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LEGAL FLASH | SHANGHAI OFFICE

June 2015

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ADMINISTRATIVE MEASURES ON FOOD OPERATION LICENSE (DRAFT FOR COMMENTS)
（《食品经营许可管理办法（征求意见稿）》）

The food licensing system is classified according to the nature of activities carried out, namely food production, catering and distribution.

The Draft for Comments on the Administrative Measures on Food Operation License ("the Draft"), issued by the State Food and Drug Administration, combines the Food Distribution License and Catering Services License regimes, thus creating the new "Food Operation License" regime.

The Draft's main highlights:

- A licensed food manufacturer does not need a Food Operation License to sell self-produced food at its premises.

- The administration of Food Operation Licenses will be classified according to the enterprises' activities, which are divided into three categories: (1) food distribution, (2) catering services and (3) canteen.

- The administration of Food Operation Licenses will also be classified according to food types.

- To obtain the Food Operation License, the applicant must have:

    1) approved premises for food storage, processing and sales according to the food type and quantity;

    2) approved equipment (for disinfection, dust protection, wastewater treatment and garbage storage) depending on the food type and quantity;

    3) full-time or part-time staff responsible for food safety techniques and management;

    4) by-laws for food safety; and

5) a suitable equipment layout and technological processes.

- A company with different branches must file applications in its own name for each branch to obtain an individual Food Operation License.

- The Food Operation License will be issued for a term of up to five years.

- Any food distribution and catering company operating without a Food Operation License may be subject to a fine of between RMB 50,000 and RMB 100,000 if the illegal profit is below RMB 10,000, or between 10 and 20 times the amount of the illegal profit if it reaches RMB 10,000 or more.

Date of issue: June 5, 2015. Deadline for public comments: July 5, 2015.

CHINA OPENS UP ITS E-COMMERCE MARKET TO FOREIGN INVESTORS

Foreign investors have long been restricted from establishing and operating e-commerce platforms in China. They were required to operate e-commerce businesses through a joint venture with domestic partners, in which their shareholding was limited to 50%.

China's emerging pilot free trade zones have been providing new opportunities for foreign investors. When the China (Shanghai) Pilot Free Trade Zone ("Shanghai FTZ") was launched in late 2013, pilot free trade zones allowed foreign investors up to a 55% shareholding in joint ventures in e-commerce businesses. On January 13, 2015, in the Circular on Removing the Restrictions on the Foreign Equity Ratios in Online Data Processing and Transaction Processing Services (Operating E-commerce) in the Shanghai FTZ, the Chinese Ministry of Industry and Information Technology ("MIIT") announced that foreign investors could operate in these two areas through wholly foreign-owned enterprises ("WFOE") within Shanghai FTZ.

MIIT allows e-commerce companies established in Shanghai FTZ to carry out their e-commerce businesses nationwide.

In a recent public speech, MIIT specified that China has decided to further open up online data processing and transaction processing businesses to foreign investors and allow them to fully own e-commerce companies engaging in these businesses in China, extending the pilot scheme launched in Shanghai FTZ nationwide.

A further sign that China has opened up e-commerce to foreign investors is the Guiding Catalogue of Industries for Foreign Investment, amended in April 2015 ("Catalogue"), which for the first time establishes that the limitation on the ratio of foreign investment participation on value-added telecommunication services (up to 50%) does not apply to e-commerce business.

The scope of e-commerce businesses opened up to foreign investment is expected to surpass the liberalized scope in Shanghai FTZ, including internet, mobile social networking and third-party online payment platforms as included in the definition of value-added telecommunication services under the Chinese legal framework.

The liberalization of the e-commerce businesses is expected to enable foreign investors to operate several e-commerce platforms by adopting simple WFOE structures, without having to use other vehicles (including variable interest entity "VIE" structures) to avoid the shareholding limitation.

