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1 Circular of the Ministry of Finance and the State Administration of Taxation on Several Issues Regarding Enterprise Income Tax in Restructuring

2 Circular of the Ministry of Finance and the State Administration of Taxation on Several Issues Regarding Enterprise Income Tax in Liquidation

Circular of the Ministry of Finance and the State Administration of Taxation on Several Issues Regarding Enterprise Income Tax in Restructuring

财政部、国家税务总局关于企业重组业务企业所得税处理若干问题的通知

Issued By	The Ministry of Finance and the State Administration of Taxation
Subject	Enterprise Income Tax In Restructuring
Promulgated on	April 30th , 2009
Source	http://szs.mof.gov.cn

On 30 April 2009, The Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly released the Circular on Several Issues Regarding Enterprise Income Tax in Restructuring (hereinafter: "Circular"), which further clarified tax treatment regarding enterprise income tax and provides guidance for enterprise restructuring after the implementation of China's Enterprise Income Tax Law (hereinafter: "EIT").

The EIT and the Detailed Implementation Rules to the EIT(hereinafter: "DIR") provide general guidelines regarding enterprises, which undergo a enterprise restructuring, while they do not provide any further rules on what constitutes enterprise restructuring and their tax treatments. In this regard, the Circular fills a vacancy of the EIT. More importantly, the Circular distinguishes enterprise restructuring from common transaction of assets, allows concessionary tax treatment to qualified enterprise restructuring, and largely reduced the restructuring cost and relieve the tax burden of the taxpayers.

The Circular points out that the tax issues in restructuring of enterprises shall be handled respectively in line with basic tax treatments and special tax treatments according to the different circumstances. The Circular defines the types of enterprise restructuring subject to the tax rules as the following: change of legal form, debt restructuring, share or assets acquisition, merger and spin-off.

Basic tax treatments are applied in case an enterprise restructuring does not meet prescribed conditions of the special tax treatments. Basic tax treatment specifies the taxation principle of the EIT. Fair value is used to determine the gains or losses for the transferor as well as the taxation basis for the transferee who receives the shares, equity or assets in each type of enterprise restructuring.

The Circular allows concessionary tax treatments, which the Circular calls special tax treatments, in case certain prescribed conditions are met. In general, the gains or losses of the transactions shall defer to be determined in case the consideration is in shares or in

equities. In debt restructuring, the taxable amount arising from the enterprise restructuring will be deferred. over 5 tax years averagely. In other types of restructuring, for the transferor, the tax basis shall be determined as the original tax basis of the transacted shares, equity or assets, correspondingly, the transferee shall assume the transferor's original tax basis of these shares, equity or assets.

The conditions for qualifying for special tax treatments include:

- The restructuring has to have reasonable commercial purposes;
- The change in the corporate structure, equity interests or assets involved has to reach certain prescribed level of significance to the transferor or transferee;
- The portion of the share or equity consideration has to exceed a certain prescribed percentage of the total consideration;
- No change in the original operating activities within a period of successive 12 months after the restructuring;
- Share or equity acquired after the enterprise restructuring shall not be transferred within a period of successive 12 months.

For cross-border enterprise restructuring, tax-deferral treatment will be possible but with more stringent requirements with emphasis on the shareholding relationship as well as the preservation of the taxation right of the People's Republic of China.

The effective date of the Circular will be retrospective to 1 January 2008, to align with the effective date of the new EIT regime. This should be a relief to those taxpayers which have undergone enterprise restructuring on or after 1 January 2008 that would qualify for the special tax-deferral treatment; otherwise they would be taxable upon the restructuring as per Article 75 of the DIR.

Circular of the Ministry of Finance and the State Administration of Taxation on Several Issues Regarding Enterprise Income Tax in Liquidation

财政部、国家税务总局关于企业清算业务企业所得税处理若干问题的通知

Issued By	The Ministry of Finance and the State Administration of Taxation
Subject	Enterprise Income Tax In Liquidation
Promulgated on	April 30th , 2009
Effective from	January 1st , 2008
Source	http://szs.mof.gov.cn

The Ministry of Finance and the State Administration of Taxation released the Circular on Several Issues Regarding Enterprise Income Tax in Liquidation (hereinafter: "Circular") on

April 30th,2009 with effective date on 1 January 2008 to align with the effective date of the new EIT regime.

