

TAXATION*PRC Deed Tax*

Under the Provisional Regulations of the PRC on the Deed Tax (中華人民共和國契稅暫行條例) which took effect on October 1, 1997, deed tax applies to entities and individuals that accept the transfer of land use rights and the ownership of houses within the territory of the PRC.

The transfer of land use rights and the ownership of houses refer to the following acts:

- Assignment of the right to use state-owned land;
- Transfer of land use rights, including the transfer by means of sale, gift and exchange, excluding the transfer of the right contract for the management of rural collective land;
- Purchase and sale of houses;
- Gift of houses; and
- Exchange of houses.

The transfer of land use rights and the ownership of houses by the means of the following methods are also deemed to be governed by the above regulation, as stipulated by the Implementation Rule of Provisional Regulation on Deed Tax (中華人民共和國契稅暫行條例細則):

- Using land use rights and ownership of a house as investment;
- Setting off debt with land use rights and the ownership of house;
- Obtaining land use rights and the ownership of a house as a prize;
- Obtaining land use rights and the ownership of a house by the way of purchasing in advance.

The rate of deed tax will, within the range of 3%–5%, be determined by the PRC government agencies of provincial, autonomous region and municipal level in light of the actual conditions of the underlying properties respective areas and shall be reported to the Ministry of Finance and the State Administration of Taxation of China.

The deed tax will be reduced or exempted under the following circumstances:

- For the acceptance of land and houses by state agencies, institutions, social organizations and military units for office, teaching, medical service, scientific research and military facilities, the deed tax will be exempted;
- For the initial purchase of state-owned residential houses by urban and township workers and staff members according to the provisions of relevant laws and regulations, the deed tax will be exempted;

- For the purchase of residential houses in replacement of houses damaged or destroyed due to force majeure, the tax will, upon approval, be reduced or exempted according to the circumstances; and
- Any other types of reduction or exemption provided by the Ministry of Finance.

Reduction or exemption of deed tax will not be applicable if the relevant land or house and the change of use is no longer within the above mentioned scope, and an amount of tax equivalent to the tax reduction or exemption should be repaid.

On October 22, 2008, the State Council, the Ministry of Finance, and the State Administration of Taxation jointly announced the decision to reduce the tax expenses of housing transactions. The Ministry of Finance and the State Administration of Taxation provided that effective November 1, 2008, the deed tax were temporarily reduced to 1% for individuals who purchase the ordinary residence with less than 90 sq.m. floor areas for the first time, and temporarily exempt stamp duty and land appreciation tax for purchase or sales of housing by individuals, as applicable.

Income Tax

According to the Enterprise Income Tax Law of the People's Republic of China (中華人民共和國企業所得稅法) enacted by the National People's Congress on March 16, 2007 and relevant implementation rules enacted by the State Council on December 6, 2007, both in effect from January 1, 2008 onwards, a uniform income tax rate of 25% will be applied towards PRC enterprises, foreign investment enterprises and foreign enterprises which have set up production and operation facilities in the PRC. However, enterprises which have enjoyed preferential tax policies can still enjoy interim preferential tax treatment for up to five years from 2008.

Under the Enterprise Income Tax Law, in effect from January 1, 2008, a withholding tax of 10% will be applicable to dividends paid by foreign invested enterprises to foreign investors, unless otherwise stipulated in tax treaties concluded between Chinese government and other jurisdictions. However, due to a tax treaty between the PRC and Hong Kong on August 21, 2006, a company incorporated in Hong Kong will be subject to a withholding tax at a rate of 5% on dividends it receives from a company incorporated in the PRC if it holds a 25% interest or more in the PRC company, or 10% if it holds less than 25% interest in the PRC company.

According to the Implementation Rule of the Enterprise Income Tax Law, if an enterprise incorporated outside the PRC has its "de facto management body" located within the PRC, such an enterprise may be recognized as a PRC tax resident enterprise and subject to enterprise income tax at the rate of 25%. According to the Enterprise Income Tax Law, dividends received by a qualified PRC tax resident from another qualified PRC tax resident are exempted from enterprise income tax. However, given the short history of the Income Tax Law, it remains unclear as to the detailed qualification requirements for such an exemption.

