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HAN KUN LAW OFFICES

Newsletter

2nd Edition of 2012

Insights & Ideas

1. SAFE Introduced New Circular on Domestic Individuals Participating in Stock Incentive Plans of Overseas Publicly-listed Companies

Legal Updates

1. MOFCOM Revised Its Commercial Franchise Information Disclosure Measures
2. Tianjin Issued Supplementary Notice on Equity Investment Enterprises Registration and Record Filing
3. Further Clarification on the Regulation of Individual Income Tax Concerning the Transfer of Restricted Shares of Listed Companies

SAFE Introduced New Circular on Domestic Individuals Participating in Stock Incentive Plans of Overseas Publicly-listed Companies (Authors: Ying YANG, Nikki YANG)

To better regulate the foreign exchange administration of domestic individuals participating in stock incentive plans of overseas publicly-listed companies, the State Administration of Foreign Exchange (the "**SAFE**") promulgated the *Circular on Matters Relating to Foreign Exchange Administration of Domestic Individuals Participating in Stock Incentive Plans of Overseas Publicly -listed Companies* (Hui Fa [2012] No.7, the "**Circular 7**") on February 15, 2012.

Compared with other relevant operating rules of foreign exchange administration previously promulgated, Circular 7 has clarifies the procedural requirements on foreign exchange registration for domestic individuals participating in stock incentive plans of overseas publicly-listed companies, the management of the bank account of such individuals for their exercise of stock options, purchase and sale of corresponding stocks or interests, and fund transfer, and the additional measures for timely on-going monitoring. Certain important provisions and changes are summarized as follows:

Validity of Relevant SAFE Circulars Promulgated Prior to Circular 7

Starting from the date of promulgation of Circular 7, the *Operating Rules on the Foreign Exchange Administration of Domestic Individuals Participating in Overseas Publicly-listed Companies' Employee Stock Ownership Plans and Share Option Schemes* (Hui Zong Fa [2007] No.78, the "**Circular 78**") and the *Notice on Delegation of Approval Authority Regarding the Quota for the Initial Purchase and Payment of Foreign Exchange for Domestic Individuals Participating in Overseas Publicly-listed Companies' Employee Stock Ownership Plans and the Opening of Foreign Exchange Accounts* (Hui Zong Fa [2008] No.2) shall be abolished simultaneously.

Expansion of the Application Scope

Compared with Circular 78, Circular 7 has further clarified the definition of the term "overseas publicly-listed companies". According to Circular 7, the term "overseas publicly-listed companies" means the companies publicly-listed on any overseas stock exchange including those stock exchanges locating in Hong Kong, Macao and Taiwan. Circular 7 also expands the scope of the term "domestic companies". According to Circular 7, "domestic companies" means overseas publicly-listed companies registered in the PRC domestic branches (including representative offices) of overseas publicly-listed companies, and parent companies, subsidiaries, partnerships or other domestic institutions directly or indirectly controlling over or controlled by overseas publicly-listed companies at all levels in the PRC. Furthermore, the scope of the term "domestic

individuals" is also expanded to cover the directors, supervisors, senior executives and other employees of domestic companies who are of Chinese nationality (including permanent residents of Hong Kong, Macau and Taiwan) and foreigners who are residents of China. Furthermore, the relationship between domestic individuals and relevant domestic companies can be either employment relationship or service relationship.

In addition, Circular 7 expands its application from employee stock ownership plans and option plans to all types of stock incentive plans. According to Circular 7, stock incentive plans shall mean equity incentive plans provided by an overseas listed company to the directors, supervisors, officials and other employees of its domestic companies who have an employment or service relationship with such company by granting its own stocks to them, including employee stock ownership plans, stock option plans and other stock incentive types permitted by the laws.

Foreign Exchange Registration Procedures under Circular 7

Different from Circular 78, Circular 7 does not distinguish the foreign exchange procedures for employee ownership plans and share option schemes, but unifies such procedures for domestic individuals participating in the same stock incentive plans of overseas publicly-listed companies as follows: those domestic individuals shall collectively entrust a domestic agent to complete all the procedures for registration, opening of accounts, funds transfer and foreign exchange, and shall entrust an overseas trustee to handle the matters relating to the exercise of stock options, the purchase and sale of relevant stock or stock interests and respective funds transfer. However, similar to Circular 78, Circular 7 does not specify the timing for foreign exchange registration though it clarifies that domestic individuals participating in the stock incentive plans shall complete the foreign exchange registration.

