is involved.

## » Validity of tax advance rulings

Each advance ruling is unique, and cannot apply to any other cases. Further, it is based on an applicant's legal, true, accurate, and complete statements; if not, it will lose effect.

In case the circumstances of the event or the laws, on which the decision is based, have materially changed, the advance ruling could be revoked as well. If so, the applicant should also notify its tax bureau of the changes within 30 days and apply for a revised ruling.

## WTS China's observation

The *Measures* help enhance tax certainty, and facilitate cooperation between the tax administration and the taxpayers. The deliberation process requires a high level of transparency and in-depth communication. On one hand, the applicants are held liable for a truthful and comprehensive representation. On the other hand, the tax authorities are expected to keep the cases confidential. Only by clarifying the rights and obligations of each party can the practice be sustainable.

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