Business tax

Under the Provisional Regulations on Business Tax of the PRC (中華人民共和國營業稅暫行條例) which was issued on September 13, 1993 and amended on November 5, 2008 and the Provisional Implementation Rules of the Provisional Regulations on Business Tax of the PRC (中華人民共和國營業

稅暫行條例實施細則) which took effect on January 1, 2009, business tax is levied on all enterprises that provide “taxable services”. These include the assignment of intangible assets and the sale of immovable properties in the PRC. The rates range from 3% to 20% depending on the type of services provided. The assignment of intangible assets, the sale of buildings and other attachments to the land and leasing of property incur a tax rate of 5% of gross revenue generated from the relevant transactions of the enterprise.

On May 27, 2005, the State Administration of Taxation (國家稅務總局), MOFCOM and Ministry of Construction (建設部) jointly issued a Notice on Strengthening the Administration of Taxes in Connection with Real Estate (《關於加強房地產稅收管理的通知》). According to the notice, from June 1, 2005, business tax shall be imposed on the full amount of the sales income of a real estate company, upon the transfer of the ownership of a residential house by an individual within two years from the purchase date. However, transfer of an ordinary residential property may be exempted from business tax upon tax authorities’ approval of application for such exempt. According to the Circular on Forwarding Opinions of the Ministry of Construction and other Departments on Stabilizing Housing Prices issued by the General Office of the State Council (國務院辦公廳轉發建設部等部門關於做好穩定住房價格工作意見的通知) on May 5, 2005, in the case of a house other than an ordinary residential house, business tax shall be imposed on the difference between the sales income and the purchase price, provided that the transfer occurs after two years from the purchase date. Ordinary residential house refers to a residential unit, of which (i) the plot ratio is more than 1.0; (ii) the GFA is less than 120 sq.m.; and (iii) the price is lower than 1.2 times of the average selling price of residential properties on the land of the same category. The provincial-level government may set its own GFA and price requirements with a deviation no more than 20% of the above-mentioned standards.

On May 30, 2006, the State Administration of Taxation issued a Notice on Strengthening the Administration of Business Tax Collection in Connection with Housing (《關於加強住房營業稅徵收管理有關問題的通知》). According to the notice, from June 1, 2006, business tax shall be imposed on the full amount of the sales price upon the transfer of a residential house by an individual within five years from the purchase date. In the case of a house other than an ordinary residential house, business tax shall be imposed on the difference between the sale price and the purchase price, provided that the transfer occurs five years or more after the purchase date. However, transfer of an ordinary residential property five years or more after the purchase date may be exempted from business tax upon tax authorities’ approval of application for such exemption.

On December 29, 2008, the Ministry of Finance and the State Administration of Taxation jointly issued the *Notice on Business Tax Imposed on Individuals Transferring Houses* (《財政部、國家稅務總局關於個人住房轉讓營業稅政策的通知》). The notice provided that, from January 1, 2009 to December 31, 2009, business tax would be levied on the total resale price obtained by individuals transferring property other than ordinary residential property within two years of their purchase of the property. For individuals transferring property other than ordinary residential property two years or more after their purchase of the property, or transferring ordinary residential property within two years of their purchase of the property, business tax would be levied on the difference between the resale price and the original purchase price. Individuals transferring ordinary residential property two years or more after their purchase of the property were not subject to any business tax.

On December 22, 2009, the Ministry of Finance, and the State Administration of Taxation jointly issued the *Notice on Business Tax Imposed on Individuals Transferring Houses* (《財政部、國家稅務總局關於調整個人住房轉讓營業稅政策的通知》). The notice provided that, commencing January 1, 2010, individuals transferring property other than ordinary residential property within five years of their

purchase of the property, are subject to business tax on the total resale price of such property. For individuals transferring property other than ordinary residential property five years or more after their purchase of the property, or individuals transferring ordinary residential property within five years of their purchase of the property, business tax is applicable on the difference between the resale price and the original purchase price of the property. For individuals transferring ordinary residential property five years or more after their purchase of the property, no business tax is applicable.

