



漢坤律師事務所  
HAN KUN LAW OFFICES

# Newsletter

China Practice

Global Vision



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## Legal Updates

1. China's Business Registration System Further Reformed
2. China's SAT Releases New Tax Policies on Preferential Income Tax Treatment for M&A Transactions

## 1. **China's Business Registration System Further Reformed (Authors: Wenyu JIN, Fanglu LIN)**

On May 11, 2015, the State Administration of Industry and Commerce (“**SAIC**”) released the Circular Specifically Implementing the Policy of Issuance of a Business License Before Prior Approval Obtained (Gong Shang Qi Zhu Zi [2015] No.65) (the “**Circular**”). Concurrent with the release of the Circular, the SAIC published a list of 39 matters that still require prior approval before business registration can be made, and a list of 34 matters that still require prior approval before changing or annulling a registration, pursuant to the requirements of the State Council.

According to the Circular, where laws, regulations or the State Council state that an approval can be obtained following the issuance of the business license, no prior approval is required. Accordingly, applicants who apply for business registration with the relevant local branch of the SAIC (the “**AIC**”) will not be required to provide permit documents and certificates from relevant authorities in order to conduct the business registration. Instead, such applicants shall register such permits and certificates in the Public Business Information Database within 20 days after acquiring them.

The Circular specifically lists matters that still require prior approval before amendments, terminations and dissolutions can be made to the business registration. For these matters, enterprises are still required to obtain prior approvals from relevant authorities in accordance with laws, regulations, administrative rules and decisions of the State Council before the requested amendment, termination or dissolution will be processed.

If AIC provisions on the timing of approvals for business registration or matters relating to amendments, terminations or dissolutions of business registrations conflict with other laws or State Council decisions, such conflicts shall be submitted to the provincial government for resolution.

If localities wish to reduce the number of matters requiring prior approval before business registration can be made, change prior approvals to post approvals, or cease implementing the relevant administrative approvals, it shall first report its proposals to the provincial government and apply for approval or authorization from competent authorities in accordance with legal procedures. The result of this procedure is that some localities may have prior approval requirements for business registrations, or amendments, terminations or dissolutions of business registrations, which are inconsistent with the SAIC's lists.

The SAIC may alter the matters requiring prior approval before business registration can be made in accordance with evolving conditions. Therefore, the SAIC may add or remove matters requiring prior approval, and provide an updated list to the public.

Of note, the Circular still lists the following matters as requiring prior approval before business

registration can be made:

- a) Forming or changing foreign-invested enterprises still requires prior approval from the Ministry of Commerce, departments authorized by the State Council, or local governments;
- b) Forming and managing personal credit information businesses requires prior approval from the People's Bank of China;
- c) Forming publishing businesses or publishing export businesses requires prior approval from the State Administration of Press, Publication, Radio, Film, and Television;
- d) Forming Sino-foreign joint ventures, cooperative printing enterprises, foreign-invested packing and decoration printing enterprises, and other enterprises that engage in the publication printing business requires prior approval from the component provincial counterpart of the State Administration of Press, Publication, Radio, Film and Television.
- e) Forming operating entities and branches of foreign-invested banks, PRC financial institutions and banks and their branches, and non-banking financial institutions and their branches require prior approval from the China Banking Regulatory Commission.

In addition, the following businesses require prior approval before business registration can be made: express delivery, general aviation, the establishment of pawn shops and its branches, and the exclusive distribution and wholesale of tobacco.

Of note, the Circular still lists the following matters as requiring prior approval before amendments, terminations or dissolutions to the business registration can be made:

- a) Amending a permit for the operation of a labor dispatch service requires prior approval from the Ministry of Human Resources and Social Security;
- b) Forming and amending direct sales enterprises and its branches requires prior approval from the SAIC, the Ministry of Commerce, and the Ministry of Public Security;
- c) Any amendment to the following by publishing institutions requires prior approval from the State Administration of Press, Publication, Radio, Film, and Television: changing its name, changing its sponsors, or other authorities, changing its business scope, changing its capital structure, a merger or division, or the establishment of branches;
- d) Amendments to the business scope, or a merger, acquisition or division of a video production or an electronic publication production business requires prior approval from the competent provincial counterpart of the Department of Publication.
- e) Any amendment to the following by foreign-invested banks requires prior approval from the China Banking Regulatory Commission: changing the registered capital, working capital, name, place of business, address, scope of business, the shareholding of the business, or

shareholding percentages, or amending the articles.

- f) Amending, terminating or changing the business scope of a Sino-foreign invested banking financial institution or non-bank financial institution, or any of their branches requires prior approval from the China Banking Regulatory Commission.

In addition, the following businesses require prior approval before amendments can be made to a business registration: financial guarantors, personal credit information institutions and securities, insurance and futures companies.

Since 2014, there has been a comprehensive reform of with the introduction of a registration system for the subscription of registered capital and the cancellation of minimal threshold requirements for registered capital. The Circular represents a continuation of the State Council's consolidation and reform of approvals required prior to business registration. It lowers market access thresholds and further reforms the business registration system. Having fewer prior approvals for both business registration and amendments to business registration will lower costs for forming business and improve government administration and efficiency.

