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Employment of Expatriates – The Key Legal Issues

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Expatriates

❖ What is an Expatriate?

□ Definition:

Foreigners working inside China, **EXCLUDING** those who enjoy diplomatic prerogatives and exemption, such as foreigners working in:

- ✓ foreign embassies and consulates in China;
- ✓ UN representative offices in China; and
- ✓ other international organizations.

□ Types:

- ✓ Direct hire
- ✓ Secondment

Expatriates

- ❖ **There are general requirements for hiring expatriates mainly concerning the position that can be offered to the expatriates and other general requirements connected to the subject;**
- ❖ **Furthermore there are specific requirements to be met for expatriates to be employed:**
 - in Beijing;
 - In Shanghai.
- ❖ **Other differences are concerning the kind of hiring, direct hire or secondment with reference to:**
 - Employment contract/relationship;
 - Payment of Remuneration;
 - Work permit;
 - Social security;
 - Applicability of China Labor Laws.
- ❖ **Other kind of expatriates:**
 - **Interns:** foreigners cannot work in China as an intern.
 - **Foreign Students?** can work part-time in China, but if specific requirements are met

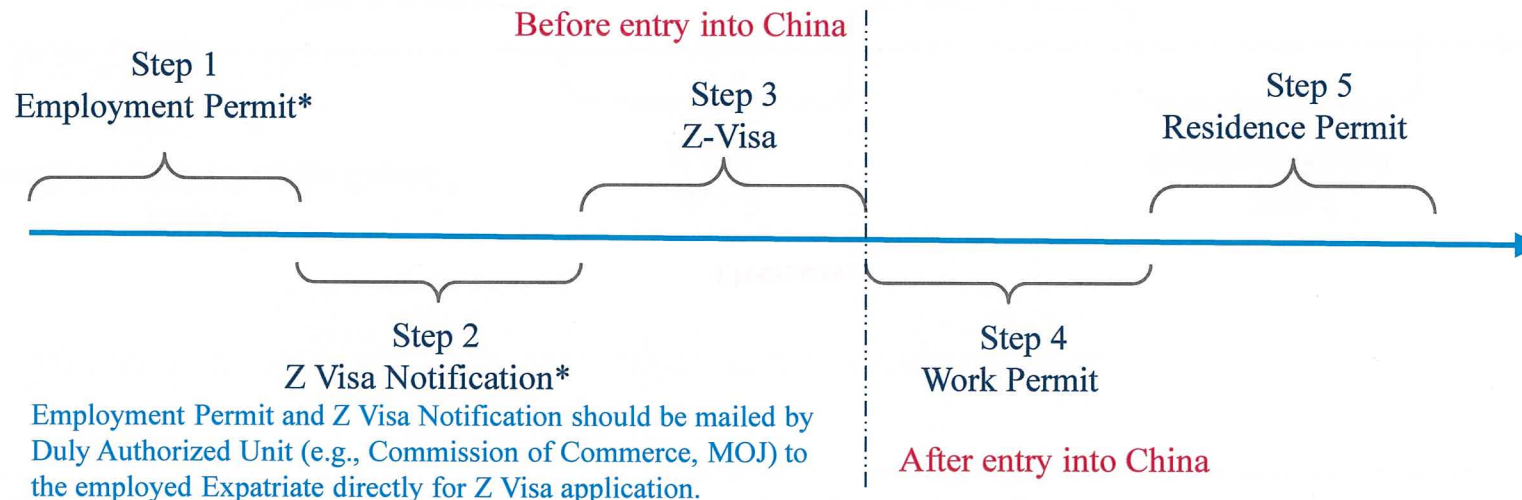
Legal Employment of Expatriates

❖ Legal employment of Expatriates

Generally, some documents have to be obtained in order for a foreigner to be legally hired and working in China before entry into China and after entry into China..