According to the Notice on Promoting the Steady and Healthy Development of the Real Estate Market (關於促進房地產市場平穩健康發展的通知) issued by the General Office of the State Council on January 7, 2010, local governments shall strictly enforce the national policy of differential taxation on non-ordinary residential houses (非普通住房) and ordinary residential houses (普通住房), first purchase of house and not first purchase of house. The local governments shall not give the buyer the preferential tax treatment.

Land Appreciation Tax

Under the Provisional Regulations of the PRC on Land Appreciation Tax (中華人民共和國國土地增值稅暫行條例) promulgated by the State Council on December 13, 1993 and its implementation rules, land appreciation tax or LAT, applies to both domestic and foreign investors, irrespective of whether they are corporate entities or individuals. LAT is payable on the appreciation in value representing the balance of the proceeds received on sales, after deducting various prescribed items, including payments made for acquisition of land use rights, the costs and expenses relating to land development and the construction of buildings and related facilities, the appraised price of any existing buildings and structures on the land and taxes related to the assignment of the real estate, and other deductible items stipulated by the Ministry of Finance. LAT is charged at progressive rates ranging from 30% to 60%. Apart from the aforementioned deductions, property developers enjoy an additional deduction, which is equal to 20% of the payment made for acquisition of land use rights and the costs of land development and the construction of new buildings or related facilities. An exemption from payment of LAT may be available if the taxpayer constructs ordinary residential apartments and the appreciation amount does not exceed 20% of the sum of deductions allowed under PRC law. If, however, the appreciation amount exceeds 20% of the sum of allowable deductions, such an exemption is not available and the taxpayer will be liable to LAT on the full appreciation amount, after taking account of the allowable deductions. The allowable deductions include the following items:

- Payment made to acquire land use rights;
- Costs and expenses related to land development and the construction of the properties;
- Construction costs and charges in the case of newly constructed buildings and facilities or assessed value in the case of old buildings and structures;
- Taxes in connection with the transfer of real estate; and
- Other items stipulated by the Ministry of Finance (including 20% deduction of the first two items mentioned above in relation to property development).

LAT is charged at progressive rates ranging from 30% to 60% of the appreciation value (i.e., the balance as described above).

Appreciation value	LAT rates (%)
For the portion:	
Not exceeding 50% of allowable deductions	30
Over 50% but not more than 100% of allowable deductions	40
Over 100% but not more than 200% of allowable deductions	50
Over 200% of allowable deductions	60

An exemption from payment of LAT may be available if the taxpayer constructs ordinary standard residential apartments and the appreciation amount does not exceed 20% of the sum of deductions allowed under PRC law.

Agricultural Land Occupation Tax

The State Council issued the Tentative Rules on Tax of Occupation of Agricultural Land of the People’s Republic of China (《中華人民共和國耕地佔用稅暫行條例》) on December 1, 2007. The rules will take effect from January 1, 2008 and as a result, the former tentative rules with the same regulation issued by the State Council on April 1, 1987 will be abolished simultaneously. The Rules mainly regulates the taxation procedures and tax amount based on the tax objects and the use of agricultural land.

Real Estate Tax

According to the Interim Regulations on Urban Real Estate Tax (房產稅暫行條例) issued by the State Council on September 15, 1986, enterprises, engaged in real estate development and investment in China are required to pay real estate tax on land and buildings owned by them in China. The tax is calculated on the remaining value (deduction from 10% to 30% of the original value of the property) at a rate of 1.2% or on the rental income from the property at a rate of 12%.

