China Tax Weekly Update

ISSUE 45 | November 2017

Reference: N/A
Issuance date: N/A
Effective date: N/A

Relevant industries: Financial sector
Relevant companies: FIEs
Relevant taxes: N/A

Potential impacts on businesses:
- Threshold for foreign investment lowered

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China eases financial sector foreign investment limits

On 10 November 2017, at a China-US economic cooperation meeting, Mr. Zhu Guangyao, deputy minister of finance, highlighted the following:

- China will lift the ceiling on foreign equity ownership in securities, fund management and futures companies from 49% to 51%. China will eliminate all equity ownership limits once this initial relaxation to 51% has been in place for three years (i.e., where the relaxation to 51% is in place from 2018 to 2020, the full relaxation will take effect from 2021).
- China will remove the foreign equity ownership holding requirement for Chinese-funded banks and financial asset management companies. Up to now there has been a 20% limit for a single foreign investor and a 25% limit for several foreign investors collectively. In future, both foreign investors and domestic investors making investments in banks will be subject to the same equity limits rules. Under the existing rules, any enterprise or individual intending to purchase more than 5% of the total amount of shares of a commercial bank shall be subject to pre-approval by the banking supervision and administration authority of the State Council (i.e., CBRC).
- China will relax the 50% foreign investor equity holding limit for life insurance companies. In three years' time (i.e., from 2021), the equity ownership limits will be lifted to 51% for foreign investment in insurance companies, whether made separately or collectively across several foreign investors, and whether made directly or indirectly. The limits will be entirely eliminated in five years' time (i.e., from 2023). This relaxation applies to insurance companies engaged in personal insurance businesses (such as life insurance, health insurance, accident insurance etc.).
- China will gradually reduce customs duty for imported automobiles (currently 25%).
- By June 2018, the 50% foreign equity ownership limit for Chinese companies engaged in special vehicle and new energy automobiles will be relaxed. This relaxation will be piloted in certain free trade zones.
- China will grant a VAT exemption on importation of DDGS (distiller's dried grains with solubles) effective from 20 December 2017.

On November 16 2017, Mr. Fan Yifei, deputy governor of the People's Bank of China ("PBOC"), made a speech at the 6th China Payment and Clearing Forum. Mr. Fan noted that China will encourage foreign companies to participate in the development of Chinese e-payment services. Under the existing rules, for provision of payment services, a "Payment Business License is required. One of requirements to obtain the license is that the applicant must be a limited liability company registered within China. This restricted the ability of foreign investors to get the license, and this requirement may be relaxed.

Reference: N/A
Issuance date: 11 November 2017
Effective date: N/A

Relevant industries: Financial sector
Relevant companies: Financial institutions engaged in asset management business
Relevant taxes: N/A

Potential impacts on businesses:

- Compliance costs due to regulatory uncertainties reduced

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Updated regulations for asset management business

On 17 November 2017, the PBOC, along with the China Banking Regulatory Commission ("CBRC"), the China Securities Regulatory Commission ("CSRC"), the China Insurance Regulatory Commission ("CIRC") and the State Administration of Foreign Exchange ("SAFE"), jointly issued *the Draft Guidance on Asset Management Business of Financial Institutions* ("the Draft Guidance") to solicit public comments before 16 December 2017.

The Draft Guidance aims to provide a sound and healthy regulatory environment for the development of asset management business. The key features of the Draft Guidance are as follows:

- The Draft Guidance applies to the asset management business conducted by financial institutions. Financial services, such as property investment and management, provided by financial institutions on behalf of investors (e.g. banks, trust companies, securities companies, fund management companies, futures and insurance asset management institutions), are defined as asset management business.
- Asset management products include, but are not limited to, (i) non-principal-guaranteed financial products; (ii) trust investment programs and (iii) asset management products issued by securities companies and their subsidiaries; fund management companies and their subsidiaries; futures companies and their subsidiaries, and insurance asset management institutions.
- The Draft Guidance clarifies that non-financial institutions must not issue or sell asset management products, unless otherwise regulated by the state.
- The Draft Guidance also makes clear that asset management is an "off balance sheet" business of financial institutions. Investment risks shall be borne by investors themselves and financial institutions must not guarantee the return on the principal and proceeds. In the event of having difficulties during redemption, financial institutions are not allowed, in any form, to pay out in advance.
- Financial institutions must separately manage and account for each asset management product. In addition, financial institutions are not allowed to carry out capital pooling business to manage funds raised through asset management products.

In June 2017, the MOF (Ministry of Finance) and SAT (State Administration of Taxation) issued circular Cai Shui [2017] No. 56 ("Circular 56") and clarified the definition of asset management products from a tax perspective:

- The term "asset management products" includes: bank financial products, trust funds (including collective fund trusts, single fund trusts), property trusts, public securities investment funds, specific client asset management plans, collective asset management plans, targeted asset management plans, private equity funds, debt investment plans, equity investment plans, debt-equity combination investment schemes, asset-backed plans, portfolio insurance asset management products, and pension management products.
- The term "asset manager" includes: banks, trust companies, public fund management companies and their subsidiaries, securities companies and their subsidiaries, futures companies and their subsidiaries, private equity fund managers, insurance asset management companies, professional insurance asset management agencies, and pension insurance companies.

Circular 56 also clarifies that, from 1 January 2018, the simplified VAT method will temporarily be applied to the supply of asset management products at a VAT rate of 3%. It will remain to be seen whether the simplified VAT method would still apply if the asset management business/products fall under the Draft Guidance definition scope, but are beyond the Circular 56 scope.

* With regard to the VAT policies for asset management products and their impact on businesses, please refer to the following KPMG China Tax Alerts:

- *China Tax Alert: New VAT rules applicable to Asset Management Products (Issue 22, July 2017)*
- *China Tax Alert: Significant retrospective changes introduced to clarify VAT reform policies (Issue 38, December 2016)*

Reference: N/A
Issuance date: 30 October 2017
Effective date: N/A

Relevant industries: All
Relevant companies: MNEs
Relevant taxes: N/A

Potential impacts on businesses:
- Risks of being challenged due to cross-border tax avoidance arrangement increased

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World Customs Organization opinion on using transfer pricing in customs valuation

On 30 October 2017, The Technical Committee on Customs Valuation of the World Customs Organization ("WCO Valuation Committee") released an important case study (case study 14.2). This illustrates a scenario where Customs take into account transfer pricing information in the course of verifying the Customs value. This is the second case study to be issued by the WCO Valuation Committee on this topic, following Case Study 14.1 in 2016. It is worth noting that this is the first time that WCO has adopted a case from the PRC Customs and this particular "China Solution" has thus become part of the global customs valuation guidelines.

The WCO Valuation Committee has been discussing the relationship between Customs valuation and transfer pricing over the past few years. The WCO Valuation Committee confirmed the principle that business documentation developed for transfer pricing purposes may contain useful information for Customs. However, the use of a transfer pricing study as a possible basis for examining the circumstances of a sale should be considered on a case by case basis.

The new case study provides an example of Customs making use of transfer pricing information based on the resale price method. Customs conclude that, in this particular case, the declared import price was not settled using a pricing basis consistent with industry practice and had been influenced by the relationship between the buyer and seller. Therefore, the Customs value should be determined by applying the alternative appraisal methods in sequence (i.e., application of appraisal methods shall be based on the order set out in *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*).

* For more details on the case study, please refer to the following KPMG publication:

- *China Tax Alert: World Customs Organization ("WCO") Issued a New Case Study on the Use of Transfer Pricing Documentation in Customs Valuation - First Case Contributed by the PRC Customs (Issue 29, November 2017)*

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