Moreover, Circular 7 provides that the domestic agent shall be a domestic company participating in the stock incentive plan or other domestic institutions that are permitted to operate asset custody business and selected by such domestic company in accordance with law. However, unlike Circular 78, Circular 7 does not limit "other domestic institutions" to be a labor union with a legal person status in such domestic company or a trust investment company qualified to operate asset custody business, and does not prescribe any limits to the qualifications of an overseas trustee.

Source of Funding for Domestic Individuals Participating in Stock Incentive Plans

Circular 7 provides that domestic individuals may use their own foreign exchange in their foreign exchange deposit accounts, Renminbi or any other legitimate onshore funds to participate in stock incentive plans. According to the registration forms attached to Circular 7, the methods for granting under stock incentive plans may include both cash and non-cash subscription while the sources of funding may include purchase of foreign exchange, domestic individuals' own foreign exchange and other sources. Unlike Circular 78, Circular 7 does not specify that domestic individuals are not allowed to directly pay for the funds needed by the exercise of stock option abroad.

Procedures for Purchase and Payment of Foreign Exchange Under Circular 7

In the event that a domestic agent needs to remit funds from China on behalf of the domestic individuals participating in stock incentive plans, the domestic agent shall apply to the local foreign exchange administration for the quota for payment of foreign exchange on an annual basis by providing the foreign exchange registration certificate for stock incentive plans (such certificate need not be provided if the applicant has applied for the quota for payment when it applied for the initial foreign exchange registration), a written application, the latest filled Foreign Exchange Registration Form of Domestic Individuals Participating in Stock Incentive Plans of Overseas Publicly-listed Companies and other relevant materials.

After the local foreign exchange administration has issued to the domestic agent the foreign exchange registration certificate for stock incentive plans with respective quota for payment of foreign exchange printed on it, banks may handle respective procedures for purchase and payment of foreign exchange within such quota for the domestic agent.

Unlike Circular 78, Circular 7 does not require a domestic agent to apply to the local foreign exchange administration for the opening of a special overseas foreign exchange account in an overseas custody bank.

Remittance of Proceeds Arising from Domestic Individual's Participation in Stock Incentive Plans back to China

Circular 7 has relatively detailed provisions regarding how to handle the foreign exchange proceeds arising from domestic individual's participation in stock incentive plans remitted back to China. A domestic agent shall go through relevant procedures for funds transfer and settlement of exchange at banks by providing a written application, the foreign exchange registration certificate for stock incentive plans, overseas transaction certificates and other relevant materials.

Change of Foreign Exchange Registration for Stock Incentive Plans

Circular 7 has added provisions regarding change of foreign exchange registration for stock incentive plans when material changes happen. "Material changes" refer to the changes that happen to stock incentive plans of overseas publicly-listed companies (for example, modification of key terms and conditions of the original plans and adding new plans, change of the original plans due to merger and acquisition, restructuring, or other material changes of overseas publicly-listed companies or domestic companies) and change of domestic agent and overseas trustee etc.. Within three months after such changes happen, a domestic agent shall go through the formalities to amend foreign exchange registration at the local foreign exchange administration by providing a written application, the foreign exchange registration certificate for the original stock incentive plans, a latest filled Foreign Exchange Registration Form of Domestic Individuals Participating in Stock Incentive Plans of Overseas Publicly-listed Companies and other relevant materials proving the authenticity of the transactions.

Cancellation of Foreign Exchange Registration for Stock Incentive Plans

Circular 7 has added provisions regarding cancellation of foreign exchange registration for stock incentive plans when such stock incentive plans terminate. In the event that the terms of stock incentive plans expire, or stock incentive plans terminate due to the delisting of overseas publicly-listed companies from overseas stock exchange, merger and acquisition or restructuring of domestic companies, or other material events, a domestic agent shall go through the formalities to cancel foreign exchange registration at the local foreign exchange administration by providing a written application, the foreign exchange registration certificate for the original stock incentive plans and other relevant materials within twenty business days after such stock incentive plans terminate.

