

# China Tax Center China Tax & Investment Express

*China Tax & Investment Express (CTIE)\** brings you the latest tax and business announcements on a weekly basis. We selected some comparatively key announcements to provide for a synopsis and we also provide a link that leads you to the full content of each latest announcement (in Chinese). Please feel free to contact your EY client service professionals for further assistance if you find the announcements have an impact on your business operations.

CTIE does not replace our *China Tax & Investment News\** which will continue to be prepared and distributed to provide more in-depth analyses of topical tax and business developments in China.

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## Tax circulars

### ► **State Taxation Administration's reply on taxes related to Judicial Sales of immovable assets**

#### **Synopsis**

On 19 October 2020, the State Taxation Administration (STA) announced a formal reply to certain suggestions regarding taxes related to judicial sales of immovable assets raised in the third session of the 13<sup>th</sup> National People's Congress (NPC) (hereinafter referred to as the "STA's Reply") on its official website.

Main contents of the STA's Reply are as follows:

- Taxes of judicial sales should be borne by both buyers and sellers instead of solely buyers

In practice, auction announcements for judicial sales of immovable assets (hereinafter referred to as the "judicial sales") generally include a clause specifying that taxes related to judicial sales shall be solely borne by buyers. In this regard, a suggestion was raised in the third session of the 13<sup>th</sup> NPC that this clause is suggested to be removed and replaced with a new clause specifying that the relevant taxes shall be borne by sellers and buyers respectively.

In response, the STA quoted the relevant stipulations in the prevailing tax regulations and confirmed that the relevant taxes of judicial sales should be borne by sellers and buyers respectively.

In addition, the STA also quoted the relevant stipulations in the Provisions of the Supreme People's Court on Several Issues concerning Online Judicial Sales by People's Courts which were released on 2 August 2016 and further disclosed that both the STA and Supreme People's Court agreed with the abovementioned suggestions. Accordingly, the wordings of "taxes shall be solely borne by buyers" in auction announcements shall be strictly prohibited.

► Invoice issues related to judicial sales

In respect of any non-deductible taxes/assets of buyers due to failure of obtaining qualified invoices from sellers in judicial sales, the STA quoted the stipulations in STA PN [2019] No. 48 ("PN 48", i.e., PN regarding certain items related to tax collection and administration), i.e., a bankrupt enterprise shall pay taxes triggered in the process of liquidation, and its trustee in bankruptcy may handle the tax matters on behalf of the bankrupt enterprise, including issuance of tax invoices related to asset disposal. Thus, for a judicial sale in which the seller is under bankruptcy, the trustee in bankruptcy shall be required to issue invoices to the buyer.

In addition, the STA shall further explore the possibilities for tax authorities to issue Value-added Tax special invoices on behalves of the sellers in judicial sales as well as improve the Golden Tax Control system to facilitate tax deductions.

► Establishment of a mechanism between the people's courts and tax authorities regarding taxes related to judicial sales

Currently, certain local tax authorities have already set up a mechanism with the local courts for sharing tax-related information on judicial sales to smoothen the flow of tax payments in relevant transactions. In the next step, the STA shall further coordinate with the Supreme People's Court to explore a regular coordination scheme between the tax authorities and the people's courts in this regard.

Although the intention of the STA's Reply is to respond to the suggestions made in the third session of the 13<sup>th</sup> NPC, it may provide a reference for taxpayers to understand the STA's position as well as the future trend of tax administration in this regard. We will keep an eye on any further developments and advise you accordingly; please stay tuned.

You can click this link to access the full content of the STA's Reply:

<http://www.chinatax.gov.cn/chinatax/n810214/n2015391/c5157551/content.html>

You can click this link to access the full content of the Provisions of the Supreme People's Court on Several Issues concerning Online Judicial Sale by People's Courts:

<http://www.court.gov.cn/zixun-xiangqing-24391.html>

You can click this link to access the full content of PN 48:

<http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5142107/content.html>

## Business circulars

► **Press conference of the State Council Information Office on the data of foreign exchange receipts and payments in the first three quarters of 2020**

### Synopsis

The State Council Information Office held a press conference on 23 October 2020. Wang Chunying, Deputy Director and Spokesperson of the State Administration of Foreign Exchange's (SAFE), introduced the data of foreign exchange receipts and payments in the first three quarters of 2020 and answered reporters' questions. Below are some noteworthy questions and answers (Q&As) quoted and summarized:

Q: Evaluation of the situation of foreign exchange receipts and payments in the first three quarters of 2020 and forecast for the future

A: The international receipts and payments remained basically balanced and foreign exchange reserves were generally stable. The positive domestic economic fundamentals will continue to play a key role in stabilizing foreign exchange market in the future. However, considering the uncertainty and instability of external factors, the RMB exchange rate will still fluctuate within a reasonably balanced range. At the same time, the market becomes more rational and the supply and demand of foreign exchange remain in balance.

Q: What are the reasons for the recent rapid appreciation of RMB? Will appreciation accelerate in the future?

A: The recent appreciation of RMB is mainly caused by positive economic fundamentals. China has taken the lead in controlling the epidemic and domestic economic and social development are recovering. Under the combined effects of internal and external factors, the RMB exchange rate is expected to maintain certain level of fluctuations but with relative stability.

Q: What are the considerations and measures of the SAFE for supporting Beijing in building a comprehensive demonstration zone for expanding opening-up in the service sector and the cross-border trade and direct investment in the Beijing Free Trade Zone (FTZ)?