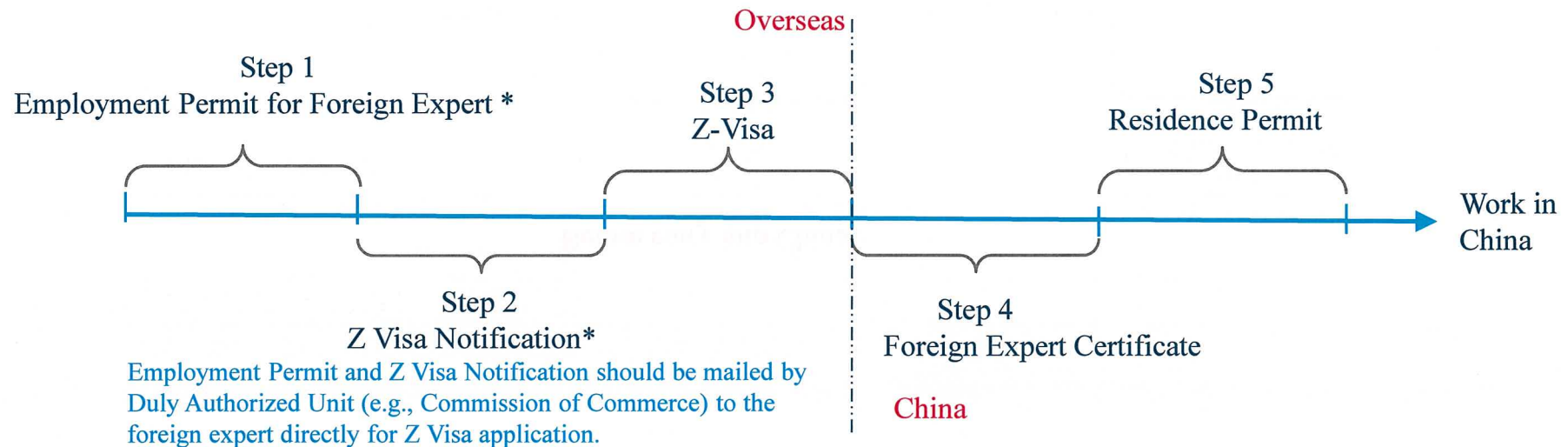
Under certain circumstances, Employment Permit and Work Permit may be exempted for a foreigner to work in China.

□ General Procedure



Legal Employment of Expatriates (Cont'd)

□ General Procedure of Legal Employment of Foreign Experts



□ On-going Management

Please pay attention to the following on-going management issues:

- ✓ Work Permit;
- ✓ Residence Permit;
- ✓ Foreign Expert Certificate.

Applicability of PRC Labor Laws

The *Labor Law* and *Labor Contract Law* of the People's Republic of China (“Labor Laws”) apply to all enterprises and individual economic organizations within the territory of the People's Republic of China and to staff and workers who have contractual labor relationships with these employers. Thus, the Labor Laws should also apply to foreigners directly hired by Chinese companies or where a local contract or de facto employment relationship exists between the foreigner and the Chinese company.

General provisions of the Labor Laws:

Employment contract and employment relationship between employer and expatriates are subject to the general provisions of the Labor Laws.

Furthermore are provided special provisions for expatriates.

Penalties and Liabilities (Cont'd)

- ❖ **Specific penalties are provided for the expatriates for example for the following circumstances:**
 - **Illegally entering/exiting China;**
 - **Obtaining Visa, certificate for stay or residence permit documents;**
 - **Illegal employment;**
 - **Make up, change, falsely use, transfer, trade the Work Permit or the Employment License;**
 - **Refuse annual inspection of work permit;**
 - **Change employer, job, terms of employment without permission;**
 - **Assisting with illegal entering/exiting China;**
 - **Illegally employing expatriate;**
 - **Make up, change, falsely use, transfer, trade the Work Permit and the Employment License;**
 - **Obtaining visa, certificate for stay or residence permit documents, or other exit and entry documents by means of falsification or cheating.**

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Jolin Song has more than 14 years of experience in providing legal services for inbound and outbound investments, mergers and acquisitions, private equity investments and financing, and real estate financing and acquisitions. She has represented international and domestic clients in structuring, negotiating and documenting their business transactions for direct investments and acquisitions. She also has extensive experience in assisting MNCs in China merger review, antitrust related corporate compliance advisory/investigation as well as trainings. Her client portfolio covers a wide spectrum of industries including real estate, telecommunications and information technology, insurance, banking, oil and gas, automobile, retail and manufacturing.

