



LEGAL FLASH | SHANGHAI OFFICE

May 2013

INDEX

---

AMENDED GOOD SUPPLYING PRACTICE FOR PHARMACEUTICAL PRODUCTS	2
ADMINISTRATIVE MEASURES ON FOREIGN DEBT REGISTRATION	3
PROVISIONS ON FOREIGN EXCHANGE ADMINISTRATION OF DIRECT INVESTMENT BY FOREIGN INVESTORS IN CHINA	4
NOTICE ON THE ISSUE OF INCOME TAX EXEMPTIONS ON THE INTEREST FROM LOCAL GOVERNMENT BONDS	4
ANNOUNCEMENT ON ISSUES RELATING TO COLLECTION OF ENTERPRISE INCOME TAX ON NON-RESIDENT ENTERPRISES DISPATCHING PERSONNEL TO PROVIDE LABOR SERVICES IN CHINA	5
ANNOUNCEMENT ON ISSUES RELATING TO VALUE ADDED TAX ON SALES OF FOOD FOR OFF-SITE CONSUMPTION BY TAXPAYERS IN THE HOTEL INDUSTRY AND CATERING INDUSTRY	5
NOTICE ON THE RELEASE OF THE INDIVIDUAL INCOME TAX DECLARATION FORM	6
CIRCULAR OF MINISTRY OF FINANCE AND THE STATE ADMINISTRATION OF TAXATION ON TAX POLICIES IN THE NATIONWIDE PILOT COLLECTION OF VALUE ADDED TAX IN LIEU OF BUSINESS TAX IN THE TRANSPORTATION INDUSTRY AND CERTAIN MODERN SERVICES INDUSTRIES	6

---

**AMENDED GOOD SUPPLYING PRACTICE (“GSP”) FOR PHARMACEUTICAL PRODUCTS**  
 (“NEW STANDARDS”) (新修订《药品经营质量管理规范》), ISSUED BY THE MINISTRY OF  
 HEALTH (“MOH”)

After three rounds of public consultation, MOH finally enacted the amended GSP standards, regulating all pharmaceutical distribution and introducing stricter requirements for pharmaceutical wholesalers and retailers than the previous version published in 2000.

The New Standards explicitly requires pharmaceutical distributors to establish a quality control system and virtually set up a quality control department to make sure quality control policies are implemented efficiently. A comprehensive quality control system shall consist of the following factors

- Pharmaceutical distributor’s personnel shall meet certain education, license and professional experience requirements, which the New Rules have specified in detail.
- Pharmaceutical distributor shall carry out archive management, keeping files on the quality of management, responsibilities of various departments and positions, routine practice, profiles, reports and certificates.
- Pharmaceutical distributor shall have business premises, storeroom and logistics suitable for the scope and scale of its business. The storage of different types of pharmaceutical products, such as frozen medications and Chinese medications must meet specific facility requirements established in the New Standards.
- Pharmaceutical distributor shall be equipped with a computer system to supervise the pharmaceutical products electronically, including digital applications, network devices and databases for this computer system.

The New Standards are enacted with the objective of rectifying the pharmaceutical distribution industry. The tighter requirements will oblige most existing pharmaceutical distributors to upgrade their facilities and personnel to comply with these standards, which may impose a greater financial burden on them. As expected, a large number of small-scale distributors will be forced to leave the market due to financial embarrassment.

Date of issue: January 22, 2013. Effective date: June 1, 2013.

**ADMINISTRATIVE MEASURES ON FOREIGN DEBT REGISTRATION** (“MEASURES”)

(外债登记管理办法), ISSUED BY THE STATE ADMINISTRATION OF FOREIGN EXCHANGE (“SAFE”)

SAFE issued the Measures together with the Operational Guidelines on Foreign Debt Registrations (“Guidelines”), providing detailed implementing rules for various issues relating to foreign debt registration.

The Measures simplify the procedures for registering foreign debt and eliminate several approval requirements stipulated in the previous SAFE regulations. The main points established in the Measures are below.

The Measures classify the debtor into three categories: financial department, domestic bank and non-bank debtor.

- Where the debtor is a financial department, it shall report information on foreign debt transactions to SAFE relating to withdrawal, settlement, foreign exchange purchasing, repayment and change of account, within the first 10 working days of each month.
- Where the debtor is a domestic bank, it shall report the information on each foreign debt transaction through the SAFE system.
- Where the debtor is a non-bank debtor, it shall go through SAFE’s filing or registration procedures when executing agreements for all foreign debt transactions.

The Measures remove SAFE’s approval requirements for foreign debts of domestic banks, which are currently allowed to open accounts directly with either a domestic bank or foreign bank to handle the withdrawal and repayment of foreign debt.