Record Filing Requirements for Stock Incentive Plans

Compared with Circular 78, Circular 7 has shortened the time for quarterly record filing of stock incentive plans by a domestic agent from the first ten business days of every quarter to the first three business days of every quarter.

Moreover, Circular 7 has added the requirements for record filing by the bank of deposit of a domestic agent. According to Circular 7, the bank of deposit of a domestic agent shall submit the Form of Opening and Closure of the Domestic Special Foreign Exchange Account for Domestic Individuals Participating in Stock Incentive Plans of Overseas Publicly-listed Companies and the Form of Balance of Payments of the Domestic Special Foreign Exchange Account for Domestic Individuals Participating in Stock Incentive Plans of Overseas Publicly-listed Companies to the local foreign exchange administration within the first three business days of every month.

Other Important Provisions

Similar to Circular 78, Circular 7 also provides that where a domestic individual's participation in stock incentive plans of overseas publicly-listed companies involves foreign payment and collection of money via the domestic special foreign exchange account opened by a domestic agent, the domestic agent shall handle the procedures regarding indirect declaration of international balance of payments statistics in accordance with relevant provisions.

Furthermore, Circular 7 requires that all the materials required to be submitted for the relevant foreign exchange registration and filing shall be in Chinese version, which is legally binding. Where there are multiple versions in Chinese and other languages, the Chinese version, which is legally binding, shall prevail.

The aforementioned is a preliminary summary of Circular 7. There may be uncertainties regarding the application of Circular 7 in practice as the assessment criteria of different bureaus of foreign exchange administration may vary to some extent. Should you have any questions regarding Circular 7 and its application, please do not hesitate to contact us.

Legal Updates

1. MOFCOM Revised Its Commercial Franchise Information Disclosure Measures (Authors: Evan ZHANG, Muchun XU)

In order to further protect the lawful rights and interests of franchisors and franchisees, on February 23, 2012, the PRC Ministry of Commerce (MOFCOM) amended the *Measures for the Administration of the Disclosure of Information Pertaining to Commercial Franchises* it promulgated on April 13, 2007. The amended Measures will come into force as of April 1, 2012.

Compare with the 2007 Measures, the amended Measures contain the following amendments:

Expand the definition of "affiliated party"

According to the 2007 Measures, the "affiliated company" means "the parent company of the franchiser, a subsidiary company of which all or majority of the equity is directly or indirectly owned by the franchiser, and a company of which all or majority of the equity is directly or indirectly owned by the owner of that franchiser". The amended Measures added the "franchisor's natural person shareholders" into the definition of "affiliated party".

Specify the information required to be disclosed by franchisers

According to the amended Measures, information disclosed by franchisers should include the following items:

a) Basic information of the franchisor and the franchising activities;

b) Basic information on the business resources held by the franchisor;

c) Basic information on franchising expenses;

d) Information on the prices and conditions of the products, services and equipment provided to the franchisee;

e) Information on continuous services to the franchisee;

f) The forms and contents of the guidance and supervision over the franchisee's business activities;

g) Information on investment budgets of franchising outlets;

h) Information on franchisees within the territory of China;

i) The abstract of the financial and accounting statements and that of the auditor's reports of the franchisor in the past two (2) years as audited by accounting firms or audit firms;

j) Information on franchise-related litigations and arbitrations involving the franchisor in the past five (5) years;

k) Records of major illegal business operations committed by the franchisor and its legal representative;

l) Text of the franchise contract.

Add new requirements on franchisee's duty of confidentiality

According to the amended Measures, a franchisor shall be entitled to require a franchisee to sign a confidentiality agreement prior to disclosing information thereto. The franchisee shall not divulge or improperly use the trade secrets that come to its knowledge during the process of contract conclusion, regardless of whether the franchise contract is legally established or not. After the termination of the franchise contract, the franchisee shall still be under the obligation to keep confidential the franchisor's trade secrets that come to its knowledge due to the contractual relationship, even if there is no confidentiality agreement after the termination of the franchise contract. The franchisee shall be liable for compensating the losses caused to the franchisor or other persons due to its divulgence or improper use of trade secrets in violation of the preceding two paragraphs.

