

# **THE MAKING OF TAX LAW IN CHINA – DOES IT COMPLY WITH RULE OF LAW PRINCIPLES**

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*Abstract: Whether the legal reform of the last 30 years has fundamentally changed the role of law in China and led her towards a rule of law regime is contentious. Given the close relationship between taxation and the rule-of-law development and the crucial position captured by the Enterprise Income Tax law in China's developing tax regime, this article has specifically selected the making of the Enterprise Income Tax law as the unit of analysis in assessing whether the making of China's tax law complies with the rule of law principles.*

## **Introduction**

The “rule of law” has been commonly used as an honorific term<sup>1</sup> to describe a regime in which all, including the ruling authority and its subjects, are equal before law. All have to abide by the law and govern (or be governed) by the law. Rights and duties are specified and protected by the law. The law is promulgated in public so that people are able to plan their lives and make decisions according to the law they are made aware of. In light of these attributes, the rule of law is often regarded as one of the core values of developed countries and an ideal which developing nations are encouraged to achieve. Regimes which score high in the rule of law are viewed more favorably by international community and, more often than not, fare better in attracting foreign capital. It is a widely accepted proposition that the rule of law and economic developments are positively correlated.

In the wake of the period of lawlessness experienced by the People's Republic of China

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<sup>1</sup> According to Randall Peerenboom, the rule of law has been ordinarily used as “an honorific term signaling a certain standard of achievement (of a legal system).” See Randall Peerenboom, *China's Long March Toward Rule of Law* (Cambridge University Press, 2002), 140.

(PRC or China) during the Cultural Revolution, the country “had a moment of deep reflection<sup>2</sup>” in reviewing her centuries-long tradition of rule-by-man and was poised to look for alternatives to prevent the history from repeating itself. The country’s then supreme leader, Deng Xiaoping, saw such alternatives in law. According to Chen Jianfu, Deng’s view on the importance of law “is best indicated in his “Two-Hands” policy: on the one hand the economy must be developed, and on the other hand the legal system must be strengthened to maintain an environment for such development<sup>3</sup>.” In 1978, the Communist Party of China (CPC) under Deng’s leadership, made the declaration that, “there must be laws for people to follow; these laws must be observed; their enforcement must be strict; and law-breakers must be dealt with” at the Third Plenary Session of the Eleventh CPC’s Central Committee<sup>4</sup>. The declaration set the stage for the massive legal reform in PRC in the subsequent decades, the scale and rate of which have been unprecedented in China’s history<sup>5</sup>.

In the years that followed, the interplay of economic development and a more liberal political environment fostered lively debate on the role of law in PRC. “After long-term discussions and contention, a consensus over governance by law was finally

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<sup>2</sup> Wang Chenguang, *From the Rule of Man to the Rule of Law, Rule of Law in China: 1978-2008* (*Beijing Shi:She Hue Ke Xue Wen Xian Chu Ban She*, 2008), 8.

<sup>3</sup> Chen Jianfu, “The Transformation of Chinese Law – From Formal to Substantial” (2007) 37 *Hong Kong Law Journal* 689 – 729.

<sup>4</sup> Chen, above fn.3.

<sup>5</sup> Chen has outlined the massive legal developments in the PRC during the period from 1980 to 2000. For details, see Chen, above fn.3.

achieved in academic circles, and was accepted as a slogan by leading organizations of the Party and the state<sup>6</sup>.” In 1996, the then President of PRC and General Secretary of the Central Committee of the CPC, Jiang Zemin, delivered a speech titled “Governance by Law for Long-term Stability”<sup>7</sup>. In the same year, “Governance by law together with construction of a socialist country governed by law” was declared as a basic policy and a national goal in the Fourth Session of the Eighth People’s Congress<sup>8</sup>. In 1999, PRC formally incorporated “ruling the country in accordance with the law and building a socialist country of law”<sup>9</sup> into her Constitution.

Whether the legal reform of the last 30 years has fundamentally changed the role of law in China and led her towards a rule of law regime is contentious. This article aims to examine how PRC complies with the rule of law principles in a particular area of law - tax law making. Part I of the article gives a brief overview of the rule of law concept in the Western context. It then lays down the particular rule of law conceptions and principles to be adopted for the analysis of this article. The relevance and limitations of the conceptions are also highlighted. Part II first expounds why tax law is chosen as the unit of analysis by outlining the close relationship between taxation and the rule of

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<sup>6</sup> Li Buyun, “The Development of Jurisprudence in the New Era” (2000 Summer) *Social Sciences in China* 99-105.

<sup>7</sup> Li, above fn.6.

<sup>8</sup> Li, above fn.6.

<sup>9</sup> Constitution of the PRC (2004 Amendment), Art 5.

law development. It then sets out the scope of the analysis by specifying the type of PRC tax and the kinds of legal documents to be examined. Part III embodies the analysis of how PRC's tax law making as defined complies with the rule of law principles as laid down in Part II. Part IV concludes the article by discussing the observations and the insights drawn from the exercise.

## **Part I – The Rule of Law Concept**

### ***A. Evolution of the rule of law concept in the West***

The rule of law discourse dated as far back as ancient Greece<sup>10</sup>. Despite its long history of evolvement, the rule of law remains a contested concept today. There are “disagreements about whether the term relates to outcome or to process and whether it is mainly based on natural law or positive law principles<sup>11</sup>”. Disagreements also lie on what an ideal rule of law regime should possess<sup>12</sup> and what are the essential conditions to achieve such a regime<sup>13</sup>. There are also debates on whether there exists a universal rule of law benchmark applicable to nations around the world albeit the differences in

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<sup>10</sup> (1) “There was some theorizing by Plato about the advantages of making the Ruler subject to law.” See Richard Cullen, “Rule of Law in Hong Kong” (2005) 1, downloadable from [http://civic-exchange.org/en/live/upload\\_files/200507\\_RuleofLaw.pdf](http://civic-exchange.org/en/live/upload_files/200507_RuleofLaw.pdf); (2) According to Albert Chen, “a significant number of leading scholars in contemporary China found it useful to cite Aristotle’s passage in Politics that rule of law embraces two principles: there is general compliance with the established laws and the content of the law is good.” (See Albert Chen, “Toward a Legal Enlightenment: Discussions in Contemporary China on Rule of Law” (2000) UCLA Pacific Basin Law Journal 125 to 165. This is echoed by Xia Yong in his “What does rule of law mean [Fa Zhi Shi Shen Mo]?” (1999) 4 China Political Science [Zhong Guo She Hui Ke Xue] 117-143)

<sup>11</sup> Cullen, above fn.10 (1).

<sup>12</sup> To Peerenboom, there are 4 ideal types of Rule of Law. They are Liberal Democratic, Communitarian, Neoauthoritarian, Statist Socialist. (For details of the 4 ideal types of Rule of Law, see Peerenboom, above fn. 1, 71 to 102).

<sup>13</sup> Cullen, above fn.10 (1)

their history, culture and economic development<sup>14</sup>. Generally agreed measures to objectively assess the level of rule of law of any given regime are not yet available<sup>15</sup>.

Amid the different schools of thoughts and interpretations of the rule of law, the basic concept hinges on the role law plays in limiting the power of the ruling authority and in protecting rights of the ruled. An overview of the rule of law concept usually starts with the work of A V Dicey. Dicey, though not the inventor of the rule of law concept<sup>16</sup>, has been widely regarded as the one who “encapsulated the concept as a Common Law doctrine<sup>17</sup>”. The rule of law, to Dicey, embodies three conceptions. First, it is supremacy of law, which means “no man is punishable except for a distinct breach of law”<sup>18</sup>. Second is equality of all before law. As such, “no man is above the law and ...every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals<sup>19</sup>”. Lastly, the law of constitution of England is the consequence of “judicial decisions determining the rights of private persons in particular cases brought before Courts<sup>20</sup>”. The first two concepts have been widely accepted as the essence of the rule of law and are frequently cited in

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<sup>14</sup> Peerenboom has provided a detailed account of the debate on the applicability of the rule of law, a concept originated in the West, to China (Peerenboom, above fn.1, 126 – 187)

<sup>15</sup> Peerenboom, above fn.14.

<sup>16</sup> Bernard J. Hibbits, “The Politics of Principle: Albert Venn Dicey and The Rule of Law” (1994) 23 *Anglo-American Law Review* 1.

<sup>17</sup> Cullen, above fn.10(1).

<sup>18</sup> A.V. Dicey, *An Introduction to the Study of the Law of Constitution* (London Macmillan, 1995) 183 to 191.

<sup>19</sup> Dicey, above fn.18.

<sup>20</sup> Dicey, above fn. 18.

the rule of law discourse.

While Dicey is regarded as having encapsulated the general doctrine for the rule of law, Lon Fuller has laid down the substantive elements of the rule of law by prescribing what will make good laws. To Fuller, good laws should possess the following eight elements<sup>21</sup>: (1) generality; (2) promulgation and publishing of law to make it generally available; (3) not being retroactive (or retrospective); (4) not requiring the impossible; (5) clarity; (6) not being contradictory (within the frame of a single enactment or among different enactments); (7) stability; (8) congruence between official action and defined rules. Like Dicey, Fuller's eight conditions to make good laws are widely quoted by scholars in the discourse of the rule of law. Other scholars have developed different versions of conditions that will make good laws<sup>22</sup>. It is noted that these versions either built on or modified Fuller's model and retained most of the conditions as suggested by Fuller, such as consistency, stability, clarity, prospectivity and promulgation.

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<sup>21</sup> Lon L. Fuller, *The Morality of Law*, Revised Ed (Yale University Press, 1964).

<sup>22</sup> Amongst these scholars are Joseph Raz and John Finnis. For Joseph Raz, the 8 conditions to make good laws are: (1) all laws should be prospective, open, and clear; (2) laws should be stable; (3) the making of laws should be guided by open, clear, and general rules; (4) the independence of the judiciary must be guaranteed; (5) natural justice must be observed; (6) courts must have reviewing power over some principles; (7) courts should be accessible; and (8) the discretion of crime-preventing agencies should not be allowed to pervert the law (See book review of "The Authority of law: Essays on law and morality" by Joseph Raz – downloadable from <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198253457.001.0001/acprof-9780198253457-chapter-11?print>).

For John Finnis, a legal system is found to comply with the rule of law if the laws are: (1) predictable and prospective; (2) can be complied with; (3) promulgated in public; (4) clear; (5) consistent; (6) stable; (7) the making of the laws are guided by clear, stable and transparent procedures; (8) implemented and executed by institutions with the proper authority in a consistent, responsible and reliable manner (See Xia, above fn.10 (2), 117-143.)

**B. The rule of law concept for assessing PRC's legal regime – relevance and limitations**

The discourse on the rule of law concept is abundant and ongoing. Many other scholars provide different views on the conception of the rule of law and give their own unique prescriptions on the means to achieve it<sup>23</sup>. The purpose of this article is neither to give a full account of the different conceptions of the rule of law nor to comment the attributes of these different conceptions. What is relevant at this juncture is to decide the particular rule of law concept to be adopted for the analysis of this article among the different conceptions.

As noted by Peerenboom, “(the) rule of law obviously may be defined in different ways; there is no single theory or interpretation. How one defines rule of law depends largely on one’s purposes<sup>24</sup>.” For the purposes of this article, the following principles will be adopted for benchmarking the unit of analysis (i.e. the making of PRC Tax Law) among the different conceptions on the rule of law: (1) There must be procedural rules for law-making and valid laws must be made by an entity with the authority to make laws in accordance with such rules; (2) Laws must be clear; (3) Laws must be prospective; (4) Laws must be consistent. Certain of these principles are based on Peerenboom’s “thin

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<sup>23</sup> Cullen, above fn.10 (1).

<sup>24</sup> Peerenboom, above fn.1, 102.



conception of rule of law<sup>25</sup>” and the eight essential elements to make good laws as suggested by Lon Fuller.

Peerenboom is of the view that the thin conception of rule of law is a good starting point for analyzing the legal regime of PRC given that “there is considerable agreement about the basic requirements of a thin theory<sup>26</sup>” and “general agreement that a rule-of-law system must meet the standards of a thin theory<sup>27</sup>”. Focusing on thin conception “highlights the importance of the virtues of the rule of law<sup>28</sup>” and avoids the endless debate on the political ideology embedded in thick conception of the rule of law<sup>29</sup>. In addition, China’s legal development has historically stressed more on substantive justice. Thin theory, which incorporates elements on procedural rule of law, helps to correct this tendency<sup>30</sup>.

There is question as to whether the rule of law concept, with its Western origination, would be an appropriate concept to apply in China given the vast cultural differences

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<sup>25</sup> Both Lon Fuller’s account of rule of law and Peerenboom’s thin conception of rule of law include elements other than those mentioned above such as stability, enforceability, fairness and acceptance of laws. They are not to be included as the principles of measurement in this article as their measurement will involve study spanning a longer timeframe than the current analysis and will require feedback/information gathering from the taxpayers. The work of which is not within the reach of this article (in terms of length and resources).

<sup>26</sup> Peerenboom, above fn.1, 102.

<sup>27</sup> Peerenboom, above fn.1, 65.

<sup>28</sup> Peerenboom, above fn.1, 67.

<sup>29</sup> According to Peerenboom, thick theory “begins with the basic elements of a thin theory of rule of law but then incorporates elements of political morality such as particular economic arrangements, forms of government or conceptions of human rights. (See Peerenboom, above fn.1, 3).

<sup>30</sup> Peerenboom, above fn.28.

between the two civilizations. Views of the Chinese scholars may shed some lights on this issue. Albert Chen, in tracing the rule of law theory in contemporary China, noted that most China's scholars "find the theory and practice of the rule of law as developed in the West highly relevant to China's contemporary needs"<sup>31</sup>. He also found that "there seems to be a consensus that the rule of law connotes the binding authority of democratically generated law on both subjects (citizens) and rulers (government)"<sup>32</sup>.

