



An Update on Windfall Gain Levy on Oil Exploitation Business

On 25 March 2006, the Ministry of Finance (“MOF”) issued the “Administration Measures on Collection of Windfall Gain Levy on Oil Exploitation Business” (the “Measures”) under which oil exploitation enterprises working in China, including joint venture enterprises, are subject to the Windfall Gain Levy (the “Levy”), if the sales price of crude oil is above US\$40 per barrel. Such Levy is imposed at the progressive rates from 20% to 40% on the portion of sales price exceeding US\$40 per barrel. For details, please refer to our News Flash Issue # 8 in April this year.

Since the issuance of the Measures, a lot of practical questions have arisen. In an attempt to resolve these issues, MOF has issued a Supplementary Notice for the Administration Measures on Collection of Windfall Gain Levy on Oil Exploitation Business (the “Supplementary Notice”) on 30 June 2006. Here are the salient points of the Supplementary Notice:

Taxation scope

It has clarified that oil exploitation enterprise is required to pay the Levy as long as it has exploited oil in the territory of China even though the relevant sales of oil is not made in China.

Taxable amount

Foreign partner of any cooperative oil exploitation project should be subject to the Levy to the extent that the oil is lifted. It is understood that such amount of oil should not include the portions to be paid as VAT, oil field royalty and oil retained for the nation. In addition, the price which is used for computing oil sharing amount (“oil sharing reference price”) will be regarded as the sales price for the Levy calculation purpose. More importantly, unlike VAT or oil field royalty, the Levy must be paid in RMB cash. Furthermore, such Levy should not be treated as joint account cost and hence is not eligible for cost recovery.

Filing and payment responsibilities

It has further clarified that the compliance filing for the Levy should be consolidated and performed by the partner of the concerned oil project holding the oil exploitation and development permit. Documentation showing details of sales price/oil sharing reference price of each month should also be filed. After confirmation by MOF on the respective payable amounts of the Levy of joint venture partners, the Levy should be paid directly by joint venture partners (on an individual basis) to the specific account of MOF. Late filing or payment will result in surcharge and penalty to the responsible party(ies).

Although there are still issues which need to be resolved, the Supplementary Notice has indeed helped the oil industry players to have a better understanding on how Windfall Gain Levy regime works.

Relaxation of Controls on Outbound Investment by Chinese Investors

In support of China's "Going Out" strategy, the State Administration of Foreign Exchange ("SAFE") has issued various circulars in the past year to liberalise policies governing outbound investments by Chinese investors. Alongside with this same objective, Hui Fa [2006] 27 ("Circular 27") was issued on 6 June 2006. This latest circular announced measures to further facilitate Chinese investors' overseas investments and help Chinese investors stay competitive in an international arena.

One of the key liberalisation measures provided in Circular 27 is the removal of quota limit imposed on the amount of foreign exchange a Chinese investor can obtain for an overseas investment. With the liberalisation, Chinese investors face lesser constraints and holdbacks when developing their outbound investment strategy.

Another liberalisation measure introduced in Circular 27 is to allow Chinese investors to remit foreign exchange for pre-investment costs on an overseas investment project upon approval. Examples of pre-investment costs include:

- Guarantee deposits required in share or asset acquisitions
- Bidding deposits required in bidding projects,
- Expenses in connection with pre-investment / market feasibility studies
- Other pre-investment expenses

There are however certain restrictions on the outbound remittance of pre-investment costs, including:

- The outbound remittance required for pre-investment costs is not expected to exceed 15% of the total outbound remittance required for the investment. In the event that the pre-investment costs will exceed 15%, approval for a higher ratio should be applied through SAFE.
- In the event that the requisite approval for the overseas investment project is not completed within 6 months from the date of outbound remittance for the pre-investment costs, the unspent portion of the outbound remittance would have to be remitted back to China. In this respect, Chinese investors should plan and manage their outbound remittance application process carefully to avoid having to remit any unused portion of their pre-investment funds back to China when the 6-month time limit has lapsed.

The above liberalisation measures take effect from 1 July 2006.

In the context of this China Tax / Business News Flash, China refers to the People's Republic of China but excludes Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Region.

The information contained in this publication is for general guidance on matters of interest only and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PricewaterhouseCoopers client service team.

Beijing

Tel: (86) (10) 6533 2866
Fax: (86) (10) 6533 8800
Edward Shum
edward.shum@cn.pwc.com

Chongqing

Tel: (86) (23) 6374 0008
Fax: (86) (23) 6374 0990
Tony Kwan
tony.kwan@cn.pwc.com

Dalian

Tel: (86) (411) 8370 6668
Fax: (86) (411) 8370 6665
Edward Shum
edward.shum@cn.pwc.com

Guangzhou

Tel: (86) (20) 3819 2128
Fax: (86) (20) 3819 2100
Charles Leung
charles.leung@hk.pwc.com

Hong Kong

Tel: (852) 2289 3669
Fax: (852) 2810 9888
Petrina Tam
petrina.tam@hk.pwc.com

Qingdao

Tel: (86) (532) 8089 1888
Fax: (86) (532) 8089 1800
Steven Wong
steven.wong@cn.pwc.com

Shanghai

Tel: (86) (21) 6123 2515
Fax: (86) (21) 6123 8800
Tony Kwan
tony.kwan@cn.pwc.com

Shenzhen

Tel: (86) (755) 8261 8899
Fax: (86) (755) 8261 8800
Charles Lee
charles.lee@cn.pwc.com

Suzhou

Tel: (86) (512) 6288 6860
Fax: (86) (512) 6288 6870
Billy Hsieh
billy.hsieh@cn.pwc.com

Tianjin

Tel: (86) (22) 2330 6789
Fax: (86) (22) 2339 3662
Alan Wu
alan.wu@cn.pwc.com

Xian

Tel: (86) (29) 8720 3336
Fax: (86) (29) 8720 3335
Elton Huang
elton.huang@cn.pwc.com

To make enquiries about our China tax and business advisory services, please feel free to contact the following lead specialist partners:

Human Resources Services

Tel: (86) (21) 6123 2517
Fax: (86) (21) 6123 8800
Nora Wu
nora.wu@cn.pwc.com

International Assignment Services

Tel: (86) (10) 6533 2698
Fax: (86) (10) 6533 8800
May Huang
may.huang@cn.pwc.com

Registration and Corporate Compliance Services

Tel: (86) (21) 6123 3052
Fax: (86) (21) 6123 8800
Matthew Wong
matthew.mf.wong@cn.pwc.com

Worldtrade Management Services Transfer Pricing

Tel: (86) (21) 6123 3599
Fax: (86) (21) 6123 8800
John Robinson
john.p.robinson@cn.pwc.com

Indirect Tax

Tel: (86) (10) 6533 2889
Fax: (86) (10) 6533 8800
Alan Wu
alan.wu@cn.pwc.com

Mergers & Acquisitions

Tel: (852) 2289 3097
Fax: (852) 2810 9888
Danny Po
danny.po@hk.pwc.com

Tel: (86) (21) 6123 2580
Fax: (86) (21) 6123 8800
Spencer Chong
spencer.chong@cn.pwc.com

Tel: (86) (21) 6123 3028
Fax: (86) (21) 6123 8800
Glenn Desouza
glenn.desouza@cn.pwc.com

Additionally, we welcome you to visit our PricewaterhouseCoopers China website at <http://www.pwccn.com> or <http://www.pwchk.com> for practical insights and professional solutions to current and emerging business issues.