Amend situation in which the franchisor may discharge the franchise contract

According to the amended Measures, a franchisee may discharge the franchise contract if the franchisor has concealed information that affects the performance of the contract, thereby frustrating the purposes of the contract, or if the franchisor has disclosed false information.

Amend the legal liabilities of the franchisor

According to the amended Measures, a franchisee shall be entitled to report to the competent commerce department any violation of these Measures committed by a franchisor. Once the violation is verified, the franchisor shall be punished pursuant to Article 26 (the franchisor shall be ordered by the department in charge of commerce to make a correction and a fine not exceeding RMB10,000 shall be imposed; in serious cases, a fine amounting to a minimum of RMB10,000 but not exceeding RMB50,000 shall be imposed and a public announcement shall be made), Article 27 (the franchiser shall be ordered by the industrial and commercial department to make a correction and a fine amounting to a minimum of RMB30,000 but not exceeding RMB100,000 shall be imposed. If the case is serious, a fine amounting to a minimum of RMB100,000 and not exceeding RMB300,000 shall be imposed and a public announcement shall be made. If a crime is made out, the violating party shall be subject to criminal liability in accordance with the law) or Article 28 (the franchisor shall be ordered by the department in charge of commerce to make corrections and shall be imposed with a fine amounting to a minimum of RMB10,000 and not exceeding RMB50,000. Under serious cases, a fine amounting to a minimum of RMB50,000 but not exceeding RMB100,000 shall be imposed and a public announcement shall be made) of the Regulations for the Administration of Commercial Franchising.

2. Tianjin Issued Supplementary Notice on Equity Investment Enterprises Registration and Record Filing (Authors: Evan ZHANG, Chu LIU)

The Development and Reform Commission of Tianjin Municipality, together with the Bureau of Financial Affairs, Administration of Commerce and Industry, Commission of Commerce and Bureau of Public Finance of Tianjin Municipality, jointly promulgated the *Supplementary Notice to the Measures for the Administration of the Equity Investment Enterprises and Equity Investment Management Institutions in Tianjin* (Jin Fa Gai Cai Jin [2012] No. 146, "**Notice 146**") on March 5, 2012. Notice 146 is a supplement to *the Measures for the Administration on the Equity Investment Enterprises and Equity Investment Management Institutions in Tianjin* (Jin Fa Gai Cai Jin [2011] No. 675, "**Notice 675**") issued by the same authorities. It is also the first local implementing rule after the promulgation by National Development and Reform Commission of the *Notice on the Promotion of the Standardized Development of the Equity Investment Enterprises* (Fa Gai Ban Cai Jing [2011] No. 2864, "**Notice 2864**").

Notice 146 has elaborated on the record-filing of and regulation on the Existing Equity Investment Enterprises and Equity Investment Management Institutions (as defined below) and clarified the sanctions against those Existing Equity Investment Enterprises and Equity Investment Management Institutions that fail to satisfy the record filing requirements. Notice 146 further strengthens regulation on equity investment enterprises and equity investment management institutions registered in Tianjin, which will exert further impact on the registration and record-filing process of equity investment enterprises and equity investment management institutions in Tianjin.

Salient points of Notice 146 are:

Further clarification on the record-filing of Existing Equity Investment Enterprises and Equity Investment Management Institutions

1) What are "Existing Equity Investment Enterprises and Equity Investment Management Institutions"?

Notice 146 defines "Existing Equity Enterprises and Equity Investment Management Institutions" as equity investment enterprises and equity investment management institutions registered with Tianjin Administration of Industry and Commerce prior to September 1, 2011, which have the wording of "equity" or "fund" in their names, or have the wording of "engaging in investment in private enterprises, and non publicly issued stocks of listed enterprises, and related consulting services" in the business scope of equity investment enterprises, or "entrusted management of equity investment funds, engaging in investment and financing management and related consulting services" in the business scope of equity investment management institutions.