Chen Jianfu, on the other hand, prefers the concept "ruling the country according to law" than the western term "rule of law" in assessing PRC's legal development<sup>33</sup>. According to Chen Jianfu, "ruling the country according to law" means "there must be laws for people to follow, these laws must be observed, their enforcement must be strict and law-breakers must be dealt with"<sup>34</sup>. Although there is disagreement on the particular term to use, Chen Jianfu, in assessing the recent developments in PRC, praised the passing of the Legislation Law<sup>35</sup> in China which served to make its law making procedures more transparent and put up mechanism to "ensure the consistency of laws enacted at different levels"<sup>36</sup>. He also advocated more public participation in the law making process and

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<sup>31</sup> Albert Chen, above fn.10(2)

<sup>32</sup> Alert Chen, above fn.10(2).

<sup>33</sup> Chen, above fn.3.

<sup>34</sup> Chen, above fn.3.

<sup>35</sup> Legislation Law of the PRC (Legislation Law), promulgated by 3<sup>RD</sup> Session of the 9<sup>th</sup> NPC on 15 March 2000, effective from 1 July 2000.

<sup>36</sup> Chen, above fn.3.

placing the government under the rule of law<sup>37</sup>. From this perspective, Chen Jianfu's "ruling the country according to law" includes elements which are also commonly found in the western conceptions of the rule of law.

Regarding what will make good laws, there are also common grounds shared by the PRC scholars and their Western counterparts. According to Li Buyun<sup>38&39</sup>, in order to develop into a rule of law state, China should build up a complete and comprehensive legal system. Such system should possess laws which are clear and consistent. There should be reasonable rules governing the terms of the laws, their effective date and ways of promulgation.

The discussions above showed that the rule of law concept, despite its Western origination, has been widely studied by the Chinese scholars. Certain of its basic principles are also accepted among these scholars as good model for the PRC legal regime to follow. On a practical level, China has to face the reality that she is under increasing demand to comply with the rule of law principles in the Western context as a

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<sup>37</sup> Chen, above fn.3

<sup>38</sup> Li Buyun is a respectable Chinese scholar whose academic expertise is in jurisprudence, constitution and human rights law (See <http://www.chinesewhoswho.org/enmrdata/index.php?doc-view-2580>.) He had worked for the Institute of Law of the Chinese Academy of Social Sciences since the 1960's and had given lectures to members of the Politburo Standing Committee of the CPC.

<sup>39</sup> Li Buyun, "Ten Principles of Rule of Law State (*Fa Zhi Guo Jia De Shi Tia Biao Zhun*)" (2008 February) 12(1) Journal of the Party School of the Central Committee of CPC 78-83.

result of her extensive interactions with the international community on economic, trade and political matters.

Given that China is one of the countries which attract the most of the world's foreign direct investment<sup>40</sup>, she inevitably has to take into account of the views and needs of the foreign investors in exercising her governance on economic matters<sup>41</sup>. It is reasonable to expect that these foreign investors, in order to protect their interests in China, would demand China to adopt greater transparency and consistency in making and implementing her laws<sup>42</sup>. The accession into the World Trade Organization ("WTO")<sup>43</sup> is another factor promoting China's adoption of the rule of law principles. As pointed out by Chen Jianfu, "some WTO agreements demand national laws to be transparent, readily accessible, relatively stable and universal in their application, and that national judicial and other dispute resolution mechanisms are independent, impartial and transparent."<sup>44</sup> These WTO related legal reforms are exerting the rule of law principles

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<sup>40</sup> According to the World Factbook published by the Central Intelligence Agency ("CIA") of the United States ("US"), China ranks second, only after the US, in terms of the amount of foreign direct investment received from non-residents of other countries as at 31 December 2012. Comparison is downloadable from <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2198rank.html>.

<sup>41</sup> As reported by the press (<http://finance.sina.com.cn/g/20050120/17131309950.shtml>), when the new Enterprise Income Tax Bill was in the process of being drafted, several multinational corporations jointly issued a letter to the relevant authorities of PRC Government expressing their concern on the abolition of the preferential corporate tax rate for foreign investors. Government officials had to yield to the pressure of the foreign investors and explained in public the basis of unifying the tax rate. This incident shows that the Chinese Government is increasingly engaged in dialogue with foreign investors when making new laws and implementing new policies, whether willingly or unwillingly.

<sup>42</sup> Peerenboom has given detailed examples on how unclear and inconsistent laws have frustrated foreign investors in PRC. For details, see Peerenboom, above fn.1, 249 to P.256.

<sup>43</sup> China has become a member of the WTO since 11 December 2001.

<sup>44</sup> Chen, above fn.3.

of openness, transparency, stability and fairness on China.

From the above discussions, it can be concluded that the rule of law principles have been widely recognized both by China<sup>45</sup> and by the international community as a common means to assess her legal development. With these internal and external factors in force, “it is unlikely that China will develop a legal system so radically different as to render a thin rule of law conceptually inapplicable<sup>46</sup>.” As such, the rule of law principles, including those adopted as the benchmark of assessment for this article, should serve as an appropriate and realistic criteria to assess the situation in China.

Having said, the rule of law principles adopted are not free from limitations. The most relevant limitation for the current discussion is how to measure the level of compliance of the subject matter against the rule of law principles. There is no absolute rating which will lead to an objective conclusion of whether the principles are complied with. For instance, out of ten regulations, 50% of those are found to be complying with the principles of clarity, prospectivity and consistency. Would that percentage be sufficient to qualify a system as complying with the rule of law principles?

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<sup>45</sup> Stanley Lubman also agreed that “the increasing demand to call for rule of law” is “from indigenous Chinese sentiment, not the creations of Western scholars.” For details see Stanley Lubman, “Bird in a Cage: Chinese Law Reform After Twenty Years” (1999-2000) 20 *Northwestern Journal of International Law and Business* 383 to 423.

<sup>46</sup> Peerenboom, above fn.1, 144.

An alternative solution would be making use of a sliding scale whereby different regimes are ranked against the scale to derive an index which represented the level of compliance<sup>47</sup>. This alternative would also involve subjective judgment when selecting what criteria to be included in compiling the index as well as weighing the importance of the criteria chosen.

As the involvement of subjective judgment is inevitable, the analysis of this paper will attempt to list out the incidences of non-compliance through examining the relevant legislative documents issued during the period as specified in the section below and conclude the result of compliance based on the significance and frequency of the non-compliance<sup>48</sup>. It is expected that the result would provide certain insights as to whether China is moving towards the direction of rule of law and the challenges she faces along the way.

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<sup>47</sup> Peerenboom, above fn.1, 136.

<sup>48</sup> This approach is analogous to the eyeball approach highlighted by Peerenboom when he quoted US Supreme Court Justice Potter Stewart's views about pornography, "I know it when I see it." See Peerenboom, above fn.1, 135.

## Part II – Why Tax Law and What Tax Law?

### A. Why tax law? - taxation and rule of law

The relationship between taxation and rule of law has always been close, each affecting the other's development. On one hand, tax collection has to be governed by rule of law. According to Dicey, "all taxes are imposed by statute, and that no one can be forced to pay a single shilling by way of taxation which cannot be shown to the satisfaction of the judges to be due from him under Act of Parliament<sup>49</sup>." This thinking has evolved into the modern constitutional principle of "no taxation without law", "which means no one but the legislative authority has the right to decide what kinds of tax will be imposed and how<sup>50</sup>." In short, the right to collect taxes should be according to the law. Taxpayers' rights should be protected by the law.

On the other hand, the collection of taxes has spurred the rule of law development, as history has shown us. The famous Magna Carta was forced onto King John of England against the backdrop of his imposition of high taxes. There are many other incidences<sup>51</sup> in the history of Western civilizations which exhibited the inseparable role taxation

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<sup>49</sup> Dicey, above fn.18, 311.

<sup>50</sup> Xu Yan, "Taxation and Constitutionalism in China" (2006) 36 Hong Kong Law Journal 365 to 379.

<sup>51</sup> As noted by Xu Yan, "Many studies have found that the modern constitutional polity emerged in early modern Europe when monarchs in England, France and the Austro-Hungary Empire were forced to surrender their absolute power to parliamentary institutions most of all in exchange for the agreement to impose new taxes." She also quoted the direct linkage between the War of Independence of American colonies and British government's attempts to raise new taxes from these colonies. For details, see Xu Yan, "No Taxation without Representation: China's Taxation History and Its Political-Legal Development" (2009) 39 Hong Kong Law Journal 515 – 528.

played in the development of constitutionalism<sup>52</sup>. This causal relationship is not by coincidence. According to constitutional theory, the collection of taxes by governments is tantamount to taking of private property from their subjects. As an exchange for the agreement to surrender their private property to the government, citizens strive for the right to constrain the government as taxpayers<sup>53</sup>.

There are doubts as to whether taxation will play the same role in China's rule-of-law development as it had in western civilization, due to the unique cultural orientation of the Chinese, who are found to be more obedient to the ruling regime and place higher value on social harmony. Nevertheless, out of the practical needs to collect taxes from the foreign investors deriving income from her jurisdiction as well as from her domestic residents who have invested or worked overseas, China's tax law is required to converge to western practice and is expected to be at the forefront in complying with the western ideal of rule of law. As a matter of fact, the State Administration of Taxation (SAT) has declared continued improvement in the rule of law for tax collection as one of the major missions in its Twelfth Five-Year Policy Taxation Development Planning Outline<sup>54</sup>.

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<sup>52</sup> According to Yan (See above fn. 50), constitutionalism generally refers to (1) rule of law; (2) limited government.

<sup>53</sup> Yan, above fn.50.

<sup>54</sup> [http://www.ce.cn/cysc/newmain/yc/jsxw/201303/06/t20130306\\_21439035.shtml](http://www.ce.cn/cysc/newmain/yc/jsxw/201303/06/t20130306_21439035.shtml)



In view of the crucial role taxation plays in the rule of law development and the pivotal position tax law captures in the junction where China converges with the Western practice, this article will specifically select the making of tax law as the unit of analysis in assessing whether China complies with the rule of law principles. While the other components of tax law are also important, their assessment may involve study of the organization structure of China's tax collection authorities, the cultural orientation and the whole judicial system, the scope of which may not be entirely legal related – and, also, which is beyond the reach of this work (in terms of length).

***B. What tax law to study?***

There are currently 19 categories of taxes in China<sup>55</sup>. To further refine the scope of this paper, Enterprise Income Tax (EIT) has been selected as the subject matter for analysis out of the following considerations : (1) Tax revenue generated from EIT amounts to around 20% of total tax revenue for 2011<sup>56</sup>, ranks only second to Value Added Tax<sup>57</sup>; (2) EIT has a wide taxpayer population and covers all corporate entities, irrespective of their industries, capital size and country of residence; (3) EIT is a shared tax whereby revenue is shared between the Central and local authorities; (4) EIT is a comparatively new tax

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<sup>55</sup> Website of the SAT, downloadable from <http://www.chinatax.gov.cn/n6669073/n6669133/6887407.html>

<sup>56</sup> China Statistical Year book 2012, downloadable from <http://www.stats.gov.cn/tjsj/ndsj/2012/html/H0806C.HTM>

<sup>57</sup> Since 2012, PRC has embarked on reforms on her Value Added Tax ("VAT") and Business Tax, aiming at merging the two taxes into one regime. Given that the reform is still ongoing, frequent modifications or fine tuning to the existing regime are expected. Therefore, VAT is not chosen as the unit of analysis for this paper.

regime, governed by the EIT Law<sup>58</sup> effective from 1 January 2008. As such, EIT should serve as a modern tax, representative of PRC's developing tax law regime and suitable for analysis under this paper.

Similar to other tax regimes in PRC, the normative documents governing the operation of EIT are not restricted to the EIT Law. Rather, they comprised a wide range of regulations, rules, notices issued by various legislative and administrative authorities. Before proceeding to the analysis, the types of normative documents considered as the EIT law for this analysis have to be ascertained first. Wei Cui, a scholar of the China University of Political Science and Law, has posed a similar question, "What is the 'Law' in Chinese Tax Administration?"<sup>59</sup> The conclusion of Cui is that there are at least three contrasting views on what constitute tax law in China.

The first view is that only legislative documents expressly governed by provisions under Legislation Law possess the binding force of law. These legislative documents include (1) law as adopted by the National People's Council (NPC) and its Standing Committee (NPCSC or SC); (2) administrative regulations issued by the State Council; (3) local regulations / autonomous regulations / separate regulations formulated by the people's

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<sup>58</sup> The EIT Law of the PRC was adopted at the 5<sup>th</sup> Session of the 10<sup>th</sup> NPC of the PRC on 16 March 2007.

<sup>59</sup> Wei Cui, "What is the 'Law' in Chinese Tax Administration?" (2011) 19(1) Asia Pacific Law Review 73 to 92.

congresses or their standing committee of the provinces, autonomous regions and municipalities directly under the Central Government; (4) rules made by ministries and commissions of the State Council<sup>60</sup>; (5) rules made by people's government of provinces, autonomous regions and municipalities directly under the Central Government and the comparatively larger city<sup>61</sup>. This view<sup>62</sup> is endorsed by the provisions in the Administrative Procedure Law<sup>63</sup> and by the Supreme People's Court<sup>64</sup>.

The second view is the view of the SAT. Pursuant to the national policy<sup>65</sup> of administration according to law, the SAT issued SAT Order 20, Administrative Measures for the Formulation of Tax Regulatory Documents<sup>66</sup> (SAT Order No 20). The Order lays down the substantive and procedural requirements of "drafting, examination, promulgation, filing, clean-up and other work" on "tax regulatory documents" issued by

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<sup>60</sup> Legislation Law Art 71 reads: "the ministries and commissions of the State Council, the People's Bank of China, the State Audit Administration as well as the other organs endowed with administrative functions directly under the State Council" may make rules.