The Circular defines circumstances where enterprise income tax of liquidation shall be levied. One condition is liquidations according to the Company Law and the Enterprise Bankruptcy Law, the other condition is liquidations in enterprise restructurings. Enterprises income tax rules at two levels are further stipulated in the Circular, in which tax treatments of enterprises undergoing liquidation and investors of the liquidated enterprise are prescribed respectively.

The Circular stipulates the following for settling the income tax of enterprises undergoing liquidation:

- The income or loss for asset transfer shall be identified based on the realizable value or transaction value of total assets;
- The income or loss from claims and debt settlement shall be identified;
- The accrued expenses or deferred expenses shall be processed during a change in the accounting principles of continuous operation;
- The deficits shall be covered according to laws and the liquidation income shall be confirmed;
- Liquidation tax shall be calculated and paid for;
- The assignable remaining assets and payable dividends for shareholders shall be confirmed.

The treatment in the Circular is more reasonable compared to Article 11 of the DIR by stipulating that the remaining amount of total cashable values or transaction price subtracting the tax basis of assets, liquidation expenses and other relevant taxes and expenditures, adding gains or losses of debt payment, shall be determined as liquidation income.

The Circular and the Circular on Several Issues Regarding Enterprise Income Tax in Restructuring are considered to be new implementation rules of EIT, they not only provide further guidelines regarding enterprise income tax, but also establish a more reasonable and improving taxation regime for enterprises. These tax implementation rules come out at an appropriate time as corporate liquidation and restructuring would become more popular and necessary in difficult economic times.

Regulations on the Implementation of the Food Safety Law (Draft for Opinion)
食品安全法实施条例（征求意见稿）

Issued By	**The Legislative Affair Office of the State Council**
Subject	**Food Safety**
Promulgated on	**April 24th , 2009**
Effective from	**June 1st , 2009**
Source	**http://www.chinalaw.gov.cn**

In order to implement the new Food Safety Law (FSL), the implementation rules for the FSL are being formulated. On 24 April 2009, the Legislative Affair Office of the State Council issued a draft regulations of the implementation of the Food Safety Law (hereinafter: "Draft Regulations") to solicit public opinions. The Draft Regulations are supposed to become effective on June 1and therefore on the same date as the FSL.
The Draft Regulations contain 57 articles in nine chapters. Their goal is to tighten the responsibilities for food safety problems of food production enterprises and enterprises in connected industries, it also reiterates that related department and administrations should be aware of their own responsibilities and should demonstrate smoother cooperation with the enterprises. Some comprehensive principles in the FSL are further specified in the Draft Regulations, in order to make them more practical and operational.

The Draft Regulations further clarify that food-production enterprises shoulder the responsibilities for food safety management by the following rules: specifications on internal safety management systems of enterprises engaging in the food production, establishment of safety management measures in the process of food production, and establishment of a record systems for safety management in the process of food production. Also, the Draft Regulations requires food-wholesale enterprises to establish a sale record system. Furthermore, the Draft Regulations stipulate the responsibilities of catering businesses for food safety management.

The Draft Regulations further clarify some systems and mechanisms stipulated in the FSL including: regulations regarding certain circumstances that shall initiate a food safety risk assessment, elaboration regarding the implementation mechanism for a food recall, stipulations about the food re-inspection system, and clarifications regarding the information of routine supervision and the administration of food safety.

Also, the registration system for overseas food-production enterprises is further specified. An overseas food-production enterprise, which wants to import food into China, shall be registered at the Entry/Exit Inspection and Quarantine Department of the State. Such registration shall be valid for 4 years. Furthermore, the Draft Regulations contain a new rule regarding imported food additives, the labels and

instructions of the imported food additives should meet certain requirements in conformity with the relevant laws and national food standards in China.

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