FOREIGN CURRENCY EXCHANGE

Prior to December 31, 1993, a quota system was used for the management of foreign currency. Any enterprise that used foreign currency in the normal course of its operations was required to obtain a quota from the local SAFE office before it could convert Renminbi into foreign currency through the Bank of China or other designated banks. Such conversion had to be effected at the official rate set up by SAFE on a daily basis. Renminbi could also be converted into foreign currency at swap centers. The exchange rates used by swap centers were largely determined by the demand for and supply of the foreign currency and the Renminbi requirements of enterprises in the PRC. Any enterprise that wished to buy or sell foreign currency at a swap center had to obtain an advanced approval from SAFE.

On December 28, 1993, the PBOC, under the authority of the State Council, promulgated the Notice of the People’s Bank of China Concerning Further Reform of the Foreign Currency Control System (人民銀行關於進一步改革外匯管理體制的公告), promulgated on January 1, 1994. The notice announced the abolition of the foreign exchange quota system, the implementation of conditional convertibility of Renminbi in current account items, the establishment of the settlement and payment system of foreign exchange by banks, and the unification of the official Renminbi exchange rate and the market rate for Renminbi established at swap centers. On June 20, 1996, the PBOC promulgated the Regulations for the

Administration of the Settlement, Sale and Payment of Foreign Exchange (結匯、售匯及付匯管理規定), which set out detailed provisions regulating the trading of foreign exchange by enterprises, economic organizations and social organizations in the PRC.

The principal regulation governing foreign currency exchange in the PRC is the Regulations for the Control of Foreign Exchange or the Foreign Exchange Regulations (中華人民共和國外匯管理條例), promulgated by the State Council in January 1996, as amended in January 1997. Under these regulations, Renminbi are freely convertible for payments of current account items, such as trade and service-related foreign exchange transactions and dividend payments, but are not freely convertible for capital expenditure such as direct investment, loans or investments in securities outside the PRC unless the approval of the SAFE is obtained in advance.

Under the Foreign Exchange Regulations, foreign-invested enterprises in the PRC may purchase foreign currency for trade and service-related foreign exchange transactions without the approval of the State Administration by providing commercial documents evidencing these transactions. They may also remit foreign currency (subject to a cap approved by the SAFE) to satisfy foreign exchange liabilities or to pay dividends. However, the relevant PRC government authorities, which have significant administrative discretion in implementing the laws, may restrict or eliminate the ability of foreign-invested enterprises to purchase and remit foreign currencies in the future. See “Risk Factors — Risks relating to conducting business in the PRC — Governmental control of currency conversion may limit our ability to use capital effectively.” In addition, foreign exchange transactions involving direct investment, loans and investments in securities outside the PRC are subject to limitations and require approvals from the SAFE.

Pursuant to the SAFE’s Notice on Relevant Issues Concerning Foreign Exchange Administration for PRC Residents to Engage in Financing and Inbound Investment via Overseas Special Purpose Vehicles (關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知), or SAFE Circular No. 75, issued on October 21, 2005, (i) a PRC resident is required to register with the local branch of SAFE before he or she establishes or controls an overseas special purpose vehicle, or overseas SPV, for the purpose of overseas equity financing (including convertible debt financing); (ii) when a PRC resident transfers assets of or equity interests in a domestic enterprise into an overseas SPV, or engages in overseas financing after contributing assets or equity interests into an overseas SPV, such a PRC resident shall register his or her interest in the overseas SPV and the change thereof with the local branch of SAFE; and (iii) when the overseas SPV undergoes a material capital change event outside of China, such as a change in share capital or merger and acquisition, the PRC resident shall, within 30 days from the occurrence of such event, register such change with the local branch of SAFE. In May 2007, SAFE issued guidance to its local branches with respect to the procedures for SAFE registration, which strengthens the supervision on registration pursuant to SAFE Circular No. 75 and imposes obligations on onshore subsidiaries of the overseas SPVs to coordinate with and supervise the relevant PRC residents to complete the registration.

Under SAFE Circular No. 75, failure to comply with the registration procedures set forth above may result in restrictions on a PRC subsidiary’s foreign exchange activities and impact its ability to distribute dividends to the overseas SPV. The failure may also result in such penalties as being ordered to remit the foreign exchange illegally paid out of China back into China, as well as the imposition of fines up to more than 30% while less than five times of the amount.