<sup>61</sup> Legislation Law Art 72

<sup>62</sup> According to Cui, although the Legislation Law does not expressly state that only these 5 types of legislation have the binding force of law, it has implied so since "the central purpose of the Legislation Law is to bring consistency and uniformity to the Chinese legal system, and its ability to do so would be severely limited if rules with the force of law are not governed and ordered by it." See Cui, above fn.59, 76.

<sup>63</sup> Administrative Procedure Law of the PRC (Administrative Procedure Law), adopted at the 2<sup>nd</sup> Session of the 7<sup>th</sup> NPC of the PRC on 4 April 1989 and effective as of 1 October 1990. Under Article 52, "the people's courts shall take the law, administrative rules and regulations and local regulations as the criteria in handling administrative cases."

<sup>64</sup> According to *Fa* (2004), No 96, which is the "Meeting minutes of a national judicial conference held in Shanghai in 2003 regarding the Application of Legal Norms in Reviewing Administrative Cases", the Supreme People's Court ("SPC") has clarified that in reviewing administrative cases, the people's court shall base on the law, administrative regulations issued by the State Council; local regulations / autonomous regulations / separate regulations formulated by the people's congresses or their standing committees and rules made by ministries and commissions of the State Council and by people's governments. Other normative documents, including interpretations, decisions, orders, formulated by ministries of the State Council or people governments above county level, do not form the source of law and are not binding to the people's courts. For details, also refer to Cui, above fn.59, 80.

<sup>65</sup> The national policy as stated in *Guofa* {2004}, No. 10 - Program of the State Council for Promoting the Administration by Law in an All-round way, issued on 22 March 2004.

<sup>66</sup> Issued on 10 February 2010, effective as of 1 July 2010.

“a tax authority at or above the county level under the statutory functions and provisions”<sup>67</sup>. Tax regulatory documents refer to documents which “prescribe the rights and obligations of the taxpayers, withholding agents and other relative persons of tax administration...and have universal binding force and are applicable repeatedly within the jurisdiction of the said tax authority”<sup>68</sup> and specifically exclude “departmental tax rules and regulations formulated by the SAT”<sup>69</sup>. No other definitions of tax regulatory documents are found in the Order. In a notice<sup>70</sup> issued by the SAT supplementary to the SAT Order No 20, documents on internal management matters are specifically differentiated from tax regulatory documents.

SAT Order No 20 signifies the SAT’s views that, apart from the 5 types of legislative documents stipulated under the Legislation Law, normative documents issued by tax authorities above the county level, prescribing rights and duties of taxpayers and related persons, shall have the force of law. According to the SAT, these normative documents are “important tools”<sup>71</sup> for the implementation of taxation laws, regulations and rules and therefore should be governed by similar principles as laid down by the Legislation Law, most of which are adapted in the Order.

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<sup>67</sup> SAT Order No 20, Arts 2 and 3.

<sup>68</sup> See above fn.67.

<sup>69</sup> See Above fn.67.

<sup>70</sup> *Guashuifa* (2010) No. 55, issued on 1 June 2010.

<sup>71</sup> See above fn.70.

The above two views representing the official perspective of what constitutes tax law are, however, different from the views of the general public, including the tax practitioners. Cui observed that the prevalent view among the general public is that “the Legislation Law has no practical relevance in the tax context<sup>72</sup>”. As such, they “routinely disregard the differences in the legal effectiveness of tax rules<sup>73</sup>” and accept that “informal rules issued by the government should be given full weight even if they contradict laws created by higher authority and contradict each other<sup>74</sup>”. Given the cultural orientation towards social harmony and out of the concern that confrontation might invite retaliation<sup>75</sup>, taxpayers in China tend to adopt an accommodating approach with the tax authorities. They would resort to negotiation rather than litigation when dealing with contentious matters with the tax offices. As they consider that the legal effectiveness of the normative documents would only affect them in the rare incidences when the matter is put to court, they generally do not seriously examine such aspect in the day to day handling of their tax matters.

Our analysis will take the approach close to the second view. The analysis will focus

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<sup>72</sup> Cui, above fn.59, 88.

<sup>73</sup> Cui, above fn.59, 88.

<sup>74</sup> Cui, above fn.59, 73.

<sup>75</sup> In Chinese culture, direct confrontation is generally not favored in social interactions as it may make the other party lose their “face” – dignity and reputation. Resolving conflict in this manner may harm future relationship and even cause retaliation.

on the EIT Law adopted by the NPC, EIT administrative regulations issued by the State Council, rules made by ministries of the State Council (i.e. the SAT<sup>76</sup>), normative documents on EIT formulated by the SAT<sup>77</sup> and its provincial offices<sup>78</sup> as well as those issued by local tax bureaus at provincial level<sup>79</sup>. To further refine the scope of the analysis for practical considerations, the SAT's local offices at Guangdong and Sichuan and local tax bureaus at these two provinces have been chosen as the source for sample selection<sup>80</sup>.

The approach represents the Tax Administration's formal view and more reflects the practical reality that the operation of EIT is supported by a substantial amount of normative documents. It is expected that this approach will help us to form a realistic picture of how the PRC EIT law complies with rule of law principles.

### **Part III – Does the Making of PRC's EIT Law Comply with the Rule of Law**

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<sup>76</sup> Certain tax regulatory documents are jointly issued by the SAT and other ministries of the State Council, such as the Ministry of Finance (MOF). As these jointly issued circulars may be subject to formulation guidance of the other ministries, they are not included so as not to affect the validity of the result.

<sup>77</sup> It is noted that EIT matters are rarely governed by local regulations and local rules made by the local people's congress or local governments. As such, these local regulations and rules are not included for current purposes.

<sup>78</sup> The provincial state tax offices are part of the SAT administration and directly under the supervision of the SAT.

<sup>79</sup> The local tax bureaus at provincial level are jointly supervised by the SAT and the people's government at the provincial level.

<sup>80</sup> Guangdong (a coastal province) and Sichuan (an inland province) are selected due to the differences in their geographical location, production mix and level in economic development. In addition, Sichuan's EIT collection ranks the highest at RMB\$200,590 million among the inland provinces for 2011 (according to the China Statistical Yearbook 2012). The diverse samples aim to give a more complete picture of the compliance level of the rule of law principles in respect of documents issued by local tax offices while at the same time narrow the scope of research for practical considerations.

## Principles?

### A. Compliance with procedural rules?

As noted by Li Yahong, “the laws and regulations in China governing organization, procedures and other legislative matters at various levels of the legislative organs are very comprehensive.”<sup>81</sup> The PRC Constitution<sup>82</sup> sets out the division of legislative power among the various law making authorities in the country. Briefly, the NPC, being the highest law making organ, is given the power “to amend the Constitution<sup>83</sup>” and “to enact and amend basic laws governing criminal offences, civil affairs, the state organs and other matters<sup>84</sup>”. The NPCSC can make laws with the exception of those basic laws reserved to the NPC as prescribed above<sup>85</sup>. It can also supplement and amend laws enacted by the NPC when it is not in session<sup>86</sup>. The State Council and the local people’s congress may adopt measures and regulations in accordance with the Constitution and laws as enacted by the NPC and its SC<sup>87</sup>.

Law making procedures of the respective bodies are laid down by the organic laws and

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<sup>81</sup> Li Yahong, “The Law-making Law: A Solution to the Problems in the Chinese Legislative System?” (2000) 30 Hong Kong Law Journal 120 – 140.

<sup>82</sup> See above fn.9.

<sup>83</sup> Constitution of PRC Art 62(1).

<sup>84</sup> Constitution of PRC Art 62(3).

<sup>85</sup> Constitution of PRC Art 67(2)

<sup>86</sup> Constitution of PRC Art 62(3).

<sup>87</sup> Constitution of PRC Arts 89 (1), 100 and 116.

procedural rules of these bodies<sup>88</sup>. The Legislation Law of 2000<sup>89</sup> consolidated the major principles found in these procedural laws, reaffirmed the order of ranking among laws, regulations and rules and, more importantly, emphasized the requirement to solicit input from the public in the course of law making. Pursuant to the Legislation Law, the State Council and the SAT formulated separate measures governing the making of the regulations, rules and tax regulatory documents. In the following section, the basic procedures of the making of the EIT Law, its related regulations, rules and tax regulatory documents are highlighted, which are followed by findings of how the making of these documents complied with procedures stipulated in actual reality.

a. EIT Law

The EIT law was adopted by the NPC in 2007. In accordance with the Legislation Law, the EIT bill may be submitted to the NPC by various bodies, amongst them the NPCSC and the State Council. The Presidium of the NPC will decide whether to place the bill on agenda of the NPC. The sponsor of the bill is required to provide an explanation of the proposed bill to all deputies of the NPC at the plenary meeting of the session. The bill would then be deliberated by the delegations, the relevant special committee(s) and

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<sup>88</sup> These include Organic Law of the NPC (1982), Procedural Rules of the NPC (1989), Procedural Rules of the Standing Committee (1987), Organic Law of the State Council (1982), Organic Law of Local People's Congress and Local People's Government (1979). See Albert Chen, *An Introduction to the Legal System of the People's Republic of China*, 4<sup>th</sup> Ed (LexisNexis, 2011) 123 – 150.

<sup>89</sup> See above fn.35.



the Law committee. Pursuant to the deliberations, the bill is to be revised by the Law Committee according to the opinion of the delegations. The revised bill shall be decided by the Presidium before submission to a plenary meeting for vote and shall be adopted as law if passed by a simple majority of the deputies.

The idea of enacting a new EIT Law to replace the then concurrent tax regime for domestic and foreign enterprises originated from the ruling party's policy of unifying the tax regime of the domestic and foreign enterprises announced in 2003<sup>90</sup>. The bill was jointly drafted by the MOF, the SAT and the Legislative Affairs Office of the State Council since 2004<sup>91</sup>. The State Council proposed the bill for deliberation by the NPCSC in September 2006<sup>92</sup>, which sanctioned the proposal of the bill for the next NPC's deliberation by a majority vote<sup>93</sup> in December 2006. The bill was submitted to the NPC by the State Council for examination and deliberation in the 5<sup>th</sup> Session of the 10<sup>th</sup> NPC held in March 2007.

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<sup>90</sup> Prior to the EIT Law, enterprise income tax was governed by "The Income Tax Law of the PRC on Foreign-funded Enterprises and Foreign Enterprises (1991)" and "The Interim-Regulation of the PRC on Enterprise Income Tax". In the 3<sup>rd</sup> Plenum of the 16<sup>th</sup> CPC Central Committee in 2003, the Party decided that the PRC tax system should be reformed on a step-by-step basis. The different tax regimes governing domestic and foreign enterprises should be unified. For details, see "Decision of the CPC Central Committee on issues regarding the improvement of the socialist market economic system", downloadable from <http://www.china.com.cn/Chinese/zhuanti/sljzqh/426675.html>.

<sup>91</sup> Explanations on EIT bill by the then Minister of the MOF, Jin Renqing, at the 5<sup>th</sup> Session of the 10<sup>th</sup> NPC on 8 March 2007.

<sup>92</sup> According to Constitution of PRC Art 67(6), the NPCSC has the authority to supervise the work of the State Council. Bills proposed by the State Council to the NPC are required to be first deliberated by the NPCSC. The EIT bill was deliberated in the 25<sup>th</sup> session of the 10<sup>th</sup> NPCSC.

<sup>93</sup> 155 deputies out of 156 approved submission of the bill for deliberation by the NPC. 1 deputy abstained from voting.

The EIT bill, according to the MOF<sup>94</sup>, was distributed to all the deputies of the NPC in January 2007 prior to the holding of the plenary meeting of the NPC in March of the same year, which exceeded the one-month requirement as stipulated under the Legislation Law<sup>95</sup>. During this period, the draft bill was discussed among the NPC deputies of their own constituencies prior to the plenary session. Their views were collected by the Law Committee of the NPCSC for further refining of the bill.

In the NPC session held in March 2007, the examination of the bill started with the explanation by the Minister of the MOF at the plenary session of 8 March 2007. This was followed by deputies' deliberation in groups on the next day. The revised bill incorporating the opinion of the deputies was further deliberated on 13 March 2008. On 15 March, 2008, the Presidium sanctioned the submission of the revised draft bill for voting at the plenary session of 16 March 2008<sup>96</sup>. The bill was adopted in the session by a high majority of vote.

In view of the above, the drafting, review, deliberation and adoption of the EIT Law have generally complied with the procedural requirements as prescribed by the Legislation

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<sup>94</sup> See above fn.91.

<sup>95</sup> Legislation Law Art 15.

<sup>96</sup> See Agenda of the 5<sup>th</sup> session of the 10<sup>th</sup> NPC, downloadable from [http://www.npc.gov.cn/npc/oldarchives/dbdh/dbdhnew/more.jsp@hyid=011005\\_\\_\\_\\_\\_&id=358980&lmid=\\_25d2\\_25e9\\_25b3\\_25cc\\_25c8\\_25d5\\_25b3\\_25cc&lmmc=\\_25b4\\_25f3\\_25bb\\_25e1\\_25d2\\_25e9\\_25b3\\_25cc&pdmc=10.htm](http://www.npc.gov.cn/npc/oldarchives/dbdh/dbdhnew/more.jsp@hyid=011005_____&id=358980&lmid=_25d2_25e9_25b3_25cc_25c8_25d5_25b3_25cc&lmmc=_25b4_25f3_25bb_25e1_25d2_25e9_25b3_25cc&pdmc=10.htm)

Law. However, a close examination of the process casts some doubts as to whether the EIT Law, which affects all enterprises conducting businesses and / or receiving income in / from China, has gone through sufficient public consultation prior to its enactment.