Jolin also specializes in advising multinational clients on regulatory compliance matters concerning China's employment laws and regulations. She is experienced in dealing with a variety of employment issues for expatriates and local employees, including the structuring of compensation packages, drafting employment contracts, employee handbooks, and transferring employees in post-M&A/restructuring transactions.

Jolin was admitted to the New York State Bar and has obtained China's legal profession qualification. Prior to joining Qin Li, she has practiced at several international law firms and also worked as a Senior Legal Counsel (Greater China) at a leading consulting firm. She received her Master of Law (LL.M.) from both New York University (USA) and Peking University as well as a B.A. from Peking University. She is proficient in Chinese, English and French.



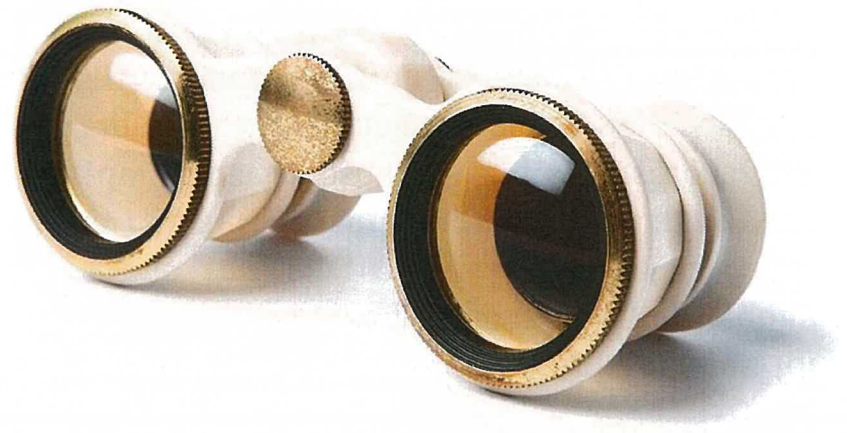
China Individual Income Tax (“IIT”) Updates

