

China Cuts Taxes for Foreign Investors

By Maarten Roos

1. Introduction

Following an announcement by the State Council on 28 July 2017, the Ministry of Finance (MOF) jointly with several other ministries followed up on 21 December with a Circular 88 allowing foreign investors to defer withholding taxes on profits that are re-invested into China. Circular 88 takes retroactive effect from 1 January 2017, and by slashing the withholding tax rate from 5/10% (to 0%) will encourage foreign investors to re-invest their profits into China.

2. Conditions

Circular 88 does set some conditions on the exemption. The most important are:

- (1) The profit subject to the deferral must be invested in qualified Chinese entities, through:
 - Increase in or conversion to paid-in registered capital or capital reserve of a Chinese subsidiary
 - Set-up of a new Chinese subsidiary
 - Acquisition of equity in a Chinese entity, that is not already an affiliate
 - (2) The investment must be for an industry which falls in the encouraged category of the Catalogue for Guidance of Foreign Investment in Industries (updated 2017), or in the Catalogue for Guidance of Foreign Investment in Industries in Central and Western Regions, if the investment is made in Central or Western China (updated 2017). Encouraged sectors include various kinds of manufacturing and services.
- Other key points:
- The exemption is structured as a deferral, which means that if the equity investment is disposed then the withholding tax should be paid. An exception is made for disposals that qualify for the deferral treatment of company restructurings.
 - Where withholding tax has been paid by a company that qualifies for the deferral, a retroactive application for refund can be paid within three years.



R&P PUBLICATIONS

3. Conclusion

Years back, a similar policy was in place to encourage foreign investors to re-invest their profits into China. That the policy is now re-instated signals China's want for foreign investors to continue investing into China, especially in industrial sectors that need capital and foreign expertise, and whose development is part of China's vision of long-term plans. And while this deferral may not drive a lot of new investment, it will be a good tax planning opportunity for many multinationals that continue to see China as a key market.

Above all, this policy change should be seen not only as financial support but also as a message that **China continues to welcome foreign investment!**

Maarten Roos, founder of R&P China Lawyers, a PRC law firm exclusively supporting foreign companies with a business interest in China.

As a full-service firm, R&P assists with corporate/M&A, litigation, arbitration, IP, employment, tax, compliance, and commercial matters. R&P China Lawyers has a thriving retail practice, supporting numerous international companies on selling to Chinese consumers through e-commerce, cross-border e-commerce, and brick-and-mortar stores in China.

For more information on our practice, or to discuss strategies on taking advantage of the latest legal developments, please contact roos@rplawyers.com

By **R&P China Lawyers**

© 2018 R&P China Lawyers