



# China Tax Alert

Issue 33, December 2019

## FIE investment in China companies facilitated

### Regulations discussed in this issue:

- Circular of State Administration of Foreign Exchange (SAFE) on Further Promoting the Facilitation of Cross-border Trade and Investment, Huifa [2019] No.28 (SAFE Circular 28), issued and effective from 25 October 2019.
- Notice of the State Administration of Foreign Exchange on Improving Business Operational Issues relating to Administration of Sale of Foreign Currency for Payment of Foreign Currency Capital Funds of Foreign Investment Enterprises, Huizongfa [2008] No.142 (SAFE Circular 142).
- Notice of State Administration of Foreign Exchange on Further Improvements and Adjustments to Foreign Exchange Control Policies for Direct Investments, Huifa [2012] No.59 (SAFE Circular 59).

### Background

SAFE Circular 28, issued and effective from 25 October 2019, introduces twelve new measures to facilitate China cross-border trade and investment. This includes the removal of restrictions on foreign invested enterprises (FIEs) from using their registered capital for domestic equity investments. Restrictions previously applied where these were not 'FIE investment enterprises' (i.e. FIEs with equity investment as a listed activity in their registered scope of business). The change, which builds on earlier pilot schemes, should facilitate the expansion of foreign business and investment in China.

### FIE investment in domestic equity

Since 2008, policies governing FIE use of registered capital for domestic equity investment have evolved:

- SAFE Circular 142 (2008) stipulated that the RMB capital obtained by an FIE from foreign exchange settlement had to be used within its approved business scope. Such RMB capital should not be used in domestic equity investment, unless specifically provided (e.g. the regimes for FIE investment enterprises). In addition, FIE investment enterprises, such as foreign invested venture capital investment enterprises (FIVCIEs) or qualified foreign limited partnerships (QFLPs), could only transfer RMB capital for equity investment after obtaining SAFE approval. Subsequent SAFE Circulars 59 (2012), 21 (2013), 13 and 19 (both 2015) simplified the forex administration processes, but they did remove the limitation on FIE non-investment enterprises.
- In July 2019, Shanghai and Shenzhen SAFE branches issued Shanghai Pilot FTZ Policy and Notice 19.

## Regulations discussed in this issue:

- Notice of State Administration of Foreign Exchange on Promulgation of the Provisions on Foreign Exchange Control on Direct Investments in China by Foreign Investors and Supporting Documents, Huifa [2013] No.21 (SAFE Circular 21).
- Notice of the State Administration of Foreign Exchange on Further Simplifying and Improving the Foreign Exchange Management Policies for Direct Investment, Huifa [2015] No.13 (SAFE Circular 13).
- Notice of the State Administration of Foreign Exchange on Reforming the Administration of Foreign Exchange Settlement of Capital of Foreign-invested Enterprises, Huifa [2015] No.19 (SAFE Circular 19).
- Implementation Rules for Further Promoting the Pilot Program of the Reform of Foreign Exchange Control in China (Shanghai) Pilot Free Trade Zone (Edition 4.0), Shanghai Huifa No. 62, (Shanghai Pilot FTZ Policy).
- Notice on Further Promoting the Implementation Rules of Pilot Foreign Exchange Management Reform in Shenzhen Qianhai/Shekou Area (Guangdong) Pilot Free Trade Zone, Shenwaiguan [2019] No.19 (Notice 19).
- Notice on Widening the Scope of Application of Temporary Waiver for Withholding Income Tax for Overseas Investors Using Distributed Profits for Direct Investments, Caishui [2018] No.102 (Circular 102).

These provided that FIE non-investment enterprises in the Shanghai FTZ and Qianhai/Shekou area could use their forex capital account and RMB capital obtained from foreign exchange settlement to undertake domestic equity investment. This is subject to the investment being 'genuine' and reasonable, and complying with the Foreign Investment Negative List. Under the latter certain sectors are prohibited or restricted for foreign investment; in the latter case they may need to meet special conditions and get special approvals.