Huan Wang, Partner

Global Employer services

Always One Step Ahead

领先一步



Updates on Recent IIT Change / Development

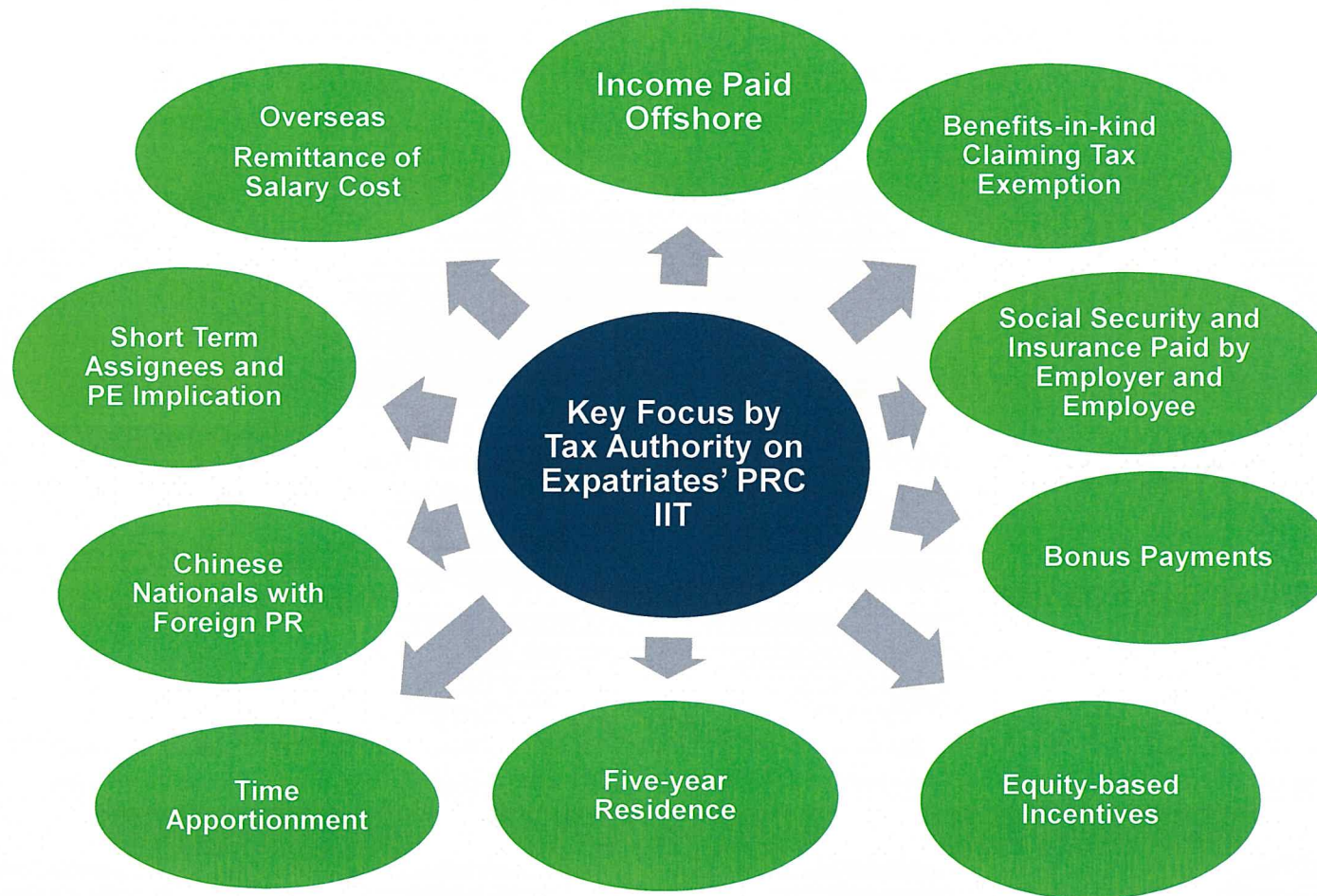


Intensified IIT administration for foreigners working in China

- From 2010, SAT has been intensifying the administration of PRC IIT, especially on the foreign assignees.
- During recent years, tax self-inspection and audit have been conducted more frequently on foreigners' IIT reporting in nationwide.

Tax Authority's Focus During IIT Audit

Issues Focused by Tax Authority



Our Recommendation

- Understand and monitor the changes and updates on tax regulations and practice of in-charge tax authorities;
- Periodic review of current position taken and supporting documents in relation to employees to ensure the IIT compliance;
- Internal review of IIT reporting and filing status to identify any non-compliance issues; and if any, further assess the non-compliance level and if rectification required;
- Seek professionals' assistance where necessary.

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Huan is a Partner at Global Employer Services Group ("GES") of Deloitte Beijing Office. She has over 18 years of experience providing tax services to MNCs.

Since 2000, she has been focusing on GES practice and her main clients include many famous MNC companies. Being one of the pioneers setting up the GES practice in China market when she worked for the former employer which is also Big Four, she has extensive experience in providing PRC individual income tax ("IIT") and social security related consulting service, advice on PRC IIT implications and planning for income derived from stock-based incentives to MNCs. During the recent years, Huan also provided PRC IIT related consulting services to Chinese high net worth individuals.

Huan is also a frequent speaker at various seminars, including Deloitte's external seminar and seminars/events hosted by Deloitte together with other associations.

