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Cross-Border Payments under Non-trading Items Relaxed in Shanghai

By David Yu and Clare Lu

On 31 December 2010, the State Administration of Foreign Exchange Shanghai Branch ("SAFE SH") issued Circular Shanghai Hui Fa [2010] No.192 ("Circular 192"), which relaxed restrictions on cross-border payment of reimbursements and allocated expenses.

Overview of Circular 192

According to Circular 192:

- Multinational companies ("MNCs") and domestic affiliated enterprises, which can meet requirements stipulated in Circular Hui Fa [2004] No.62 ("Circular 62"), can, with required documents, apply with SAFE SH for recognition of MNCs for the purpose of foreign exchange ("Forex") purchase/payment under non-trading items. Upon receiving "approval" issued by SAFE SH, MNCs can go to designated banks to arrange for Forex purchase/payment for reimbursements and allocated expenses.

- Qualified single foreign-invested enterprises ("FIEs") or domestic-invested enterprises ("DIEs"), after being confirmed on qualification by SAFE SH, can go to designated banks to arrange for Forex purchase/payment for reimbursements and allocated expenses with Registration Forms issued by SAFE SH.

- Single FIEs or DIEs, which are not within the scope mentioned above and required to pay reimbursements and allocated expenses, can go directly to designated banks to arrange for Forex payments with the single payment amount no more than USD100,000; and can go to designated banks to arrange for Forex payments with "Approval for Forex Purchase/payment" (issued by SAFE SH) if the single payment amount exceeds USD100,000.

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Our Analysis

- Circular 192 relaxed the restrictions on outbound payment of reimbursements and allocated expenses

  In accordance with Circular 62, MNCs and domestic affiliated enterprises shall obtain the approval issued by SAFE SH and present other required documents stipulated in Circular 62 to a designated bank before they can make outbound payments under non-trading items; and the banks shall check the authenticity before releasing payments. As such, except for the MNCs that have obtained approvals, enterprises generally cannot make outbound reimbursements and allocated expenses or need to bear additional tax burden for making payments. The issuance of Circular 192 can help these enterprises find a way out of the Forex payment problem.

- Boundary of outbound remittance of reimbursements and allocated expenses

  For general single FIEs or DIEs, Circular 192 clarifies that such enterprises can make outbound remittance of reimbursements and allocated expenses directly in a designated bank with the amount no more than USD100,000; and shall apply and obtain approvals if the remittance exceeds USD100,000.

- Scope of application

  Circular 192 was issued by SAFE SH and is implemented and effective within Shanghai. However, there is possibility that such practice might be expanded to other cities in PRC. In addition, we understand the reimbursements and allocated expenses are currently paid only to the overseas affiliated enterprises of local payers (i.e. not covering overseas third-party enterprises).

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