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CHINA'S NEW OFFSHORE TRUST TAX RULES: WHAT YOU NEED TO KNOW

INTRODUCTION

On 24 July 2026, the Ministry of Finance and the State Taxation Administration of the People's Republic of China issued Announcement 2026 No.21, introducing a comprehensive framework for taxing PRC resident individuals on income arising from offshore trusts. A companion administrative announcement (No.15) followed shortly after, setting out detailed filing and payment procedures. These rules have immediate implications for PRC resident individuals who have established offshore trusts or who benefit from them – as well as for the trustees and advisers who serve them.

Although PRC tax and regulatory developments affecting international structures have been unfolding over the past few years, this announcement represents the clearest and most direct statement of China's intent to tax offshore trusts. The rules apply retrospectively to transfers made from 1 January 2023, and trust income accumulated before 1 January 2026 must also be declared. A 90-day transitional window allows historical positions to be disclosed without incurring late-payment surcharges.

This briefing is a joint publication by Stephenson Harwood and W&H Law Firm. Stephenson Harwood's Greater China roots date back to 1867, when William Harwood started out in Asia. Building on this long-standing connection with the region, Stephenson Harwood established its Shanghai office in 1993. Our tax and trust lawyers are fluent in English, Mandarin and Cantonese, and we combine international tax and trust law expertise with practical, in-house experience. Last year, Stephenson Harwood entered into a strategic cooperation agreement with W&H Law Firm, which provides PRC legal and tax advice, bringing deep knowledge of the Chinese regulatory environment. Together, we offer a perspective that bridges international wealth structuring and onshore compliance – an essential combination for clients navigating these developments.

KEY PROVISIONS OF THE NEW REGIME

Who is affected?

The rules cast a wide net. PRC resident individuals who transfer property into offshore trusts are squarely within scope – including transfers to offshore entities held, controlled or managed by the trust or trustee. PRC resident beneficiaries of trusts funded by non-resident individuals are also caught.

There is also a deeming rule. If property is formally transferred into an offshore trust by a non-resident individual, but the trust is actually controlled by a PRC resident individual, the PRC resident individual is deemed to have transferred the property into the trust and must declare and pay individual income tax in accordance with the Announcement. In substance, this means that using a non-resident transferor will not prevent the PRC resident individual from being treated as the relevant taxpayer where control in fact rests with that resident. The Announcement does not define "control" in this context, and it remains to be seen whether reserved powers (such as a power to appoint or remove trustees, or to direct investments) or advisory roles (such as a protector or investment committee member) would be sufficient to trigger this deeming rule. Until further guidance is issued, structures where a PRC resident holds any significant degree of influence over trust decision-making should be reviewed carefully.

Importantly, where both PRC resident and non-resident individuals transfer property into the same offshore trust, the entire trust is treated as having been funded by the resident individual(s). This means the resident individual bears the full tax liability for the trust, regardless of the non-resident's contribution. This is a notably strict rule and may in practice require residents and non-residents to maintain separate trust structures.

The Announcement is also silent on how the Chinese communal property (夫妻共同财产) regime interacts with these rules. Under PRC law, assets acquired during marriage are generally treated as belonging to both spouses. Where trust property was originally acquired as marital property, questions arise as to whether both spouses should be treated as having transferred property into the trust – and, if so, whether both are liable for the resulting tax. Where assets are transferred into trust by one spouse without the other's knowledge or consent, further issues may arise. Specialist PRC family law and tax advice should be obtained where trust property may include marital assets.

What does "resident" mean?

A PRC resident individual is someone who is domiciled in China or who, without domicile, resides in China for 183 days or more per year. "Domicile" refers to individuals who habitually reside in China because of their household registration (*hukou*), family or economic ties. Importantly, individuals holding foreign passports or with long-term overseas residence may still be treated as PRC residents if their primary economic interests are derived from China. This is a point that warrants careful analysis for each affected client and for each affected tax year.

Residence status should also be monitored on an ongoing basis: if a PRC resident settlor later becomes non-PRC resident, this triggers an exit-style tax charge (see below).

What is taxed and when?

The regime creates multiple tax points:

- **Transfer into trust**: Capital gains are taxed when property is transferred into an offshore trust, calculated as the market value at the time of transfer minus the original acquisition cost and reasonable expenses.
- **Annual income**: Income generated by the trust during the settlor's lifetime is attributed

to the settlor and taxed annually, whether or not it is actually distributed. Income is categorised as either "Income from Transfer of Property" (e.g. capital gains) or "Income from Interest, Dividends and Bonuses" (e.g. investment returns). These categories are taxed separately: losses in one category cannot be offset against income in the other, and losses from property transfers cannot be carried forward to subsequent tax years.

