

## China Business Advisory

2009 Issue 7

July 2009



### China to further improve environment for foreign investments

China's Ministry of Commerce (MOF) issued a report on May 31<sup>st</sup>, 2009 which suggested that China will make great efforts to create a stable and transparent environment to attract foreign investments and enhance foreign capital utilization. A series of measures will be adopted to this end. Firstly, China will streamline administrative charges and inspection regulations in connection with foreign investments and further delegate the authorities for approving foreign investments to lower government levels. Secondly, foreign capital will actively be channeled towards industries that will contribute to the quality growth of the economy and society of China. To this end China will encourage foreign companies to invest in industries with heavy orientation of new and high technology, advanced manufacturing skills, energy-saving, environment protection and modern service concept. Agriculture and farming that require higher levels of technology, produce more added value, and boost farmers' income are also among the favorites. Multinationals will be induced to set up regional headquarters and/or various functional centers in China. Thirdly, the Central government will continue to promote central and western regions to foreign companies. Fourthly, China will pay close attention to the development and impacts of the international financial crisis and strengthen the collaboration among various government departments to help solve the operating difficulties of enterprises. All these will offer new opportunities for foreign investors.

The American Chamber of Commerce in the People's Republic of China (AmCham-China) recently announced that among the US enterprises surveyed, over 80 percent are optimistic about the prospects for their operations in China and 73 percent are planning to expand their investments in China. For instance, Siemens invested an additional US\$190 million in China recently to expand the production capacity and operational activities in the field of alternative energy.

### World Expo lottery to be distributed

China will distribute nationwide new welfare lottery featuring Shanghai World Expo starting next month. The money thus raised will be fully funneled to aid reconstruction in southwest China's Sichuan Province which was hit by a devastating earthquake in May last year leaving more than 80,000 people dead or missing. The Shanghai World Expo will run from May 1 to October 31 next year. It is expected to attract 70 million visitors. So far, 240 countries and international organizations have confirmed to attend the expo.

### PMI shows positive impact of stimulus plan

Manufacturing activities in the mainland continued to gather steam for the fourth month in June, indicating that China's massive stimulus package is having its effects on dampening the negative impacts of the financial crisis. The official purchasing managers' index (PMI) of June rose to 53.2 from 53.1 in May. A companion index compiled for brokerage CLSA, climbed to 51.8 from 51.2. The current economic recovery in China has signs of being sustainable.

### The New Chinese Special Tax Adjustments Rule -Contemporaneous Transfer Pricing Documentation Requirements

In the past, it was not mandatory for Chinese enterprises to prepare transfer pricing documentation in China for compliance purposes. In line with the spirit of the new Corporate Income Tax Law (CIT law) and its Implementation Rules, the State Administration of Taxation (SAT) has introduced contemporaneous transfer

pricing documentation requirements in China for the first time. Based on the Special Tax Adjustments (STA) Rules, enterprises are required to prepare contemporaneous transfer pricing documentation for the fiscal year by May 31 of the following year, unless one or more of the following exceptions apply:

- Annual amount of related party purchase and sales is lower than RMB 200 million (for customs-supervised contract-processing activities, the amount will be based on the prices adopted in the import or export customs declaration) AND annual amount of other related party transactions is lower than RMB 40 million (for related party financing, the amount is based on the interest received or paid). The determination of the above mentioned related party purchase and sales or other transactions should exclude those amounts already covered by Cost Sharing Agreements (CSAs) or Advanced Pricing Agreements (APAs) that are in effect in the relevant year;
- Related party transactions are covered by an APA;
- Foreign shareholding in the enterprise is less than 50% and the enterprise only transacted with domestic related parties (not including Hong Kong, Taiwan and Macau).

When defining related parties, the STA Rules adopt 25% as the threshold for direct or indirect ownership. Where an entity owns more than 25% of an intermediary entity, its indirect ownership of the lower tier entity will be deemed to be the same as the intermediary's direct ownership of the lower tier entity. As a result, two entities could be treated as being related even if their legal shareholding proportion has not reached the 25% related party threshold.

The STA Rules also put a great emphasis on control when defining related parties. An entity with significant control over the taxpayer's senior management, purchases, sales, production and the intangibles and technologies required for the business is defined as a related party under the STA Rules. These conditions could cause two transacting enterprises without any equity stake in the other to be subject to transfer pricing assessment and investigation according to the STA Rules.

The contemporaneous documentation includes:

- Organizational Structure
- Summary of Business Operations
- Information about the Related Party Transactions
- Comparability Analysis
- Selection and Application of Transfer Pricing Methods

The STA Rules also specify timing of preparation and submission of the required documents and penalties for failing to do so.

### **China government issued “Administrative Rules on Pilot Program of Renminbi Settlement of Cross-border Trade Transactions”**

China has issued detailed measures to regulate the pilot program for cross-border trade settled in Renminbi (RMB or Yuan), according to a document released by the central bank. The document posted on website of People's Bank of China specified how to make transactions using the Yuan to settle trade with Hong Kong, Macau and other trade partners. As explained in our China Business News Issue 4 in April 2009, this pilot program is aimed to allow exporters and importers in Shanghai, Guangzhou, Shenzhen, Zhuhai and Dongguan to settle cross-border trade deals in Yuan.

## Service Highlight

In the light of the continued booming China economy coupled with its ever changing regulations, we reiterate to CBA readers that Sino-Bridge has a team of professionals who are highly experienced and knowledgeable in both international and Chinese business operations to provide a most comprehensive array of professional services to meet the diverse needs of our clients. The following are a highlight of some of the services we offer:

- Sourcing of investment opportunities and joint venture partner identification and evaluation
- Feasibility studies , market research on industry, product potential, competitors, customers profile, entry strategy
- Due diligence on financial performance, asset valuation and management profile of target companies
- Negotiation on finalizing investment deals
- Setting up of joint ventures or wholly foreign-owned entities; completing all legal and regulatory procedures pertaining to their full operation
- Development of overall business strategy in China; building an appropriate team of staff; engaging professionals of different disciplines to meet varying needs
- Production support including quality control, follow up on shipment and managing suppliers
- Arrangement for financing in the form of bank loans, convertible instruments and equity investment
- Completion of legal and regulatory requirements on an on-going basis
- Performance of ongoing financial and operational monitoring

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