On July 11, 2006, the Ministry of Construction, MOFCOM, NDRC, PBOC, SAIC and SAFE jointly issued the Opinions on Regulating the Entry and Administration of Foreign Investment into the Real Estate Market (關於規範房地產市場外資准入和管理的意見) (the “171 document”). The 171 document provides that: (i) foreign organizations and individuals who have established FIEs are allowed to invest and purchase non-self-resided real estate in China; branches or representative offices of foreign organizations established in China and foreign individuals who work or study in China for over a year are eligible to purchase commodity properties which match their real needs for self-utilization or self-residence under their real names; (ii) the registered capital of foreign-invested real estate corporations with total investments of more than US\$10.0 million shall be no less than 50% of its total investment; (iii) foreign-invested real estate corporations can apply for the formal FIE approval certificate and business license only after they have paid back all the land premium and obtained the State-owned land use rights certificate; (iv) foreign investors shall pay off all the transfer price in a lump sum with their own funds if they acquire Chinese domestic real estate corporations; (v) no offshore or Chinese domestic loan is allowed and the foreign exchange administration shall not approve the conversion of foreign loans into RMB if the foreign-invested real estate corporations have not paid their registered capital in full, or have not obtained the State-owned land use rights certificate, or their internal fund for a development project is less than 35% of the total investment; and (vi) by no means can Chinese or foreign investors make any commitment in any documents to guarantee a fixed return or fixed revenue in disguised form for any party in the contract.

In accordance with the 171 document, MOFCOM and SAFE jointly issued a Notice on Further Strengthening and Regulating the Approval and Administration regarding Foreign Direct Investment in the Real Estate Industry (關於進一步加強、規範外商直接投資房地產業審批和監管的通知) (“No. 50 Notice”) on May 23, 2007. Under the Notice, local commercial authorities should reinforce the approval and supervision process over foreign-invested real estate enterprises, and strictly control foreign fund from investing in high-end real estate development projects. For foreign-invested company intending to engage in the property development business, the land use right should be obtained, or at least has entered into pre-contract purchase agreement with the relevant land administrative authorities, land developers, or the owners of the house or other constructions, otherwise the proposed foreign invested real estate company will not be approved by the authorities. For existing foreign invested company who intends to expand its operations in its business operation or company who intends to engage in the operation or development of the new real estate project, they should undertake relevant procedures with the approval authority.

No. 50 Notice strictly controls the acquisition or merger of domestic real estate enterprises by means of return investment (includes the same effective controller). It also prohibits Chinese or foreign investors in real estate joint ventures to reach any terms that aim to achieve a fixed return for either party. Once the local authority has approved the establishment of a foreign invested real estate enterprise, it should immediately file such approval with the MOFCOM.

The local SAFE administrative authority and designated foreign exchange bank will not conduct foreign exchange purchase and settlement process for foreign invested real estate company who fails to satisfy the MOFCOM for filing requirement or to pass the joint annual examination of foreign-invested enterprises.

On July 10, 2007, the General Department of SAFE issued the Notice on Issuing the List of the First Batch of Foreign-invested Real Estate Projects Having Passed the Procedures for Filing with the Ministry of Commerce (國家外匯管理局綜合司關於下發第一批通過商務部備案的外商投資房地產項目名單的通知) (the “No. 130 Rule”). The No. 130 Rule included the list of the first batch of foreign-funded real estate projects that passed MOFCOM’s filing procedures.

According to No. 130 Notice, registration regarding the establishment of foreign-invested real estate enterprises shall be made with MOFCOM. However, such real estate enterprises with foreign investment as filed with MOFCOM will not be permitted to borrow money from overseas, including through shareholder loans and foreign commercial loans. Further, for those which fail to file with MOFCOM after June 1, 2007, neither foreign exchange registration, foreign exchange alteration registration nor sale and purchase of foreign exchange under capital account will be effected with SAFE or its branches.