

# China Legal Briefing\*297

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## I. **Guidelines for Compliant Labour Dispatch in the Beijing-Tianjin-Hebei Region**

To regulate the labour dispatch practices in the Beijing-Tianjin-Hebei region, on February 3, 2024, the Departments of Human Resources and Social Security of Beijing Municipality, Tianjin Municipality and Hebei Province jointly promulgated the *Guidelines for Compliant Labour Dispatch in the Beijing-Tianjin-Hebei Region* (the "**Guidelines**"). In this article, we will briefly introduce some key points of the Guidelines.

- **Labour dispatch service providers:**

According to the Guidelines, in order to engage in labour dispatch services, the service provider must first obtain a business license. Applicants for labour dispatch business should meet the following conditions: (1) registered capital is not less than RMB 2 million; (2) fixed business premises and equipment are suitable for the business; (3) labour dispatch management system complies with the provisions of laws and administrative regulations;

Any entity that engages in labour dispatch business without a license should be ordered to stop the illegal act, its illegal income should be confiscated and a fine of more than one time and less than five times the illegal income should be imposed; if there is no illegal income, a fine of less than RMB 50,000 may be imposed.

The labour dispatch service providers should, after obtaining the labour dispatch business license, properly keep it and should not alter, resell, rent, loan or otherwise illegally transfer it. Otherwise, a fine of less than RMB 10,000 should be imposed, and if the circumstances are serious, a fine of more than RMB 10,000 but less than RMB 30,000 should be imposed.

- **Labour receiving unit:**

Employment by labour assignment is a supplemental form and is to be used only for temporary, auxiliary, or alternative positions.

Temporary positions are positions that exist for no more than six

months; auxiliary positions are positions that are not part of the main business and that provide services to the main business positions; an alternative position is a position that is filled by other employees for a certain period of time during which an employer's employees are in full-time study or on leave. Therefore, an employer may only use temporary employees in the above-mentioned temporary, auxiliary or alternative positions and may not expand the scope of their employment.

- **Labour disputes:**

If a labour dispute arises between a temporary employee and a labour service provider or a labour receiving unit, the temporary employee may apply for arbitration of the labour dispute, and the labour service provider and the employer should be joint parties. The handling of labour disputes by arbitration should mainly include the followings: filing of application, acceptance of arbitration, trial, mediation and arbitration award.

- **Conclusion**

In general, the Guidelines provide specific reference for compliant labour dispatch practices for enterprises in Beijing, Tianjin and Hebei. When using labour dispatch services based on actual production and business needs, foreign enterprises should pay attention to examining the business qualifications of labour dispatch service providers, and ensure that labour secondment can comply with the three "temporary, auxiliary and substitutable" requirements as stated above.

## **II. Judicial Interpretation in the Handling of Criminal Cases of Endangering Tax Collection and Management**

On March 18, 2024, the Supreme People's Court and the Supreme People's Procuratorate issued the "Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several

Issues Concerning the Application of Law in the Handling of Criminal Cases of Endangering Tax Collection and Management."

(hereinafter referred to as the "Judicial Interpretation"), which took effect on March 20, 2024. The Judicial Interpretation provides clear sentencing basis and identification standards for various tax-related crimes, thereby providing more precise legal standards for judicial practice.

At the same time, it is evident from the stringent provisions of the Judicial Interpretation that tax compliance issues continue to be tightly regulated in China. Here are several key regulatory points worthy of attention:

- **The first-time inclusion of "Dual contracts" as a tax evasion method**

Article 1 of the Judicial Interpretation explicitly enumerates the forms of "deception, concealment means" and "failure to declare" in tax evasion crimes. It's worth noting the second point: "(2) To sign 'Dual contracts and other forms of concealing income or dividing assets in the name of another person."

Dual contracts refer to the practice where both parties to a contract draw up multiple contracts with different contents on the same matter, one for internal use and one for external use. The external contract does not reflect the true intention of the parties but is aimed at evading national taxes, etc. In this Judicial Interpretation, such behaviours is explicitly classified as a target for punishment under tax evasion crimes. The corresponding penalty is imprisonment for less than three years or detention, and a fine if the amount of tax evaded is significant and accounts for more than ten percent of the payable tax; imprisonment for three to seven years, plus a fine, if the amount evaded is enormous and accounts for more than thirty percent of the payable tax.

