

China Business Advisory

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TABLE OF CONTENTS

1. China Updates

- ✧ Release of FIE Record-filing Administrative Measures
- ✧ New Pilot Customs Duty Administration Program
- ✧ Employers' Labor Law Violations to be Made Public
- ✧ Renewed VAT Taxable Thresholds in Shanghai

2. Service Highlight

Release of FIE Record-filing Administrative Measures

On 8th October 2016, the Ministry of Commerce (“MOC”) released Decree No. 3, “Provisional Measures for Record-filing administration on the Establishment and Alteration of Foreign-invested Enterprises (FIEs)” (“Measures”). These Measures took immediate effect on the date of

promulgation. It aims at promoting the simplified administration practices in the Pilot Free Trade Zones nationwide. The key points include:

- The Features

The filing procedures are now performed online either before the incorporation of a FIE or within 30 days after the issuance of the business license of the FIE. The completion of filing procedures are therefore no longer a pre-requisite for the establishment of a FIE.

- The Scope

All FIEs are covered by the Measures except those subject to special administration measures. FIEs with items of restricted investment, prohibited investment and encouraged investment are covered by the Public Notice [2016] No. 22 issued by MOC instead.

Mergers and acquisitions on the other hand would be covered by MOC Order [2009] No. 6 for domestic non-FIE by a foreign investor and “Administrative Measures on Strategic Investment in Listed Company by Foreign Investments” for cases in relation to listed companies. Investments in other fields and modes by foreign investors will be subject to the Measures.

In addition as a means to alleviate the burden of investors, FIEs listed on the stock exchanges or the National Equities Exchange and Quotations are only required to implement the Measures if the cumulative shareholding change is more than 5% or (relatively) the holding status is changed.

- The Targets

The Measures are mainly applicable to Chinese-foreign joint ventures, Chinese-foreign cooperative enterprises, wholly foreign-owned enterprises and foreign-invested limited joint stock companies.

- The Record-filing Procedures

1. Foreign-invested enterprises or other investors fill in the application and submit the relevant documents online through the record-filing system;
2. The relevant authority checks the submitted information, examines if the declared matters fall into the scope of record-filing and completes the record-filing within 3 work days;
3. The record-filing applicants could choose whether or not to receive the receipt of record-filing.

The implementation of the simplified record-filing administration mechanism of FIE can produce significant cost and time savings for companies that wish to establish a FIE.

New Pilot Customs Duty Administration Program

On 29th October 2016, the General Administration of Customs (“GAC”) issued Announcement [2016] No.62 (“Announcement”) to carry out a pilot reform on customs duty levy. The reform shifts the current pre-goods release review to post-goods release review. The Announcement came into force on 1st November 2016. The main features of the reform are detailed below:

- Online self-declaration and duty payment by enterprises
 - Enterprises shall complete the customs declaration forms online in a truthful manner. They must use the tax calculation tool in the system to come up with the amount of duties payable. They have to confirm the calculation result of the system and submit this confirmation to the authority via the system.
 - Upon receiving confirmation of receipt from the authority, the enterprises may then pay the duty and print a hard copy of the duty payment notice in the customs office. The notice only serves the purpose of proof of duty payment proof. It is by no means an administrative decision document issued by the authority.
- Post-review of duty-related items
 - After release of the goods, the authority will conduct selective inspection on the duty-related items declared by enterprises with regards to the reported price, classification, place of origin, etc. In special circumstances, the authority has the right to review the duty-related items before the release of the goods.
 - Where an enterprise voluntarily submits a written report to the authority on its violation of regulatory provisions and accepts actions taken by the authority, the authority shall impose lighter or mitigated administrative penalties. Administrative penalties could even be waived for illegal acts which are not serious, have been corrected and do not result in harm. Late payment penalties may also be reduced or exempted for violation voluntarily disclosed and duties voluntarily paid by the enterprise.

Employers' Labor Law Violations to be Made Public

On 1st September 2016, the Ministry of Human Resources and Social Security (“MHRSS”) issued a decree (“Decree”) to promulgate measures with regards to making public employers’ significant violations of Labor Law.

According to the Decree, employers with the following violations that are of a severe degree will be published:

- Unreasonable reduction or default of payment of employees’ remuneration
- Failure of payment of insurance premium and/or enrollment in social insurance program
- Violation of working hours and/or holiday/leave requirements
- Violation of special provisions to protect female and underage employees
- Violation of prohibition of using child labor
- Violations causing serious negative social consequences
- Other significant violations

The following information will be made public:

- The full name, address and social credit code or registration number of the employer
- The name of the employer’s legal representative
- Details of the violation(s)
- Outcome of the verdict

Information pertaining to state security, business secrets and individual privacy will not be published. The Decree will come into effect on 1st January 2017.

Renewed VAT Taxable Thresholds in Shanghai

Shanghai municipal authorities of taxation and finance have jointly issued a notice on 27th October 2016 to renew the Value Added Tax (“VAT”) taxable thresholds in Shanghai which was published in 2011 previously. The key stipulations are as follows:

- The taxable threshold for selling goods is RMB20,000 per month
- The taxable threshold for rendering taxable services is RMB20,000 per month
- The taxable threshold for businesses taxed on a transaction-by-transaction or daily basis is RMB500 per transaction or day

The move is also in coordination with the B2V (VAT in lieu of Business Tax) reform which extended to the whole nation this year. The notice will become effective on 1st November 2016.

Service Highlight

With continuously evolving regulations in China, it is critical to enlist the help of experienced consultants like Sino-Bridge who has more than two decades of dedicated operation in China and possesses a strong understanding of the unique business and regulatory environments. We are more than keen and privileged to help all the investors. Our Marketing Executive, Ms. Kimme Chan, would like to hear from you at (852) 3579 8745 or kimmechan@sinobridge-consulting.com to learn of how we could assist you with your business.

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