- **Migration**: If a PRC resident settlor becomes non-PRC resident while the trust exists, the settlor must declare and pay income tax on any gain accruing on the trust property. Any unpaid income tax for prior years, and for the period from 1 January of the year of change to the date the settlor becomes non-resident, must also be declared and paid.

- **Death of the settlor**: If a PRC resident settlor dies and the trust is "inherited" (承继) by a non-resident individual (or left without a successor), the trustee (or its designated domestic agent) must declare and pay individual income tax on the gain (being the market value of the trust property as of the date of death, less its original value). Payment may be spread over a maximum of five years if timely payment is difficult. If the trust is "inherited" by another PRC resident, the successor becomes the taxpayer for future trust income and gains. For purposes of the Announcement, "inherit" (承继) is a defined concept. It refers to a situation in which another individual succeeds to the original settlor's relevant rights and interests in the offshore trust. The successor is therefore treated, for PRC tax purposes, as standing in the settlor's place. This concept is distinct from succession under general inheritance law and from concepts of beneficial ownership under trust law. The holding of an oversight or governance role (such as protector) does not, of itself, constitute "inheritance" for these purposes unless the individual also holds the relevant rights and interests attributed to the settlor.

- **Distributions**: Trust income that has already been declared and taxed to the settlor is not taxed again on actual distribution. This avoids double taxation. However, where the settlor is a non-resident individual and the trust distributes income to a PRC resident beneficiary, the beneficiary is taxed on the amount actually received. The Announcement refers to distributions of "income" (所得) without explicitly distinguishing between income and capital gains, or addressing distributions of original trust capital during the trust's existence. Whether distributions of realised capital gains or original capital to PRC resident beneficiaries attract tax before termination is unclear and requires specialist PRC tax advice.

- **Deemed distributions**: If a trust funded by a non-resident provides economic benefits to a PRC resident (such as loans, guarantees, free use of trust property, or payments made on their behalf), these are deemed to be distributions and are taxable to the resident beneficiary when the benefit is received or enjoyed.

- **Tax rates**: Capital gains ("Income from Transfer of Property") and investment income ("Income from Interest, Dividends and Bonuses") are both taxed at a flat rate of 20%.

- **Non-deductibility of expenses**: Trustee fees, trust management fees, legal service fees, investment advisory fees and other expenses incurred during the establishment and existence of the offshore trust cannot be deducted from taxable income. This increases the effective tax burden compared to direct ownership structures where such costs might be deductible.

<u>Do underlying holding structures change the analysis?</u>

Underlying holding companies held by a trustee do not necessarily place the arrangement outside the rules. Transfers to an overseas entity held, controlled or managed by the offshore trustee are included, and income of overseas entities held, controlled or managed by an offshore trustee established by a PRC resident individual is attributed to the resident individual during the trust's existence.

The term "overseas entity" includes foreign companies, partnerships, foundations and similar organisations meeting specified passive-income, lack-of-substance, personal expenditure or decision-making criteria – but excludes regulated financial institutions and certain other organisations. Whether a particular underlying entity falls within or outside these definitions will require detailed analysis of its activities, substance and governance; specialist advice on the structure should be obtained.

What about life insurance and other structures?

The Announcement's definition of "offshore trusts" extends to "other legal arrangements with trust functions" (具有信托功能的其他法律安排). This broad language could potentially capture structures that are not labelled as trusts but perform similar functions, such as private foundations, private placement life insurance (PPLI) and insurance wrappers.

However, the Announcement expressly excludes "financial products issued by banks, insurance companies, securities firms, fund companies, etc., that are regulated by financial regulatory authorities of the host country or region, and independently conduct business and bear risks for unspecified clients". This carve-out appears designed to exclude standardised, publicly-offered financial products from the rules.

The question is whether bespoke, single-family insurance arrangements qualify for this exclusion. The carve-out requires multiple cumulative criteria, including products being offered "to unspecified clients" (面向不特定客户), suggesting that mass-market products are protected but tailored arrangements for specific individuals or families may not satisfy all relevant conditions. Clients using PPLI, insurance wrappers or similar structures should therefore review whether their arrangements could be characterised as performing "trust functions" and, if so, whether they satisfy all criteria to fall within the regulated financial products exception.

