



浦瑞律师事务所  
CENLAW & PARTNERS

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## International trade & Foreign Investment

### **MOFCOM Extends Imported Photographic Papers' Anti-Dumping Investigation Period**

The Ministry of Commerce (MOFCOM) has decided to extend the period of the anti-dumping investigation into photographic paper products imported from the European Union, United States and Japan for three months, according to its Announcement [2011] No.88 issued on 23 December 2011. The MOFCOM opened the investigation on 23 December 2010 and made the decision to extend the period of investigation as the case is relatively special and complex. The deadline for the investigation period is 23 March 2012.

### **Two Regulators Continue Border-Sale Tea VAT Exemption Policy**

The Ministry of Finance and State Administration of Taxation on 7 December 2011 jointly released the *Circular on Continuing the Implementation of the Value-added Tax Policy for Border-sale Tea*. According to the Circular, from 1 January 2011 until 31 December 2015, the border-sale tea sold by makers of the tea themselves or by dealers shall be exempt from value-added tax (VAT). If a taxpayer who sells border-sale tea qualifying for the VAT exemption as set forth in the Circular has issued special VAT invoices to a buyer, the taxpayer shall not apply for the tax exemption process until it gets back the special invoices. If the taxpayer fails to do so, the tax shall be levied according to the regulations without exception and no tax exemption will be given.

### **GAC Announces Tax Rates & Arrangements for Agricultural Products from NZ under FTA**

The General Administration of Customs (GAC) has taken special protective measures for agricultural products from New Zealand under 11 sub-categories of 4 categories in accordance with the "Free Trade Agreement between the Government of the People's Republic of China and the Government of New Zealand" and Announcement of the General Administration of Customs No. 91/2008. In its first announcement of this year, the GAC has revealed the applicable agreed tax rates and imported quotas for the said agricultural products in 2011 and threshold of the import volume in 2012 and affirms that the Announcement of the General Administration of Customs No. 91/200 continues to be effective.

### **Catalogue of Toxic Chemicals Subject to Restrictions on Import & Export (2012) Issued**

The Ministry of Environmental Protection (MEP) and General Administration of Customs (GAC) have jointly published the "Catalogue of Toxic Chemicals Subject to Restrictions on Import to and Export from China" (2012) which shall take effect as of 1 January 2012. Any party who intends to import or export toxic chemicals listed in the Catalogue shall make applications to the MEP for the necessary permit and cross-border notice for such import or export.

## Company Law

### **CSRC Rules for M&A and Restructuring Audit Committee of Listed Companies Amended**

The China Securities Regulatory Commission (CSRC) has recently released the *Work Rules for the Audit Committee for Mergers, Acquisitions and Restructurings of Listed Companies (Amended*

in 2011) (the “Work Rules”), which clarify the mechanism and procedures for the formation of the Audit Committee for Mergers, Acquisitions and Restructurings of Listed Companies (the “Audit Committee”) and public announcement of the names of the Committee Members. Under the newly revised Work Rules, “the Audit Committee shall be divided into a conveners group and professional group; the latter shall be divided into legal, accounting, assessment and financing teams. The name lists of these groups and teams shall be published on the website of the CSRC.

### **CSRC to Revise Listed Companies’ Takeover Measures**

The China Securities Regulatory Commission has released the “Decisions on Revising Articles 62 and 63 of the ‘Administrative Measures for the Takeover of Listed Companies’ (Consultative Draft)” for public consultation by 16 January 2012. Under the Consultative Draft, some provisions in Articles 62 and 63 have been revised, cancelling the administrative permission for the waiver from the offer obligation as a result of the issuance of stocks, providing a 2% shareholding increase by majority shareholders holding over 30% of the shares annually, an unlimited shareholding increase by majority shareholders holding over 50% of the shares and the inheritance of shares.

### **Interim Rules Promoting SME Development through Government Procurement Released**

The Ministry of Finance (MOF) and Ministry of Industry and Information Technology (MIIT) have recently issued the Interim Measures for Promoting the Development of Small and Medium-sized Enterprises through Government Procurement, which require that no entity or individual shall hinder or restrict any small or medium-sized enterprise (SME) from entering the government procurement market in the region and the industry freely, and stress that over 30% of the budget for government procurement projects will be specifically reserved for SMEs, with the percentage thereof reserved for small and micro enterprises being no less than 60%.

## **Finance & Taxation**

### **SAFE Regulates RQFII’s Domestic Securities Investment**

The State Administration of Foreign Exchange (SAFE) has released the “Notice of the State Administration of Foreign Exchange on Issues concerning Pilot Domestic Securities Investment by RMB Qualified Foreign Institutional Investors (RQFII) of Fund Management Companies and Securities Companies”. Under the Notice, the SAFE will implement balance management of the line of credit of investments (“Investment Credit Line”) made by RQFIIs. The accumulated net RMB capital invested by RQFIIs may not exceed the approved investment credit line. No RQFII may transfer or sell its investment credit line to other institutions or individuals.

