

CHINA LEGAL BRIEFING* 173

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Circular of the State Administration of Taxation Concerning Interpretation and Implementation of the Arrangement between Mainland China and Hong Kong Special Administrative Region on Avoidance of Double Taxation on Income and Tax Evasion and Tax Dodging (“Arrangement”) (Guoshuihan [2007] No. 403) (“Circular 403”)

关于《内地和香港特别行政区关于对所得避免双重征税和防止偷漏税的安排》有关条文解释和执行问题的通知(国税函(2007) 403号)

Issued By **State Administration of Taxation**
Subject **Double Taxation**
Promulgated on **April 4th 2007**
Effective from **April 4th 2007**
Source **www.chinatax.gov.cn**

Mainland China and Hong Kong signed the Arrangement on 21 August 2006 to avoid double taxation in China Mainland and Hong Kong, and this would sharpen the city’s competitive power and encourage investment in the region. According to Circular 403, where the Arrangement conflicts with taxation regulations, the Arrangement shall prevail, however, where the taxation regulations are more favorable, then such taxation regulations shall prevail.

Circular 403 states that the contents thereof shall be applicable to other tax treaties that Mainland China has signed with other countries or regions if the contents of the relevant articles are the same and there are no interpretation and implementation guidelines which have been promulgated. Therefore, Circular 403 is not only important to the tax residents in Hong Kong, but also the tax residents of other tax treaty countries or regions.

As for the issue of permanent establishment (the “PE”), now the Circular 403 stipulates that when determining the “6 consecutive or cumulative months in any 12-month period”, the entire period shall start from the first month when the first employee arrives in Mainland China and lasts till the last month when the last employee leaves Mainland China. This means, even if the employee is present in Mainland China for only 1 day in a particular month, that would still be regarded as “a month”.

Circular 403 also clarifies that if the commencement date and cessation date of a 12-month period fall into two tax years, the employment income derived from Mainland China during all the months within those two tax years shall be subject to Chinese Individual Income Tax (“IIT”).

Measures for the Administration of Foreign Stock Exchanges' Representative Offices in China (Order No. 44 of China Securities Regulatory Commission)

境外证券交易所驻华代表机构管理办法（中国证券监督管理委员会令第44号）

Issued By China Securities Regulatory Commission
Subject Foreign Stock Exchanges' Representative Office in China
Promulgated on May 20th 2007
Effective From July 1st 2007
Source www.csrc.gov.cn

The Measures for the Administration of Foreign Stock Exchanges' Representative Offices in China (Order No. 44 of China Securities Regulatory Commission) (the "Measures") have been promulgated for the purpose of regulating the establishment of foreign stock exchanges' representative offices in China and their business operations. The Measures are constituted under the Securities Law of the People's Republic of China and the related regulations.

The "foreign stock exchanges" as mentioned in the Measures means stock exchanges, securities automated quotation or electronic trading systems or markets established abroad. The "foreign stock exchanges' representative offices in China" as mentioned in the Measures means the permanent representative offices established by foreign stock exchanges inside the territory of China under the approval of engaging in liaison, market promotions, investigations and other similar non-business activities.

The Measures clearly regulates that one applicant can only apply for establishing one representative office, and a foreign stock exchange applying for the establishment of a representative office shall be subject to the requirements as follows:

1. The country or region where the applicant is located has perfect laws and regulations on financial supervision;
2. The financial supervision authority in the country or region where the applicant is located has concluded a memorandum of understanding on supervisory cooperation with CSRC, and keeps a good cooperation with CSRC;
3. The applicant is a financial institution established under the approval or ratification of the financial supervision authority of the country or region where it is located;
4. The applicant has been established for more than 20 years, it has a stable operation and standardization, and its financial situation is good; and
5. Other prudential conditions put forward by the CSRC.

A representative office shall have an independent and fixed office of its own, employ a reasonable amount of staff members, among which, the proportion of domestic residents shall not be lower than 50%. Any chief representative may not concurrently hold a post in the head office or a regional head office, nor may he concurrently hold a post in any other commercial institution inside the territory of China. A chief representative shall stay in the representative office to take charge of the daily routine.

Any representative office and any of its staff members may not conduct any commercial activities or do so in a disguised form, it or he may not conclude an agreement with any legal person or natural person that may bring income to the representative office or the stock exchange. Any representative office and any of its staff members may not conduct publicity in any form, it or he may not hold any market promotion activity oriented to individuals in any form.

Circular of China Banking Regulatory Commission concerning Wholly Foreign-funded Banks and Chinese-foreign Equity Joint Banks to Conduct the Bank Card Business (Yinjianfa [2007] No. 49)

中国银行业监督管理委员会关于外商独资银行、中外合资银行开办银行卡业务有关问题的通知(银监发[2007]第49号)

Issued By **China Banking Regulatory Commission**
Subject **Conducting Bank Card Business**
Promulgated on **June 6th 2007**
Effective From **June 6th 2007**
Source **www.cbrc.gov.cn**

The Circular of China Banking Regulatory Commission concerning Wholly Foreign-funded Banks and Chinese-foreign Equity Joint Banks to Conduct the Bank Card Business (Yinjianfa [2007] No. 49) (the "Circular") has been issued in order to regulate the administration of bank card business of wholly foreign-funded banks and Chinese-foreign equity joint banks and prevent the risks of bank card business.

Wholly foreign-funded banks and Chinese-foreign equity joint banks may apply for conducting the bank card business as of the day when the Circular is printed and distributed. The term "bank cards" as mentioned in the Circular is classified into RMB cards and foreign currency cards as per different currencies, including debit cards, quasi-credit

cards and credit cards. Quasi-credit cards and credit cards are referred to as credit cards in general.

A wholly foreign-funded bank or Chinese-foreign equity joint bank, which plan to issue bank cards, shall abide the bank card business and technical standards as formulated by the People's Bank of China and meet the general requirements for the network of bank cards. A wholly foreign-funded bank or Chinese-foreign equity joint bank which plans to conduct the bank card business, shall apply to the branch of the CBRC of the place where its headquarters is located by analogy for the application materials as stipulated in the Measures for the Administration of Bank Card Business.

An applicant shall satisfy the following requirements:

1. Its capital adequacy ratio, asset quality and other main supervisory indicators are in conformity with the related provisions of the CBRC;
2. It has management rules and risk management measures commensurate with its needs of conduction of bank card business;
3. It has established a computer system in conformity with the related business and technical standards and has the technical capability to ensure the safety of the banking information within the territory of China;
4. It has technicians, management personnel and corresponding management institutions which can satisfy the needs for conducting the bank card business; and
5. Other prudent conditions as requested by the CBRC. If a wholly foreign-funded bank or Chinese-foreign equity joint bank plans to issue foreign currency cards, it shall have the qualifications as approved by the foreign exchange administrative department of the State Council for conducting settlement of foreign exchange and sale of foreign currencies.

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