Family offices are not addressed in the Announcement. A standalone family office held directly by individuals is outside the scope of these rules. However, if a family office is held beneath an offshore trust, it may be treated as an "overseas entity" and looked through – with its income attributed to the settlor annually.

When do the rules take effect?

The rules enter into force on 24 July 2026 and contain special transitional compliance arrangements for transactions occurring before 1 January 2026. Transfers of property into offshore trusts completed between 1 January 2023 and 31 December 2025 must be declared and tax settled within the 90-day transitional window, with no late-payment surcharges imposed. All trust income derived up to 31 December 2025 shall also be subject to one-off declaration and tax payment within the same 90-day transitional window without late-payment surcharges. Property transfers into offshore trusts made on or after 1 January 2026, as well as trust income generated on or after 1 January 2026, are governed by the standard annual filing and tax payment requirements under the new rules.

Failure to comply with the reporting and payment requirements may result in late-payment surcharges and penalties under PRC tax administration law. In serious cases, such non-compliance may constitute tax offences carrying criminal liability. The 90-day transitional window offers an important opportunity to regularise historical positions without incurring late-payment surcharges – but this window is limited, and affected individuals should act promptly.

CASE STUDIES

The following scenarios illustrate how the new rules may apply in practice. Although trusts established and administered in Hong Kong and Singapore are likely to be most directly affected given their proximity to Mainland China, trusts in other offshore jurisdictions – including Jersey, Guernsey, the BVI and the Cayman Islands – will also be caught where the relevant connections to PRC resident individuals exist.

SCENARIO 1: EXISTING TRUST WITH PRC RESIDENT SETTLOR AND NON-PRC BENEFICIARIES

Mr Wang, a PRC resident, settled a discretionary trust in Singapore in 2023. He transferred shares in a family holding company (valued at USD 20 million at the time of transfer, with an original acquisition cost of USD 5 million) into the trust. The beneficiaries are his adult children, who are Australian residents with no PRC tax exposure. The trust generates approximately USD 800,000 per year in dividend income from holding the company's underlying investments.

Analysis: Under the new rules, Mr Wang is liable for individual income tax on: (a) the capital gain arising on the 2023 transfer (USD 15 million gain, taxable during the 90-day transitional window); and (b) the annual dividend income generated by the trust (USD 800,000 per year from 2026 onwards, and earlier income under the one-time reporting requirement), regardless of whether any distributions have been made. The fact that beneficiaries are non-PRC residents does not shield Mr Wang from tax. If Mr Wang dies, the trustee will need to declare and pay tax on the market value of the trust property at that date.

SCENARIO 2: EXISTING TRUST WITH NON-PRC SETTLOR WITH PRC RESIDENT BENEFICIARY

Mrs Wong, a Hong Kong permanent resident who has never been a PRC resident, established a Jersey trust in 2010 for the benefit of her extended family. One of the beneficiaries, her nephew Mr Li, moved to Shanghai in 2020 and is now a PRC resident. The trust holds a diversified investment portfolio valued at approximately USD 30 million. In 2026, the trustee makes a discretionary distribution of USD 500,000 to Mr Li to fund the purchase of an apartment in Shanghai. The trust also pays Mr Li's children's school fees (USD 100,000 per year) directly to the school.

Analysis: Because the settlor (Mrs Wong) is not a PRC resident, the trust income is not attributed to her. However, Mr Li, as a PRC resident beneficiary, is taxed on the USD 500,000 distribution when he actually receives it. The school fees paid on Mr Li's behalf are deemed distributions and are also taxable to Mr Li in the year in which the benefit is provided. The trustee will need to consider how to manage Mr Li's PRC tax obligations and whether information should be provided for Mr Li to file his PRC tax return.

SCENARIO 3: NO EXISTING TRUST - CONSIDERING WHETHER TO PROCEED

Mr and Mrs Liu are PRC resident individuals who have been advised to establish an offshore trust for succession planning. They hold a portfolio of Hong Kong and overseas real estate and listed securities with a combined value of approximately USD 50 million. They are now reconsidering whether to proceed in light of the new rules.

Analysis: The new rules do not eliminate the benefits of offshore trusts for succession planning, asset protection and family governance. However, they do mean that any transfer of property into an offshore trust will crystallise a capital gains tax liability for Mr and Mrs Liu at the time of transfer. Ongoing trust income will be taxed annually to them as settlors. The Lius should weigh these tax costs against the non-tax benefits of a trust structure, consider the timing of any transfer, and review whether the trust deed should include provisions to facilitate PRC tax compliance (for example, information-sharing mechanisms or tax-payment clauses). Alternative structures – such as life insurance wrappers or family investment companies – may also warrant consideration, though each comes with its own tax and regulatory implications. We explore some of these alternatives below.

