



Appendix

Unofficial Translation Prepared by Baker McKenzie

Notice of the Ministry of Finance, the State Administration of Taxation, the National Development and Reform Commission and the Ministry of Commerce Concerning the Deferral of Withholding Tax on Dividends Directly Invested by Foreign Investors

(Document ref. Cai Shui [2017] No. 88

Dated 21 December 2017. Effective from 1 January 2017).

To the Departments (Bureaus) of Finance, the State and Local Tax Bureaus, the Development and Reform Commissions, the competent Commerce Bureaus of all provinces, autonomous regions, and municipalities directly under the Central Government and cities directly under State planning, and the Finance Bureau, the Development and Reform Commission and the Commerce Bureau of the Xinjiang Production and Construction Corps:

In order to thoroughly implement the decisions and arrangements of the Central Committee of the Communist Party of China and the State Council, in accordance with the relevant requirements under the State Council's Notice Concerning Certain Measures to Attract Foreign Investment (Document ref. Guo Fa [2017] No. 39), to make active further use of foreign investment, promote the increase of foreign investment, improve the quality of foreign investment and encourage foreign investors to continually increase their investments in China, issues relating to the withholding tax deferral policy for dividends directly invested by a foreign investor are hereby announced as follows:

1. Subject to certain prescribed conditions, dividends that are derived by a foreign investor from a resident enterprise within China and then directly invested into an encouraged investment project are eligible for the tax deferral policy and are not subject to immediate withholding tax.
2. In order for a foreign investor to enjoy the dividend withholding tax deferral, the following conditions should be satisfied concurrently:
 - (i) The foreign investor shall use the dividends received for direct investment, including for equity investments such as capital increase into an existing enterprise, formation of a new enterprise and share acquisition of an enterprise from an unrelated party, but excluding capital increase into and share acquisition of a listed company (unless the investment constitutes a qualified strategic investment into the listed company). To be more specific, direct investment includes:
 - a. An increase of the paid-in capital or capital reserve of a resident enterprise within China;
 - b. Formation of a new resident enterprise within China;
 - c. Share acquisition of a resident enterprise within China from an unrelated party; and



- d. Other methods as provided by the Ministry of Finance and the State Administration of Taxation.

The enterprise receiving the aforementioned investments from the foreign investor is hereinafter referred as the "invested enterprise".

- (ii) The dividends derived by the foreign investor are earnings from equity investment such as dividends and bonuses that are actually distributed from retained earnings realized by a resident enterprise within China.
 - (iii) If the dividends to be used for direct investments by the foreign investor are paid in the form of cash, the relevant funds shall be directly transferred from the account of the profit-distributing enterprise to the account of the invested enterprise or the transferor in a share transfer and must not be transferred to another domestic or offshore account before the direct investment; if the dividends to be used for direct investments by the foreign investor are paid in a non-cash form such as in-kind payment or payment in negotiable securities, the ownership of the respective assets should be directly transferred from the profit-distributing enterprise to the invested enterprise or the transferor in a share transfer and must not be held by another enterprise or individual as a nominee or temporary owner before the direct investment.
 - (iv) Direct investment into an encouraged investment project means that during the foreign investor's investment period the invested enterprise shall conduct business activities within the scope listed in either:
 - a. *the Catalogue of Encouraged Industries for Foreign Investment as listed in the Industry Catalogue for Guiding Foreign Investment*; or
 - b. *the Catalogue of Priority Industries for Foreign Investment in Central and Western China*.
3. A foreign investor satisfying the conditions as prescribed under Article 2 of this notice should make a declaration in accordance with the relevant taxation administration requirements and submit supporting documents of its eligibility for the dividend tax deferral policy to the profit-distributing enterprise. After a proper review of the documents, the profit-distributing enterprise may temporarily be exempt from withholding income tax in accordance with Article 37 of the *Enterprise Income Tax Law* after fulfilling the recordal procedure with its in-charge tax authority.
 4. The tax authority should enforce subsequent administration in accordance with the law. If the tax authority verifies in subsequent administration that a foreign investor that did not satisfy the prescribed conditions but has enjoyed the withholding tax deferral as provided in this notice, the foreign investor shall be considered as having not declared and paid enterprise income tax in accordance with the relevant provisions and shall be liable for the delayed tax payment in accordance with the law (the liabilities shall arise from the payment date of the relevant



dividends), unless the unpaid tax was caused by the profit-distributing enterprise.

5. A foreign investor who is eligible for the dividend withholding tax deferral in accordance with this notice but has not actually enjoyed the deferral may apply for the deferral within three years from the actual tax payment date, claiming a refund of the paid tax.
6. If a tax authority at or above the prefecture-level (地市级) has doubts in subsequent administration regarding whether business activities conducted by the invested enterprise fall within the scope of encouraged business activities as provided in Article 2.4, it can require the competent Development and Reform Commission and Commerce Bureau to provide an opinion. These authorities shall actively cooperate with the tax authority.
7. If the foreign investor's direct investment is recovered by way of share transfer, redemption, liquidation, etc., and the foreign investor has enjoyed the dividend withholding tax deferral policy on that foreign investment, the foreign investor shall declare and pay back the deferred tax to the tax authority in accordance with prescribed procedures within seven days from actual receipt of the relevant payments.
8. If, after a foreign investor enjoyed the dividend withholding tax deferral on a direct investment as provided in this notice, the invested enterprise undergoes a restructuring that qualifies for and actually enjoys the special tax treatment, the foreign investor does not need to pay back the deferred tax in accordance with Article 7 of this notice.
9. A "foreign investor" as used in this notice refers to a non-resident enterprise as provided under Article 3.3 of the *Enterprise Income Tax Law*; a "resident enterprise within China" as used in this notice refers to a resident enterprise established within China in accordance with PRC law.
10. This notice takes effect from 1 January 2017. The notice is applicable to earnings from equity investment such as dividends and bonuses derived by a foreign investor on or after 1 January 2017. If tax has been withheld and paid, Article 5 shall apply.

The Ministry of Finance, the State Administration of Taxation, the National Development and Reform Commission and the Ministry of Commerce

21 December 2017