2) What are the mandatory requirements for the record-filing of the "Existing Equity Investment Enterprises and Equity Investment Management Institutions"?

According to Notice 146, the Existing Equity Investment Enterprises, if fitting into one of the following three scenarios, may apply for record filing despite the requirements set forth in the Notice 675 (their respective management institutions shall apply for record filing simultaneously):

(a) For those Existing Equity Investment Enterprises with paid-in capital above 20,000,000 RMB before March 5, 2012 (the date Notice 146 is promulgated), each investor thereof is obligated to invest at least 1,000,000 RMB into the equity investment enterprises (general partner excluded), which is lower than the minimum amount of 2,000,000 RMB for each individual investor and 10,000,000 RMB for each institutional investor respectively in Notice 675.

(b) For those Existing Equity Investment Enterprises that have invested in target companies prior to March 5, 2012 (the date Notice 146 is promulgated), yet without over 20,000,000 RMB of paid-in capital, each investor thereof is obligated to invest at least 1,000,000 RMB into the equity investment enterprises (general partner excluded), which is also lower than the requirement in Notice 675. And there is even no requirement of minimum 20,000,000 RMB paid-in capital.

(c) For other Existing Equity Investment Enterprises and Equity Investment Management Institutions, the mandatory requirement is the same as what is set forth in Notice 675, in other words, a total subscribed capital of more than 100,000,000 RMB with each individual investor subscribing at least 10,000,000 RMB and each institutional investor subscribing at least 2,000,000 RMB.

In addition, Notice 146 also provides that the equity investment enterprises established by the Existing Equity Investment Institutions with the sole purpose of investment into one single target company ("Special Purpose Vehicle" or "SPV") shall also apply for record filing together with the Existing Equity Investment Enterprises. Notice 146 requires the Existing Equity Investment Enterprises to undertake the relevant legal liability for the SPV's investment and financing activities and the SPV to be supervised by the same custodial bank serving the Existing Equity Investment Enterprises, which shall be documented and filed together with the Existing Equity Investment Enterprises.

3) How should Existing Equity Investment Management Institutions which do not establish or manage any equity investment enterprises apply for record-filing?

Notice 146 provides that Existing Equity Investment Management Institutions which have not yet established or been managing any equity investment enterprises shall submit the following documents to the local registry within 2 months from March 5, 2012, in other words, prior to May 5, 2012：(i) the resumes and the photocopies of identification documents of at least 3 senior

management personnel; (ii) the contact information of the persons in charge and contact persons; and (iii) the signed Undertaking Letter for Fundraising in Compliance with the Applicable Laws and Regulations and the signed Risk Alerts as appended to Notice 675.

Where such equity investment management institutions set up or are entrusted to manage equity investment enterprises within 2 years from March 5, 2012, they will have their equity investment enterprises apply for record-filing under Notice 675 together with themselves. If they fail to set up or been entrusted to manage equity investment enterprises by then, they shall apply for a change in their names and business scopes.

Those equity investment management institutions set up after September 1, 2011 (in other words, outside the scope of "Existing Equity Investment Management Institutions") shall submit the relevant documents to the local registry within 2 months after March 5, 2012, and apply for record-filing of themselves and equity investment management enterprises set up by them within 2 years after March 5, 2012. If the record filing process fails to be completed within 2 years, the equity investment management institutions shall change their names and business scopes, or even be deregistered.

4) Where should the application of record-filing be submitted?

Those Existing Equity Investment Enterprises with subscribed capital of more than 500,000,000 RMB, shall apply for record-filing with the National Development and Reform Commission through the Development and Reform Commission of the Tianjin Municipality. Those Existing Equity Investment Enterprises with subscribed capital of less than 500,000,000 RMB, shall apply for record-filing with the Bureau for Development and Record Filing of Equity/Industry Investment Funds of Tianjin Municipality ("Bureau for Record Filing of Tianjin Municipality").

5) What is the time limit for record-filing of the Existing Equity Investment Enterprises and Equity Investment Management Institutions?