Having set out the key provisions and illustrated their application, we now turn to the practical steps that affected individuals and their advisers should consider.

PRACTICAL STEPS: THE 90-DAY TRANSITIONAL WINDOW

The 90-day transitional window (from 24 July 2026) provides a limited opportunity to regularise historical positions without penalties. For settlors and beneficiaries with PRC tax exposure, the immediate priority is to assess whether they are affected and to engage specialist advisers. Trustees, private bankers and family office advisers should consider notifying relevant clients of the new rules and facilitating access to PRC tax advice where appropriate. The following steps should be considered:

1. **Identify affected trusts and individuals**. Review all trusts with connections to PRC residents. This includes trusts with PRC resident settlors (regardless of where beneficiaries are located), trusts with PRC resident beneficiaries (regardless of where the settlor is located), and trusts where a PRC resident has effective control.

2. **Assess residency status**. Residency is the threshold question. Clients with foreign passports or long-term overseas residence may still be treated as PRC residents if their primary economic interests are derived from China. This requires a fact-specific analysis. Treaty analysis may also be required where the individual is resident in more than one jurisdiction.

3. **Gather valuation and income information**. To calculate potential tax liabilities, you will need: the market value of assets at the time of transfer into the trust; the original acquisition cost and reasonable expenses; the current market value (for death-event calculations); and annual income generated by the trust, broken down by category.

4. **Engage with the PRC tax authorities**. Filing and payment procedures are set out in the Announcement and require engagement with PRC tax authorities. Early engagement with PRC tax specialists such as W&H Law Firm is essential to ensure compliance within the transitional window.

5. **Consider trust deed review**. For existing trusts, it may be appropriate to review the trust deed to ensure it facilitates PRC tax compliance – for example, by including provisions for information sharing between the trustee and the settlor, or mechanisms for the trust to fund tax payments on behalf of the settlor. It may also be appropriate to review whether powers currently held by PRC resident individuals (such as protector or investment committee roles) should be moved to non-PRC residents where this is consistent with the family's objectives.

6. **Plan for liquidity**. Settlors may face significant tax liabilities without corresponding cash distributions. Consider whether the trust can make distributions to fund tax payments, or whether other liquidity sources are available.

7. **Plan for long-term administration and restructuring**. For trusts that will continue to be administered for PRC resident settlors or beneficiaries, consider the following: (a) segregating original capital from accumulated income and gains to facilitate tax calculations and compliance reporting; (b) establishing clear information-sharing protocols between the trustee and the settlor or beneficiaries to enable timely tax filings; (c) reviewing trust deeds to determine whether amendments are needed to address the "inherit" (承继) concept – i.e. the succession of rights and

interests in the trust upon the death of the original settlor; and (d) considering whether alternative structures may be more appropriate going forward, in conjunction with the existing trust or instead of it. These are longer-term considerations that should not be rushed merely to meet the 90-day filing deadline.

While these steps provide a framework for immediate action, the underlying analysis is rarely straightforward. It may involve reviewing tax residence for multiple individuals over multiple years, treaty analysis, valuations of trust assets, and how income and gains are characterised across different tax systems. For those needing to make declarations within the 90-day window, the groundwork needs to start now.

That said, the bigger strategic questions – whether to relocate, restructure, distribute, or even wind up the trust – require careful analysis from both an international tax and trust law perspective. These decisions should not be rushed merely to meet a filing deadline. It is here that the role of trustees becomes particularly important.

TRUSTEE OBLIGATIONS: A NOTE OF CAUTION

Offshore trustees owe fiduciary duties to the beneficiaries of the trusts they administer. These duties typically include a duty to act in the best interests of the beneficiaries as a whole, a duty to take proper advice, and a duty to comply with applicable law. The interaction between these duties and the new PRC reporting requirements raises important questions.

If a settlor or beneficiary is subject to PRC tax obligations, the trustee may need to consider whether it has an obligation to provide information to enable the relevant individual to file and pay tax. The trustee may also need to consider whether paying tax on behalf of the settlor or beneficiary (if authorised by the trust deed) is in the best interests of the beneficiaries, and whether failing to facilitate compliance could expose the trust or the trustee to risk.

