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PRC Tax

Shanghai eases foreign exchange control on remittance of reimbursements

The Shanghai Branch of the State Administration of Foreign Exchange ("SAFE") issued a circular in December 2010 (Shanghai Huifa [2010] No. 192, "Circular 192") to ease the foreign exchange control requirements on the remittance of reimbursements by Shanghai entities. The new circular makes it easier for foreign investment enterprises in Shanghai to make such reimbursements to affiliated companies outside China.

Background

The SAFE issued guidance in 2004 (Circular Huifa [2004] No. 62, "Notice on Service-Trading Foreign Exchange Remittances for Multinational Corporations," "Circular 62") that allows qualified Chinese subsidiaries of multinational companies (MNCs) to make reimbursements under service-trading items to foreign related parties (including reimbursements of salary, welfare subsidies, social security contributions and premiums on overseas commercial insurance for expatriates; expenses incurred for employees' overseas business trips and overseas training; shared R&D costs and procurement costs, etc.). Circular 62 is generally applicable only to MNCs with global or regional headquarters located in China. Most ordinary enterprises were not entitled to the benefits under Circular 62 and unable to remit reimbursements until a new circular was issued in August 2010 by the SAFE. Circular Huifa [2010] No. 43 ("Circular 43") stipulates that "single foreign investment enterprises or Chinese investment enterprises"[1] also may make such reimbursements to their foreign related parties pursuant to the relevant rules. The recent circular issued by the Shanghai Branch of the SAFE provides details on the implementation of Circular 62 and 43 in Shanghai.

Highlights of Circular 192

In accordance with the rules in Circular 62, the Shanghai SAFE circular allows qualified Chinese subsidiaries of MNCs to remit a reimbursement under service-trading items provided they have an Approval Instrument issued by the SAFE Shanghai Branch. Other entities may make a remittance under service-trading items as follows:

1) Enterprises falling in one of the following categories may apply to make a direct reimbursement on the basis of the Filing Form for Remittances issued by the Shanghai Branch of the SAFE:

[1] A "single foreign investment enterprise or Chinese investment enterprise" generally refers to an enterprise other than qualified Chinese subsidiaries of an MNC as stipulated in Circular 62.

- Regional headquarters of MNCs recognized by the Shanghai Municipal Commission of Commerce;
- Foreign investment research and development centers recognized by the Shanghai Municipal Commission of Commerce;
- Foreign investment advanced enterprises recognized by the Shanghai Municipal Commission of Commerce and the Shanghai Association of Enterprises with Foreign Investment;
- Key service outsourcing and service trading enterprises recognized by the Shanghai Municipal Commission of Commerce;
- Insurance and insurance agency institutions.

2) Other enterprises:

- For each foreign exchange payment not exceeding the equivalent of USD 100,000 (inclusive), an enterprise can apply to make a direct reimbursement through a bank;
- For each foreign exchange payment exceeding the equivalent of USD 100,000, an enterprise must obtain approval from the Shanghai Branch of the SAFE and then apply to make a reimbursement payment through a bank.

Comments

For efficiency purposes, foreign companies often pay various expenses outside China on behalf of their Chinese related parties; such expenses include salaries of expatriates, insurance premiums and travelling expenses incurred outside China. However, because many foreign investment enterprises in China have encountered difficulties in satisfying the MNC requirements in Circular 62, relevant expenses often cannot be paid out, which has resulted in large amounts of accounts payable consisting of reimbursement expenses. Some enterprises have even disguised the reimbursements as fictional transactions to facilitate the remittance, which increases the tax burden, as well as risk exposure.

The issuance of Circulars 43 and 192 are both welcome developments. Foreign investment enterprises located in Shanghai can now make reimbursements under the procedures prescribed by Circular 192, such as by submitting an application for the Filing Form for Remittances with the SAFE branch. We understand that the relevant authorities in many other areas have not yet issued similar regulations, so affected foreign investment enterprises should closely monitor local practices and timely consult on the local practice details of Circular 43 with the relevant foreign exchange administration or designated foreign exchange bank in order to remit the reimbursements with undue delay.

It is worth noting that an enterprise must submit the documents prescribed in the regulations to the bank at the time a remittance is made, and where the foreign exchange payment under service-trading items exceeds USD 30,000, the enterprise must produce a tax clearance certificate issued by the tax authorities. Failure to obtain a tax clearance certificate will create difficulties in remitting the reimbursement.

Tax Analysis is published for the clients and professionals of the Hong Kong and Chinese Mainland offices of Deloitte Touche Tohmatsu. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter. For more information or advice on the above subject or analysis of other tax issues, please contact:

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About the Deloitte China National Tax Technical Centre

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