STATE ADMINISTRATION OF TAXATION'S ANNOUNCEMENT ON ENTERPRISE INCOME TAX ADMINISTRATION ON ASSET (EQUITY) TRANSFERS (ANNOUNCEMENT [2015] NO. 40) (国家税务总局关于资产（股权）划转企业所得税征管问题的公告)

In December 2014, the Ministry of Finance ("MoF") and the State Administration of Taxation ("SAT") jointly released Circular Caishui [2014] No. 109 ("Circular 109") to expand the scope of enterprise income tax ("EIT") deferral treatment. Under Circular 109, transfer of equity or assets within a group was introduced as a new transaction eligible for EIT tax deferral treatment (see our Legal Flash of January 2015 for information on Circular 109).

However, Circular 109 only provided general guidelines and criteria, leading to practical issues that required clarification regarding the application of the tax deferral treatment to these new transactions.

To better implement Circular 109, on May 27, 2015, the SAT released Announcement [2015] No. 40 ("Announcement 40") to clarify practical issues on the administration of the tax deferral treatment for eligible group transfers.

Announcement 40's main highlights:

1. Scope of eligible group transfers

   Under Circular 109, eligible group transfers should be conducted between (i) resident enterprises directly holding 100% of the other's shares, or (ii) resident enterprises 100% directly owned by the same enterprise(s).

   Announcement 40 limits eligible group transfers to the following four transactions and provides the corresponding tax deferral treatment:

TRANSACTION TYPE	CONSIDERATION	ACCOUNTING TREATMENT	TAX DEFERRAL TREATMENT
Mother company transfers equity or assets at net book value to its 100% directly controlled subsidiary.	100% equity payment by the subsidiary.	The mother company increases its long-term equity investment in the subsidiary, while the subsidiary receives capital investment.	- The tax basis for the subsidiary's equity payment received by the mother company should be determined according to the original tax basis of the transferred equity or assets. - The tax basis for the transferred equity or assets received by the subsidiary should be determined according to their original tax basis. - The transferred equity or assets received by the subsidiary should be depreciated according to their original tax basis.

Mother company transfers equity or assets at net book value to its 100% directly controlled subsidiary.	No payment.	The mother company reduces its paid-in capital (including capital reserve), while the subsidiary receives capital investment (including capital reserve).	- The tax basis of the transferred equity or assets received by the subsidiary should be determined according to their original tax basis. - The transferred equity or assets received by the subsidiary should be depreciated according to their original tax basis.
The subsidiary transfers equity or assets at net book value to its mother company with 100% direct holding interest.	No payment.	The mother company recovers its investment or receives investment, while the subsidiary reduces its paid-in capital.	- The mother company should reduce the tax basis of its equity investment in the subsidiary according to the original tax basis of the transferred equity or assets. - The tax basis of the transferred equity or assets received by the mother company should be determined according to their original tax basis. - The transferred equity or assets received by the mother company should be depreciated according to their original tax basis.

Transfer of equity or assets at net book value between two subsidiaries that are 100% directly controlled by the same shareholder(s).	No payment.	The transferor reduces its shareholders' equity, while the transferee receives investment.	- The tax basis for the transferred equity or assets received by the transferee should be determined according to their original tax basis. - The transferred equity or assets received by the transferee should be depreciated according to their original tax basis.

2. Filing obligation for the tax deferral treatment

   Under Announcement 40, both parties to the transaction must apply the same tax treatment consistently. If they apply the tax deferral treatment, they must separately file with the relevant in-charge tax authorities a standard reporting form and other supporting documents with the annual EIT declaration for the year the transfer occurs.

   For the following annual EIT declaration, both parties must separately file with the relevant tax authorities a report stating that the original business activities of the transferred equity or assets have not changed in the 12 months following the transfer (from when the transfer was completed and received the corresponding accounting treatment) to prove the transaction is still eligible.