Trustees should be cautious about making hasty decisions in response to the new rules. The 90-day transitional window creates pressure to act quickly, but trustees who act in haste – whether by making rushed distributions, transferring assets without proper analysis, or restructuring without considering all consequences – risk breaching their fiduciary duties. The immediate priority is to gather information and take proper advice; substantive decisions about the future of the trust should follow only after careful deliberation.

Most significantly, the Announcement imposes a direct obligation on the trustee in one scenario. Where a PRC resident settlor dies and the trust is "inherited" (承继) by a non-resident individual or left without a successor, the trustee (or its designated domestic institution) must declare and pay individual income tax on behalf of the deceased settlor by the 15th day of the month immediately following the month in which the settlor dies (e.g. if the settlor dies in March, the filing deadline is 15 April). The tax is calculated on the gain in the trust property as at the date of death, and is payable under the "Interest, Dividends and Bonuses" category. This is not merely a facilitation or information-sharing role: it is a tax payment obligation that falls squarely on the trustee. Offshore trustees should consider whether they have the infrastructure and PRC presence to discharge this obligation, and whether the trust deed authorises (and funds) the payment of PRC tax from trust assets.
Trustees should also be mindful of the potential for claims that they have facilitated non-compliance with PRC tax law – whether by failing to provide information, by making distributions in a manner designed to avoid tax, or by failing to obtain appropriate tax advice before taking action. These realities may prompt some families to consider alternative planning structures.

ALTERNATIVE PLANNING OPTIONS

For clients who are reconsidering their wealth planning in light of the new rules, alternative structures may warrant exploration. However, careful analysis is required - as discussed above, the Announcement's definition of "offshore trusts" extends beyond traditional trusts to include "other legal arrangements with trust functions", which could capture some alternatives depending on their features. The only express carve-out is for regulated financial products offered to the public by banks, insurance companies, securities firms and fund companies. With this in mind, the following structures may merit consideration:

- **Wills and direct ownership**: For clients whose primary concern is succession rather than asset protection, direct ownership with a well-drafted will may be simpler and avoids the ongoing reporting and tax obligations associated with trusts. Joint ownership structures may also facilitate transfer on death, though the tax and legal implications will depend on the jurisdiction of the assets and the domicile of the owners.

- **Family investment companies and partnerships**: Corporate or partnership structures held directly by individuals (rather than through a trust) are not subject to the rules at all. Where such structures are held beneath a trust, they may still provide succession planning and governance benefits without triggering the look-through provisions, provided they have genuine commercial operations and substance. However, entities that are passive investment vehicles, lack substance, or are controlled by individuals for personal expenditure may be caught as "overseas entities" within the meaning of the Announcement.

- **Life insurance structures**: Certain insurance-based structures may fall outside the offshore trust rules where they qualify as "regulated financial products" offered to unspecified clients by licensed, regulated insurers. However, bespoke, single-family arrangements wrapped in insurance form may still be caught if they substantially perform trust functions. The tax treatment of insurance products also varies by jurisdiction and product type, and PRC tax rules on insurance proceeds warrant separate analysis.

- **Jurisdictional and treaty considerations**: Structures established in different jurisdictions may have different treaty positions with China, which could affect the availability of foreign tax credits or the characterisation of income.

Each alternative comes with its own tax, regulatory and operational implications, and none offers a complete substitute for the benefits of an offshore trust. The decision to restructure should not be taken lightly, particularly where existing structures have been in place for many years and serve important non-tax objectives such as asset protection, family governance or cross-border coordination. We recommend that clients consider these options with specialist advisers such as Stephenson Harwood and W&H Law Firm who can assess the full picture across all relevant jurisdictions, both onshore and offshore.

KEY TAKEAWAYS

The introduction of these rules marks a significant shift in the wealth planning landscape for families with connections to Mainland China. Families should work with international tax and trust specialists to assess whether they are affected and their exposure, and decide on appropriate steps - bearing in mind both tax and non-tax objectives.

The 90-day transitional window provides a narrow but important opportunity to regularise historical positions. Those affected should act promptly to assess their exposure. Trustees and other advisers can support this process by alerting clients to the new rules and facilitating access to specialist advice. Stephenson Harwood and W&H Law Firm are here to support both individual clients and professional trustees and private banks with these developments.

Looking ahead, we expect continued regulatory scrutiny of offshore structures. The rules signal China's clear intent to bring offshore wealth within the scope of its tax net, and further guidance and enforcement can be anticipated. Proactive compliance is likely to be more favourably viewed than reactive remediation

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