SAFE Circular 28 now takes the latter treatment for FIE non-investment enterprises nationwide.

## KPMG Observations

Key impacts of Circular 28 for foreign investors include:

- Previously, FIE non-investment enterprises could only invest in China equity by using their accumulated business profits. Going forward, foreign investors have more flexibility to use foreign capital to establish enterprises in China (e.g. establish onshore holding companies and underlying China operating companies), conduct mergers and acquisition, and undertake restructurings. There is no need to change the business scope to include 'equity investment' to do so.
- In view of this, FIE non-investment enterprises could become an alternative structure for making domestic equity investments, alongside QFLP, FIVCIEs, and other variants of FIE investment enterprises. Indeed, the tax rules are clearer for FIEs than for other investment platforms such as QFLP. FIEs can also benefit from the incentive in Circular 102 (2018) which defers the application of withholding tax (WHT) on dividends where profits are reinvested in China.
- Red chip structures (i.e. Chinese companies with a Hong Kong or Cayman top company as listing entity) can also benefit. These can inject the foreign capital raised overseas into their onshore controlled entities, which can then make onward domestic equity investments.

A number of additional points are worth noting:

- Circular 28 provides that the domestic investments made with registered capital should be "genuine" and reasonable. It is not entirely clear what this means - it could be that capital cannot be invested in companies without a substantive business. Further guidance is needed in this regard.
- Circular 28 states that FIE non-investment enterprises can use registered capital in domestic equity investments. The Shanghai FTZ pilot policy goes broader, allowing foreign debt, and other capital, to be used as well. It remains to be seen whether Circular 28 scope will be similarly expanded.
- There are differences in the cash flow and registration procedures for FIE non-investment enterprises and FIE investment enterprises. The latter can directly remit capital into the RMB settlement accounts of subsidiaries or equity transferors without restrictions. The subsidiaries or equity transferors themselves do not need to complete an information registration on receiving the payments. FIE non-investment enterprises are subject to more cumbersome rules.



## KPMG Services

With an overall deepening of reform and opening-up, China is exerting even more efforts to optimize the business environment. KPMG will continue to pay close attention to relevant policies and assist investors with investing and expanding their businesses in China. We can provide the following services:

- M&A tax advisory;
- Tax due diligence;
- FIE set-up advisory;
- China tax advisory and compliance.

并肩赋能  
税道渠成

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG Advisory (China) Limited, a wholly foreign owned enterprise in China and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.



# Contact us

## National

---



### Lewis Lu

Head of Tax  
KPMG China  
T: +86 (21) 2212 3421  
E: lewis.lu@kpmg.com



### Michael Wong

Head of Deal Advisory, M&A Tax  
KPMG China  
T: +86 (10) 8508 7085  
E: michael.wong@kpmg.com