- **Changes and improvements in the circumstances of "falsely reporting exports or other deceptive means".**

Article 7 stipulates that any of the following circumstances shall be deemed as "falsely reporting exports or other deceptive means" as provided in Article 204(1) of the Criminal Law:

- (1) Applying for export tax refund using forged, illegally purchased, or otherwise illegally obtained value-added tax special invoices or other invoices that can be used for export tax refund;
- (2) Declaring untaxed or tax-exempt export transactions as taxed export transactions;
- (3) Impersonating others to apply for export tax refunds for export businesses;
- (4) Falsely increasing the export tax refund amount by fictitiously stating the name, quantity, unit price, and other elements of exported goods;
- (5) Forging or signing false sales contracts, or obtaining export-related documents and vouchers such as export customs declarations and transportation documents through forgery, alteration, or other illegal means, and falsely declaring exports for tax refunds;
- (6) After goods are exported, re-importing them into the country or importing similar goods from abroad for repeated import and export and applying for export tax refunds;
- (7) Falsely reporting the functions, purposes, etc., of exported products and applying for tax refunds for products that are not eligible for tax refunds;
- (8) Deceiving export tax refunds by other means.

- **Adding the provision that intermediary organizations and their personnel providing false certification documents shall be held criminally liable for the crime of "providing false certification documents".**

Article 9 states that for the act of deceiving the state to obtain export tax refunds without actually receiving the refund, the punishment may

be mitigated or reduced in accordance with the provisions applicable to completed offenders.

Intermediary organizations and their personnel engaged in activities such as freight forwarding, customs clearance, accounting, taxation, comprehensive foreign trade services, etc., who violate relevant national regulations on import and export operations by providing false certification documents to others, causing others to deceive the state to obtain export tax refunds, shall be held criminally liable according to the provisions of Article 229 of the Criminal Law.

- **Conclusion**

This Judicial Interpretation clarifies the conviction and sentencing standards for various tax-related crimes, indicating that in China's future judicial practice, there will be more unified and clear standards for handling cases involving tax crimes. This is of significant importance for the strict management of tax crimes and the maintenance of tax justice, companies are consequently reminded to be more cautious in dealing with tax-related issues and to pay more attention to tax compliance.

### **III. Implementation Regulation of Consumer Rights Protection Law of China**

The Implementation Regulation of Consumer Rights Protection Law of China ("**Regulation**") will come into effect on July 1, 2024. This Regulation consists of 53 articles and covers various aspects such as Consumer rights and Businesses' Obligations, Government's Principles for Protecting Consumer Rights, Consumers Organization, Dispute Resolution, Legal responsibilities, and etc. It refines and modernizes the provisions of the "Consumer Rights Protection Law of China" which was lastly revised in 2013. It also addresses specific issues that have been raised by consumers in recent years.

Several key points worth noting include:

- **Prohibition of using big data for price discrimination:**

Article 9 specifies that businesses are prohibited from using big data technology to set different prices or fees under the same transaction conditions.

- **Regulation of live streaming platforms and operators:**

Article 14 mandates that businesses providing goods or services through online live streaming platforms must fulfil their obligations related to consumer rights protection. Platform operators must establish a robust system for protecting consumer rights and define mechanisms for resolving consumer disputes. Additionally, if the content published by live stream operators and persons constitutes commercial advertising, they must comply with the relevant provisions of the Advertising Law.

- **Prepaid consumer protection:**

Article 22 stipulates that operators of prepaid consumer services must fulfil their obligations to provide goods or services as agreed upon and must not decrease the quality of the goods or services or increase the prices thereof. Where the goods or services were not provided as agreed upon, a refund must be paid to the customers. It is worth noting that the Regulation also specifically stipulated for the corresponding penalties in case of violation of the above Article 22. The relevant administrative department shall order rectification, depending on the circumstances, they may issue single or concurrent warnings, confiscation of the illegal gains, impose a fine ranging from more than one time to less than 10 times the amount of illegal gains. If there are no illegal gains, a fine of less than 500,000 yuan maybe imposed; if the circumstances are serious, the business shall be ordered to be suspended for business rectification or have their business license revoked.

Furthermore, the Regulation includes specific protections for elderly and underage consumers. For instance:

- Article 15 prohibits businesses from exploiting the lack of knowledge among elderly consumers by exaggerating the health benefits of products to induce them to make purchases.
- -Article 16 requires operators providing online gaming services to minors to incorporate time management, permission management, and consumption management functions to prevent minors from excessive use of and spending on online games.

- **Conclusion**

Foreign companies selling products or services in China should pay attention to the specific provisions and enforcement of this Regulation, adjust their business strategies to comply with legal requirements if necessary. In addition to strengthening product quality management and ensuring compliance with personal information protection law, foreign companies also shall avoid using promotional methods explicitly prohibited by this Regulation.

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