### **SAFE Requires Reporting Adjustment of Domestic Banks’ Foreign-Related Payments**

The State Administration of Foreign Exchange (SAFE) has issued a notice to adjust the content of vouchers of domestic banks for foreign-related payments, requirements for international balance statistics as well as serviceable range of domestic payment vouchers, and to regulate the information collection of foreign exchange settlement and sales via institutional accounts and individual capital accounts. The notice states that a domestic bank shall be prepared for using new

vouchers with adjusted content and format, and report the use of new vouchers as required by the relevant regulations before 31 March 2012.

### **Central Bank Announces Rules to Implement Pilot RQFII Measures**

The People's Bank of China today released the *"Notice of the People's Bank of China on the Matters regarding the Implementation of the 'Measures on the Pilot Programme for Domestic Securities Investment by Fund Management Companies and Securities Companies as Renminbi-Qualified Foreign Institutional Investors'"* which clarify that a fund management company or securities company which qualifies as a Renminbi-Qualified Foreign Institutional Investor (RQFII) shall open a basic RMB savings account for foreign institutions and special RMB savings account for foreign institutions with a domestic commercial bank which possesses dual-qualification as custodian of qualified foreign institutional investors and agent for settlement services in the inter-bank bond market, and shall not open a general savings account or temporary savings account.

### **Tax Return for Resources Tax on Offshore Oil & Gas Fields Released**

The State Administration of Taxation has prepared and released the "Tax Return for Resources Tax on Chinese-Foreign Cooperated and Self-Operated Offshore Oil and Gas Fields" with effect from 1 February 2012. The Tax Return applies to Chinese-foreign cooperated offshore oil and gas fields and offshore oil and gas fields operated by China National Offshore Oil Corporation.

### **DTA between China and Zambia Put Into Effect**

The State Administration of Taxation (SAT) has announced that the "Agreement between the Government of the People's Republic of China and the Government of the Republic of Zambia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income" was officially given full force on 30 June 2011 and is applicable to affected taxpayers who earn income from 1 January 2012.

## **Miscellaneous**

### **MFA Issues China Consular Certificates Service Guideline**

On 28 December 2011, the Ministry of Foreign Affairs (MFA) issued the *Guideline for China Consular Certificates Service* (the Guideline), which comprises six parts, namely, "Preparation", "Exit & Entry", "Residence Abroad", "Certificates Application", "Safe Use" as well as "Special Tips". The Guideline comprehensively introduces the details of consular certificates based on the generality and characteristics of all kinds of certificates, and also gives special tips on problems which usually arise when people go abroad.

### **Protocol on Amended DTA between PRC & Uzbekistan Effective on 30 December 2011**

The State Administration of Taxation (SAT) has made an announcement that the "Protocol on Amending the 'Agreement between the Government of the People's Republic of China and the Government of the Republic of Uzbekistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income' Signed on 3 July 1996" was put

into effect on 30 December 2011. The Protocol was signed in Beijing on 18 April 2011. The two countries completed their own legislative procedures to bring the Protocol into effect respectively on 15 June 2011 and 1 December 2011.

#### **Eligible Sino-Invested Vessels during 12th Five-Year Plan Enjoy Tax-Free Registration**

The Ministry of Transport (MOT) has issued the *Announcement on Continually Implementing the Special Tax-Free Registration Policies for Sino-Funded Vessels with Flags of Convenience during the "12<sup>th</sup> Five-Year Period"* (the Announcement), which clarifies that the special tax-free registration policies for Sino-funded vessels with a "Flag of Convenience" shall be extended to 31 December 2015. The eligible Sino-funded vessels listed below shall be exempted from tariffs and Import Value-Added Tax if they have declared at Customs from 1 July 2011 to 31 December 2015: (i) the vessel had been registered abroad before 31 December 2005; (ii) the investments made by the Chinese parties shall not be lower than 50%; etc.

#### **Two Depts. Clarify Business Tax Policies for Transfer of Right to Use Natural Resources**

The Ministry of Finance (MOF) and State Administration of Taxation (SAT) have jointly issued the Notice on Business Tax Policies for Transfer of the Right to Use Natural Resources, which shall come into force as of 1 February 2012 such that (i) a new item "transfer of the right to use natural resources" shall be inserted in Article 8 that provides "transfer of intangible assets" of the Notice of the State Administration of Taxation on Printing and Issuance of the Annotations on Business Tax Category (Trial) (Guoshuifa [1993] No. 149). Any assignment and transfer or withdrawal of the right to use natural resources by local governments or competent authorities of natural resources at or above the county level shall not be subject to business tax; and (ii) transfer of the right to use natural resources in China refers to natural resources to be transferred that are within the territory of China.

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