



## Tightening Up Restrictions for Foreign Investment in Real Property Sector in China

In the wake of Guo Ban Fa [2006] 37, an administration opinion on foreign investment in the real property sector, namely Jian Zhu Fang [2006] 171 ("Circular 171") was jointly issued by six authorities. It provides a few new restrictions in several aspects:

### *Market entry barrier*

Unlike the past practice, Circular 171 requires foreign investors to set up foreign investment enterprises ("FIEs") to house their investment properties in China. For setting up a real property FIE of total investment exceeding USD10 million, it is required to inject registered capital amounting to at least 50% of total investment. It would be more stringent than the general requirements which allow 40% for FIEs of total investment ranging from USD10 million to USD30 million and 33% for FIEs of total investment exceeding USD30 million.

In cases of acquisition of real property FIE by way of equity transfer or other methods by foreign investors, it is necessary to pay the relevant consideration in one lump sum.

Circular 171 has also imposed restrictions on property investment for branches or representative offices of foreign enterprises as well as foreign individuals. Such branches, representative offices and foreign individuals who have stayed in China for over one year for working or studying are allowed to purchase real properties for self-use purpose. Furthermore, foreign enterprises without any establishment in China and foreign individuals who have stayed in China for less than one year are not allowed to acquire any real properties. As a concessionary treatment, residents of Hong Kong, Macao and Taiwan or overseas Chinese may buy real properties with area limitation for living purpose. Pursuant to a subsequent circular issued by properties administration authority, each of the aforesaid residents is allowed to buy one apartment. Meanwhile, the properties administration authority will not process any registration in respect of purchases made by unqualified entities or individuals.

### *Post establishment of a real property FIE*

After meeting the above registered capital requirements, real property FIE will be issued with a one-year approval permit and business license. The documents evidence the official establishment of a real property FIE. However, a permanent business license will be issued only when the real property FIE has fully paid up the land premium and got the land use right certificate.

Meanwhile, funding by loans is not allowed before the following conditions can be met:

- Registered capital is fully paid up.
- The land use right certificate has been obtained.
- 35% of the total project investment injected as the required registered capital of the project.

Separately, for joint venture real property FIEs, it is not permitted to include any guarantee provision for fixed return in joint venture contract, articles of association, equity transfer contract or other documents.

More importantly, it clearly stipulates that no tax incentive should be granted by local governments to real property FIEs.

*Exit stage*

It specifically emphasizes that necessary compliance review and tax clearance procedures must be completed before remitting any sales proceeds of real properties out of China. It seems that more restrictive foreign exchange administration measures in this regard will be released in the future.

## More Incentives in Tianjin

Tianjin Ministry of Finance, Tianjin Development and Reform Commission together with Tianjin Local Tax Bureau jointly issued a brand new incentive policy to promote the development of headquarters establishment and financial industry in Tianjin. It takes effect retrospectively from 1 January 2006.

### *Headquarters or regional headquarters*

It is defined that headquarters or regional headquarters (collectively referred to as "HQ") is a legal entity performing management function to its investee enterprises and enterprises entrusted by others located in several regions. Foreign wholly owned investment holding companies and management companies are included.

To qualify for incentives, the following conditions should be fulfilled:

1. A separate legal entity.
2. Total asset value of its parent company should not be less than RMB3 billion.
3. Cumulative investment in China by its parent company should not be less than RMB200 million.
4. Number of enterprises under its control or management should not be less than three.
5. Capability to perform centralized accounting and consolidated income tax filing.

Separately, it provides that foreign invested management company of minimum registered capital amounting to RMB20 million also qualifies.

Financial subsidies are available to newly set up HQ on a progressive scale based on registered capital amount of the subject HQ.

<b>Registered capital</b>	<b>Financial subsidy</b>
RMB1 billion or more	RMB20 million
RMB500 million (RMB500 million inclusive) - RMB1 billion	RMB15 million
RMB100 million (RMB100 million inclusive) - RMB500 million	RMB10 million

Furthermore, subject to certain criteria, expatriate senior management personnel may enjoy a refund of paid individual income tax ("IIT") to the extent of the IIT portion retained by the local government.

In addition, in respect of contribution to housing fund for staff, a cap at 15% of the total salaries and wages is allowed for income tax deduction purpose. By the same token, individual can also exclude maximum 15% of his/her salary and wage from the IIT taxable amount when making his/her housing fund contribution.

Regarding other aspects, priority will be given to HQ when arranging utilities and assistance may also be rendered to HQ when applying residence permit for their expatriate and Chinese returnee staff as well as their spouses and children.

### *Financial institutions*

For financial institutions ("FI"), the following financial subsidies are available:

- A subsidy at a rate of RMB1,000 per square meter for any purchase of office premises.
- Exemption of deed tax and exemption of real property tax for three years in respect of newly purchased or built office premises for self-use purpose.
- Refund of 50% of business tax for the first three years after operation.
- Refund of income tax at a cap of the retained portion by the local government for three years starting from the first profitable year.

- By the end of 2010, a subsidy at a rate of RMB150,000 for every RMB100 million increment of year end balance of loan or trust extended to small and medium sized enterprises, individuals or farmers.

Besides, senior management personnel working in FI for two consecutive years may enjoy a subsidy if an individual makes the first purchase of apartment, automobile or training in Tianjin. The subsidy amount is effectively the lower of the individual's IIT payment portion retained by the local government in the preceding year or the actual amount paid by the individual for the purchase of apartment, automobile or training in Tianjin.

*Observation*

Although it is encouraging to see this incentive policy, there are still a few areas remaining unclear. For instance, whether and how a FIE may fulfill the conditions to qualify as a HQ, particularly requiring the enterprise to possess the capability to perform centralized accounting and consolidated income tax filing. Additionally, whether the 15% cap for housing fund contribution by HQ may be implemented given a different statutory cap has been imposed by the Ministry of Finance and the State Administration of Taxation.

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

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

#### Transfer Pricing

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.