

外商投资

商务部、国家外汇管理局于 2007 年 5 月 23 日发布商资函[2007]50 号文《关于进一步加强、规范外商投资房地产业审批和监管的通知》强调：

- 申请设立房地产公司，应先取得土地使用权、房地产建筑物所有权，或已与土地管理部门、土地开发商/房地产建筑物所有人签订土地使用权或房产权的预约出让/购买协议。未达到上述要求，审批部门不予批准。
- 已设立外商投资企业新增房地产开发或经营业务，以及外商投资房地产企业从事新的房地产项目开发经营，应按照外商投资有关法律法规向审批部门申请办理增加经营范围或扩大经营规模的相关手续。
- 严格控制以返程投资方式（包括同一实际控制人）并购或投资境内房地产企业。境外投资者不得以变更境内房地产企业实际控制人的方式，规避外商投资房地产审批。
- 外商投资房地产企业的中外投资各方，不得以任何形式订立保证任何一方固定回报或变相固定回报的条款。

外商投资企业所得税

国家税务总局于 2007 年 5 月 31 日发布国税函[2007]603 号文《关于从事房地产开发的外商投资企业售后回租业务所得税处理问题的批复》内容有：

- 企业无论采取何种租赁方式，均应将售后回租业务分解为销售和租赁两项业务分别进行税务处理。
- 企业销售或转让有关不动产所有权的收入与该被转让的不动产所有权相关的成本、费用的差额，应作为业务发生当期的损益，计入当期应纳税所得额。
- 企业与其关联方进行不动产售后回租交易的，除适用本批复规定外，还应适用有关关联企业业务往来的税务管理规定。

企业所得税

国家税务总局于 2007 年 5 月 30 日发布国税函[2007]610 号文《关于从事通信业务的外商投资企业缴纳企业所得税有关问题的通知》内容有：

- 通信企业用于收发信号的综合通信铁塔、存放通信光缆设备的管道、存放通信基站设施的简易房屋等固定资产，是通信设备不可分割的组成部分，可以统一作为通信设施固定资产，按照 10 年期限计提折旧。
- 通信企业 2G 通信设备和支撑网计算机系统设备，可以从原来确定的 7 年折旧年限调整为最短 5 年折旧年限。上述调整应报主管税务机关备案。
- 通信企业对客户采取积分回馈计划，凡客户兑现积分的，通信企业所发生的实物或服务费用，可作为当期成本费用列支。客户没有兑现积分的，不得作为成本费用列支。

出口退税

国家税务总局于 2007 年 6 月 19 日发布财税[2007]90 号文《关于调低部分商品出口退税率的通知》主要有：

- 取消部分木板和一次性木制品等十六种类商品的出口退税；
- 调低服装、鞋帽等部分种类的出口退税率，出口退税率最低调至 5%；
- 花生果仁、油画、雕饰板、邮票、印花税票等改为出口免税。
- 执行日期自 2007 年 7 月 1 日起。

☞ 编者按：此次调整共涉及 2831 项商品，约占海关税则全部商品的 37%。与以往不同的是，本次调整涉及的商品除了“高污染、高能耗、资源性”的商品外，还增加了大量低附加值以及容易引起国际贸易摩擦的商品。为此企业需认真核对海关代码；适当调整原材料供应链；在关联企业交易中重新审视定价问题；考虑在必要时在利用特定区域新设特定功能的公司；适当改变原有的业务流程和运作模式以应对政策的改变。

购买国产设备退税

国家税务总局于 2007 年 6 月 12 日发布国税函[2007]637 号文《关于外商投资企业以包工包料方式委托承建企业购买国产设备退税问题的通知》规定：

- 外商投资企业以包工包料方式委托其他企业承建的工程项目，如外商投资企业与承建企业签订了委托购买国产设备协议，承建企业受托采购国产设备并取得增值税专用发票（增值税专用发票上购货单位为承建企业）后，交由外商投资企业申请办理退税。