One of the laudable achievements of the Legislation Law is the stipulation of provisions requiring solicitation of public opinion in the law-making process<sup>97</sup>. However, “there is no such requirement for draft bill considered or adopted by the NPC<sup>98</sup>”. It is noted that although the drafting of the EIT bill commenced in 2004, there was no public disclosure of its content before January 2005. According to the press, the then Vice Minister of the MOF, Lou Jiwei, first made public the details of the EIT bill in a press conference held in Beijing in January 2005<sup>99</sup>. The disclosure was made necessary amid mounting oppositions from the multinational corporations affected by the proposed abolition of the preferential treatment granted to foreign investor. Prior to that, the details of the bill were only circulated among a small group of relevant officials even within the MOF<sup>100</sup>.

It is interesting to note that, in the same session of the NPC held in March 2007, the

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<sup>97</sup> Legislation Law Arts 34 and 58.

<sup>98</sup> Albert Chen, above fn.88, 129. However, as noted by Albert Chen, “the Rules of Procedure of the NPC do provide that the NPCSC may, before the NPC meets, publish for public consultation any bill for an important basic law to be considered at the NPC meeting.”

<sup>99</sup> Report from Sina Finance of 20 January 2005, downloadable from <http://finance.sina.com.cn/g/20050120/17131309950.shtml>

<sup>100</sup> See above fn.99.

Property Law<sup>101</sup> was adopted. The Property Law draft bill was submitted to the NPC by the NPCSC and was published for public consultation<sup>102</sup>. The treatment is different from that of the EIT bill which only solicited public opinion by means of “forums and conferences among experts, relevant authorities and corporates<sup>103</sup>”. As a basic law affecting all corporate entities conducting business and / or receiving income in / from China, it is doubtful whether solicitation of public opinion via such limited channels is sufficient. The lack of public consultation of the draft EIT bill no doubt reduced the level of transparency of its making process.

b. EIT regulations, rules & tax regulatory documents

Procedures governing the formulations of the EIT regulations, rules and tax regulatory documents (collectively referred as “EIT supplemental legislative documents” below) are separately prescribed in the following documents:

- Regulations – Decree No. 321 of the State Council – Regulations on Procedures for the Formulation of Administrative Regulations (State Council Decree 321)<sup>104</sup>;
- Rules – Decree No. 322 of the State Council - Regulations on Procedures for the

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<sup>101</sup> Adopted at the 5<sup>th</sup> session of the 10<sup>th</sup> NPC on 16 March 2007, effective as of 1 October 2007.

<sup>102</sup> Bills published for public consultation are posted in the NPC website. See [http://www.npc.gov.cn/npc/flcazqyj/node\\_8195.htm](http://www.npc.gov.cn/npc/flcazqyj/node_8195.htm)

<sup>103</sup> See above fn.91.

<sup>104</sup> Promulgated on 16 November 2001, effective as of 1 January 2002.

Formulation of Rules (State Council Decree 322)<sup>105</sup>

- Tax rules – SAT Order No 1 – Implementation Measures concerning Formulation of Regulations and Rules of Tax Administrations (SAT Order No 1)<sup>106</sup>
- Tax regulatory documents – SAT Order No 20 – Administrative Measures for the Formulation of Tax Regulatory Documents<sup>107</sup>

The above-mentioned Decrees and Orders are all based on the principles as laid down in the Legislation Law. Common features include:

- Legislative documents should possess substantive elements including clarity, conciseness, operability<sup>108</sup>;
- The drafting and examination process shall include inputs obtained from solicitation of public opinion<sup>109</sup>;
- Draft of the legislative documents shall be examined by the legislative departments of the relevant law making authorities<sup>110</sup>. The examination shall take into account the principles as laid down in the PRC Constitution, Legislation Law and in the relevant Decree or Order<sup>111</sup>;

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<sup>105</sup> Promulgated on 16 November 2001, effective as of 1 January 2002.

<sup>106</sup> Issued on 1 February 2002, effective as of 1 March 2002.

<sup>107</sup> See above fn. 66.

<sup>108</sup> State Order Decree No 321 Art 5; State Council Decree No 322 Art 7; SAT Order No 1 Art 4 and SAT Order No 20 Art 4;

<sup>109</sup> State Council Decree No 321 Arts 12, 19, 21 and 22; State Council Decree No 322 Arts 13, 14, 15, 21, 22 and 23 ; SAT Order No 1 Arts 8 and SAT Order No 20 Art 17;

<sup>110</sup> State Council Decree No 321 Arts 17 and 18; State Council Decree No 322 Arts 18 and 19; SAT Order No 1 Arts 9 and 10 and SAT Order No 20 Arts 19 and 22 ;

<sup>111</sup> See above fn.110.

- The legislative documents shall not have retrospective effect and should come into force within 30 days after promulgation unless under conditions specifically stipulated in the relevant Decree or Order<sup>112</sup>. In case if such conditions apply, the legislative document may be effective as of the date of promulgation<sup>113</sup>.

For the purposes of discussions in this section, the major concern is whether the formulation of these EIT supplemental legislative documents have complied with the procedures in soliciting public opinion as stipulated in the relevant Decree and Order<sup>114</sup>.

i. EIT regulations

The only regulation formulated supplemental to the EIT Law as at to-date is the “Regulation on the Implementation of the Enterprise Income Tax Law of PRC (EIT Regulation)<sup>115</sup>”. According to State Council Decree No 321, drafting of regulations shall involve “the opinions of the relevant organs, organizations and citizens<sup>116</sup>”. “Solicitation of opinions may take forms such as forums, appraisal meetings and

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<sup>112</sup> State Council Decree No 321 Art 29; State Council Decree No 322 Art 32; SAT Order No 1 Art 3; SAT Order No 20 Arts 13 and 14..

<sup>113</sup> See above fn.112.

<sup>114</sup> Common features under items (1) and (4) relate to substantive elements of law making, which are to be dealt with in the following section of this article. Item (3) involves examination of compliance of internal procedures by the relevant authorities which is not be privy to the general public and therefore does not fall within the scope of the current discussion.

<sup>115</sup> Promulgated on 6 December 2007, effective as of 1 January 2008.

<sup>116</sup> State Council Decree No 321 Art 12.

hearings, etc.<sup>117</sup>” The legislative affairs department of the State Council may publicize “important draft<sup>118</sup>” for comments, upon approval of the State Council. As a matter of fact, the State Council has “introduced an Internet-based system of consultation on draft administrative regulations<sup>119</sup>” in 2008.

As the State Council website on public consultation came into operations only in 2008, the EIT Regulation, which underwent drafting process before 2008, would not be found posted in the website. A search on the internet also did not indicate any draft EIT Regulation available for public comments. As noted by one of the tax practitioners, the EIT regulation was issued “after rounds of consultations with local governments, central ministries, multinational corporations, domestic groups, scholars, professional firms, and others<sup>120</sup>”, but without publication for public comments.

## ii. EIT rules

The SAT does not formulate any rules relating to EIT. This is not surprising given that the SAT has, in practice, exercised authority to make specific rules on tax matters delegated to it by the State Council “through issuance of informal rules<sup>121</sup>”. As shown

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<sup>117</sup> See above fn.116

<sup>118</sup> State Council Decree No 321 Art 19.

<sup>119</sup> Albert Chen, above fn.88, 136.

<sup>120</sup> Matthew Mui and Raymond Wong, “The China Business Review” (2008 Mar/April) 32 to 14

<sup>121</sup> As observed by Cui, the SAT’s practice of formulating “informal rules” rather than rules is prompted by the less stringent requirements in the formulation of such informal rules and the absence of mechanism of regular review on legality of these informal

in the section below, based on the research done on the SAT website, over 100<sup>122</sup> such “informal rules” have been issued by the SAT regarding the EIT Law during the period under study.

### iii. EIT tax regulatory documents

According to SAT Order No 20, in drafting a tax regulatory document (the so called “informal rules”), the relevant tax office shall “make in-depth investigation and research, summarize practical experiences and attend to the opinions of all relevant parties<sup>123</sup>”. “The opinions shall be solicited in writing or online, or by holding symposiums, discussions and hearings<sup>124</sup>”. The legislative department of the relevant tax office, in examining the draft tax regulatory document, shall review “whether the public opinions of all relevant parties have been solicited and if a comment has been made on the opinions given<sup>125</sup>.”

It should be noted that SAT Order No 20 only came into effect on 1 July 2010. Prior to this, the formulation of tax regulatory documents is governed by the “Notice of SAT about issuing the Administrative Measures for the Formulation of Regulatory Document

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rules prior to the coming into effect of SAT order No 20. For details see Cui, fn.58, 82 and 85.

<sup>122</sup> This number does not include the “informal rules” jointly made by the SAT and other ministries of the State Council.

<sup>123</sup> SAT Order No 20 Art 17.

<sup>124</sup> See above fn.123.

<sup>125</sup> SAT Order No 20 Art 22.



on Taxation (for Trial Implementation) (Old Measures)<sup>126</sup>”. The requirements as prescribed under Old Measures on solicitation of public opinion are less stringent. Although it required tax offices to “fully solicit the opinions of all relevant parties<sup>127</sup>” in drafting tax regulatory documents, the means of solicitation are not prescribed and may be in the form of holding “symposia, argumentation meetings, hearings etc”. In addition, the legislative departments of the relevant tax offices are required to review whether opinions of the relevant parties have been consulted only on significant issues when examining the draft<sup>128</sup>.

A review of the Public Consultation webpage maintained by the SAT, its Guangdong and Sichuan provincial offices as well as that of the Guangdong and Sichuan local tax bureaus reveals that none of the tax regulatory documents relating to EIT issued by the these offices / bureaus had been posted online for public comment, irrespective of whether the documents were issued prior to 1 July 2010 or after. This is notwithstanding that certain of these tax regulatory documents stipulate detailed implementation of the EIT regime which have significant impact to the taxpayers.

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<sup>126</sup> Issued on 16 December 2005, effective as of 1 March 2006, now expired and replaced by SAT Order No 20.

<sup>127</sup> Old Measures Art 16.

<sup>128</sup> Old Measures Art 18.

Publication of draft legislative documents for public comments is not the only means to solicit public opinion. The SAT, its tax offices and the local tax bureaus may, as SAT Order No 20 prescribes, hold symposiums, discussions and public hearings for such purposes. However, publication of these documents serves as a direct way to make the general public aware of any proposed changes in tax policy, in particular when these changes may result in significant implications to their business and investment decisions. In addition, public opinions solicited in this manner will be more comprehensive, wide ranging and free from bias than opinions sourced from holding symposiums and discussions, attendees of which are selected by officials.

***B. Compliance with substantive elements of rule of law?***

In this section, legislative documents as defined in Part IIB, namely the EIT Law<sup>129</sup>, the EIT Regulation<sup>130</sup>, the tax regulatory documents issued by the SAT, its Guangdong and Sichuan provincial tax offices as well as local tax bureaus at Guangdong and Sichuan provincial level (collectively referred as “EIT legislative documents”) are reviewed against the rule of law substantive benchmark of (i) clarity; (2) prospectivity and (3) consistency. Since the EIT Law was passed on 16 March 2007, the EIT legislative documents issued from this date to 30 June 2013 are included in the review.

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<sup>129</sup> See above fn.58.

<sup>130</sup> See above fn.115.

a. Clarity

Lon Fuller regarded clarity as “one of the most essential ingredients of legality”<sup>131</sup>. To achieve clarity, he recommended one “to take advantage of, and incorporate into law, common sense standards of judgment that have grown up in the ordinary life lived outside the legislative halls<sup>132</sup>”. It follows that laws that are clear should be made up of ordinary language which can be understood by people using the “common sense standards of judgment”.

In the review of the EIT legislative documents, the following observations on compliance of the “clarity” elements are noted:

i. Incomplete details

The EIT Law is divided into 8 chapters, consisting of 60 articles. It outlines the types of taxpayers subject to EIT, taxability of their income and deductions of their expenses, preferential tax treatment under EIT, income subject to withholding, forms of special tax adjustment, mechanism of tax collection, and treatment subsequent to the withdrawal of preferential tax benefits granted under pre-EIT tax regime.

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<sup>131</sup> Fuller, above fn.21, 76 to 77.

<sup>132</sup> See above fn.131.

Despite its broad coverage, the EIT Law only gives a skeleton of the EIT regime, failing to provide concrete content as to the actual operation of the new regime. As shown in Table I, out of the total 66 articles, 20 articles (which is around 30%) of the EIT Law either directly refer to the State Council to supplement further details or indirectly do so by simply leaving the specific terms undefined in the Law. These “to-be-advised” details are not restricted to procedures of implementation but also relate to basic matters such as tax rate and definition of income. Without the supplemental regulations and other tax regulatory documents to fill up these blanks, the EIT regime is simply not operational by relying on the EIT law alone.

The matter is aggravated by the fact that this manner of formulating law with incomplete provisions is repeated in the EIT Regulation. Table II shows the list of articles of the EIT Regulation that refer to the SAT or other Ministries to prescribe further details or to formulate separate measures. Out of a total of 133 articles of the EIT Regulation, 17 articles require to be supplemented by subsequent legislative documents.

The above practice of deferring details to supplemental tax regulatory documents to be issued is in substance a form of delegation of law making power to the administrative organs by the legislative authorities. It should be noted that formal authorization by

the NPC and the NPCSC to the State Council to formulate administrative regulations is now governed by the Legislation Law. The purpose and scope of the authorization have to be clearly specified and the authorized organ is not allowed to “impart the authority to other organs”<sup>133</sup>. The manner the EIT Law is drafted is incongruent with the spirit of the Legislation Law.