According to Notice 146, the Existing Equity Investment Enterprises and Equity Investment Management Institutions shall complete the record filing or rectification prior to September 1, 2013.

6) What are the legal consequences for Existing Equity Investment Enterprises and Equity Investment Management Institutions that fail to make record filling?

According to Notice 146, those equity investment enterprises that have not completed the record filing or rectification within the time limit shall be sanctioned in accordance with relevant provisions.

Pursuant to Notice 675, those equity enterprises or equity investment management institutions that have not applied for record filing in compliance with the applicable laws and regulations shall be publicized and announced on the website of the Development and Reform Commission of Tianjin Municipality for evading the regulation; those equity investment enterprises that do not operate lawfully, or correct the wrongdoing, or can't pass the annual examination by the local Administration

of Industry and Commerce, shall be publicized and announced on the website of the Development and Reform Commission of Tianjin Municipality for unlawful operation. The list of those equity investment enterprises and equity investment management institutions that are characterized as evading the regulation or operating against the law will be transferred by the Bureau for Record Filing of Tianjin Municipality to the relevant authorities for further sanctions.

Per our practical experience, those equity investment enterprises or equity investment management institutions that fail to make record filing might probably fail to pass the annual examination by the local Administration of Industry and Commerce, be obligated to deregister their business licenses and then publicized on the websites.

Strengthening regulation on intermediary institutions

Notice 146 provides that intermediary institutions that issue false capital verification reports and legal opinions will be blacklisted by the Bureau for Record Filing of Tianjin Municipality, and shall be prohibited from engaging in any registration or record filing work afterwards.

Tightening requirements on capital custody and registration

Notice 146 further requires that after obtaining the name approval and completing capital verification of the first installment of capital contribution, the equity investment enterprises shall provide the Letter of Intent for Custodianship between the equity investment management institutions, executive partners or legal representatives and the custodial banks to the local Administration of Industry and Commerce, without which the equity investment enterprises shall not be registered.

Notice 146 also mandates that those equity investment enterprises and equity investment management institutions with the wording of “fund” in their names shall provide, when registering, the Undertaking Letter for Capital Subscription of the Equity Investment Enterprises and the Legal Opinion issued by a law firm on the legality of all the documents submitted to the local Administration of Industry and Commerce.

We see that Notice 2864 strengthens the regulation on equity investment enterprises; yet some leeway has still be left for those existing equity investment enterprises and equity investment management institutions established before September 1, 2011 (the date of promulgation of Notice 675).

3. Further Clarification on the Regulation of Individual Income Tax Concerning the Transfer of Restricted Shares of Listed Companies (Authors: Bing XUE, Jiaxin LIU, Chu LIU)

The Ministry of Finance (“MOF”), the State Administration of Taxation (“SAT”) and the China Securities Regulatory Commission jointly promulgated “Notice on the Relevant Issues Regarding

Levy of Individual Income Tax on the Income Derived from the Transfer of the Restricted Shares of the Listed Companies" (Cai Shui [2009] No. 167, "**Notice 167**") and "Supplementary Notice on the Relevant Issues Regarding the Levy of Individual Income Tax on the Income Derived from the Transfer of the Restricted Shares of the Listed Companies" (Cai Shui [2010] No. 70, "**Notice 70**") on December 31, 2009 and November 10, 2010 respectively, providing that the income derived from the transfer of restricted shares of listed companies is subject to individual income tax in accordance with the category "gains from property transfer" at a rate of 20% commencing from January 1, 2010.

In order to further improve the administration and collection of the individual income tax on the transfer of restricted shares of listed companies, the MOF and the SAT jointly promulgated the "Notice on the Relevant Issues Regarding the Levy of Individual Income Tax on the Income Derived from the Transfer of the Restricted Shares of the Listed Companies After the Completion of the Technological and Systematic Preparation by the Security Firms" (Cai Shui [2011] No. 108, "**Notice 108**"), which clarifies relevant matters concerning calculation of the cost and taxable income and procedure of tax declaration on transfer of restricted shares of listed companies. The salient points of Notice 108 are summarized as below:

The declaration requirements on the original cost of restricted shares

Pursuant to Notice 108, the company seeking initial public offering with the subscription date for online issuance on or after March 1, 2012 ("**Newly Listed Companies**") shall apply for preliminary share registration with declaration to securities depository and clearing companies the detailed materials regarding the original cost of restricted shares from the corresponding shareholders and the attestation reports on such materials issued by accounting firms or tax agencies. The data on the original cost of restricted shares shall be implanted into the securities clearing system by the securities depository and clearing companies.

