



# China Updates

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In response to our clients' needs for up-to-date information on the evolving legal and business environment in China, Lee and Li presents our monthly China Updates to assist our clients in understanding the latest legal and economic trends of China.

Lee and Li has provided legal services across the Greater China Area (Mainland China and Taiwan) longer than any other firm. In addition to decades of rich experience in legal services covering all disciplines, we have established the Greater China Strategic Alliance (L&L-Leaven, Attorneys-at-Law in Shanghai and Lee and Li - Leaven IPR Agency Ltd. in Beijing), providing our clients with the benefits of efficient and professional managing of legal and patent matters in the Greater China Area.

It is widely recognized by our clients that Lee and Li's integrated legal perspective and unparalleled expertise in cross-strait services significantly reduce the time and effort that many companies expend seeking trustworthy Chinese lawyers. Misunderstanding and communication costs arising out of cultural differences in legal practices between the cross-strait legal systems are avoided as well.

## I. Law Updates

### **China Publishes Draft Amendment to the Law on Individual Income Tax for Public Comments**

On June 29, 2018, National People's Congress published the Draft Amendment to the Law on Individual Income Tax ("Draft Amendment"). The Draft Amendment includes amendment to the following key provisions:

(1) The Criteria of PRC Tax Residents:

The Draft Amendment introduces the definition and determination of resident and non-resident individuals for taxation purpose. The criteria to determine whether an individual shall pay individual income tax in China is adjusted from a one-year residency to a 183-day residency within the territory of China. As such, an individual who has a domicile in China or who is non-domiciled but has resided in China for 183 days or more in a tax year will be deemed as a tax resident.

(2) Proposal to consolidate certain labor income:

The current tax law divides taxable income into 11 categories and applies different tax rates: Wages and salaries are subject to a maximum of 45% tax rate. In contrast, income derived from labor services is currently subject to tax rates between 20% and 40%. Some high-income earners therefore declared their income of wages and salaries as income derived from labor services for tax avoidance purposes. The Draft Amendment seeks to consolidate wage and salary income, income derived from labor services, author's remuneration, and royalty income into one category of income and apply unified progressive tax rates.

(3) Improvement on Tax Rate Structure:

The tax rate for the comprehensive income is based on the current salary and salary income tax rate, and the calculation of tax is adjusted from monthly basis to annual basis.



## Law Updates

(4) Increased Tax-Exempt Income:

The Draft Amendment increases the monthly tax-exempt income from RMB 3,500 to RMB 5,000 (RMB 60,000/year).

(5) Allow itemized deductions for specific expenditures

In addition to the current deductible items, the Draft Amendment allows additional deduction for specific expenditures which are closely related to people's lives, such as expenditures on dependent children's education, continuing education, serious illness medical treatment, housing mortgage interest and rental.

(6) Anti-Avoidance Rules:

Referring to the anti-avoidance rules in the Law of the People's Republic of China on Enterprise Income Tax, the Draft Amendment stipulates that under any of the following circumstances, the tax authority shall be empowered to adjust tax based on reasonable methods: (a) business is carried out in violation of the arm's length principle; (b) an enterprise is set up overseas to avoid tax burden; and (c) an individual obtains improper tax benefits from other unreasonable commercial arrangement. Where tax authority has made adjustment on the tax liability, additional tax payments due shall be made, along with the interests.

The Amendment (Draft) to the Law on Individual Income Tax (in Chinese):

[http://www.npc.gov.cn/npc/flcazqyj/2018-06/29/content\\_2057033.htm](http://www.npc.gov.cn/npc/flcazqyj/2018-06/29/content_2057033.htm)



## Law Updates

## II. Case Updates

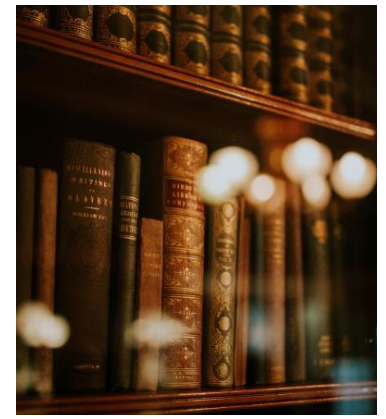
### **Hangzhou Internet Court Allows Blockchain-based Data Permissible as Evidence**

Hangzhou Internet Court (the “Court1”) recently rendered a judgment on a copyright infringement lawsuit in June 2018, allowing blockchain evidence to be admissible in court for the first time. It is also the first time blockchain technology has been allowed as a method of preserving evidence in China.