The deferral of details to supplemental regulatory documents has greatly diminished the level of clarity of the EIT Law and the EIT Regulation and causes many uncertainties to the taxpayers. One of such incidences is the disallowance of interest expenses pursuant to the thin capitalization provisions. Taxpayers with loans from affiliated entities were not able to determine the amount of allowable interest deductions they were able to claim by referring to the EIT Law and the EIT Regulation until the issuance of the “Notice of the SAT on issuing the Measures for the Implementation of Special Tax Adjustments (for Trial Implementation)” on 8 January 2009<sup>134</sup>. In other words, taxpayers were left in the dark on the deductibility of related party interest expenses for over 1 year. The absence of the operational substance has seriously reduced the efficacy of the EIT Law and the EIT Regulation.

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<sup>133</sup> Legislation Law Arts 9 & 10.

<sup>134</sup> *Guoshuifa* [2009] No 2, Effective as of 1 January 2008.

## ii. Unclear provisions

The review of the EIT Law and the EIT Regulation finds that both contain unclear provisions which either use indeterminate terms or refer to other laws or regulations without specifying the exact title and articles of such references. These unclear provisions are listed out in Tables III and IV.

### 1. Use of indeterminate terms

Use of indeterminate terms is not uncommon in tax laws. Terms such as “without reasonable excuse<sup>135</sup>”, “sole and dominant<sup>136</sup>” can be found in tax legislation of other jurisdictions. The meaning of these terms is made more vivid in times by courts through cases brought before them. The situation in China, however, may not allow clarification via this type of mechanism.

Firstly, according to the Administrative Procedure Law<sup>137</sup>, the people’s court shall accept “action initialed by citizens, legal persons and organizations against specific administrative act<sup>138</sup>” and would not accept cases in respect of “administrative rules and regulations, or decisions and orders with general binding force formulated and

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<sup>135</sup> Hong Kong Inland Revenue Ordinance (Cap 112) Art 51(4B)(a).

<sup>136</sup> Hong Kong Inland Revenue Ordinance (Cap 112) Art 61(A)(1)

<sup>137</sup> Administrative Procedure Law Art 11.

<sup>138</sup> Administrative Procedure Law Art 12.

promulgated by administrative organs”. The authority of legal interpretation is rested with the NPCSC, which is empowered to issue legal interpretations under situation as stipulated in the Legislation Law<sup>139</sup>. Official institutions, such as the State Council, the Supreme People’s Court, may request the NPCSC to give legal interpretation on laws made by the NPC whereas citizens may apply to the NPCSC for legal interpretation on regulations only.<sup>140</sup> & <sup>141</sup> Secondly, the prevalent attitude of taxpayers towards tax administration in China tends to be accommodating rather than confrontational. Taxpayers would choose to negotiate with tax offices and would not prefer to settle the contentious matters in court.

Under circumstances described above, the presence of the indeterminate terms in tax laws would leave the tax administration wide discretion in interpreting the EIT Law and Regulation, which will undoubtedly cause contention between the tax administration and taxpayers. With the accommodating attitude of the taxpayers, they are, more often than not, the parties who bear the brunt arising from the use of these indeterminate terms in tax laws.

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<sup>139</sup> Legislation Law Art 42.

<sup>140</sup> Legislation Law Art 43.

<sup>141</sup> Legislation Law Art 90 allows citizens and organizations to apply to NPCSC for interpretation of administrative and local regulations when they are found to be contravening the Constitution or other laws.

## 2. Open-ended referencing

After a tax reform of over thirty years, the number of laws and legislative documents enacted and issued in China has grown exponentially<sup>142</sup>. Her legal system has sprawled into a comprehensive network covering almost all kinds of human activities of the modern society. It is understandable that one law or legislative document may need to refer to another piece of legislation either to share a common definition or to make reference to existing provisions governing the same type of activities. This kind of practice can be found in tax laws of other jurisdictions<sup>143</sup>. In most of these cases, the respective details of the referenced legislation including its title, article and section number are prescribed in the referencing legislation.

What is problematic in the case of China, or more specifically for the EIT Law and Regulation, is the open-ended referencing adopted in their making. The terms “subject to the relevant provisions” or “unless otherwise provided for by the relevant provisions” or “according to the rates as set down by other competent authorities” are frequently found in the EIT Law and Regulation. One of the reasons for the use of such terms may be due to the generality and flexibility of these wordings, which allow the relevant

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<sup>142</sup> According to Chen Jianfu, the total number of laws, regulations, department and local rules enacted in China amounts to about 1,150 during the period 1949-1978. This number has escalated to about 170,000 during the period from 1979-2005. For details see Chen, above fn.3.

<sup>143</sup> This kind of referencing practice can be found in Singapore Income Tax (Chapter 134), Canada Income Tax Act (R.S.C., 1985 (5<sup>th</sup> supp.))



competent authorities to lay down further guidance on the matter and make room for future changes of the prevalent rates or standard.

Irrespective of the reasons, the use of these open-ended referencing provisions has caused confusion for taxpayers, who ended up spending considerable time and effort in ascertaining the “relevant provisions”. The task gets increasingly complicated with the rising number of new laws and regulations, not to mention the continuous changes to the existing ones.

### iii. Undefined legal position of tax regulatory documents

Apart from the problems arising from the manner in which the EIT Law and Regulation are drafted as mentioned above, a more fundamental issue reducing clarity lies on the uncertainty of the legal binding force of the tax regulatory documents. The contention surrounding this matter has been discussed in Part IIB above and is not repeated again.

What is worth noting is that the over-simplification of the principal EIT Law and the delegation to the administrative organs (i.e. the State Council and its ministries) to draw up the details have resulted in a large volume of tax regulatory documents being issued. They have captured an unreasonably important position in the whole EIT regime due to

the role they play in the functionality of the regime<sup>144</sup>.

Notwithstanding their importance, the legal position of these tax regulatory documents is kept hanging in the balance. This has caused the EIT regime highly vulnerable to challenges against its legality. In a hypothetical situation of a successful lawsuit against the legality of these tax regulatory documents, it is uncertain whether the EIT regime can sustain and continue to operate without the legal backing of these documents. With the prevalent accommodating attitude of the Chinese taxpayers, this exposure may not be imminent. However, the possibility of such occurrence cannot be totally precluded, in particular with the continual opening up of the country.

b. Prospectivity

Propectivity requires laws taking effect after they are enacted and published. As found in the New Hampshire Constitution of 1784, “retrospective laws are highly injurious, oppressive and unjust. No such laws, therefore, should be made either for the decision of civil causes, or the punishment of offenses<sup>145</sup>.” The problem with retrospective laws is that they subject people to a highly unpredictable environment whereby past actions

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<sup>144</sup> The review of the selected sample of the EIT tax regulatory documents issued by the SAT, its Guangdong and Sichuan local offices and the Guangdong and Sichuan local tax bureaus shows the language used in these tax regulatory documents are clearer and instances of open-ended references are seldom found. This supports the view that the operation of the EIT regime is largely dependent on these documents.

<sup>145</sup> Fuller, above fn.21, 65.

may be found “illegal” by legislation passed subsequently. In this sense, retrospective laws are considered infringing people’s freedom by depriving them of the certainty under which “they can plan their affairs knowing what laws apply to them at that time”<sup>146</sup>. It is not surprising that retrospective (tax) laws are a rarity in countries which practice the rule of law. It is in the rare occasions for combating aggressive tax planning and protection of state revenue that retrospective legislation is considered justified<sup>147</sup>.

A review done on the EIT legislative documents shows that the problem of retrospectivity is mainly found in the tax regulatory documents issued by the SAT<sup>148</sup> &<sup>149</sup>. Findings listed in Tables V and VI show that a considerable proportion of the documents carry retrospective effects. Instances of documents with retrospective effects are also found from those issued by the SAT local offices and the provincial tax bureaus<sup>150</sup>. The matters prescribed by these retrospective documents are varied, which include defining the scope of tax exemption<sup>151</sup>, setting out the basis of tax deductions<sup>152</sup>

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<sup>146</sup> “Retrospective Tax Legislation – a thing of the past or the way forward?” Abbey Tax Protection, downloadable from <http://www.abbeytax.co.uk/NEWS/RESOLVENEWS/Pages/RetropsectiveTaxLegislation>

<sup>147</sup> Recent instances include India Government’s attempt to seek parliament to pass retrospective tax rules after its case with Vodafone Group Plc. See news of 4 March 2013 from Reuters, downloadable from <http://in.reuters.com/assets/print?aid=INDEE92308820130304>.

<sup>148</sup> As shown in Tables V(a) and VI(a), 54 EIT tax regulatory documents issued by the SAT out of 112 documents reviewed (i.e. around 50%) carry retrospective effects.

<sup>149</sup> Both the EIT Law and the EIT Regulation took effect after the promulgation date.

<sup>150</sup> See Tables V(b) to Table V(d).

<sup>151</sup> See *Guoshuifa* [2008] No 116 and *Guoshuifa* [2009] No 80.

<sup>152</sup> See *Guoshuifa* [2009] No 81 and *Guoshuihan* [2009] No 202.

and drawing out details of tax filing<sup>153</sup>.

These matters ostensibly are not within the scope generally allowed for retrospective tax law making. Instead they relate to basic assessment and deduction provisions of the EIT regime which have significant impact to taxpayers' tax incidences and filing obligations. Prescribing these provisions in documents with retrospective effects<sup>154</sup> deprives taxpayers of the certainty to plan their affairs and makes business decision making highly contingent. As noted by Cui when he commented on the retrospective rules made in respect of the tax deferral of assets transfers in corporate reorganizations, "the retroactivity of the finally adopted rules means that the tax treatment of reorganizations between January 2008 and April 2009 was largely an arbitrary matter, since no one knew what actions to take to achieve deferral treatments."<sup>155</sup> Under such circumstances, "FIEs<sup>156</sup> and foreign investors need to learn the new law, understand its impact, and be prepared to revamp their China tax planning and risk management strategies. New approaches are needed to manage higher tax burdens, fulfill new compliance requirements....., and, most importantly, apply a new income tax law when many areas are still unclear and subject to PRC tax authorities' interpretations."<sup>157</sup>

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<sup>153</sup> See *Guoshuifa* [2009] No 3 and *Guoshuifa* [2009] No 79.

<sup>154</sup> As shown in Table V, certain of these documents were issued more than one year after the EIT Law and the EIT Regulation came into effect.

<sup>155</sup> Cui, above fn.59, 83.

<sup>156</sup> Foreign Invested Enterprises.

<sup>157</sup> Mui and Wong, above fn.120.

c. Consistency

This article will look into two levels of consistency of the EIT legislative documents.

Firstly, the tax regulatory documents issued by the SAT are reviewed to examine whether there exists any inconsistencies with the provisions contained in the EIT Law and the EIT Regulation. Secondly, the tax regulatory documents issued by the SAT's Guangdong and Sichuan provincial offices and local tax bureaus at these two provinces are compared to the SAT tax regulatory documents to look for inconsistencies.

The result of the review finds no notable inconsistencies at these two levels, which is likely the consequences of the following:

- i. the vague language used and the broad outline as laid down by the EIT Law and the EIT Regulation give the tax authority wide discretion in drawing up details of the EIT regime without contravening the provisions in the Law and the Regulation.
- ii. the review only include tax regulatory documents issued by the SAT and does not include documents issued or jointly issued by other ministries of the State Council such as the MOF<sup>158</sup>. It cannot be precluded that inconsistencies may be found in those documents<sup>159</sup>.
- iii. one of the major legislative motives behind the EIT Law is offering industry

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<sup>158</sup> See above fn.76 for reasons of not including these tax regulatory documents.

<sup>159</sup> As observed by Cui, he noted at least two instances of inconsistencies of these regulatory documents with the EIT Law and the EIT Regulation. They are (1) *Caishui* [2009] No 125, jointly issued by the SAT and the MOF on 25 December 2009, effective as of 1 January 2008, governing claiming of foreign tax credits; (2) *Caishui* [2009] No.122, jointly issued by the SAT and the MOF on 11 November 2009, effective as of 1 January 2008, defining scope of not-profit organizations. For details, see Cui, above fn.59.

specific tax incentives to sectors encouraged by the state, such as new and high technologies industries, farming and agricultural sector. On the other hand, tax incentives varying among different geographical regions as set out in the old foreign enterprises tax regime are phased out. Inconsistencies in the approval of tax incentives among different tax offices and local tax bureaus are therefore greatly reduced under the EIT regime.

There are, however, instances of controversies, one such instance being the requirements issued under *Guoshuihan* [2009] No 698<sup>160</sup>. The document requires resident entities to report the transfer of their ownership by their non-resident holding companies to the tax authorities. Transfer of shares in non-resident intermediate companies, which hold shares in PRC resident enterprise, is also included in the reporting requirement. Some find this requirement has exceeded the taxing rights of PRC and is not consistent with Article 3 of the EIT Law which stipulates that only income derived in China by non-residents is subject to EIT. Since the gain from disposal of shares in non-resident intermediate enterprises is not sourced / derived in China, it should not be subject to EIT. According to the SAT, this *Guoshuihan* is in line with the anti-avoidance provisions under Article 47 of the EIT Law which empowers the PRC tax authority to disregard tax avoidance arrangements without any reasonable business purposes. The above instance reflects again the weakness of the EIT regime caused by the reliance on tax regulatory documents in setting out rules of details.

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<sup>160</sup> Issued by the SAT on 10 December 2009, effective as of 1 January 2008.

### *C. Summary of findings*

To sum up, the result of the findings shows that the making of the EIT Law and the EIT Regulation is generally in line with the procedures laid down by law. However, there is much room for improvement in the manner public opinion is solicited since both documents are not published for public consultation. Lack of transparency is also found in the formulation of the tax regulatory documents issued by the SAT, its Guangdong and Sichuan provincial tax offices and local tax bureaus at these provinces.

The performance on clarity is found unsatisfactory for both the EIT Law and the EIT Regulation. Indeterminate terms and open-ended referencing are found in both pieces of legislation. Deferral of the task to draw up the details to other administrative organs of the State Council is, in substance, delegation of law making power. The reliance on the tax regulatory documents which lack clear binding force of law has made the EIT regime highly susceptible to possible challenges against its legality.

