New trend for Cross-border Capital under Capital Account

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In brief

China’s State Administration of Foreign Exchange (SAFE) recently held a press conference with regard to the cross-border capital flow in October 2016, from which it could be understood that, China’s cross-border capital flow remains basically stable going forward with the increasingly steady economic environment. Based on the statistics provided by the SAFE, the outflow stress of cross-border capital in October 2016 has been relieved. Although the deficit of foreign exchange (forex) sales and purchases by banks continues, but such deficit significantly decreased compared to the statistics in September. Meanwhile, the forex settlement deficit by the non-banking organizations continues to decline, the proportion of forex purchase in China has decreased on a month-on-month basis. On the contrary, the statistics of the People’s Bank of China (PBOC) shows that China’s forex reserves kept decreasing in November 2016, reduced by 69.1 billion US dollars compared with last month, which witnesses the largest drop since January 2016 and marks the fifth continuous decrease over the last five months in China.

We have observed recently that, in order to maintain the stable flow of cross-border capital, prevent the arbitrage activities by applying RMB and related cross-border policies, the SAFE and the PBOC have set forth new supervision and administrative measures on the cross-border capital flow under the capital account. In this issue of China Tax/Business News Flash, we will share with you the development of administration on cross-border capital flow under capital account, new regulations on RMB cross-border lending, as well as our recommendations on implementation of forex remittance under the new trend.

In detail

Tightened supervision on cross-border capital transactions with a report obligation for forex transfer over the prescribed threshold

We have observed that both SAFE and the banks in China have adopted several new measures on the cross-border capital transactions, which pose more stringent administration and supervision on the capital outflow. These new measures are summarized as below:

- Forex purchase and forex remittance exceeding certain prescribed threshold (i.e., probably more than or equivalent to USD 5 million) needs to be reported to SAFE Beijing Branch;
- Foreign direct investments with capital outflow exceeding a prescribed threshold (i.e., probably more than or equivalent to USD 50 million) are subject to the SAFE’s supervision;
- The above transactions shall be proceeded after verification and approval of the relevant departments in terms of their authenticity and compliance;
- During the verification period, the authority in-charge of the foreign investment may require more supplementary documents from the enterprise.

In addition, the banks shall report regularly to the authority in-charge of forex capital account in Beijing for forex transactions under the capital account they dealt with, which may include: forex registration or alternation for direct outbound investment, application of forex purchase and payment under the capital account, as well as their explanations in case necessary, etc. In general, the SAFE will further enhance examination of the forex remittance going forward and will impose severe punishment once they detect any suspicious remittance splitting transactions for the purpose of avoiding scrutiny on large amount.

New update for RMB overseas lending

We heard that the PBOC has recently released a circular...
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to the local-level banks requiring them to implement the new regulation (the “New Regulation”) on RMB overseas lending business. As of 8 December 2016, we have not located the circular officially. As such, the content below is just for reference purpose. In summary, compared to the prevailing regulation, the major changes include the following:

• **The relationship between lenders and borrowers was clarified.** Prior to the New Regulation, there is no mandatory requirement on equity ratio between a lender and borrower. However, the lenders or borrowers shall have the shareholding relationship pursuant to the New Regulation and lenders shall be legally incorporated for more than 1 year.

• **A quote for RMB overseas lending is additionally set in the New Regulation.** Previously, there was no clear and consistent rule on the quota of RMB overseas lending in different locations. The in-charge authorities in some areas did not make clarification in this regard, while those in other areas required the balance should not exceed the lenders’ net asset value of the previous year. The New Regulation sets forth an upper limit on the net outflow of RMB overseas lending for the first time, more specifically, it shall not exceed 30% of the lenders’ net asset value on a provisional basis.

• **Advanced registration is newly required.** Previously, it was not clarified that the lenders needed to perform registration of their RMB overseas lending in advance. Pursuant to the New Regulation, the banks shall require the lenders to perform pre-registration with the in-charge SAFE before processing their lending business within the prescribed quota.

• **Return of the overseas lending capital is mandated.** In the past, for cross-border parties to lend RMB overseas and to return the overseas RMB loans and will suspend the process of any new transaction if such loans are not returned in due time and the lenders fail to provide any or less reasonable explanation regarding the delay in repayment. Moreover, it should be noted that RMB overseas lending shall only be extended one time.

The takeaway

We believe that the new measures jointly released by the SAFE and PBOC serve the two objectives in general. On one hand, it standardizes the cross-border capital (RMB and forex) administration for the overseas lending business. On the other hand, it helps to curb transactions by taking advantage of RMB exchange rate fluctuations for the purpose of malicious capital outflow, overseas arbitrage and short-selling of markets.

The new regulation and implementation measures put forward higher standards on the enterprises, which means a more prudent and stringent administration on their cross-border capital throughout the transaction process. Against this backdrop, we recommend enterprises to pay more attention to the compliance requirement of forex business in practice so as to avoid examination, penalty and bad record imposed by the relevant authorities for reasons of non-compliance. Besides, enterprises shall proactively communicate with their banks and in-charge forex administration with respect of the relevant business and well prepare for the new measures in advance. Our China Business & Investment Advisory Team will closely follow up the administrative measures and practical implementations possibly released by the PBOC and SAFE and share with you any further observations and suggestions in due course.

Endnote

1. More details of the press conference with regard to the cross-border capital flow in October 2016 held by the SAFE, please see the link below: http://www.safe.gov.cn/wps/portal/?ut/p/c5/hY2xFx0A6tWxAES_xSnFVWpxLjW4uAaVRkIRoMIRfFwwMH6_EGjIbn5fdOQohc8fj46rLv47Kczc3kHNg44y1MIoMKpQ1f3cGiEklygSpM7_yV3bmcZB yQ3zwpFWYVhibXpXPLHvixc_vLV6swv_eUcH_InBuE_T-5Nc6Fw-xw3_h-BIFU3huwITEHUKoatUbG6rz+iw!!/d l3y/d3/L2dJQbSsEoUUt3QSpZOnZj3Lz3Jf SENEQo1LRzEuODRJQzBISvP6R6pKSDKsT3T1/?WCM_GLOBAL_CON TEXT=/wps/wcm/connect/safe_web _store/safe_web/whxw/sjjd/node_n ews_sjjd_store/f64777804efca45f832 ccf333792acb5

2. For the prevailing regulations on RMB overseas lending business, please refer to the <Notice of the PBOC on Simplifying the Procedure of RMB Cross-border Business and Improving the Relevant Policies> (Yinfa [2013] No.168).
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Let’s talk

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PwC’s China Business & Investment Advisory Team specializes in China regulatory advisory and implementation work, ranging from market entry solutions, structure set-up, foreign exchange solutions, to restructuring solutions, e.g., equity transfer, merger and liquidation, etc. The team maintains close dialogues with various Chinese approval and registration authorities as well as industry bureaus at central and local levels. It also has extensive involvement and experience in advising clients on business cases from both the regulatory and practical perspectives.

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* These results are based on an independent survey of 130 primary buyers of tax services in China, conducted by research agency Jigsaw Research (Q1-Q4 2015).