Bulletin 16 – New Rule to Strengthen Transfer Pricing Administration



**Deloitte Touche Tohmatsu Certified Public Accountants
LLP, Beijing Branch**

China Tax Authorities' Current Core Works(Circular 16)

—Significant outbound payment management (Cont'd)

March 2015---Announcement on Enterprise Income Tax Issues concerning the Disbursement of Expenses by Enterprises to Their Overseas Related Parties (Announcement of the State Administration of Taxation [2015] No.16)

1. As for the expenses disbursed to the overseas related parties are not under the arm's length principle, the tax authorities may make an adjustment.

2. The competent tax authorities may require the enterprises to provide the contracts or agreements signed and the related data records demonstrating that those transactions really happen.

3. If the enterprises disburse expenses to their overseas related parties that fail to perform their functions or bear risks and that have no substantial operating activities, such expenses shall not be deducted when the taxable income of enterprises is calculated.

4. If the enterprises pay for the services rendered by the overseas related parties, these services shall enable the enterprises to obtain the direct or indirect economic benefits. If not, such expenses shall not be deducted when the taxable income of enterprises is calculated.

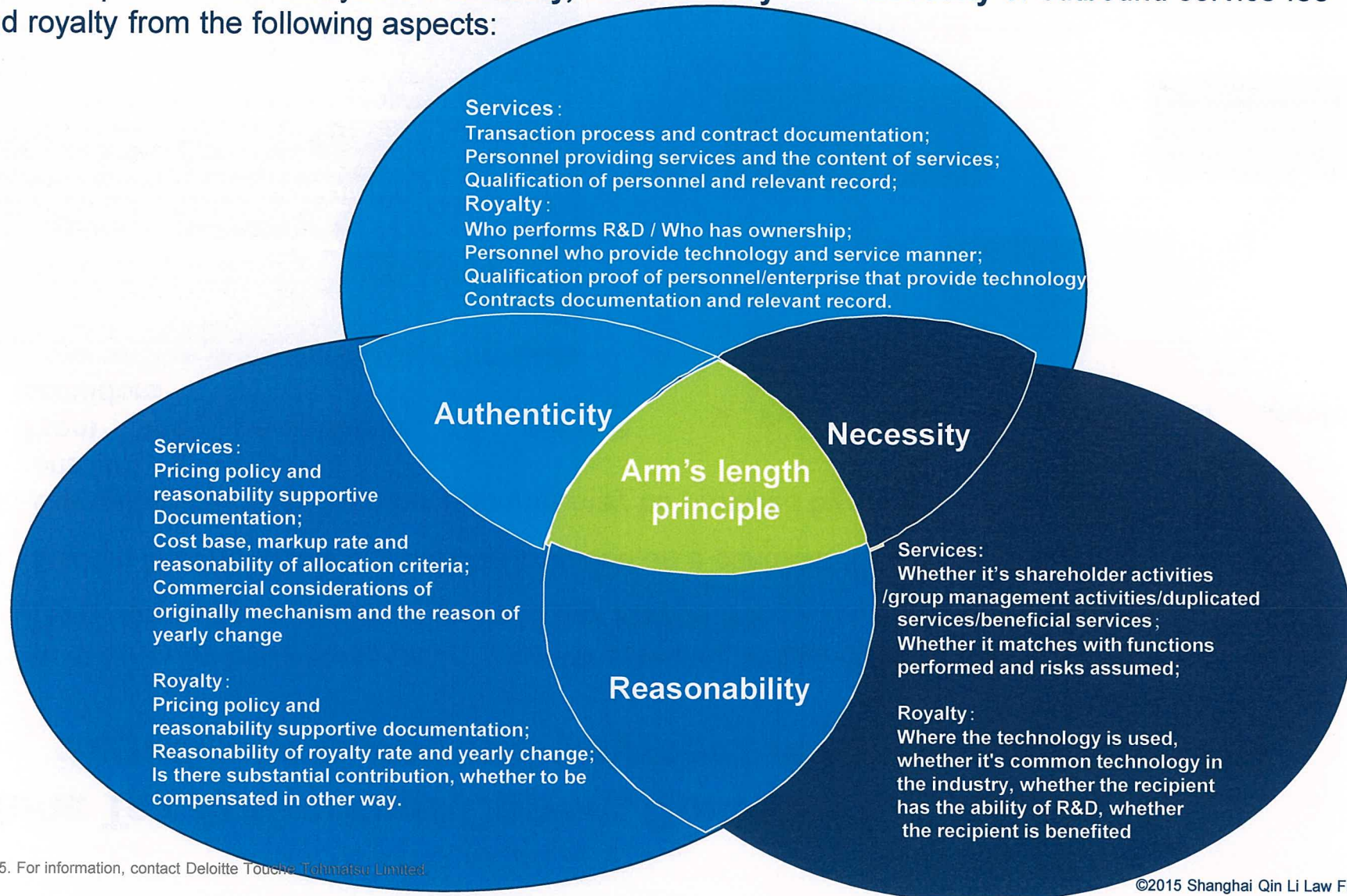
5. Share of contribution of each related party in the value creation of these intangible assets should be considered when paying royalties. Where the royalties paid by the enterprises to their related parties that only have the legal ownership of intangible assets and make no contributions to the abovementioned value creation, as well as not in line with the arm's length principle, such royalties shall not be deducted when the taxable income of enterprises is calculated.