## **2. China's SAT Releases New Tax Policies on Preferential Income Tax Treatment for M&A Transactions (Author: Bing XUE)**

In May 2015, the State Administration of Taxation (“SAT”) released Public Notice on Issues concerning the Collection and Administration of Enterprise Income Tax on Non-monetary Asset Investments (SAT Notice [2015] No.33, “**Notice 33**”) and Public Notice on the Levy and Administration of Enterprise Income Tax on Assets (Equity) Assignment (SAT Notice [2015] No.40, “**Notice 40**”), to further clarify the implementation rules of the tax incentive policies for M&A transactions.

### **Background**

Towards the end of 2014, the Ministry of Finance and the SAT jointly released the Notice on Issues concerning the EIT Treatment for the Promotion of Enterprise Restructurings (Caishui [2014] No.109, “**Circular 109**”) and the Notice on Issues concerning the EIT Policies for Non-Monetary Asset Investments (Caisui [2014] No.116, “**Circular 116**”), to support the M&A transactions.

However, both enterprises and tax authorities found that there are uncertain issues with respect to the assets/equity assignment as set forth in the Circular 109 and the non-monetary asset investments provided in the Circular 116.

### **Clarification on the Non-Monetary Asset Investment under Notice 33**

Notice 33 made the following clarifications on non-monetary asset investment:

	Rules under Circular 116	Clarifications under Notice 33
Applicable Enterprise Type	Tax resident enterprise (“ <b>TRE</b> ”)	TRE subject to taxation by accounts audit
Tax Settlement Period	Up to five years	Up to five consecutive tax years as of the year when the said gains are recognized
Income Recognition	Recognize the income upon the relevant investment agreement comes into effect and the equity registration formalities have been processed	For <b>related parties</b> : if the procedures for registration of equity changes fail to be completed within 12 months after the relevant investment agreement comes into effect, the income shall be recognized upon the effective date of the investment agreement
Selection of Preferential Policies	Upon satisfying the requirements for special tax treatment (“ <b>STT</b> ”), the TRE may choose to implement STT	Upon satisfying the requirements for STT, the TRE may select one of the applicable preferential policies, and shall not change the policies once selected

#### Clarification on the Equity/Assets Assignment under Notice 40

Circular 109 set out an STT rule for intra-group equity/assets assignment. Given that the term of assignment is quite uncommon since the implementation of the Enterprise Income Tax Law in 2008, the recognition of assignment has caused issues for both enterprises and tax authorities.

Notice 40 made further clarifications on intra-group equity/assets assignment based on net book value:

Scenarios		Tax Rules
A parent company and its 100% direct control subsidiary	Parent company assigns equity/assets to its subsidiary and the parent company obtains 100% equity payment by the subsidiary	<ul style="list-style-type: none"> <li>The tax basis of the subsidiary’s equity by the parent company shall be determined based on the original tax basis of the assigned equity/assets</li> <li>The tax basis of the assigned equity/assets obtained by the subsidiary shall be determined based on the original tax basis</li> <li>The deductible tax depreciation or amortization of the assigned assets obtained by the subsidiary shall be determined based on the original tax basis</li> </ul>
	Parent company assigns equity/assets to	<ul style="list-style-type: none"> <li>The tax basis of the assigned equity/assets obtained by the subsidiary shall be determined by the original</li> </ul>

Scenarios		Tax Rules
	its subsidiary but does not obtain any equity or non-equity payment	<p>tax basis</p> <ul style="list-style-type: none"> <li>• The deductible tax depreciation or amortization of the assigned assets obtained by the subsidiary shall be determined based on the original tax basis</li> </ul>
	The subsidiary assigns equity/assets to its parent company but does not obtain any equity or non-equity payment	<ul style="list-style-type: none"> <li>• The parent company shall reduce the tax basis of its subsidiary's equity by the original tax basis of the assigned equity/assets</li> <li>• The tax basis of the assigned equity/assets obtained by the parent company shall be determined by the original tax basis</li> <li>• The deductible tax depreciation or amortization of the assigned assets obtained by the parent company shall be determined based on the original tax basis</li> </ul>
Subsidiaries under 100% direct control of the same single parent company or the same multiple parent companies	As instructed by the parent company/parent companies, one subsidiary assigns equity/assets to another subsidiary but does not obtain any equity or non-equity payment	<ul style="list-style-type: none"> <li>• The tax basis of the assigned equity/assets obtained by the assignee shall be determined on the original tax basis</li> <li>• The deductible tax depreciation or amortization of the assigned assets obtained by the assignee shall be determined based on the original tax basis</li> </ul>

To be eligible for the STT, there is one basic principle: within 12 consecutive months upon completion of assignment of the equity or assets, the original substantive business activities of the equity or assets assigned shall not be changed.



## Important Announcement

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