The plaintiff claimed that the defendant re-published the plaintiff’s article without permission and thus infringed the plaintiff’s right of public transmission. The plaintiff requested the court to order the defendant to cease infringement, remove the infringing article, and be liable for plaintiff’s losses and damages. To prove the defendant’s infringement, the plaintiff presented the electronic data of the infringing article on the webpages that has been stored in a third-party blockchain-based platform.

In order to determine whether the blockchain technology evidence has probative value and conform to the relevant regulations governing electronic data, the Court examined the qualification of the third-party platform, the reliability of the method and content integrity thereof. The Court also examined whether the electronic evidence had been uploaded and the relevancy of the electronic evidence. Given the findings above, the Court held that the blockchain-based electronic data submitted by the plaintiff satisfies relevant standards and was allowed as evidence to prove the defendant's infringement.

<sup>1</sup> Hangzhou Internet Court is specializing in hearing cases on internet-related disputes arising in Hangzhou. To maintain efficient and convenient method for dispute resolution, the court accepts filings electronically and tries cases via live stream in a platform of the Court.



## Case Updates

In terms of the integrity of the blockchain-based evidence, the Court determined that, “The blockchain has the characteristic of incorruptibility because if one intends to revise the current block, he has to change the hash in the subsequent block and the data of all the institutes and companies in the blockchain network. Therefore, once the electronic data has been stored in the blockchain, the blockchain technology could be regarded as a reliable method to preserve the data integrity.”



## Case Updates

### **III. Economic Updates**

#### **1. New Tesla Auto Factory in Shanghai will be the Largest Foreign Investment in Shanghai**

After the easing of foreign ownership restrictions in China, Tesla signed an Investment Agreement with the Lingang Management Committee and the Lingang Group in Shanghai. According to the agreement, Tesla will build up a wholly-owned auto factory in Shanghai with a production capacity of 500,000 vehicles a year and facilities for research and development, manufacturing and sales. Tesla's Shanghai auto factory will represent Shanghai's largest-ever foreign investment in the field of manufacturing industry.

The new auto factory will not only boost Tesla's production capacity, but also allow the automaker to avoid costly new tariffs and trans-pacific shipping costs, thereby allowing Tesla vehicles made in China to be delivered at much lower cost than those built in Tesla's existing US factory.



## **Economic Updates**



## **2. ZTE Takes Significant Steps to Lift U.S. Trade Ban**

In April 2018, the U.S. Department of Commerce hit ZTE with a seven-year trade ban because it violated an agreement with the U.S. government by not punishing its personnel who violated U.S. sanctions against Iran and North Korea. Because ZTE depends on U.S. suppliers for many key components in its products, the trade ban poses a grave threat to the company's current operations.

It is reported that ZTE recently reached a settlement agreement with the U.S. government. In addition to paying a US\$1 billion fine, ZTE agreed to put US\$400 million in an escrow account and replace all senior management involved in the violations. As a result, the U.S. government has lifted the trade ban forbidding U.S. vendors from selling products to ZTE.



**Economic  
Updates**

## **IV. IP Updates**

### **State Intellectual Property Office Published 2017 China Intellectual Property Development Status Evaluation Report**

The Intellectual Property Development Research Center of State Intellectual Property Office recently released the “2017 China Intellectual Property Development Status Evaluation Report.” This report evaluates the progress of China's intellectual property protection based on four aspects of intellectual property regime (including creation, application, protection and management) in terms of 54 comprehensive indicators. The report also shows that the comprehensive development level of China's intellectual property protection has steadily increased in 2017, and the international ranking of China's overall strength in intellectual property has climbed rapidly as well.

The nationwide intellectual property development index shows a trend of progressive decline from the eastern region, the central region to the western region of China. The imbalance in the intellectual property development reflects the imbalance between the economic development and market development levels in various regions of the country. It also reflects the imbalance of the distribution of industries across different regions. In general, among the regions with a development index of more than 80 points, except for Beijing, Guangdong, Shanghai and Jiangsu are all belonged to the coastal areas.

In addition, the global ranking of China's intellectual property development status has improved significantly. During the period from 2012 to 2016, the United States, Japan and South Korea held the top three rankings, while China improved from 19th to 10th place during the same period.



**IP  
Updates**



*The China Updates content on Chinese law and regulations is meant to provide an overview of the latest legal developments in China. Due to the generality of this overview, the information contained herein may not be applicable in all situations and should not be acted on or relied upon without specific legal advice. For more information or advice on specific legal issues, please contact Lee and Li directly. Our contact information is provided below.*

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