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New PRC Offshore Trust Tax Rules – Key Implications for Cayman and BVI Offshore Trust Structures

On 24 July 2026, China's Ministry of Finance and State Taxation Administration jointly issued the *Announcement on Individual Income Tax Matters Relating to Offshore Trusts* (《财政部 税务总局关于离岸信托个人所得税有关事项的公告》) (Announcement No. 21 of 2026) (the "Notice"), together with a companion *Announcement of the State Taxation Administration on Collection and Administration Matters Relating to Individual Income Tax on Offshore Trusts* (《国家税务总局关于离岸信托个人所得税有关征管事项的公告》) (Announcement No. 15 of 2026) (the "STA Announcement") and an official Q&A issued by the heads of the Tax Policy Department of the Ministry of Finance and the Income Tax Department of the State Taxation Administration (《财政部税政司 税务总局所得税司有关负责人就离岸信托个人所得税有关事项答记者问》) (the "Q&A").

The Notice introduces a tax framework that applies throughout the lifecycle of offshore trusts:

- *At establishment*: When a PRC resident individual contributes property such as company equity, shares, or real estate into an offshore trust, the gain is taxed as "property transfer income" at 20%, calculated as the market value of the contributed property less its original cost and reasonable expenses. Non-resident individuals are taxable at the contribution stage only on China-sourced property transfer income.

- *During the trust's subsistence*: Income generated by the trust and offshore entities it holds, controls, or manages is taxable on a current-inclusion basis, whether or not actually distributed, with the PRC resident individual who contributed the property treated as the taxpayer. Losses on property transfers may not be carried forward to subsequent years. Fees incurred in the establishment and operation of the trust (including trustee compensation, management fees, legal fees, and investment advisory fees) may not be deducted from taxable income. Trust income on which the PRC resident individual has already paid individual income tax during the subsistence stage is not taxed again upon actual distribution, thereby avoiding double taxation.

- *Upon trust termination*: The clearance gain, being the market value of all trust property at termination less the original cost and reasonable expenses, is taxed as "interest, dividends, and bonuses income."

- *Distribution from non-resident-funded trusts*: Where a PRC non-resident individual contributes property to an offshore trust and the trust distributes income to a PRC resident individual during its subsistence, the PRC resident individual is the taxpayer and the income is taxed as "interest, dividends, and bonuses income." Upon termination of such a trust, the market value of trust property received by the PRC resident individual constitutes taxable income under the same category.

The Notice also contains significant anti-avoidance provisions, including:

- *Substance-based look-through of offshore entities*: The tax net extends to income generated by offshore entities held, controlled, or managed by the trust. Article 13 of the Notice defines such entities by reference to specific criteria, including a threshold whereby more than 50% of the entity's total profits consist of passive income (dividends, interest, rent, royalties, property transfer income, and low-risk trade or service income), lack of substantive operational conditions (such as employees, registered business address, or independent financial accounting), use of entity funds for personal consumption or property expenditures unrelated to the business, or production and business decisions not being made by the entity itself. Entities that are regulated financial institutions or that can demonstrate genuine commercial purpose and substantive operations are excluded from this treatment.

- *Deemed distributions*: Certain economic benefits provided through trust assets, such as guarantees or loans secured against trust property that remain outstanding at year-end, reimbursement of expenses, or below-market-value use of trust property, are treated as deemed distributions to the relevant PRC resident individual and are subject to individual income tax accordingly. It should also be noted that this deemed-distribution rule applies only to offshore trusts funded by PRC non-resident individuals.

- *Expanded tax-residency concept*: Individuals who have acquired foreign nationality or long-term or permanent overseas residency, but whose primary economic interests remain in China may be treated as domiciled PRC resident individuals for purposes of the Notice.

- *Resident-to-non-resident conversion*: If a PRC resident individual becomes a non-resident during the trust's subsistence, a deemed disposition is triggered, requiring the individual to pay individual income tax on the difference between the market value of the trust property on the date of conversion and its original cost, classified as "interest, dividends, and bonuses income."

The rules apply retrospectively. PRC resident individuals who contributed property to offshore trusts during the period from 1 January 2023 to 31 December 2025, and PRC non-resident individuals who contributed property during the period from 1 January 2023 to the effective date of the Notice, must declare and pay unpaid individual income tax within 90 days of the Notice's implementation, without late-payment surcharges. All pre-2026 trust income accrued during the subsistence of a PRC resident individual's offshore trust must likewise be reported and paid within the same 90-day grace period, classified as “interest, dividends, and bonuses income” and without late-payment surcharges. Taxpayers who fail to pay within this window will be subject to late-payment surcharges and, in cases of tax evasion, to recovery of unpaid taxes together with surcharges and penalties under the PRC Tax Collection and Administration Law.

The STA Announcement prescribes tax filing deadlines as below:

1. for contribution-stage tax, PRC resident individuals must file in the year following the contribution (between 1 March and 30 June);
2. for subsistence-stage income, PRC resident individuals file on an annual basis (between 1 March and 30 June each year for the preceding year’s income).