   If a group transfer no longer qualifies for the tax deferral treatment (if there is a change in either party's business activities, company nature or shareholding structure in the 12 months following the transfer), the relevant party must report to the in-charge tax authority within 30 days following the change and notify the other party. The other party, in turn, must also report to the in-charge tax authority within 30 days of the notification.

   Within 60 days following the change, both parties must (i) adjust the taxable income for the year the transfer occurred and the tax basis of the transferred equity or assets according to the general tax treatment, retroactively; (ii) and submit the adjusted EIT annual declaration form to the in-charge tax authorities and calculate the EIT payable for group transfers.

Announcement 40 is applicable to the 2014 EIT annual declaration onwards, and to completed corporate restructuring transactions that have not been dealt with for tax purposes.

Date of issue: May 27, 2015. Effective date: January 1, 2014.

STATE ADMINISTRATION OF TAXATION'S ANNOUNCEMENT ON ADMINISTRATION OF COST SHARING AGREEMENTS (ANNOUNCEMENT [2015] NO. 45) (国家税务总局关于规范成本分摊协议管理的公告)

The concept of cost sharing agreement ("CSA") was introduced into the EIT Law as a general principle in 2008.

Under article 41 of the EIT Law, an enterprise and its related parties can share the costs incurred in co-developing or co-obtaining intangible assets and co-providing or co-receiving services. Shared costs that comply with the arm's length principle can be deducted before tax when calculating taxable income.

Under article 112 of the Implementing Rules of the EIT Law, when a CSA is entered into between an enterprise and its related parties, the shared costs should match the expected benefits, and supporting documents must be provided to the tax authorities on request.

Circular Guo Shui Fa [2009] No. 2 ("Circular 2"), concerning the Implementing Measures on Special Tax Adjustments, issued by the SAT on January 8, 2009, further regulated CSAs by introducing a chapter on their administration. Under Circular 2, CSAs should be filed with the SAT through local tax authorities within 30 days of their signature so the SAT can verify whether they follow the arm's length principle.

Circular 2 also (i) limits CSAs to group purchasing and marketing activities, (ii) requires that enterprises entering into CSAs prepare the relevant transfer pricing documentation, and (iii) provides that share costs incurred under a CSA are not deductible, among other circumstances,[1] if the enterprise operation period is less than 20 years since the CSA was signed.

Due to these strict requirements and review procedure, few Chinese enterprises have used CSAs.

In the context of reforming the government approval system, the State Council released Guo Fa [2015] No.27 ("Circular 27") on May 14, 2015, to abolish the approval procedure for CSAs.

Following the release of Circular 27, the SAT issued Announcement [2015] No.45 ("Announcement 45") on June 16, 2015, updating the rules on the administration of CSAs.

Announcement 45's main highlights:

1. Filing obligations

   When an enterprise enters into or amends a CSA with its related parties, the enterprise must file the CSA with the relevant tax authority within 30 days of its signature.

   Also, when declaring its annual EIT, the enterprise must provide relevant information on the CSA in its reporting forms on annual related party transactions. According to the official interpretation of Announcement 42, once a CSA has been signed, the reporting forms should be filed regardless of whether it has been executed.

2. Post-monitoring approach

[1] Other circumstances include the CSA (i) lacking reasonable commercial purpose and economic substance, (ii) not complying with the arm's length principle, and (iii) not matching the benefits expected, as well as the enterprise entering into them not recording it, or not preparing and making the transfer pricing documentation available for review.

Likewise, the SAT will strengthen the post-monitoring of CSAs. Under Announcement 45, the tax authorities can make special tax adjustments when the CSA does not follow the arm's length principle or the cost-benefit matching principle, and enterprises do not make the necessary compensatory adjustments.

Therefore, a CSA no longer needs to be examined and approved by the tax authority before its implementation, and the shared costs are tax-deductible unless the tax authority decides otherwise through a specific procedure.