Although the EIT Law and the EIT Regulation are taking effect on a date after they are promulgated, a high proportion of the EIT tax regulatory documents are found to take retrospective effect. Since these retrospective documents embody the substantive elements of the EIT regime, taxpayers' are deprived of the certainty to plan their affairs

under a known set of legal rules.

The SAT tax regulatory documents are generally found to be consistent with the EIT Law and the EIT Regulation, under the caveat that this may be due to the vague language used in the main legislation which only gives a broad outline of the EIT regime. Existence of inconsistencies is not precluded in documents issued or jointly issued by other ministries of the State Office, which are not part of the review. Due to the equalization of tax incentives across different provinces, the tax regulatory documents issued by Guangdong and Sichuan SAT offices and the local tax bureaus at these two provinces are found to be generally consistent with the tax regulatory documents issued by the SAT.

#### **Part IV – Observations and Insights**

Based on the result of the analysis on the making of the PRC EIT law as described in the above section, this article concludes that compliance with the rule of law principles in the making of tax law in China is far from satisfactory. Reasons for this are varied, with ideological, cultural and structural dimensions.

Law drafting in China has long been guided by the fundamental principles that “primary



legislation should be both ‘general’ (*yuanzexing*) and ‘flexible’ (*linghuoxing*)<sup>161</sup>. This is to enable the implementation of primary legislation on a nationwide level and its adaptation to local differences<sup>162</sup>. The principles, justified, it is said, by the considerable size of the nation and the diversity among China’s provinces, have been pursued to date. This, to certain extent, explains the use of vague language and the deferral of drawing up substantive elements of the EIT regime as found in the EIT Law and the EIT Regulation.

The extensive formal procedures for law making as stipulated in the Legislation Law and the two Decrees of the State Council<sup>163</sup> and the length of time involved in complying with these procedures have resulted in officials to favoring the far more convenient way of law making by the issuance of tax regulatory documents (rather than via laws, regulations and departmental rules) which is subject to less extensive formulation procedures and less stringent scrutiny.

The traditional submissive attitude to authority and the cultural inclination of settling disputes with an accommodating approach contribute to the infrequent use of legal means to settle contentious matters between tax authorities and taxpayers in China.

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<sup>161</sup> Perry Keller, “Sources of Order in Chinese Law” (1994) 42 The American Journal of Comparative Law 711 – 759. See also Lubman, above fn.45.

<sup>162</sup> See above fn.161.

<sup>163</sup> See above fn.104 and 105.

The limitations of judicial review to specific administrative acts and the non-availability to citizens of the application of judicial interpretation of law,<sup>164</sup> further deter them from challenging tax authorities on basis of the legality of laws. Under such circumstances, tax authorities are less concerned about enhancing the transparency of the law making process. Public consultations related to the making of tax laws are still more of a rarity rather than a norm in China.

Notwithstanding the above, there are signs that the authorities are aware of the unsatisfactory compliance with the rule of law principles in China's tax regime and they are taking steps to improve the situation. One of the signs is the SAT's formal declaration of continued improvement in the rule of law for tax collection as one of the major missions in its Twelfth Five-Year Policy Taxation Development Planning Outline<sup>165</sup>. In accordance with this mission, the SAT has taken the initiative of informing taxpayers of their legal rights<sup>166</sup> and instructing its tax offices on the importance of protecting these rights<sup>167</sup>.

The issuance of SAT Order 20 is another manifestation that the SAT has attempted to

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<sup>164</sup> Citizens may only apply NPCSC for interpretation of Regulations. See above fn.141.

<sup>165</sup> See above fn.54.

<sup>166</sup> See Notice regarding rights and obligations of taxpayers issued by the SAT on 6 November 2009, downloadable from <http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=75771&flag=1>.

<sup>167</sup> See *Guoshuifa* [2012] No. 65 issued on 3 July 2012 and *Shuizongfa* [2013] No 15 issued on 8 February 2013.

exercise self-regulation of its informal rule making activities. SAT Order 20 contains a number of important provisions aiming to improve compliance with the rule of law principles of the informal rule making activities. Amongst them are the requirements of public opinion solicitation as part of the formulation process<sup>168</sup>, making of regulatory documents with prospective effect and limiting retroactive documents to special conditions only<sup>169</sup>, review of draft documents by legal departments of the respective tax offices on rule of law aspects<sup>170</sup>, filing and examination of tax regulatory documents by higher level tax authorities<sup>171</sup>, regular self-checking of tax regulatory documents<sup>172</sup>.

Discernible changes to the informal rule making activities are found subsequent to the issuance of SAT Order 20. As shown in Table VI(a), the EIT tax regulatory documents issued after the effective date of SAT Order No 20, i.e. 1 July 2010, are SAT Notices whereas most of the documents issued prior to this date are *Guoshuifa* and *Guoshuiha*. According to *Guoshuifa* [2004] No 132<sup>173</sup>, notices are generally more formal than *Guoshuifa* and *Guoshuihan*<sup>174</sup>. In addition, the instances of tax regulatory documents

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<sup>168</sup> SAT Order No 20 Art 17.

<sup>169</sup> SAT Order No 20 Art 13..

<sup>170</sup> SAT Order No 20 Art 22.

<sup>171</sup> SAT Order No 20 Art 32..

<sup>172</sup> SAT Order No 20 Arts 36 and 40..

<sup>173</sup> Issued on 9 October 2004, effective as of 1 November 2004.

<sup>174</sup> According to *Guoshuifa* [2004] No 132 Arts 15 and 29, Notices are applicable for announcement of important matters to domestic and foreign community. Tax offices shall publish Notices in accordance with relevant laws and regulations. *Guoshuifa* and *Guoshuihan* are correspondences between tax offices, for clarification and explanation of tax policies, tax collection measures and implementation of tax laws, for reporting work progress to higher level tax offices and for giving instructions to lower level tax offices. *Guoshuifa* are for clarification of important matters while *Guoshuihan* for general ones.

taking retrospective effect are reducing. More documents took effect after the published date<sup>175</sup>. There are also public notices on the status of self-checking of tax regulatory documents by respective tax offices as well as publication of the lists of currently effective tax regulatory documents.

According to Peerenboom, the first level of measurement of the rule of law of a given regime is to ascertain whether ‘there is a credible commitment to the principle that law is to bind the state and state actors, as evidenced by efforts to establish a legal system that meets the standard of a thin theory<sup>176</sup>’. If the above-mentioned signs are accepted as such evidence, China’s tax regime can be described as progressing to complying with the rule of law although there is still much room for improvement.

Scholars have contributed various ideas on how to improve the rule of law of PRC’s tax regime. These include insertion of a provision on protection of taxpayers’ rights in the PRC Constitution<sup>177</sup>, introduction of a basic tax law laying down the specific rights and duties of tax authorities and taxpayers, consolidating provisions in tax regulatory documents into formal departmental rules on a regular basis, implementation of new tax

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<sup>175</sup> More documents took effect 30 days after the date of publication, adhering to the provisions of SAT Order No 20.

<sup>176</sup> Peerenboom, above fn.1, 136.

<sup>177</sup> Constitution of the PRC Art 56 stipulates citizens’ duty to pay taxes but does not mention their rights as taxpayers.

policy by way of trial scheme prior to formulation of nation-wide laws and, most important of all, fostering an environment which allows taxpayers the choice to settle contentious tax matters by legal means.

All the above are sound suggestions. Whether they are achievable will largely depend on the courage and determination of the ruling party and the government. Provided the ruling authority truly takes “ruling the country in accordance with law” seriously, building a notably more rule of law based tax regime, though not yet part of the “China dream<sup>178</sup>”, may one day be realized in China.

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<sup>178</sup> The newly elected President of PRC, Xi Jinping, made a debut announcement of the China Dream slogan on 29 November 2012, two weeks after his appointment as the party’s general secretary and military commander-in-chief, when he visited the grandiose National Museum next to Tiananmen Square. See Xin Jinping’s vision: Chasing the Chinese Dream, Economist, 4 May 2013, downloadable from <http://www.economist.com/news/briefing/21577063-chinas-new-leader-has-been-quick-consolidate-his-power-what-does-he-now-want-his>

Table I : List of Incomplete Provisions\* of EIT Law

	Article No	Subject Matter	Incomplete provisions on
1	2	Definition of residence	Definition of "actual institution of management"
2	3	Definition of China sourced income	Definition of "real connection"
3	7	Tax free income	Definition of "other tax free income"
4	16	Transfer of assets	Definition of "net value" of assets transferred
5	19(2)	Taxability of income of non-resident enterprises	Definition of "net value of property"
6	20	Revenue, deductions, tax treatment of assets	Scope and criteria of revenue and deductions, tax treatment of assets
7	24	Taxability of overseas income	Definition of "direct and indirect control"
8	26	Tax free income	Definition of "qualified not-for-profit organizations"
9	27	Income subject to reduced rate	Rate of reduced rate
10	27 (2)	Exempt Income from public infrastructure project	Definition of "public infrastructure project"
11	28	Small & meagre / high & new tech enterprises	Qualifying requirements
12	30(1)	New technology, new products and new techniques	Definition of new technology, new products and new techniques
13	31	Start-up enterprises	Qualifying criteria and amount of additional deduction
14	32	Acceleration of depreciation	Conditions under which acceleration applies
15	34	Deduction of purchase of fixed assets for environmental protection, water-saving and work safety	Qualifying criteria and amount of deduction
16	35	Preferential tax treatment	Specific measures for preferential tax treatment

Table I : List of Incomplete Provisions\* of EIT Law

	Article No	Subject Matter	Incomplete provisions on
17	41-47	Special tax adjustment	Details on TP transactions, filing requirements, thin capitalization, rules, CFC rules, anti-avoidance
18	48	Special tax adjustment	Scale of additional penalty interest
19	52	Consolidated basis tax filing	Method of consolidated tax filing basis
20	57	Withdrawal of preferential treatment under the previous tax laws and administrative regulations	The merging of tax rate and the withdrawal of preferential treatment to be stipulated by the State Council

**\* Incomplete provisions refer to those with details to be supplemented by subsequent regulations or other tax regulatory documents formulated by the State Council or its Ministries**

**Table II : List of Incomplete Provisions\* of EIT Regulation**

	<b>Article No</b>	<b>Subject Matter</b>	<b>Incomplete provisions on</b>
1	7(6)	Taxability of other Income	Definition of other income subject to EIT
2	32	Deductions of losses	Basis of losses deduction
3	44	Deductions of advertising and publicity expenses	Conditions where the deduction rate of 15% stipulated in EIT Regulation do not apply
4	52	Definition of public interest social bodies	Qualifying conditions
5	61	Losses and depreciation for oil and natural gas exploitation business	Basis of calculating losses and depreciation
6	80	Claiming of tax credit of overseas income	Specific measures for claiming the tax credit
7	84	Not-for-profit organizations	Measures for determining not-for-profit organizations
8	88	Exempt income of qualifying environmental protection, energy-saving and water-saving projects	Qualifying conditions and scope
9	90	Reduction and exemption of qualifying technological transfers	Definition of qualifying technological transfers
10	93	High and new technology enterprises entitled to state support	Measures for determining high and new technology area enterprises
11	96	Additional deduction of salaries paid to employees as encouraged by the State	Measures of the additional deduction
12	101	Reduction of income from operation of public infrastructure investment projects, from production of products encouraged by state; Deduction of purchase of fixed assets for environmental protection, water saving and work safety	Types of operations, products and fixed assets available for incentive



**Table II : List of Incomplete Provisions\* of EIT Regulation**

	<b>Article No</b>	<b>Subject Matter</b>	<b>Incomplete provisions on</b>
13	112	Cost sharing arrangements	Time limit and materials to be submitted for claiming deductions under cost sharing arrangements
14	114	Transfer pricing arrangements	Time limit of filing details of transfer pricing arrangements
15	119	Thin capitalization rules	Safe harbor ratio of debt to equity
16	125	Consolidated basis of tax filing	Specific measures of consolidated basis of tax filing
17	128	Payment of taxes	Specific measures of monthly or quarterly prepayment
			of taxes

**\* Incomplete provisions refer to those with details to be supplemented by subsequent tax regulatory documents formulated by the State Council's Ministries**

Table III : List of Unclear Provisions of EIT Law

	Article No	Subject Matter	Unclear provisions
<b><u>1. Use of Indeterminate Terms</u></b>			
1	6 (9)	Taxability of other income	Definition of "other" income
2	8	Deduction of expenses	Definition of "reasonableness"
3	11(7)	Depreciation of fixed assets	Definition of "other" fixed assets for which no depreciation shall be calculated
4	12(4)	Amortization of intangible Assets	Definition of "other" intangible assets for which no amortization shall be calculated
5	13(4)	Long Term Deferred Assets	Definition of "other" long term deferred assets for which amortization shall be calculated
<b><u>2. Use of open-ended referencing</u></b>			
1	11	Depreciation of fixed assets	Allowable depreciation on fixed assets calculated "under the relevant provisions"
2	12	Amortization of intangible assets	Allowable amortization on intangible assets calculated "according to the relevant provisions"
3	13	Long term deferred assets	Allowable amortization on long term deferred assets calculated "according to the relevant provisions"
4	15	Inventory	Cost of inventory calculated "according to the relevant provisions"
5	27 (3)	Exempt income - environmental protection project	Projects of which meet "the relevant requirements"
6	27 (4)	Exempt income - transfer of technology	Transfer of which meets "the relevant requirements"
7	28	Small & meagre enterprises	Enterprises of which meet "the prescribed conditions"

Table III : List of Unclear Provisions of EIT Law

	Article No	Subject Matter	Unclear provisions
8	33	Reduction of income from production of products confirming to the industrial policies of the state	Definition of the “industrial policies of the state”
9	46	Special tax adjustment on thin capitalization	Disallowance of interest on loans in excess of the "prescribed criterion"
10	54	Filing requirements	Filing documents shall include other relevant materials "according to the relevant provisions"