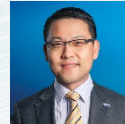
## Northern Region

---



### John Gu

Tax Partner  
China Tax  
T: +86 (10) 8508 7095  
E: john.gu@kpmg.com



### Christopher Xing

Tax Partner  
China Tax  
T: +86 (10) 8508 7072  
E: christopher.xing@kpmg.com



### Adams Yuan

Tax Partner  
China Tax  
T: +86 (10) 8508 7596  
E: adams.yuan@kpmg.com

## Eastern and Western Region

---



### Christopher Mak

Tax Partner  
China Tax  
T: +86 (21) 2212 3409  
E: christopher.mak@kpmg.com



### Henry Wong

Tax Partner  
China Tax  
T: +86 (21) 2212 3380  
E: henry.wong@kpmg.com

## Southern Region

---



### Fiona He

Tax Partner  
China Tax  
T: +86 (20) 3813 8623  
E: fiona.he@kpmg.com

## HK

---



### Darren Raymond Bowdern

Tax Partner  
China Tax  
T: +852 2826 7166  
E: darren.bowdern@kpmg.com



### Benjamin Pong

Tax Partner  
China Tax  
T: +852 2143 8525  
E: benjamin.pong@kpmg.com

## Management Leaders

### National Leader

**Lewis Lu**  
Head of Tax, KPMG China  
+86 (21) 2212 3421  
[lewis.lu@kpmg.com](mailto:lewis.lu@kpmg.com)

### National Tax Markets Leader

**Lilly Li**  
Partner-in-Charge,  
KPMG China  
+86 (20) 3813 8999  
[lilly.li@kpmg.com](mailto:lilly.li@kpmg.com)

### National Tax Operations Leader

**Anthony Chau**  
Partner-in-Charge,  
KPMG China  
+86 (21) 2212 3206  
[anthony.chau@kpmg.com](mailto:anthony.chau@kpmg.com)

### Regional Leaders

**Vincent Pang**  
Regional Tax Partner-in-Charge,  
Northern Region  
+86 (10) 8508 7516  
[vincent.pang@kpmg.com](mailto:vincent.pang@kpmg.com)

**Jennifer Weng**  
Regional Tax Partner-in-Charge,  
Eastern & Western Region  
+86 (21) 2212 3431  
[jennifer.weng@kpmg.com](mailto:jennifer.weng@kpmg.com)

**Karmen Yeung**  
Regional Tax Partner-in-Charge,  
Southern Region  
+852 2143 8818  
[karmen.yeung@kpmg.com](mailto:karmen.yeung@kpmg.com)

**Curtis Ng**  
Regional Tax Partner-in-Charge,  
Hong Kong (SAR)  
+852 2143 8709  
[curtis.ng@kpmg.com](mailto:curtis.ng@kpmg.com)

