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CHINA TAX ALERT

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Pilot Free Trade Zone Series — Issuance of policies on supporting the establishment of wholly foreign owned medical institutions in China (Shanghai) Pilot Free Trade Zone

Regulations discussed in this issue:

- *Provisional Measures for the Administration of Wholly Foreign Owned Medical Institutions in China (Shanghai) Pilot Free Trade Zone,* Hu Fu Ban Fa [2013] No. 63, issued by General Office of Shanghai Municipal People's Government on 13 November, 2013

Background

The General Office of Shanghai Municipal People's Government recently issued the *Provisional Measures for the Administration of Wholly Foreign Owned Medical Institutions in China (Shanghai) Pilot Free Trade Zone* (hereinafter "Provisional Measures"), which was jointly formulated by the Shanghai Municipal Commission of Health and Family Planning, Shanghai Municipal Commission of Commerce and Shanghai Administration for Industry and Commerce. Provisional Measures stipulates the conditions for establishing wholly foreign owned medical institutions in China (Shanghai) Pilot Free Trade Zone (hereafter "Pilot FTZ"), approval and registration administrations, as well as practice related issues. The Provisional Measures provides regulatory support to foreign investors to establish wholly foreign owned medical institutions in the Pilot FTZ.

Developments of foreign invested medical institutions in China

Key regulations	Significant developments
Provisional Measures for the Administration of Sino-foreign Equity Joint and Cooperative Joint Medical Institutions **(issued in 2000)**	• Foreign investors are allowed to establish a medical institution in the form of Sino-foreign equity or cooperative joint venture, and the proportion of equity interest or the rights and interests of the Chinese party shall not be less than 30%
Mainland and Hong Kong Closer Economic Partnership Arrangement, Mainland and Macau Closer Economic Partnership Arrangement, **and *Economic Cooperation Framework Agreement*** **(issued in 2010)**	• Qualified service providers from Hong Kong and Macau are allowed to set up wholly foreign owned hospitals in Shanghai, Chongqing, Guangdong, Fujian and Hainan • Qualified service providers from Taiwan can establish wholly foreign owned hospital in Shanghai, Jiangsu, Guangdong, Fujian and Hainan

***Provisional Measures* (issued in 2013)**	• Provisional Measures permits qualified service providers to establish wholly foreign owned medical institutions in the Pilot FTZ

Summary of Provisional Measures

1. Provisional Measures stipulates the conditions for establishing a wholly foreign owned medical institution in the Pilot FTZ:

   The establishment and development of wholly foreign owned hospital should conform with the spirits and requirements of promoting privately rendered medical services as mentioned in Shanghai's regional health plan and medical institution establishment plan, and *Basic Standards for Medical Institutions* formulated by the State Administration of Health and Family Planning.

   Foreign Investors must be legal entities who can bear civil responsibilities independently, and shall have more than 5 years of direct experience in medical institution investment and management. In addition, one of the following requirements must be met:

   1) Able to provide globally advanced medical institution management experience, management models and service models; or

   2) Able to provide globally advanced medical technologies and equipment; or

   3) Able to supplement or improve the inadequacy of local medical service capacity, quality, technology, funding and medical facilities.

   Wholly Foreign Owned Medical Institutions should meet all of the following requirements:

   1) The medical institution should be an independent legal entity;

   2) Total investment should be more than RMB20 million; and

   3) Operation term should be 20 years.

2. Provisional Measures clarifies that the Administration for Industry and Commerce in the Pilot FTZ is the registration authority of wholly foreign owned medical institutions and that applicants should submit all application documents to this authority. Subsequently, written approval or rejection shall be issued by the Shanghai Municipal Commission of Health and Family Planning, the Administrative Committee of the Pilot FTZ and the Administration for Industry and Commerce in the Pilot FTZ. Once approved, the Administration for Industry and Commerce in the Pilot FTZ shall deliver relevant certificates, such as Approval Certificate for Establishment of Medical Institution, Approval Certificate for Foreign Invested Enterprises and a Business License.

3. Provisional Measures stipulates that the charges for medical services provided by a wholly foreign owned medical institution in the Pilot FTZ are subject to the relevant regulations of the State.

KPMG Obeservations

Provisional Measures relaxes the existing restriction on setting up wholly foreign owned medical institutions in China, no longer limiting qualified service providers to those from Hong Kong, Macau and Taiwan but allowing all qualified foreign investors to set up wholly foreign owned medical institutions in the Pilot FTZ. In addition, forms of wholly foreign owned medical institutions other than hospitals, including maternal and child care service centres, health centres, medical centres and clinics are now also allowed in the Pilot FTZ.

Furthermore, Provisional Measures simplifies the relevant approval and registration procedures for establishing wholly foreign owned medical institutions. With the "one window acceptance" arrangement, foreign investors only have to submit application documents to the Administration for Industry and

Commerce in the Pilot FTZ and obtain establishment approvals and certificates from the same authority.

The relatively substantial amendments made to the administrative procedures may prompt an increase in the number of foreign investors with globally advanced managerial experience and service skills will come to set up wholly foreign owned medical institutions in the Pilot FTZ.

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