Foreign Investment

Ministry of Commerce (MOF) and State Administration of Foreign Exchange (SAFE) issued Circular on Further Strengthening and Standardizing Approval and Supervision of Foreign Investment in Real Estate Industry (Shang Zi Han [2007]No.50) on May 23, 2007, emphasizing that:

- Prior to foreign investors' applying for incorporating real estate company, they must obtain land use right and ownership of real estate, or sign advance agreement on sale/purchase of land use right or ownership of building with land administration, real estate development company or owner of building. Otherwise, competent authorities would not approve such application without foreign investors' meeting above-said requirements.
- Existing FIEs who intend to incorporate development and operation of real estate into their business scope, and foreign-invested real estate enterprises who intend to start up new projects of development and operation of real estate, shall apply to competent authorities for adding items to their scope of business or expanding their operation scale, according to law and regulations related to foreign investment.
- Acquiring or investing in domestic real estate enterprises by means of return investment (including the same controller) shall be under strict control. Foreign investors shall not be allowed to avoid examination of foreign investment in real estate industry by changing the actual controller of domestic real estate enterprises.
- Both Chinese and foreign investors to foreign-invested real estate enterprises shall not be allowed to conclude such agreement which guarantees fixed return or a fixed return in a disguised form to either party.

Foreign Investment Enterprises Income Tax (FEIT)

The SAT issued a Circular (Guo Shui Han No [2007]603) Approval for Income Tax of After Sale Leaseback Business of Foreign Investment Enterprises Engaging in Real Estate Development on 31st May, 2007. The content is as follows:

- For whichever way of lease the enterprise has adopted, when processing tax problem, they shall divide after sale leaseback business into two parts sale and lease.
- The difference between income from sale or transfer ownership of real properties and related cost and expense of such sale or transfer shall be treated as profit or loss in the same period when it occurs and recorded in taxable income.

- For enterprise engaging in after sale leaseback business with its related parties, apart from applying this Approval, they shall conduct in compliance with relevant tax regulations concerning transaction with related parties.

Enterprises Income Tax (EIT)

The SAT issued a Circular (Guo Shui Han No [2007]610) Approval for Enterprise Income Tax of Foreign Investment Enterprises Engaging in Telecommunication on 30th May, 2007. The content is as follows:

- Fixed assets of telecommunication enterprise such as comprehensive telecommunication iron tower, pipelines for storing telecommunication cables, buildings for storing telecommunication base station facilities are inseparable parts of telecommunication equipment and can be treated as telecommunication fixed assets with depreciation period of 10 years.
- The depreciation period of enterprise's 2G telecommunication facility and equipment supports computer network system can be adjusted from 7 years to a minimum of 5 year. The adjustment shall be filed with tax beaurue in charge.
- For enterprise implements customer points redemption scheme, when customers redeem the points, the expenses incurred from goods or services by the telecommunication enterprise shall be treated as cost of goods sold in the same period when it occurs. For goods or services that customers have not redeemed, they shall not be treated as cost of goods sold.

Export Tax Refund

The SAT issued a Circular (Cai Shui No [2007] 90) Notice Concerning Reducing Export Tax Refund Rate of Certain Commodity on 19th June, 2007. The content is as follows:

- Abolish export tax refund of wooden boards, disposable wooden products and other 16 types products of similar nature
- Reduce export tax refund rate of garment, footwear, etc down to 5%.
- To change export tax refund to export tax exemption for peanut kernels, paintings, carved decoration boards, stamps and fiscal stamps, etc.
- The effective date starts from 1st July, 2007.

☞ Editorial comments: The above adjustment involves in total 2831 types of commodities, approximately 37% of total commodities listed in Custom Tax Regulations. Differing from the past, this adjustment not only involves commodities with high pollution, large energy consuming, and resource nature, but also extends to large amount of products with low value-added and that may cause conflict in international trading. Hence enterprises shall carefully check custom code; properly adjustment raw material supply chain; reconsider pricing issue in related parties transactions; consider to utilize companies set up with special function in specified areas; and properly alter business process and model to adapt to policy change.