6. If an enterprise establishes a holding company or financing company overseas for the major purpose of financing and listing, and pays royalties to their overseas related parties for the spinoff benefits arising from the relevant financing and listing activities, such royalties shall not be deducted when the taxable income of enterprises is calculated.

China Tax Authorities' Current Core Works(Circular 16)

——Significant outbound payment management (Cont'd)

The enterprise should analyze the **facticity, reasonability and necessity** of outbound service fee and royalty from the following aspects:

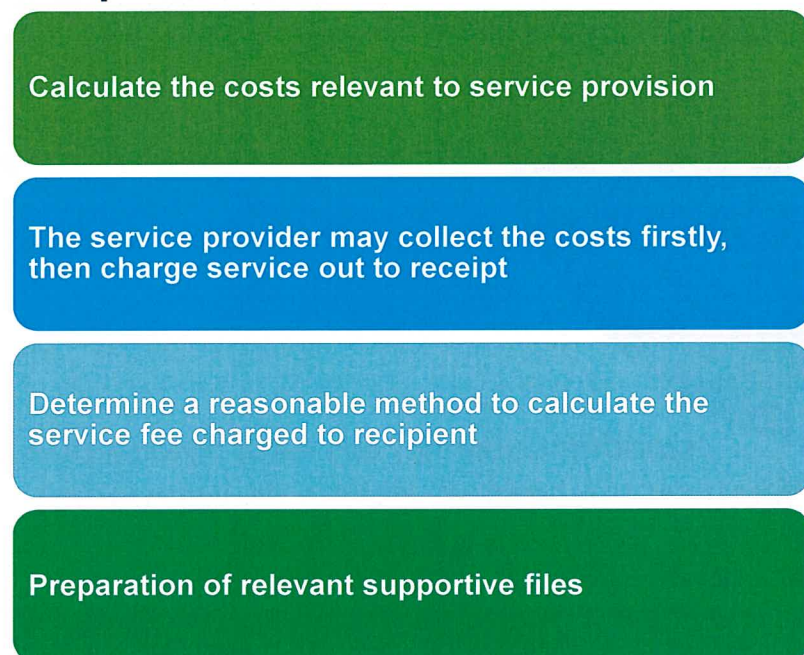


China Tax Authorities' Current Core Works(Circular 16)

——Significant outbound payment management (Cont'd)

- ❑ In order to be more competitive, improve operating efficiency as well as obtain cost saving, related party transactions are unavoidable to pay service fee
- ❑ Certain important services may be provided on a centralized basis (by the group)
- ❑ Centralized services from headquarter may be provided by team members hired by different entities

➤ From the perspective of service providers



➤ From the perspective of service recipient (The six tests)