## Service Lines Leaders

### Global Transfer Pricing Services

**Xiaoyue Wang**  
+86 (10) 8508 7090  
[xiaoyue.wang@kpmg.com](mailto:xiaoyue.wang@kpmg.com)

### Research & Development Tax

**Bin Yang**  
+86 (20) 3813 8605  
[bin.yang@kpmg.com](mailto:bin.yang@kpmg.com)

### Legal & Indirect Tax

**Lachlan Wolfers**  
+852 2685 7791  
[lachlan.wolfers@kpmg.com](mailto:lachlan.wolfers@kpmg.com)

### Global Compliance Management Services

**Stanley Ho**  
+852 2826 7296  
[stanley.ho@kpmg.com](mailto:stanley.ho@kpmg.com)

### M&A Tax

**Michael Wong**  
+86 (10) 8508 7085  
[michael.wong@kpmg.com](mailto:michael.wong@kpmg.com)

### Tax Dispute Resolution

**Tony Feng**  
+86 (10) 8508 7531  
[tony.feng@kpmg.com](mailto:tony.feng@kpmg.com)

### International Tax

**Christopher Xing**  
+86 (10) 8508 7072  
[christopher.xing@kpmg.com](mailto:christopher.xing@kpmg.com)

### People Services

**Murray Sarelus**  
+852 3927 5671  
[murray.sarelus@kpmg.com](mailto:murray.sarelus@kpmg.com)

### Tax Managed Services

**Maggie Mao**  
+86 (21) 2212 3020  
[maggie.y.mao@kpmg.com](mailto:maggie.y.mao@kpmg.com)

### Accounting & Payroll

**Janet Wang**  
+86 (21) 2212 3302  
[janet.z.wang@kpmg.com](mailto:janet.z.wang@kpmg.com)

### Trade & Customs

**Eric Zhou**  
+86 (10) 8508 7610  
[ec.zhou@kpmg.com](mailto:ec.zhou@kpmg.com)

### Tax Transformation & Tax Technology

**Michael Li**  
+86 (21) 2212 3463  
[michael.y.li@kpmg.com](mailto:michael.y.li@kpmg.com)

### US Corporate Tax

**Wade Wagatsuma**  
+852 2685 7806  
[wade.wagatsuma@kpmg.com](mailto:wade.wagatsuma@kpmg.com)

## Sector / Market segment Leaders

### Auto

**William Zhang**  
+86 (21) 2212 3415  
[william.zhang@kpmg.com](mailto:william.zhang@kpmg.com)

**Grace Luo**  
+86 (20) 3813 8609  
[grace.luo@kpmg.com](mailto:grace.luo@kpmg.com)

### Energy & Natural Resources

**Jessica Xie**  
+86 (10) 8508 7540  
[jessica.xie@kpmg.com](mailto:jessica.xie@kpmg.com)

**Ling Lin**  
+86 (755) 2547 1170  
[ling.lin@kpmg.com](mailto:ling.lin@kpmg.com)

### Technology, Media & Telecommunications

**Sunny Leung**  
+86 (21) 2212 3488  
[sunny.leung@kpmg.com](mailto:sunny.leung@kpmg.com)

### Financial Services

**Tracey Zhang**  
+86 (10) 8508 7509  
[tracy.h.zhang@kpmg.com](mailto:tracy.h.zhang@kpmg.com)

**John Timpany**  
+852 2143 8790  
[john.timpany@kpmg.com](mailto:john.timpany@kpmg.com)

### Enterprise

**Karmen Yeung**  
+852 2143 8818  
[karmen.yeung@kpmg.com](mailto:karmen.yeung@kpmg.com)

**Koko Tang**  
+86 (755) 2547 4180  
[koko.tang@kpmg.com](mailto:koko.tang@kpmg.com)

### Technology, Media & Telecommunications

**Kelly Liao**  
+86 (20) 3813 8668  
[kelly.liao@kpmg.com](mailto:kelly.liao@kpmg.com)

### Real Estate

**Jennifer Weng**  
+86 (21) 2212 3431  
[jennifer.weng@kpmg.com](mailto:jennifer.weng@kpmg.com)

**Ricky Gu**  
+86 (20) 3813 8620  
[ricky.gu@kpmg.com](mailto:ricky.gu@kpmg.com)

### Domestic Chinese Market

**Wayne Tan**  
+86 (28) 8673 3915  
[wayne.tan@kpmg.com](mailto:wayne.tan@kpmg.com)

**John Wang**  
+86 (571) 2803 8088  
[john.wang@kpmg.com](mailto:john.wang@kpmg.com)

### Asset Management Private Equity

**Darren Bowdern**  
+852 2826 7166  
[darren.bowdern@kpmg.com](mailto:darren.bowdern@kpmg.com)

### US Desk

**David Ling**  
+1 609 874 4381  
[davidxling@kpmg.com](mailto:davidxling@kpmg.com)

**Shirley Shen**  
+1 669 208 5352  
[yinghuashen1@kpmg.com](mailto:yinghuashen1@kpmg.com)

### Japanese Market

**Naoko Hirasawa**  
+86 (21) 2212 3098  
[naoko.hirasawa@kpmg.com](mailto:naoko.hirasawa@kpmg.com)

**Vivian Chen**  
+86 (755) 2547 1198  
[vivian.w.chen@kpmg.com](mailto:vivian.w.chen@kpmg.com)

### Korean Market

**Henry Kim**  
+86 (10) 8508 7023  
[henry.kim@kpmg.com](mailto:henry.kim@kpmg.com)

## Operations

### China Tax Centre

**Conrad Turley**  
+86 (10) 8508 7513  
[conrad.turley@kpmg.com](mailto:conrad.turley@kpmg.com)

### China Tax Centre

**Carol Cheng**  
+86 (10) 8508 7644  
[carol.y.cheng@kpmg.com](mailto:carol.y.cheng@kpmg.com)

### Learning & Development Tax

**Irene Yan**  
+86 (10) 8508 7508  
[irene.yan@kpmg.com](mailto:irene.yan@kpmg.com)