When PRC Tax Meets Offshore Trust Law: Reflections on the New Individual Income Tax Rules

Offshore trusts have never operated in a vacuum. A Cayman Islands or British Virgin Islands trust holding assets for a family with roots in mainland China has always had to function alongside the tax and regulatory regime of the settlor's home jurisdiction, even where the trust itself is governed entirely by offshore law. What has changed is that the PRC Ministry of Finance and State Taxation Administration's Announcement 2026 No. 21, issued on 24 July 2026, together with the State Taxation Administration's accompanying Announcement 2026 No. 15 (the "**Announcement**") now provides a dedicated framework for the individual income tax treatment and administration of offshore trusts.

In broad terms, the Announcement treats the contribution of assets into an offshore trust by a PRC tax resident as a taxable event in its own right rather than a tax-neutral step. It treats income and gains arising within the trust, and, subject to the relevant rules on controlled offshore entities and substantive operations, within underlying entities held, controlled or managed by it, as taxable on an ongoing basis in the hands of the resident individual who contributed the assets, whether or not any cash is actually distributed. A further tax charge can apply on the termination of a trust, on a settlor ceasing to be PRC tax resident, or on the settlor's death where the trust passes to a non-resident individual or has no clear successor. A transitional filing and payment window provides a 90-day regularisation period for certain specified pre-existing liabilities, subject to the detailed eligibility conditions in the Announcement. The Announcement specifically provides that an individual who has acquired foreign nationality or long-term or permanent overseas residence rights may nevertheless be treated as a PRC resident individual with domicile in the PRC where his or her principal economic interests remain in the PRC. The application of the wider PRC residence rules remains fact-specific.

Loeb Smith does not advise on PRC law or PRC tax law, and this note does not attempt to interpret the Announcement's technical detail, much of which will be worked out through implementation practice over time. What follows are some observations from an offshore law perspective for clients with BVI or Cayman Islands structures connected to the PRC.

Not an unfamiliar pattern

Trustees administering structures for families connected to jurisdictions such as the United States or the United Kingdom have long been accustomed to a home country tax authority asserting a claim over trust assets or income regardless of where the trust is established or governed. The US grantor trust rules and the UK's rules on transfers of assets abroad and settlor-interested trusts each address, in their own way, income and gains generated within an offshore structure while the settlor remains connected to the home jurisdiction. Seen in that light, the Announcement looks less like a novelty and more like a maturing of the PRC's approach to outbound wealth, brought closer to practice already familiar elsewhere.

This history is worth bearing in mind because offshore trusts have continued to serve their core purposes, including succession planning, consolidation of family assets, continuity of governance across generations, and protection from forced heirship or other jurisdiction-specific rules of the settlor's home country, even as those home countries have progressively asserted tax claims over the underlying wealth. A settlor's home tax position and the trust's own legal validity, governance and asset protection functions are related but distinct questions.

Two different starting points

Clients coming to this issue tend to fall into one of two positions, and the appropriate next step is not the same for both.

Some clients are themselves the settlor of an existing structure, often established some years ago, and are now asking whether it remains fit for purpose given a materially different PRC tax position. For them, the relevant question is less "was this the right structure at the time" and more whether the trust, as currently drafted and administered, still achieves what the family originally set out to achieve once the new tax cost and compliance burden are taken into account.

Others come to the question indirectly, as beneficiaries of a family trust, as the next generation who may in time become settlors or successors, or as trustees and family offices responsible for a structure they did not themselves design. The rules are not confined to a straightforward resident-settlor trust. They also contain provisions for, among other things, trusts settled by non-residents that make distributions or deemed distributions to PRC resident individuals, arrangements ostensibly funded by non-residents but in fact controlled by PRC residents, and trusts that are subsequently inherited by PRC residents.

What tends to prompt a closer look

Certain circumstances tend to make a review more pressing than others: (i) a structure that has simply not been revisited since it was established; (ii) a settlor or beneficiary whose personal or tax residence position has changed, or may soon change; (iii) a meaningful shift in the value or nature of the assets a trust holds; (iv) governance arrangements, including the roles of trustees, protectors and family members, that have evolved informally over time without being reflected in the underlying documents. None of these circumstances, on its own, points to a particular outcome. They simply suggest that the assumptions underpinning a structure may no longer match its current reality, which is itself a reasonable trigger for a fresh look, independent of the change in tax law.

The offshore perspective

BVI and Cayman Islands trust law was built with change in mind. A trust that no longer suits a family's circumstances may, depending on its terms, governing law, available powers and consents, and any applicable regulatory and tax considerations, be capable of amendment, trustee succession, restructuring or, in appropriate cases, a change of proper law or administration. The same is true of the companies that typically sit beneath these trusts, which can be reorganised, recapitalised or wound down through established BVI and Cayman company law procedures. A shift in how a settlor's home country taxes an arrangement does not, in itself, exhaust these tools. It simply gives families a reason to consider whether they are worth using.

Our work on this front usually begins once a family and its PRC advisers have reached a view on the tax position, at which point we help work out what, if anything, needs to change in the trust or its underlying companies to reflect that view, and see those changes through under BVI or Cayman Islands law. Just as often, the answer is that the existing arrangement still holds up well and does not need to be unpicked. We are also glad to be involved earlier, alongside PRC advisers, where a family wants an offshore law view on how a structure is currently put together before any decisions are made.

Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the matters discussed in this Legal Insight, please contact me or your usual Loeb Smith attorney.

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About Loeb Smith Attorneys

Loeb Smith is a leading offshore corporate law firm, with offices in the British Virgin Islands, the Cayman Islands, and Hong Kong, whose Attorneys have an outstanding record of advising on the Cayman Islands' law aspects and BVI law aspects of international corporate, investment, and finance transactions. Our team delivers high quality Partner-led professional legal services at competitive rates and has an excellent track record of advising investment fund managers, in-house counsels, financial institutions, onshore counsels, banks, companies, and private clients to find successful outcomes and solutions to their day-to-day issues and complex, strategic matters.

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