**Table IV : List of Unclear Provisions of EIT Regulation**

	Article No	Subject Matter	Unclear provisions
<b><u>1. Use of Indeterminate Terms</u></b>			
1	33	Specification of other expenditure	Definition of “reasonableness”
2	34	Deductions of salaries and wages	Definition of “reasonableness”
3	37	Deductions of interest expenses	Definition of “reasonableness”
4	48	Deductions of labour protection expenses	Definition of “reasonableness”
<b><u>2. Use of open-ended referencing</u></b>			
1	9	Basis of recognition of Income and Expenses	Exclusion of the non-current income and expenditure “unless it is
			otherwise provided for by the present Regulation or the competent
			department of treasury or taxation of the State Council”
2	17	Timing of taxability of Dividend Income	Recognition of investment income based on date of distribution
			“unless it is otherwise provided for by the competent department
			of treasury or taxation of the State Council”
3	25	Taxability of non-monetary transactions	Adoption of the normal basis "unless it is otherwise provided for
			by the competent department of treasury or taxation of the State
			Council"
4	26	Fiscal Allotment as tax-free income	Adoption of the stipulated basis "unless it is otherwise provided
			for by the State Council or the competent department of treasury
			or taxation of the State Council"

**Table IV : List of Unclear Provisions of EIT Regulation**

	Article No	Subject Matter	Unclear provisions
5	35	Deduction of certain insurance payment	Definition of allowable insurance payment as provided for "by the competent departments of the State Council or the provincial people's government"
6	36	Deduction of commercial insurance	Definition of allowable commercial insurance payable "under the relevant provisions of the state"
7	55	Unallowable deductions of reserve expenditure	Reserve expenditures which do not meet "the relevant provisions of the competent departments of treasury or taxation of the State Council"
8	56	Depreciation of fixed assets	Conditions under which historical cost of fixed assets may be adjusted for depreciation purposes "under the relevant provisions of the competent departments of treasury or taxation of the State Council"
9	60	No of depreciable years of fixed assets	Minimum years of useful life will apply "unless it is otherwise provided for by the competent department of treasury or taxation of the State Council"
10	75	Gain or loss from transfer of assets in restructuring	Realization of gain and loss of restructuring at the time the transaction is conducted "unless it is otherwise differently provided for by the competent department of treasury or taxation of the State Council"

Table IV : List of Unclear Provisions of EIT Regulation

	Article No	Subject Matter	Unclear provisions
11	78	Tax credit of overseas income	Adoption of the stipulated basis "unless it is otherwise differently provided
			for by the competent department of treasury or taxation of the
			State Council"
12	85	Not-for-profit organizations	Income for not-for-profit organizations from profitable activities
			not included as tax-free income "unless it is otherwise differently
			set forth by the competent department of treasury or taxation of the
			State Council"

Table V(a) : List of Tax Regulatory Documents Relating to EIT With Restrospective Effect (Issued by SAT)

	<b>Type of Document</b>	<b>Reference No of Document</b>	<b>Issuance Date</b>	<b>Effective Date</b>	<b>Subject Matter</b>
1	Guoshuifa	[2008] No 17	30-Jan-08	1-Jan-08	Tax treatment for new & high tech industries with status confirmed prior to effective date of new EIT Law
2	Guoshuifa	[2008] No 23	27-Feb-08	1-Jan-08	Tax treatment of tax incentives granted prior to EIT law
3	Guoshuifa	[2008] No 30	6-Mar-08	1-Jan-08	Measures for verification collection of enterprise income tax
4	Guoshuihan	[2008] No 251	21-Mar-08	1-Jan-08	Measures for prepayment of tax for small & meagre enterprises
5	Guoshuihan	[2008] No 301	3-Apr-08	1-Jan-08	Change of basis period of assessment from accounting year end to calendar year end for foreign enterprises
6	Guoshuihan	[2008] No 299	7-Apr-08	1-Jan-08	Measures for prepayment of tax for real estate enterprises
7	Guoshuifa	[2008] No 52	16-May-08	1-Jan-08	Termination of tax incentives in respect of purchase of locally made machinery
8	Guoshuihan	[2008] No 828	9-Oct-08	1-Jan-08	Tax treatment of gain on disposal of assets
9	Guoshuifa	[2008] No 101	30-Oct-08	1-Jan-08	Issuance of format of EIT return
10	Guoshuihan	[2008] No 897	6-Nov-08	1-Jan-08	Clarification of withholding tax applicable to dividend on H shares paid to non-residents
11	Guoshuihan	[2008] No 955	24-Nov-08	1-Jan-08	Clarification of withholding tax applicable to interest paid to non-resident financial institutions
12	Guoshuihan	[2008] No 952	24-Nov-08	1-Jan-08	Clarification of basis of taxation for income derived from marine and aviation transport business
13	Guoshuifa	[2008] No 111	1-Dec-08	1-Jan-08	Clarification of administration of reduction and exempt income

Table V(a) : List of Tax Regulatory Documents Relating to EIT With Restrospective Effect (Issued by SAT)

	<b>Type of Document</b>	<b>Reference No of Document</b>	<b>Issuance Date</b>	<b>Effective Date</b>	<b>Subject Matter</b>
14	Guoshuihan	[2008] No 985	2-Dec-08	1-Jan-08	Refund of excess advances taxes paid by new & high tech business for 2008
15	Guoshuifa	[2008] No 114	5-Dec-08	1-Jan-08	Issuance of related party transactions return format
16	Guoshuifa	[2008] No 116	10-Dec-08	1-Jan-08	Measures on tax deduction of R&D expenditure
17	Guoshuihan	[2009] No 3	4-Jan-09	1-Jan-08	Clarifications of reasonable test of deduction of wages and salaries
18	Guoshuifa	[2009] No 3	9-Jan-09	1-Jan-09	Measures on filing and submission of withholding tax
19	Guoshuifa	[2009] No 6	22-Jan-09	1-Jan-08	Measures of consolidated filing for non-resident enterprises
20	Guoshuihan	[2009] No 98	27-Feb-09	1-Jan-08	Transitional arrangement of certain tax treatment pursuant to the
					enactment EIT Law
21	Guoshuifa	[2009] No 31	6-Mar-09	1-Jan-08	Measures of tax treatment of real estate enterprises
22	Guoshuihan	[2009] No 185	10-Apr-09	1-Jan-08	Measures of tax incentive for production of products encouraged by state
23	Guoshuifa	[2009] No 79	16-Apr-09	1-Jan-08	Measures of consolidated filing for resident enterprises
24	Guoshuifa	[2009] No 80	16-Apr-09	1-Jan-08	Measures of tax incentive for infrastructure projects
25	Guoshuifa	[2009] No 81	16-Apr-09	1-Jan-08	Measures of accelerated depreciation of fixed assets
26	Guoshuihan	[2009] No 202	21-Apr-09	1-Jan-08	Tax treatment of unallowed deductions of reserve expenditure under
					Article 55 of EIT Regulation
27	Guoshuihan	[2009] No 203	22-Apr-09	1-Jan-08	Transitional arrangement of tax treatment prior to the enactment EIT Law
28	Guoshuifa	[2009] No 82	22-Apr-09	1-Jan-08	Definition of "actual place of management" for non-resident companies
29	Guoshuihan	[2009] No 212	24-Apr-09	1-Jan-08	Measures of tax incentive for qualifying technology transfers
30	Guoshuifa	[2009] No 87	30-Apr-08	1-Jan-08	Measures of tax incentive for start up investment



Table V(a) : List of Tax Regulatory Documents Relating to EIT With Restrospective Effect (Issued by SAT)

	<b>Type of Document</b>	<b>Reference No of Document</b>	<b>Issuance Date</b>	<b>Effective Date</b>	<b>Subject Matter</b>
31	Guoshuihan	[2009] No 255	15-May-09	1-Jan-08	Filing method for tax incentive
32	Guoshuihan	[2009] No 698	10-Dec-09	1-Jan-08	Tax treatment of direct and indirect disposal of shares in PRC enterprises
33	Guoshuifa	[2010] No 18	20-Feb-10	1-Jan-10	Measures governing tax Treatment of permanent establishment
34	Guoshuihan	[2010] No 80	22-Feb-10	1-Jan-09	Tax Treatment of services income derived by rural cooperatives
35	Guoshuihan	[2010] No 156	19-Apr-10	1-Jan-10	Consolidated tax filing for construction businesses
36	SAT Public Notice	[2010] No 1	2-Jul-10	1-Jan-10	Directions on claiming of tax credit
37	SAT Public Notice	[2010] No 2	9-Jul-10	1-Jan-10	Tax treatment of agricultural projects granted to certain type of enterprises
38	SAT Public Notice	[2010] No 4	26-Jul-10	1-Jan-10	Tax treatment of business restructuring
39	SAT Public Notice	[2010] No 6	28-Jul-10	1-Jan-10	Deductibility of investment losses
40	SAT Public Notice	[2010] No 7	30-Jul-10	1-Jan-09	Carry forward of losses of enterprises after cessation of consolidated tax
					filing
41	SAT Public Notice	[2010] No 24	9-Nov-10	1-Jul-10	Tax treatment of certain income derived by non-resident enterprises
42	SAT Public Notice	[2010] No 29	24-Dec-10	1-Jan-10	Refund of taxes due to overpayment of land appreciation tax
43	SAT Public Notice	[2011] No 25	31-Mar-11	1-Jan-11	Measures on deduction of losses on assets
44	SAT Public Notice	[2011] No 30	11-May-11	1-Jan-10	Deduction claim of labour union expenses
45	SAT Public Notice	[2011] No 36	22-Jun-11	1-Jan-11	Tax Treatment of income from investment in State treasury bonds
46	SAT Public Notice	[2011] No 39	7-Jul-11	1-Jul-11	Tax treatment of disposal gain of equity investment
47	SAT Public Notice	[2011] No 48	13-Sep-11	1-Jan-11	Supplemental details of tax incentive of tax exemption in respect of income
					from agriculture, forestry, husbandry and fishery

Table V(a) : List of Tax Regulatory Documents Relating to EIT With Restrospective Effect (Issued by SAT)

	<b>Type of Document</b>	<b>Reference No of Document</b>	<b>Issuance Date</b>	<b>Effective Date</b>	<b>Subject Matter</b>
48	SAT Public Notice	[2012] No 12	6-Apr-12	1-Jan-11	Tax incentive for deepening of economic development in western provinces
49	SAT Public Notice	[2012] No 14	13-Apr-12	1-Jan-12	Revision in tax filing for small & meagre enterprises
50	SAT Public Notice	[2012] No 15	24-Apr-11	1-Jan-11	Deduction of various expenses
51	SAT Public Notice	[2012] No 27	19-Jun-12	1-Jan-12	Treatment of disposal gain derived by enterprises assessed under
					verification collection method
52	SAT Public Notice	[2013] No 11	12-Mar-13	1-Oct-12	Further clarifications of SAT Order [2012] No 40
53	SAT Public Notice	[2013] No 25	24-May-13	1-Jan-12	Treatment of limited partnership enterprises established in Suzhou Industrial
					Park
54	SAT Public Notice	[2013] No 26	24-May-13	1-Jan-13	Clarification of tax incentives granted to electricity providers

Table V(b) : List of Tax Regulatory Documents Relating to EIT With Restrospective Effect (Issued by Guangdong SAT Office)

	Type of Document	Reference No of Document	Issuance Date	Effective Date	Subject Matter
1	Yue Guoshuihan	[2009] No 22	13-Jan-09	1-Jan-08	Tax treatment of bad debt losses incurred by banks
2	Yue Guoshuifa	[2010] No 32	11-Feb-10	1-Jan-09	Change of tax authority for approval of loss deduction
3	Guangdong SAT Public Notice	[2013] No 4	1-Apr-13	1-Jan-13	Filing requirement for tax reduction and tax exemption
4	Guangdong SAT Public Notice	[2013] No 6	9-Apr-13	1-Jan-13	Filing requirement for tax reduction and tax exemption

Table V(c) : List of Tax Regulatory Documents Relating to EIT With Restrospective Effect (Issued by Sichuan SAT Office)

	Type of Document	Reference No of Document	Issuance Date	Effective Date	Subject Matter
1	Chuan Guoshuihan	[2009] No 195	20-Jul-09	1-Jan-08	Announcement of gross profit ratio of uncompleted projects for real estate business
2	Chuan Guoshuifa	[2010] No 22	3-Mar-10	1-Jan-10	Measures for application of tax exemption approval
3	Sichuan SAT Public Notice	[2012] No 5	11-Apr-12	1-Jan-11	Tax treatment on investment losses
4	Sichuan SAT Public Notice	[2012] No 7	18-May-12	1-Jan-11	Measures for application of tax exemption approval

Table V(d): List of Tax Regulatory Documents Relating to EIT With Restrospective Effect (Issued by Sichuan local tax office)

	Type of Document	Reference No of Document	Issuance Date	Effective Date	Subject Matter
1	Sichuan Local Tax Bureau Public Notice	[2012] No 1	28-Feb-12	1-Jan-12	Filing requirement for tax reduction and tax
					exemption
2	Sichuan Local Tax Bureau Public Notice	[2012] No 2	15-Mar-12	1-Jan-12	Tax treatment on investment losses

No tax regulatory documents with retrospective effect issued by the Guangdong local tax office is found in the review.

