

China Business Advisory

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Announcement of pilot program to further relax foreign exchange control

State Administration of Foreign Exchange (“SAFE”), State Administration of Taxation (“SAT”) and General Administration of Customs (“GAC”) jointly released a pronouncement in the middle of September 2011 to introduce a pilot program on foreign exchange control reform which will commence on 1st December 2011 in certain areas. The pilot areas include provinces of Jiangsu, Shandong, Hubei, Zhejiang (excluding Ningbo City), Fujian (excluding Xiamen City) and city

of Dalian. The key points are summarized below:

- New rules with respect to foreign exchange control on cargo trading business will be introduced to pilot areas where relevant enterprises no longer need to be subjected to certain foreign exchange settlement requirements for export business;
- Administration of foreign exchange control in pilot areas will be based on rating of enterprises to arrive at the degree of necessary monitoring to allow for simplified procedures ;
- Foreign exchange settlement sheet will no longer be necessary for export tax refund;
- The customs declaration procedures and requirements for the whole country will be reformed once the pilot program is seen to work well;
- Joint supervision by different authorities will be enhanced;

It is expected that the different authorities, such as SAFE, SAT and GAC, will issue more detailed regulations to facilitate this program and the subsequent reform to the whole nation. We will follow up on this issue and keep our readers updated.

Clarification on Individual Income Tax (“IIT”) grandfathering treatment

Since the regulations with regard to the New IIT Law became effective on 1st September 2011, inconsistency between its implementation rules and grandfathering policy (presented in the last 2 issues of CBA) and different areas has been reported by the press. SAT thus organized a press conference in early September to clarify on the various areas, in particular stipulating that the old IIT regulations apply to all salaries paid before 1st September 2011, regardless of which period they are for. By the same token, the new IIT rules and rates are applicable to salaries paid in and after September.

Regulations on social security contributions in respect of expatriates in China

Further to the highlight of the new social security contribution law in our July edition, Ministry of Human Resources and Social Security (“MHRSS”) released its Decree No. 16 on 6th September to introduce the Provisional Rules on Social Security contributions in respect of Employed Foreigners in China. Foreigners are requested to register with the relevant social security authority within 30 days of securing their work permit and start paying their contributions to the various social security funds accordingly alongside their employer’s contributions. Regulations concerning how expatriates claim their benefits are also stated in this regulation. It will come into force on 15th October 2011 although further detailed rules are apparently still on their way.

Further regulation regarding supervision of foreign M&As in China

Information with regard to the need contemplated by the government for national measures to regulate M&As by foreign investors involving Chinese enterprises can be found in our March 2011 Edition. Subsequent to that, Ministry of Commerce (“MOC”) issued pronouncement No. 53 on 25th August to bring substance to the thoughts to this direction. From 1st September 2011 when this pronouncement became effective, competitors, stakeholders and local authorities can request the MOC to scrutinize relevant affairs of enterprises subject to specific conditions provided in the pronouncement. MOC will then contact and coordinate with relevant parties to compile a submission to a joint Ministerial Committee for them to decide on whether these national measures are applicable to the subject enterprises.

Taxes on sale of Land and immovable properties with attached fixed assets

SAT released Pronouncement No. 47 on 17th August 2011 for the sale of land use right or immovable properties with fixed assets attached to them. According to the current tax regulations, selling of land use right and property is subject to Business Tax (“BT”) and Value Added Tax (“VAT”) is applicable to selling of fixed assets. This is in line with Caishui No. 9 which was jointly announced by SAT and Ministry of Finance (“MOF”) in January 2009 under which BT is levied on sale and purchase of items that fall under the category of “immovable property”. In case tax payers could not prove to the satisfaction of the tax authority as to whether fixed assets are sold separately from the land use right or immovable property to which they are attached, the tax authority will exercise their own judgment to stipulate the basis they deem appropriate. This pronouncement came into effect on 1st September, 2011.

Service Highlight

In addition to what we introduced above, many new regulations became effective in the past few months. We would like to remind our clients and readers to pay attention to them and make their best attempt to be compliant all the regulations relevant to their business operations. If you need our assistance to this end at any time, please call upon Mary Li, our Marketing Executive, on +852 35798745 or email her at maryli@sinobridge-consulting.com.

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