

China Law Update

Posted at 10:41 AM on November 24, 2009 by Sheppard Mullin

Changes to China's "Value Added Tax" as of October 2009

In October, 2009, two regulations were issued regarding value added tax (VAT) treatment in China. One regulation clarifies the value added tax (VAT) treatment of certain asset reorganizations between publicly traded companies (PTC) and their holding companies. The other exempts foreign-owned research and development (R&D) centers from taxes on imports of listed equipment and grants foreign and Chinese-owned R&D centers full VAT refunds on purchases of certain domestically made equipment.

VAT Treatment Regarding Certain Asset Reorganization

On October 21, 2009, China's State Administration of Taxation (SAT) issued Guoshuihan [2009] No. 585 ("Circular 585"), clarifying the value added tax (VAT) treatment of certain asset reorganizations between publicly traded companies (PTC) and their holding companies.

1. Under Guoshuihan [2002] No. 420 (Circular 420), transfer of a company's ownership, which is defined as transfer of all of the company's assets, creditor's rights, liabilities, and labor resources, is not subject to VAT. However, according to the newly released Circular 585, if a PTC transfers its assets, liabilities, and other relevant rights and obligations to its holding companies during an asset reorganization while remaining publicly traded, the income on the transferred assets related to the asset reorganization will be subject to VAT. Such transfers will not fall into the listed transfers under Circular 420.
2. Circular 585 states that the disposal of fixed assets in the course of an asset reorganization will be subject to the VAT treatment prescribed in Caishui [2008] No.170 (Circular 170), Caishui [2009] No. 9 (Circular 9), and other relevant provisions. Companies should refer to Circular 190 and Circular 9 for details of the VAT on incomes from transferring fixed assets.
3. If a holding company of a PTC invests in another company the tangible assets acquired in an asset reorganization, the holding company is subject to VAT treatment since the contribution of those assets are treated as taxable assets for VAT purposes.

VAT Treatment Regarding Research and Development Centers

On October 10, 2009, the State Administration of Taxation, the Ministry of Finance and the General Administration of Customs jointly issued Caishui [2009] No 115 (Circular 115), exempting foreign-owned research and development (R&D) centers from taxes on imports of

listed equipment and granting foreign and Chinese-owned R&D centers full VAT refunds on purchases of certain domestically made equipment.

Different criteria were set for foreign-owned R&D centers established before September 30, 2009 and after October 1, 2009 to be qualified for the preferential tax treatment in Circular 115. Foreign-owned R&D centers who meet the criteria will be eligible for exemption of custom duty on listed equipment imported by December 31, 2010. Qualifying foreign and Chinese-owned R&D centers will also be eligible for full VAT refunds on purchases of listed equipment. The equipment under Circular 115 refers to equipment, fillings and instruments made in China for scientific research, education, and development.

Circular 115 will effect purchases and imports made from July 1, 2009, to December 31, 2010. Detailed rules on tax refunds will be formulated by the Ministry of Commerce and SAT.

Authored By:

Jingyuan Sun
(212) 634-3094
jsun@sheppardmullin.com