The documents submitted by the Newly Listed Companies and the attestation reports shall cover the following main items:

a) The names of the shareholders

b) The valid ID card number of the shareholders

c) The account number of the shareholders' security accounts

d) The full name of the Newly Listed Company

e) The number of restricted shares of the Newly Listed Company

f) The original cost of each restricted share of the Newly Listed Company

The calculation of the original cost

1) The general principle

Pursuant to Notice 108, the "original cost" of the restricted shares includes both the purchase price and the reasonably associated taxes and fees payable. Each shareholder of the restricted shares of the Newly Listed Company can only declare a single rate for the original cost. If the restricted shares are obtained at different costs, the original cost of each such share shall be the weighted average cost calculated according to the following formula:

The weighted average cost for restricted shares obtained at different costs = [(the cost for the first batch of restricted shares acquired × the number of shares in the first batch) + (the cost for the second batch of restricted shares acquired × the number of shares in the second batch) + … + (the cost for the last batch of restricted shares acquired × the number of shares in the last batch) / the total number of restricted shares

2) The applicable cases for tax assessment and collection method

a) For shares lack of proofing materials on their original cost or attestation reports

So long as the Newly Listed Companies fail to provide the documents evidencing the original cost or attestation reports when applying for the preliminary registration of the shares, the securities depository and clearing companies shall no longer accept further documents concerning the original cost or attestation reports after the completion of the preliminary registration, and shall assess and determine the rate of original cost and reasonable taxes and fees at 15% of the proceeds from sale of such restricted shares when transfer occurs.

b) For non-trading transfers

If an individual obtains the restricted shares by means of non-trading transfer, the rate of original cost and reasonable taxes and fees of shares so obtained shall be calculated according to the transfer price indicated on the tax payment receipt or Declaration Form on the Settlement of the Individual Income Tax on the Income from the Transfer of the Restricted Shares; if the transferor is an institution, the rate of original cost and reasonable taxes and fees of the restricted shares shall be assessed and determined at 15% of the proceeds from sale of such shares when transfer occurs.

c) For transfer under compulsory enforcement

When the judicial authority requires transferring restricted shares to an individual without providing materials such as tax payment receipt in case of compulsory enforcement, the securities depository and clearing companies shall assist in such enforcement after performing the notification obligation and shall assess and determine the rate of original cost and reasonable taxes and fees at 15% of the proceeds from sale of the restricted shares so obtained by such individual transferee.

3) Administration on self-declaration

The self-declaring taxpayer who is not obligated to pay tax or whose payable tax is null for transfer

of restricted shares shall conduct the restricted share transfer formalities at securities depository and clearing companies with submission of the original Declaration Form on the Settlement of the Individual Income Tax on the Income from the Transfer of Restricted Shares that is confirmed and stamped for acceptance after examination by the relevant tax authorities. The securities depository and clearing companies shall not handle the share transfer formalities if the taxpayer fails to present the said original form.

4) The scope of reasonable taxes and fees

The reasonable taxes and fees refer to the stamp duty, commission, transfer fee and other relevant taxes and fees incurred in the course of transfer of the restricted shares.

The withholding obligation of the security firms

Security firms shall hand over the individual income taxes withheld each month to the national treasury within the first 15 days of the following month and submit to the local tax authorities the Report Form on the Withholding of Individual Income Tax on the Income from the Transfer of Restricted Shares and other documents as required by the local tax authorities.

Conclusion

As Notice 108 further clarifies the collection procedures of individual income tax arising from the transfer of restricted shares, it is advisable that the Newly Listed Companies and the individual holders of the restricted shares strictly conform to the Notice 108 in course of related transaction to reduce potential compliance risks.

Important Announcement

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