Despite the change in procedure from approval to filing, an enterprise should still carry out its CSA according to other rules provided in Circular 2. However, as Circular 2 is undergoing further amendments, some changes might affect the administration of CSAs.

CSAs in China need further development. Enterprises and tax authorities are still inexperienced in this area and enterprises entering into a CSA under the new filing system risk facing special tax adjustments. To reduce this risk, however, CSAs could be reached as advance pricing arrangements.

Date of issue: June 16, 2015. Effective date: July 16, 2015.

STATE ADMINISTRATION OF TAXATION'S ANNOUNCEMENT ON THE ADMINISTRATION OF EIT FOR CORPORATE RESTRUCTURING (ANNOUNCEMENT [2015] NO.48) (国家税务总局关于企业重组业务企业所得税征收管理若干问题的公告)

In 2009, to promote corporate restructuring, the MoF and the SAT jointly released Circular Caishui [2009] No. 59 to grant tax deferral treatment to qualified corporate restructuring transactions (recently modified by Circular 109, mentioned above, which expanded its scope).

In 2010, the SAT released Announcement [2010] No. 4, providing procedural guidelines to benefit from the tax deferral treatment.

Under these regulations, to apply the tax deferral treatment, enterprises participating in a corporate restructuring had to file the required documents with the in-charge tax authorities and prove the transaction was eligible. Confirmation could be obtained from the provincial level tax authority if the leading party to the transaction submitted an application.

However, in the current context of reforming the governmental approval system, pre-approval of the tax deferral treatment is no longer suitable to develop the corporate restructuring market. Therefore, the State Council's Circular 27 abolished this procedure.

Following the release of Circular 27, and to improve administration of the tax deferral treatment, the SAT released Announcement [2015] No.48 ("Announcement 48") on June 24, 2015, amending the procedural guidelines in Announcement 4.

Announcement 48 replaces the former administrative approach by combining annual declaration management and post-monitoring management.

Announcement 48's main highlights:

1. Annual declaration management

    a) If corporate restructuring involves a simple change of legal form, no special requirements need to be fulfilled with the annual declaration.

    b) If corporate restructuring is carried out in any other form, all parties to the transaction must submit to the in-charge tax authorities (i) the newly designed "Reporting Form of Tax Deferral Treatment for Corporate Restructuring" and its schedule and (ii) the supporting documents provided in the list of declaration materials when filing the annual EIT declaration for the year the transaction was completed

    c) Any parties that are to be deregistered due to a merger or split must submit these documents before the tax deregistration procedure is carried out.

    d) As the leading party of a corporate restructuring is the party benefiting from the tax deferral treatment, in addition to the usual declaration documents, other parties should also file a copy of the reporting form submitted by the leading party.

e) Information must be provided on transfers taking place in the 12 months before or after the corporate restructuring to evaluate whether the transactions should be considered as a whole. The tax deferral treatment can be temporarily applied in the first year the relevant transfers to be carried across two years start, and retroactively adjusted if the transaction finally fails to meet all conditions.

2. Post-monitoring management

a) Resident enterprises must accurately record the tax deferral status and provide an explanation in their annual declaration for each of the following years in which the tax deferral treatment is applicable (as a track record).

b) In the case of subsequent transfers of asset or equity, if the tax deferral treatment is applied, the relevant enterprise must submit a special report on the resulting gain or loss in the annual declaration for the year the transfer occurs.

c) If the authorities determine that the tax deferral treatment is not applicable, the corresponding tax return may be subject to retroactive adjustment.

Announcement 48 also redefines other concepts such as (i) the parties in each type of reorganization, and which party must be considered dominant; (ii) the reorganization date; and (iii) the reasonable business purposes supporting the reorganization.

Announcement 48 is applicable to the 2015 EIT annual declaration onwards, and to corporate restructuring transactions already signed but not yet completed.

Date of issue: June 24, 2015. Effective date: January 1, 2015.

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