



**PRC Law Newsflash
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**New Regulation Regarding Preferential Tax Treatment for Asset Restructuring
in the China (Shanghai) Pilot Free Trade Zone**

On 15 November 2013, the Ministry of Finance and the State Administration of Taxation jointly issued the *Notice On Relevant Corporate Income Tax Policies Regarding Asset Restructuring Activities Such As Investment Using Non-Monetary Assets In the China (Shanghai) Pilot Free Trade Zone (Notice)*, which became effective as of the date of issuance.

The Notice sets forth preferential corporate income tax treatment policies for companies registered in the China (Shanghai) Pilot Free Trade Zone (**FTZ**) which are engaged in asset restructuring activities.

1. Preferential Treatment

FTZ enterprises engaged in "asset restructuring" (as defined below) may be eligible for a five year corporate income tax deferral policy if the value of their assets has increased after being evaluated pursuant to the restructuring. Under the policy, any income realized from the transfer of non-monetary assets during the restructuring can be evenly distributed for income tax purposes over a period of up to five years.

2. Asset Restructuring

Under the Notice, "asset restructuring" refers to any restructuring by way of (a) setting up of new companies using non-monetary assets, or (b) acquisition (equity or asset) as specified in the 2009 *Notice on Several Questions regarding Corporate Income Tax Treatment for Enterprise Restructuring Activities* promulgated by the Ministry of Finance, and the State Administration of Taxation (Document No.59).

3. Eligible Enterprises

In order to be eligible for the preferred tax treatment, an enterprise must be:

- registered and conducting business activities in the FTZ;
- a PRC tax resident; and
- taxed on an actual basis.

4. Cancellation of Preferential Treatment

The preferential tax treatment shall cease and the enterprise is required to pay the outstanding corporate income tax in a lump sum if the enterprise is liquidated, transfers the acquired equity or withdraws the investment, within five years after restructuring.

Conclusion

The Notice supports the FTZ's general "pro-business" approach. Specifically, the preferential treatment for corporate income tax under the Notice encourages non-monetary investment activities for FTZ incorporated enterprises.

The Notice is to be applied and interpreted together with Document No.59, which defines "equity or asset acquisition" and thereby stipulates which of those activities are eligible for preferential treatment under the Notice.

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