Refund of Tax Levied on Purchase of Home-made Equipment

SAT issued Circular on Tax Refund on Purchase of Home-made Equipment by Engineering Projects Contractor for FIEs with Contract for Labor and Materials (Guo Shui Han[2007]No.637 on June 12, 2007, stipulating that:

- As for FIEs' contracting out their engineering projects with contract for labor and materials, if FIEs sign the agreement on purchase of home-made equipment on their behalf with contractors, and the contractors obtain special VAT invoice while purchasing home-made equipment for the FIEs (purchaser of the equipment on special VAT invoice is the contractor), the invoice shall be delivered to the FIEs for applying for tax refund.

Land Appreciation Tax (LAT)

Local Tax Bureau of Shanghai issued Circular Regarding Exemption of Land Appreciation Tax on Transfer of Non-ordinary Individual Residential House (Hu Di Shui Di [2007]No.26 on June 12, 2007, including the following key points:

- Transfer of ordinary individual residential houses shall be temporarily exempted from LAT in accordance with relevant regulations. Residential houses meeting all items of the following standards are defined as ordinary residential house: (1) residential neighborhood has a floor-area ratio of above 1.0; (2) floor area of a single residential unit is below 140 square meters; and (3) actual concluded price shall be below 1.44 times average price of the residential houses built at the land of the same level; or below RMB 17,500/sq.m. for the houses located within the internal circle highway; or below RMB 10,000/sq.m. for the houses located between internal and external circle highway; or below RMB 7,000/sq.m. for the houses located outside the external circle highway.

- Individuals, who sell their non-ordinary residential houses in which they have resided for more than 5 years as they incur job transfer or intend to improve their living condition, shall be exempted from paying LAT. As for transfer of such non-ordinary residential houses in which individuals have resided for more than 3 years but less than 5 years, LAT shall be levied in half, and for the residing of no more than 3 years in such houses, LAT shall be levied in full.
- Since July 15, 2007, if individuals fail to provide either assessment price or the relevant invoice when selling their non-ordinary residential houses, LAT shall be levied on a deemed basis.

Deed Tax (DT)

SAT issued Reply to Issue Regarding Deed Tax Price of Decorated Residential Houses (Guo Shui Han [2007]No.606) on June 1, 2007, definitely stipulating that:

- DT price of residential house transaction shall be the total sum indicated in the contract of the house transaction, namely, including cost of decoration for decorated houses.

☞ Editorial comments: Although this Reply may result in a lower individual income tax payment, it would prevent tax payers from DT avoidance by aid of decoration cost that is prevailing in second-hand residential house transaction in some cities such as Beijing, Shanghai, etc.

Urban Land Use Tax (ULUT)

SAT issued Reply on Collection of Urban Land Use Tax on Foreign Investment Enterprises and Foreign Enterprises (Guo Shui Han [2007]No.596) on June 1, 2007, stipulating that

- The State Council's revising the Provisional Regulations on ULUT of the People's Republic of China shall incorporate the foreign-invested enterprises and foreign enterprises into the collection scope of ULUT.

☞ Editorial comments: Foreign-invested real estate enterprises shall need to recalculate their tax cost.

The newsletter is merely provided to our clients and those who have interest in our business for reference. We'll do our best to ensure the accuracy of the information in the newsletter. We have to remind you that the content in the newsletter is abstracted from relevant documents, and therefore in practice the original documents should be used for reference. Meanwhile, we welcome all of you to consult professionals in our firm regarding the information in the newsletter, and also welcome all of you visit our website www.dean CPA.com.cn. We will render affordable and value-added services to our clients. If there is a discrepancy between Chinese and English versions, Chinese version will prevail.

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