Table VI (a) : List of SAT Tax Regulatory Documents on EIT

	Type of Document	Reference No of Document	Issuance Date	Effective Date
1	Guoshuifa	[2008] No 17	30-Jan-08	1-Jan-08
2	Guoshuihan	[2008] No 159	5-Feb-08	NA
3	Guoshuifa	[2008] No 23	27-Feb-08	1-Jan-08
4	Guoshuifa	[2008] No 30	6-Mar-08	1-Jan-08
5	Guoshuihan	[2008] No 251	21-Mar-08	1-Jan-08
6	Guoshuihan	[2008] No 301	3-Apr-08	1-Jan-08
7	Guoshuihan	[2008] No 299	7-Apr-08	1-Jan-08
8	Guoshuifa	[2008] No 52	16-May-08	1-Jan-08
9	Guoshuihan	[2008] No 650	3-Jul-08	NA
10	Guoshuifa	[2008] No 73	17-Jul-08	NA
11	Guoshuifa	[2008] No 86	14-Aug-08	NA
12	Guoshuihan	[2008] No 828	9-Oct-08	1-Jan-08
13	Guoshuihan	[2008] No 875	30-Oct-08	NA
14	Guoshuihan	[2008] No 850	17-Oct-08	NA
15	Guoshuifa	[2008] No 101	30-Oct-08	1-Jan-08
16	Guoshuihan	[2008] No 897	6-Nov-08	1-Jan-08
17	Guoshuihan	[2008] No 955	24-Nov-08	1-Jan-08
18	Guoshuihan	[2008] No 952	24-Nov-08	1-Jan-08
19	Guoshuifa	[2008] No 111	1-Dec-08	1-Jan-08
20	Guoshuihan	[2008] No 985	2-Dec-08	1-Jan-08
21	Guoshuifa	[2008] No 114	5-Dec-08	1-Jan-08
22	Guoshuifa	[2008] No 116	10-Dec-08	1-Jan-08
23	Guoshuifa	[2008] No 120	16-Dec-08	1-Jan-09
24	Guoshuihan	[2008] No 1081	31-Dec-08	NA
25	Guoshuihan	[2009] No 3	4-Jan-09	1-Jan-08
26	Guoshuifa	[2009] No 3	9-Jan-09	1-Jan-09
27	Guoshuihan	[2009] No 34	20-Jan-09	NA
28	Guoshuihan	[2009] No 37	21-Jan-09	NA
29	Guoshuifa	[2009] No 6	22-Jan-09	1-Jan-08
30	Guoshuihan	[2009] No 47	23-Jan-09	NA
31	Guoshuihan	[2009] No 50	23-Jan-09	NA
32	Guoshuihan	[2009] No 55	6-Feb-09	NA
33	Guoshuifa	[2009] No 11	9-Feb-09	NA

Table VI (a) : List of SAT Tax Regulatory Documents on EIT

	Type of Document	Reference No of Document	Issuance Date	Effective Date
34	Guoshuihan	[2009] No 98	27-Feb-09	1-Jan-08
35	Guoshuifa	[2009] No 31	6-Mar-09	1-Jan-08
36	Guoshuifa	[2009] No 32	9-Mar-09	NA
37	Guoshuihan	[2009] No 134	17-Mar-09	NA
38	Guoshuihan	[2009] No 173	1-Apr-09	NA
39	Guoshuihan	[2009] No 185	10-Apr-09	1-Jan-08
40	Guoshuifa	[2009] No 79	16-Apr-09	1-Jan-08
41	Guoshuifa	[2009] No 80	16-Apr-09	1-Jan-08
42	Guoshuifa	[2009] No 81	16-Apr-09	1-Jan-08
43	Guoshuihan	[2009] No 188	16-Apr-09	NA
44	Guoshuihan	[2009] No 202	21-Apr-09	1-Jan-08
45	Guoshuihan	[2009] No 203	22-Apr-09	1-Jan-08
46	Guoshuifa	[2009] No 82	22-Apr-09	1-Jan-08
47	Guoshuihan	[2009] No 212	24-Apr-09	1-Jan-08
48	Guoshuifa	[2009] No 87	30-Apr-09	1-Jan-08
49	Guoshuifa	[2009] No 90	5-May-09	NA
50	Guoshuihan	[2009] No 255	15-May-09	1-Jan-08
51	Guoshuihan	[2009] No 286	31-May-09	NA
52	Guoshuihan	[2009] No 312	4-Jun-09	NA
53	Guoshuihan	[2009] No 331	22-Jun-09	NA
54	Guoshuihan	[2009] No 363	6-Jul-09	NA
55	Guoshuihan	[2009] No 377	14-Jul-09	NA
56	Guoshuihan	[2009] No 388	17-Jul-09	NA
57	Notice on Taxpayers' rights & obligations	-	6-Nov-09	NA
58	Guoshuihan	[2009] No 698	10-Dec-09	1-Jan-08
59	Guoshuihan	[2009] No 777	31-Dec-09	NA
60	Guoshuihan	[2010] No 39	26-Jan-10	NA
61	Guoshuifa	[2010] No 18	20-Feb-10	1-Jan-10
62	Guoshuifa	[2010] No 19	20-Feb-10	Date of Issuance
63	Guoshuihan	[2010] No 79	22-Feb-10	NA
64	Guoshuihan	[2010] No 80	22-Feb-10	1-Jan-09
65	Guoshuihan	[2010] No 86	2-Mar-10	NA
66	Guoshuihan	[2010] No 156	19-Apr-10	1-Jan-10

Table VI (a) : List of SAT Tax Regulatory Documents on EIT

	Type of Document	Reference No of Document	Issuance Date	Effective Date
67	Guoshuihan	[2010] No 157	21-Apr-10	NA
68	Guoshuihan	[2010] No 201	12-May-10	NA
69	Guoshuihan	[2010] No 249	28-May-10	NA
70	Guoshuihan	[2010] No 266	2-Jun-10	NA
71	SAT Public Notice	[2010] No 1	2-Jul-10	1-Jan-10
72	SAT Public Notice	[2010] No 2	9-Jul-10	1-Jan-10
73	SAT Public Notice	[2010] No 4	26-Jul-10	1-Jan-10
74	Guoshuihan	[2010] No 323	12-Jul-10	NA
75	SAT Public Notice	[2010] No 6	28-Jul-10	1-Jan-10
76	SAT Public Notice	[2010] No 7	30-Jul-10	1-Jan-09
77	SAT Public Notice	[2010] No 19	27-Oct-10	30 days after publication
78	SAT Public Notice	[2010] No 20	27-Oct-10	1-Dec-10
79	SAT Public Notice	[2010] No 23	5-Nov-10	30 days after publication
80	SAT Public Notice	[2010] No 24	9-Nov-10	1-Jul-10
81	SAT Public Notice	[2010] No 26	13-Dec-10	NA
82	SAT Public Notice	[2010] No 29	24-Dec-10	1-Jan-10
83	SAT Public Notice	[2010] No 30	24-Dec-10	1-Jan-11
84	SAT Public Notice	[2011] No 4	10-Jan-11	1-Feb-11
85	SAT Public Notice	[2011] No 22	22-Mar-11	30 days after publication
86	SAT Public Notice	[2011] No 24	28-Mar-11	1-Apr-11
87	SAT Public Notice	[2011] No 25	31-Mar-11	1-Jan-11
88	SAT Public Notice	[2011] No 26	31-Mar-11	1-May-11
89	SAT Public Notice	[2011] No 29	29-Apr-11	NA
90	SAT Public Notice	[2011] No 30	11-May-11	1-Jan-10
91	SAT Public Notice	[2011] No 34	9-Jun-11	1-Jul-11
92	SAT Public Notice	[2011] No 36	22-Jun-11	1-Jan-11
93	SAT Public Notice	[2011] No 39	7-Jul-11	1-Jul-11
94	SAT Public Notice	[2011] No 45	27-Jul-11	1-Sep-11
95	SAT Public Notice	[2011] No 48	13-Sep-11	1-Jan-11
96	SAT Public Notice	[2011] No 76	22-Dec-11	1-Jan-12
97	SAT Public Notice	[2012] No 12	6-Apr-12	1-Jan-11
98	SAT Public Notice	[2012] No 14	13-Apr-12	1-Jan-12
99	SAT Public Notice	[2012] No 15	24-Apr-12	1-Jan-11
100	SAT Public Notice	[2012] No 18	23-May-12	1-Jul-12

Table VI (a) : List of SAT Tax Regulatory Documents on EIT

	Type of Document	Reference No of Document	Issuance Date	Effective Date
101	SAT Public Notice	[2012] No 27	19-Jun-12	1-Jan-12
102	Guoshuihan	[2012] No 318	3-Jul-12	NA
103	Guoshuifa	[2012] No 65	3-Jul-12	NA
104	SAT Public Notice	[2012] No 40	10-Aug-12	1-Oct-12
105	Guoshuihan	[2012] No 445	24-Sep-12	NA
106	SAT Public Notice	[2012] No 57	27-Dec-12	1-Jan-13
107	Shuizongfa	[2013] No 15	8-Feb-13	NA
108	SAT Public Notice	[2013] No 11	12-Mar-13	1-Oct-12
109	Shuizongfa	[2013] No 26	13-Mar-13	NA
110	SAT Public Notice	[2013] No 19	19-Apr-13	1-Jun-13
111	SAT Public Notice	[2013] No 25	24-May-13	1-Jan-12
112	SAT Public Notice	[2013] No 26	24-May-13	1-Jan-13

The above are the result of a search of "Tax Regulatory Document issued by SAT during the period from 16 March 2007 to 30 June 2013" from the website of SAT office at <http://hd.chinatax.gov.cn/guoshui/main.jsp>



Table VI (b) : List of Guangdong SAT Tax Regulatory Documents on EIT

	Type of Document	Reference No of Document	Issuance Date	Effective Date
1	Yue Guoshuihan	[2009] No 22	13-Jan-09	1-Jan-08
2	Yue Guoshuifa	[2009] No 137	19-Aug-09	NA
3	Yue Guoshuifa	[2009] No 139	21-Aug-09	NA
4	Yue Guoshuifa	[2010] No 32	11-Feb-10	1-Jan-09
5	Yue Guoshuihan	[2010] No 297	10-May-10	NA
5	Yue Guoshuihan	[2011] No 229	21-Apr-11	NA
6	Yue Guoshuihan	[2012] No 776	21-Nov-12	NA
7	Guangdong SAT Public Notice	[2013] No 4	1-Apr-13	1-Jan-13
8	Guangdong SAT Public Notice	[2013] No 6	9-Apr-13	1-Jan-13

The above are the result of a search of "Tax Regulatory Document issued by Guangdong SAT during the period from 16 March 2007 to 30 June 2013" from the website of Guangdong SAT office at

[http://portal.gd-n-](http://portal.gd-n-tax.gov.cn/policy/jsp/index.jsp?categoryId=DA9EA1B0A11C88D8DEFFFF40E13AFC74)

[tax.gov.cn/policy/jsp/index.jsp?categoryId=DA9EA1B0A11C88D8DEFFFF40E13AFC74](http://portal.gd-n-tax.gov.cn/policy/jsp/index.jsp?categoryId=DA9EA1B0A11C88D8DEFFFF40E13AFC74)

Table VI (c) : List of Guangdong Local Tax Bureau Tax Regulatory Documents on EIT

	Type of Document	Reference No of Document	Issuance Date	Effective Date
1	Yue Dishuihan	[2008] No 396	17-Jun-08	NA
2	Yue Dishuifa	[2009] No 228	22-Dec-09	NA

The above are the result of a search of "Tax Regulatory Document issued by Guangdong local tax bureau during the period from 16 March 2007 to 30 June 2013" from the website of Guangdong local tax bureau at

<http://hd.chinatax.gov.cn/guoshui/main.jsp>

Table VI (d) : List of Sichuan SAT Tax Regulatory Documents on EIT

	<b>Type of Document</b>	<b>Reference No of Document</b>	<b>Issuance Date</b>	<b>Effective Date</b>
1	Chuan Guoshuihan	[2009] No 20	20-Feb-09	NA
2	Chuan Guoshuihan	[2009] No 195	20-Jul-09	1-Jan-08
3	Chuan Guoshuihan	[2009] No 265	25-Sep-09	NA
4	Chuan Guoshuihan	[2010] No 7	13-Jan-10	NA
5	Chuan Guoshuifa	[2010] No 22	3-Mar-10	1-Jan-10
6	Chuan Guoshuihan	[2010] No 73	19-Mar-10	NA
7	Chuan Guoshuifa	[2010] No 70	29-Jun-10	1-Jul-10
8	Sichuan SAT Public Notice	[2011] No 4	19-Jul-11	1-Sep-11
9	Sichuan SAT Public Notice	[2012] No 5	11-Apr-12	1-Jan-11
10	Sichuan SAT Public Notice	[2012] No 7	18-May-12	1-Jan-11

The above are the result of a search of "Tax Regulatory Document issued by Sichuan SAT during the period from 16 March 2007 to 30 June 2013" from the website of Sichuan SAT office at <http://hd.chinatax.gov.cn/guoshui/action/InitNewArticle.do>

Table VI (e) : List of Sichuan Local Tax Bureau Tax Regulatory Documents on EIT

	<b>Type of Document</b>	<b>Reference No of Document</b>	<b>Issuance Date</b>	<b>Effective Date</b>
1	Sichuan Local Tax Bureau Public Notice	[2012] No 1	28-Feb-12	1-Jan-12
2	Sichuan Local Tax Bureau Public Notice	[2012] No 2	15-Mar-12	1-Jan-12
3	Sichuan Local Tax Bureau Public Notice	[2012] No 47	Not indicated	Not indicated

The above are the result of a search of "Tax Regulatory Document issued by Sichuan local tax bureau during the period from 16 March 2007 to 30 June 2013" from the website of Sichuan local tax bureau at

[http://www.sc-1-tax.gov.cn/template.go?\\_template=1750&specialId=1634](http://www.sc-1-tax.gov.cn/template.go?_template=1750&specialId=1634)

# **Dissertation on “Tax Law Making in China – Does it Comply with Rule of Law Principles?”**

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