

CUATRECASAS, GONÇALVES PEREIRA



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Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Foreign Exchange Administration for Offshore Investment, Financing and Round-Trip Investment Undertaken by Domestic Residents via Special Purpose Vehicles ("Circular 37") (国家外汇管理局关于境内居民通过特殊目的公司境外投融资及返程投资外汇管理有关问题的通知), issued by the State Administration of Foreign Exchange ("SAFE")

Circular 37 replaces SAFE's *Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Foreign Exchange Administration for Financing and Round-Trip Investment Undertaken by Domestic Residents via Overseas Special Purpose Vehicles*, enacted in 2005, known as Circular 75.

Circular 37 reflects SAFE's intention to facilitate foreign exchange registration procedures for offshore financing and investment transactions carried out by Chinese residents (Circular 37 refers to Chinese institutions or Chinese individuals, "Chinese Residents"), by introducing major changes to the previous framework.

One of the main changes consists of the extension of the definition of special purpose vehicles ("SPVs"). Under Circular 75, an SPV is defined as an offshore enterprise directly established or indirectly controlled by a Chinese Resident, which uses the domestic assets or interest of such Chinese Resident for the purposes of obtaining equity financing (including financing through the convertible bond). Circular 37 broadens the definition of SPVs to include the use of, not only domestic but also overseas, assets or interest of the Chinese Resident for the purposes of, not only obtaining financing, but also carrying out investments overseas.

Also, SAFE registration formalities for SPVs have been notably simplified.

Another relevant change relates to the possibility of retaining capital gains and dividends from the SPV outside China.

Furthermore, channels of offshore financing have been broadened, and Circular 37 allows domestic enterprises directly or indirectly controlled by Chinese Residents to advance loans to a duly registered SPV in compliance with existing regulations, based on real and reasonable demands.

Date of issue: July 14, 2014. Date of effectiveness: July 14, 2014.

Provisions of China (Shanghai) Free Trade Zone (the "Provisions") (中国（上海）自由贸易试验区条例), issued by the Standing Committee of Shanghai Municipal People's Congress

The Provisions comprise the most comprehensive legislation by Shanghai's highest legislative body on the Shanghai Free Trade Zone ("FTZ") since it was launched in September 2013, covering aspects such as the management system, investment opening-up, trade facilitation, financial services, taxation administration, comprehensive regulation, and the legal environment of FTZ.

The Provisions were enacted based on the General Plan on FTZ that the State Council issued on September 27, 2013 (see our Legal Flash of September 2013). By reiterating the following principles for developing FTZ, they aim to:

- encourage market players, promote reform and innovation within FTZ for matters not restricted by laws or regulations;
- apply national treatment to foreign investment within FTZ, except any sectors specified in the Negative List;
- simplify the formalities of company registration within FTZ;
- allow FTZ-incorporated companies to carry out reinvestment and business activities outside FTZ;
- launch a regulatory reform on customs, inspection and quarantine;
- establish a uniform window responsible for the administration of transactions, logistics, processing and warehousing related to international trade;
- launch the pilot reforms of RMB capital account convertibility, financial market interest rate liberalization, cross-border use of RMB, and foreign exchange management reform;
- innovate the administration within FTZ and encourage government management to shift its focus from *ex ante* examination and approval to interim and *ex post* review.
- improve the legal environment of FTZ by establishing sound legal frameworks covering commercial rights, labor issues, intellectual property rights, environment protection and dispute resolution.

The Provisions overrule the *Regulations on Shanghai Waigaoqiao Free Trade Zone*, issued on December 19, 1996.

Date of issue: July 25, 2014. Date of effectiveness: August 1, 2014.

Notice regarding several VAT issues related to international freight forwarding services (“Notice [2014] No. 42”) (关于国际货物运输代理服务有关增值税问题的公告), issued by the State Administration of Taxation (“SAT”)

The SAT released SAT Announcement [2014] No. 42 (“Announcement 42”) on 4 July, 2014, clarifying several VAT issues related to the indirect provision of international freight forwarding services by taxpayers under VAT pilot arrangements (“pilot taxpayers”).

Key features of Notice 42:

1. Pilot taxpayers that, through other agents, indirectly deal with matters related to cargo and shipping services (international cargo transportation matters, port entry and exit of vehicles for international transportation, arranging for the piloting, berthing, loading and unloading) for consignors (“second forwarders”) will be exempt from VAT under Item 14 of Article 1 of Appendix III (transitional policies for VAT pilot arrangements) of Caishui [2013] No. 106 (“Circular 106”).
2. Requirements to apply for exemption: If pilot taxpayers provide international freight forwarding services, all agency fees received from consignors and paid to other agents must be settled through financial institutions. Announcement 42 also applies to pilot taxpayers that provide freight forwarding agency services for goods transported between Mainland China and Hong Kong/Macao/Taiwan.

Under Circular 106, only pilot taxpayers directly providing international freight forwarding services (“first forwarders”) can benefit from the VAT exemption regime. Second forwarders are not eligible for the VAT exemption and their VAT burden consequently increased since the enforcement of VAT pilot arrangements. Announcement 42 expands the VAT exemption treatment also to second forwarders with effects as of September 1, 2014, following the interpretation of the Ministry of Finance. However, the net basis policy is still limited to first forwarders.

Date of issue: July 4, 2014. Date of effectiveness: September 1, 2014.

Notice regarding "Administrative Measures for Taxpayers" Credit Rating (Trial) ("Notice [2014] No. 40") (关于发布《纳税信用管理办法（试行）》的公告), issued by the SAT

The SAT has established a credit system to assess taxpayers' tax performance. Its key features are:

- (1) Covered taxpayers: Enterprises that have completed tax registration and engage in manufacturing or other business transactions, and file tax by assessment.
- (2) Rating: Taxpayers are rated as A, B, C or D.
- (3) Evaluation: Tax bureaus are adopting a dynamic adjustment mechanism on the evaluation of credit rating. Annual credit rating results will be completed by April 2015, and allow taxpayers to check their own rating.
- (4) Application of credit rating results:

Taxpayers with credit rating A will benefit from special treatments/incentives:

- The tax authorities will announce a list of taxpayers with credit rating A to the public annually.
- Taxpayers with credit rating A can collect three months' special VAT invoices from the authority in one time. If taxpayers need to adjust their special VAT invoice amount, the tax authorities will immediately deal with their applications if the application documents are complete.
- They can collect normal VAT invoices as required.

Taxpayers with credit rating B will be subject to the normal administrative measures and subject to the tutorship by the authority from time to time.

Taxpayers with credit rate C will be subject to strict administrative and the measures applied to taxpayers with credit rating D could be applied to them selectively.

Taxpayers with credit rating D will be subject to strict administrative measures:

- The names of taxpayers with credit rating D and any direct persons in charge will be announced publicly. Other taxpayers registered or operating under the same persons in charge will also be classified as credit rating D.

- Taxpayers with credit rating D that collect special VAT invoices will be subject to the same policies as general taxpayers' during a supervision period. Normal VAT invoices will be strictly controlled. New normal VAT invoices can only be collected once the used ones have been verified.
- Export VAT refund applications of taxpayers with credit rating D will be closely inspected.

Date of issue: July 4, 2014. Date of effectiveness: October 1, 2014.

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