



Colleagues:

The following is the June 2011 posting of *China Law Deskbook Monthly: News & Views from Beijing* that supplements the Deskbook. Here are a few new laws, regulations, and policy trends that I find of interest this month:

- Another lesson in ***transparency in the law-drafting process***: The Standing Committee of the National People's Congress (NPC) published the draft amendment to the Personal Income Tax (PIT) Law on its official website on April 25, 2011, soliciting comments and feedback from the public. The NPC opened the process for 30 days and the deadline expired on May 24, 2011. At the close of the comment period, the NPC ***had received a record number of more than 230,000 public submissions to the draft amendment***. In short, the amendment sought to increase the minimum threshold for personal income tax from RMB 2,000 (US\$306) per month to RMB 3,000. If the personal income tax threshold is lifted, only about 12% of the labor force will have to pay individual income tax, which is a decrease from the current 28%. At the same time, the amendment will impose the maximum tax rate of 45% upon individuals whose earnings exceed RMB 82,000 per month down from RMB102,000 a month. *Although the NPC has not released the 230,000 public submissions, my gut feeling is that most are complaints from the high income individuals that will be subject to the 45% bracket if the amendment is adopted. On the transparency issue, I can just imagine that the poor folks in the Legislative Affairs Office are grumbling about having to read all of these submissions, and even cursing the very legitimacy of the public comment process. As China matures in its law-drafting process it's a positive sign to see the government giving the public an opportunity to participate. I constantly counsel my Chinese government colleagues about the benefits of transparency and public participation in the legislative process. It's all about accountability, and the process of allowing for public comment ensures some level of public buy-in for the law, and also makes for a better law since somewhere in that pile of 230k comments is something good that will help refine and improve the law. The last time the NPC received over 200k+ pages of comments was with respect to the 1st draft of the Labor Contract Law back in 2007, and in that situation the LAO took into consideration a good portion of the public's feedback. So, an argument can be made that this system seems to be working.*
- The use of ***pre-paid cash cards for corrupt purposes*** may be coming to an end pursuant to an State Council order ***effective Wednesday, May 25, 2011***. Persons that seek to purchase a large amount (RMB10,000 or US\$1,500) of prepaid cards are now required to reveal their names and to provide other identification information, and issuers are required to register purchaser details. The State Council equates pre-paid cards with cash and the order is designed to crack down on money laundering, tax evasion and bribery. With an annual sum of RMB1.1 trillion in prepaid cards

circulating in China, these cards have been a major source of payoffs favored by corrupt officials. The Central Commission of Discipline Inspection, the Party's top anti-corruption watchdog has been pushing for this rule change as well. *Pre-paid cards are the "cash" that China Customs officials prefer. In a customs investigation in Tianjin a few years ago, a customs broker/agent showed me a briefcase full of pre-paid cards that the agent used to "manage" her relationships with Chinese customs officials. This was indicative to me that the practice of bribing Customs officials using pre-paid cards was simple, effective, and hard to trace. Hopefully, the new State Council rules will put an end to this practice.*

- The Supreme People's Court issue new rules, effective May 16, 2011, to strengthen the **judicial enforcement practices involving multiple jurisdictions in China**. (*Provisions of the Supreme People's Court on Several Issues Regarding Entrusted Enforcement, adopted on April 25, 2011, by the Judicial Committee of the Supreme People's Court, and effective on May 16, 2011*) The Entrusted Enforcement Judicial Interpretation provides that if the assets of a judgment debtor are located outside the jurisdiction of the court that originally authorized the enforcement, the court is empowered to authorize other courts in China at the same level where the assets are located to enforce the enforcement measures. The Entrusted Enforcement Judicial Interpretation effectively allows for nation-wide enforcement procedures for the collection of judgments, and are also designed to reduce the travel costs for the courts to send judges to engage in enforcement activities outside of their jurisdiction. The new rules provide for time limits and procedures to compel the entrusted courts to act within a certain time frame. The new rules also stipulate that if the entrusted court fails to complete the enforcement within six months after authorization, the parties involved are entitled to appeal to a higher court for relief. *The rules are also designed to reduce incidents of corruption where the judgment creditors usually pay for the junkets of the enforcement judges to chase after assets outside their home court areas.*
- The State Council promulgated a new set of regulations designed to encourage the use and supervision of business set up as **sole proprietorships**. (*Regulation on Individual and Commercial Households, as adopted at the 149th Executive Meeting of the State Council on March 30, 2011, and effective on November 1, 2011*) The new regulations outline the registration process for sole proprietorships, the annual license process for sole proprietorships, and the potential monetary penalties against individuals that fail to go through the required registration. The new regulations also authorize sole proprietorships to open bank accounts, hire employees, and obtain loans from financial institutions. *While the new regulations seem to be a positive step for small-to-medium sized enterprises, the true legislative purpose is to force individual business operators to get into the regulatory system and pay their taxes. Also of concern is that the new regulations seem to exclude foreigners from setting up shop as sole proprietors, with the exception of residents of Hong Kong, Macau, and Taiwan.*

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