The Measures highlight the specific rules on domestic loans with foreign guarantees, which differ between foreign-invested enterprises (“FIEs”) and Chinese enterprises.

FIEs are allowed to sign guarantee contracts directly with foreign guarantors or creditors without SAFE’s approval, but the guaranteed amount is subject to the administration scale under the PRC’s foreign debt regime for FIEs.

Chinese enterprises shall apply for the quota of domestic loans with foreign guarantees before operating such transactions.

To strengthen SAFE’s supervision and administration of foreign debt registration, the Measures establish penalties for non-compliance and illegal conduct, such as providing outbound guarantees or issuing foreign bonds without SAFE’s approval.

Date of issue: April 28, 2013. Effective date: May 13, 2013

**PROVISIONS ON FOREIGN EXCHANGE (“FOREX”) ADMINISTRATION OF DIRECT INVESTMENT BY FOREIGN INVESTORS IN CHINA (“PROVISIONS”)** (外国投资者境内直接投资外汇管理规定), ISSUED BY THE STATE ADMINISTRATION OF FOREIGN EXCHANGE (“SAFE”)

In addition to the Provisions, 24 SAFE regulations on foreign exchange are abolished, relating to opening bank accounts, inbound and outbound remittance, FOREX settlement and other issues. Based on the latest FOREX administration reform, SAFE integrates and simplifies the extensive rules on foreign direct investment (“FDI”), aiming to further open up to foreign investors.

The Provisions establish an overall picture of the FOREX regime on FDI, introducing the major points below.

The Provisions define FDI as activities in which foreign investors establish foreign-invested enterprises or projects in China through new establishments, mergers and acquisitions and other ways, obtaining rights and interests such as ownership, right of control, and operation and management rights.

Together with the Operational Guidelines on FDI Activities issued simultaneously, the Provisions establish detailed examination and approval procedures for FOREX issues, such as opening upfront expense accounts, FIE incorporation, capital contribution, overseas mergers and acquisitions and other FDI-related activities.

As many of SAFE’s approval requirements have been eliminated, the Provisions require SAFE to verify or inspect the bank’s compliance when handling business related to FDI and its submission of relevant information. The bank must also verify or inspect institutions and individuals involved in abnormal or suspicious circumstances during FDI activities, to avoid any oversight of supervision.

Date of issue: May 10, 2013. Effective date: May 13, 2013

**NOTICE ON THE ISSUE OF INCOME TAX EXEMPTIONS ON THE INTEREST FROM LOCAL GOVERNMENT BONDS (THE “NOTICE”)** (CAISHUI [2013] NO. 5)

(财政部、国家税务总局关于地方政府债券利息免征所得税问题的通知), ISSUED BY MINISTRY OF FINANCE (“MOF”) AND THE STATE ADMINISTRATION OF TAXATION (“SAT”)

The Notice specifies that enterprises and individuals are exempt from income tax on interest on local government bonds issued from 2012 onwards.

These include bonds to be issued and repaid by the provincial, autonomous regional, and municipal governments directly under the Central Government, and cities designated in the state plan with the approval of the State Council.

Date of issue: February 2, 2013. Effective date: February 2, 2013.

**ANNOUNCEMENT ON ISSUES RELATING TO COLLECTION OF ENTERPRISE INCOME TAX ON NON-RESIDENT ENTERPRISES DISPATCHING PERSONNEL TO PROVIDE LABOR SERVICES IN CHINA (THE “ANNOUNCEMENT”)** (ANNOUNCEMENT [2013] NO. 19)

(国家税务总局关于非居民企业派遣人员在中国境内提供劳务征收企业所得税有关问题的公告),  
ISSUED BY SAT

According to the Announcement, if non-resident enterprises (the "dispatching enterprises") dispatching personnel to provide labor services in China bear partial or all responsibilities and risks for work results of dispatched personnel, and usually assess the performance of dispatched personnel, the dispatching enterprises will be deemed as having established offices or premises in China to provide labor services. If dispatching enterprises are contracting parties to tax treaties and have relatively fixed and permanent offices or premises to provide labor services, these offices or premises will be deemed permanent establishments in China. The Announcement illustrates the factors to consider when judging whether the dispatching enterprises have established offices or premises or permanent establishments in China.

The Announcement also clarifies that when dispatching enterprises dispatch personnel to provide labor services in China only to exercise shareholders' rights or to protect their legitimate rights and interests as shareholders in receiving enterprises, even when dispatched personnel (i) make suggestions for dispatching enterprises on investment in receiving enterprises, and (ii) participate in receiving enterprises' general shareholders meetings or directors meetings and other activities on behalf of dispatching enterprises, the dispatching enterprises will not be deemed to have established offices, premises or permanent offices in China, because these activities are carried out in the business premises of the receiving enterprises.