The Notice further provides that PRC resident individuals may credit foreign taxes of an individual income tax nature paid in respect of the offshore trust against their Chinese individual income tax liability. In cases of trust termination or death of the settlor where the resulting tax liability causes financial hardship, the taxpayer (or the trustee, as applicable) may apply to pay the tax in equal instalments over a period of up to five years.

We set out below the principal implications of the Notice for Cayman and British Virgin Islands, (BVI), trust structures.

Scope of the "Offshore Trust" Definition: Does It Include a Cayman or BVI Company?

The Notice defines "offshore trusts" as trusts established under foreign law and other overseas legal arrangements that perform similar trust-like functions, including family foundations and bespoke fiduciary structures established not in the name of a trust but substantively possessing trust-like functions. The Notice specifically excludes standardised financial products issued by licensed financial institutions, such as banks, insurance companies, securities companies, and fund companies, that are regulated, offered to the general public, and bear their own investment risk.

Based on this definition, and subject to further interpretation by PRC legal and tax advisers, a standalone Cayman exempted company or BVI business company is not itself an "offshore trust" for these purposes. The term "offshore" in the Notice refers to trusts and trust-like arrangements established under foreign law; it does not capture ordinary corporate vehicles used solely as holding companies. A Cayman or BVI company used simply as a corporate holding vehicle, without a trust above it, falls outside the definition.

A Cayman or BVI company held beneath a trust structure is, however, caught through the trust structure. Many Chinese high-net-worth structures use a layered architecture in which an offshore trust sits at the top and one or more Cayman or BVI companies beneath it hold shares, investments, or other assets. In that context, the underlying Cayman or BVI company is an "offshore entity held, controlled or managed by the trust", and the Notice expressly brings the income of such entities into the Chinese tax net where any of four conditions is met:

- Passive-type income, including dividends, interest, rents, royalties, property-transfer income, and low-risk trade or service income, accounts for more than 50% of total profits in the prior tax year.
- The entity's staffing, registered business address, or financial accounting fails to meet substantive-operations conditions.
- Entity funds are used to pay personal non-business consumption or property expenditures.
- Business decisions are not actually made by the entity itself.

Why Cayman or BVI Trusts Still Matter

The market should not overreact to the Notice. The new rules do not eliminate the rationale for Cayman or BVI trust structures. The following considerations remain relevant:

- *Tax neutrality at the Cayman or BVI level is preserved*. The Cayman Islands and BVI impose no income tax, capital gains tax, inheritance tax, or gift tax on trust assets. This remains a genuine advantage for families with beneficiaries in multiple jurisdictions: even if the Chinese settlor or beneficiary becomes subject to a 20% PRC tax, beneficiaries who are not Chinese tax residents remain unaffected by the Notice. Cayman's tax-neutral platform continues to provide a clean, single-layer holding structure for global assets.

- *Fundamental trust objectives remain unchanged*. Modern offshore trusts are not intended to facilitate tax evasion; they are designed to support tax efficiency within a compliant framework. Their fundamental objectives, wealth preservation, succession planning and multi-generational governance remain unchanged.

- *Foreign tax credit mechanism*. The Notice expressly provides that foreign income tax of a personal income tax nature already paid on trust income outside China may be credited against the PRC tax liability, mitigating the risk of double taxation.

- *No double taxation on distributed income*. Trust income on which individual income tax has already been paid at the accrual stage is not taxed again upon actual distribution, providing clarity for timing-related concerns.

It is also important to note that the Notice did not come entirely without warning. In the course of our work and communications with our clients, we have become aware that PRC tax authorities had already been communicating informally, including through direct, oral approaches to individual founders, regarding their expectations concerning offshore trust taxation, prior to the formal publication of the Notice. The Notice therefore codifies and systematises an approach that was already being signalled to parts of the market, and we believe the market has had a degree of psychological preparation for this development.

Over the years, some service providers have marketed trusts primarily as tax avoidance tools and less sophisticated Chinese clients may have been misled into establishing trusts for purposes that such structures were never designed to serve.

By contrast, individuals with complex family circumstances and substantial wealth who genuinely require a trust for succession planning, asset protection, or multi-generational governance are unlikely to be deterred solely by the newly introduced tax. The 20% charge is a cost to be factored into the structure, not necessarily a reason to abandon the planning altogether.

The competitive strengths of the Cayman Islands and BVI, including legal certainty, tax neutrality, sophisticated trust legislation, institutional governance, and a mature professional-services ecosystem, remain intact. The key change is that there is now greater certainty as to the transparency requirements and tax treatment of these structures by the PRC government. That is a shift that ultimately favours well-governed jurisdictions like the Cayman Islands and BVI. Offshore trust planning therefore remains viable where it serves genuine wealth-preservation, succession planning, asset protection, or governance objectives, provided that the relevant tax and reporting obligations are addressed from the outset.

The Chinese government has consistently established the "Go Global" strategy as a cornerstone of its economic policy. The Notice should not be construed as a departure from that policy orientation. Rather, it represents a natural evolution within the broader "Go Global" framework; as Chinese enterprises increasingly expand their overseas presence, regulatory compliance has become a matter of heightened governmental priority. The underlying message is unequivocal: offshore structuring remains not only viable but also encouraged, provided that it is conducted within a robust framework of full tax transparency, regulatory adherence and legal compliance.

Further Assistance

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