A: In respect of cross-border trade, SAFE supports the facilitation of foreign exchange receipts and payments in cross-border trade in the Beijing FTZ and also supports qualified foreign trade comprehensive service enterprises in providing comprehensive foreign exchange services of trade in goods for cross-border e-commerce.

In respect of direct investment, SAFE promotes the facilitation of overseas investment by domestic institutions. SAFE is studying a pilot reform plan for the Qualified Foreign Limited Partnership (QFLP) program to further expand their scope of investment, simplify registration procedures and facilitate currency exchange. SAFE is also exploring the administration of cross-border investment and financing of private equity investment funds. The SAFE will continue to support Beijing in attracting more world-class investment institutions to settle down.

Q: SAFE is planning to issue additional Qualified Domestic Institutional Investor (QDII) quotas in batches. What are the considerations in the policy formulation? Will restrictions on overseas investment by domestic institutions and individuals be further relaxed?

A: The new issuance of QDII quotas is to further promote the construction of a new pattern of two-way financial opening-up, meet the reasonable demand of the domestic market to allocate overseas assets or invest overseas, and deepen the reform and opening-up of cross-border securities investment. In addition, SAFE is also exploring more options for promoting the openness and facilitation of cross-border two-way investment and considering whether restrictions shall be further relaxed.

Q: SAFE recently introduced some opening-up measures for the capital market. Will there be more next?

A: SAFE will further promote the opening-up of the bond market and issue more QDII quotas in batches. SAFE is also exploring the reform in cross-border investment of private equity investment funds and working on steadily expanding the connectivity for capital markets.

You can click this link to access the full transcript of the press conference:

<http://m.safe.gov.cn/safe/2020/1023/17396.html>

► **Notice regarding enhancing the interim- and post-event supervisions on foreign-invested telecommunications enterprises (MIIT Correspondence Letter [2020] No. 248)**

**Synopsis**

To simplify the licensing process, the State Council released Guofa [2020] No. 13 ("Circular 13", i.e., Decision on cancelling or delegating a batch of administrative licensing items) to cancel the issuance of Letters for Examination Opinions on Foreign Investment in Telecommunication Service (hereinafter referred as the "Examination Letter").

Further to Circular 13, on 15 October 2020, the Ministry of Industry and Information Technology (MIIT) released MIIT Correspondence Letter [2020] No. 248 ("Circular 248") to enhance the relevant interim- and post-event supervision work on foreign-invested telecommunications enterprises.

Key features of Circular 248 are as follows:

- Starting from the promulgation date of Circular 13 (i.e., 13 September 2020), the issuance of Examination Letter was cancelled. The examination related to foreign investments shall be conducted in the approval process for license of telecommunication business. Where the foreign investment enterprises (FIEs) have already obtained the Examination Letter, they may continue to apply for the license of telecommunication business based on legal procedures. Thereafter, FIEs applying for the license of telecommunication business or relevant alteration, they shall submit the application documents for foreign investment directly, i.e. without the process of Examination Letter.

- ▶ The access policies and requirements on shareholding restriction shall be conducted based on the requirements as prescribed in Administrative Regulations on Foreign-invested Telecommunications Enterprises, Regulations on Telecommunications of the People's Republic of China, Special Administrative Measures for Admission of Foreign Investments (Negative List) and other relevant regulations.
- ▶ Where the foreign-invested telecommunications enterprises obtained the license of telecommunication business, they shall report relevant information in accordance with regulations.

Relevant parties are encouraged to read Circular 248 for more details.

You can click this link to access the full content of Circular 13:

[http://www.gov.cn/zhengce/content/2020-09/21/content\\_5545345.htm](http://www.gov.cn/zhengce/content/2020-09/21/content_5545345.htm)

You can click this link to access the full content of Circular 248:

[http://www.gov.cn/zhengce/zhengceku/2020-10/21/content\\_5552916.htm](http://www.gov.cn/zhengce/zhengceku/2020-10/21/content_5552916.htm)

### **Other business and customs related circulars publicly announced by central government authorities in the past week:**

- ▶ **Decision on revising the "Patent Law of the People's Republic of China"**  
[http://www.gov.cn/xinwen/2020-10/18/content\\_5552102.htm](http://www.gov.cn/xinwen/2020-10/18/content_5552102.htm)
- ▶ **Export Control Law of the People's Republic of China (Chairman Order [2020] No. 58)**  
<http://www.npc.gov.cn/npc/c30834/202010/cf4e0455f6424a38b5aecf8001712c43.shtml>
- ▶ **Notice regarding public opinion consultation on the "Commercial Bank Law of the People's Republic of China (Revised Draft)"**  
<http://www.pbc.gov.cn/tiaofasi/144941/144979/3941920/4111225/index.html>
- ▶ **Public notice regarding public opinion consultation on the "Measures for the Supervision and Administration of Online Trading (Discussion Draft)"**  
[http://www.samr.gov.cn/hd/zjdc/202010/t20201020\\_322434.html](http://www.samr.gov.cn/hd/zjdc/202010/t20201020_322434.html)
- ▶ **Notice regarding measures on the pilot program for legal practitioners from Hong Kong and Macao to obtain practicing qualification and engage in the practice of law in nine cities of the Guangdong-Hong Kong-Macao Greater Bay Area in the mainland**  
[http://www.gov.cn/zhengce/content/2020-10/22/content\\_5553309.htm](http://www.gov.cn/zhengce/content/2020-10/22/content_5553309.htm)
- ▶ **Notice regarding certain matters on cancelling the approval and record-filing of export food manufacturers (Shubanqihan [2020] No. 10)**  
<http://gkml.customs.gov.cn/tabid/1165/InfoID/45037/Default.aspx>

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