The Announcement also provides requirements relating to the tax registration and records of the dispatching and receiving enterprises.

Date of issue: April 19, 2013. Effective date: June 1, 2013.

**ANNOUNCEMENT ON ISSUES RELATING TO VALUE ADDED TAX (“VAT”) ON SALES OF FOOD FOR OFF-SITE CONSUMPTION BY TAXPAYERS IN THE HOTEL INDUSTRY AND CATERING INDUSTRY (THE “ANNOUNCEMENT”)** (ANNOUNCEMENT [2013] NO. 17 OF THE STATE ADMINISTRATION OF TAXATION)

(国家税务总局关于旅店业和饮食业纳税人销售非现场消费食品增值税有关问题的公告), ISSUED BY SAT

According to the Announcement, sales of food for off-site consumption by taxpayers in the hotel industry and catering industry are VAT taxable activities that do not occur regularly, and VAT may be paid by small-scale taxpayers under article 29 of the Detailed Rules for the Implementation of the Interim Regulations of the People's Republic of China

on Value-Added Tax (Order No. 50 of the Ministry of Finance and the State Administration of Taxation).

Date of issue: April 22, 2013. Effective date: May 1, 2013.

**NOTICE ON THE RELEASE OF THE INDIVIDUAL INCOME TAX DECLARATION FORM (THE “NOTICE”)** (NOTICE [2013] NO. 21 OF THE STATE ADMINISTRATION OF TAXATION)  
(国家税务总局关于旅店业和饮食业纳税人销售非现场消费食品增值税有关问题的公告), ISSUED BY SAT

The Notice releases the revised individual income tax declaration form and its explanatory notes, effective from August 1, 2013.

The Notice of the State Administration of Taxation on Printing and Distributing the Format of the Individual Income Tax Declaration Form (Guo Shui Fa [1993] No. 145), Annexes 2 to 4 to the Notice of the Ministry of Finance and the State Administration of Taxation on the Printing and Distribution of the "Provisions on the Imposition of Individual Income Tax on Investors in Sole Proprietorship Enterprises and Partnership Enterprises" (Cai Shui [2000] No. 91), Annexes 2 to 9 to the Notice of the State Administration of Taxation on Printing and Distributing the "Measures for Self Declaration of Individual Income Tax (Trial)" (Guo Shui Fa [2006] No. 162), and Annexes 1 to 2 to the Notice of the State Administration of Taxation on Printing and Distributing the "Interim Measures for the Administration of Withholding and Declaration of Individual Income Tax of all Taxpayers and in Full Amount" (Guo Shui Fa [2005] No. 205) will be repealed simultaneously.

Date of issue: April 27, 2013. Effective date: August 1, 2013.

**CIRCULAR OF MINISTRY OF FINANCE AND THE STATE ADMINISTRATION OF TAXATION ON TAX POLICIES IN THE NATIONWIDE PILOT COLLECTION OF VALUE ADDED TAX IN LIEU OF BUSINESS TAX IN THE TRANSPORTATION INDUSTRY AND CERTAIN MODERN SERVICES INDUSTRIES (THE “CIRCULAR”)** (CAISHUI [2013] NO. 37)

(财政部、国家税务总局关于在全国开展交通运输业和部分现代服务业营业税改征增值税试点税收政策的通知), ISSUED BY SAT AND MINISTRY OF FINANCE (“MOF”)

After the Executive Meeting of the State Council, the Circular is published officially for the purpose of further expanding the scope of pilot cities where business tax shall be replaced by value-added tax for levying. The main content of this Meeting is as follows:

- The Value Added Tax reform currently taking place in 9 pilot areas will be extended to cover all China starting from 1 August 2013; and

- It is intended that radio, film and television services as a sub-item of taxable item of some modern service sectors will also be shifted from BT to VAT.

Date of issue: May 24, 2013. Effective date: August 1, 2013.

## CONTACT

### **Omar Puertas**

Partner at Cuatrecasas, Gonçalves Pereira  
omar.puertas@cuatrecasas.com

### **Cuatrecasas, Gonçalves Pereira**

#### **Shanghai Office**

27 F Shanghai Central Plaza,  
381 Huai Hai Middle Road  
Shanghai 200020, P.R.C.  
+86 21 2327 7000  
+86 21 2327 7007  
shanghai@cuatrecasas.com

---

© 2013 CUATRECASAS, GONÇALVES PEREIRA. All rights reserved.

*This document contains legal information prepared by Cuatrecasas, Gonçalves Pereira. This information does not constitute legal advice. Cuatrecasas, Gonçalves Pereira owns the intellectual property rights to this document. Any reproduction, distribution, transfer or use of this document, whether fully or partially, will require the prior consent of Cuatrecasas, Gonçalves Pereira.*

---