November 2013

Greater Ease in Repatriating Service Fees from China

Until quite recently, China's foreign exchange controls meant significant delays and red tape for anyone trying to remit or receive payment overseas for services rendered to a business in China (including to a subsidiary or affiliate of the service provider). New Regulations have made most of these difficulties a thing of the past.

On July 18, 2013, China's State Administration of Foreign Exchange ("SAFE") released a *Circular Regarding Foreign Exchange Administration of the Service Trade (Huifa [2013] No. 30)* ("Circular"), which includes *Guidelines for Administration of Foreign Exchange Relating to Service Trade, as well as Detailed Rules for the Implementation of the Guidelines for the Administration of Foreign Exchange Under Service Trade*.

The Circular became effective on September 1, 2013, abolishing 49 pre-existing SAFE regulations and in the process, relaxes China's foreign exchange controls over service trade-related foreign exchange payments.

Restrictions Eased for Smaller Payments

The Circular applies to all foreign exchange receipts and payments related to provision of services, including service fees, expense reimbursements, dividends, royalties and other current account payments. It does not cover trade in goods.

According to SAFE, the vast majority of foreign exchange service payments involve remittances of $50,000 or less. The Circular simplifies SAFE procedures for these and eliminates the need to provide supporting documentation.

The Circular cancels SAFE approval requirements for all legitimate foreign exchange service payments below $50,000. Approval authority has in effect been delegated to onshore banks in China, giving them the authority to directly process these overseas remittances without SAFE pre-approval. SAFE reserves the authority to step in and inspect suspicious remittances but day-to-day responsibility will be left with the remitting banks.

From September 1, 2013, payers in China's Tier 1 cities have not been required to provide supporting documents to process foreign exchange remittances for any service-related invoices below $50,000. Banks will continue to demand supporting documents whenever the transaction or the remittance request appears suspicious. So far, these new arrangements are resulting in faster processing of all smaller overseas remittances.

Larger Remittances Still Subject to Review

In contrast, when handling remittances for amounts over $50,000, banks will still need to review, verify and retain relevant transaction documents. Normally, these will include the underlying contract, invoices and any special documents that relate to the services provided. Chinese translations are required for all foreign language transaction documents.

Nevertheless, even for amounts over $50,000, the Circular has eliminated most of the former pre-approval and pre-registration requirements. These remittances will not need to be vetted by SAFE. It is no longer necessary to produce the relevant tax payment certificate when arranging remittances but the payer must still withhold any PRC taxes owing on the remittance and make a local tax filing. This will normally involve submitting the contract and/or other relevant transaction documents together with Chinese translations. The local tax authorities will then send to the remitter instructions for payment of any tax withheld from the remittance.

Who Benefits and How?

These new streamlined foreign exchange arrangements are a welcome development for all businesses that are either providing or receiving cross-border services. For the past several years, individuals living in China have been able to remit up to $50,000 per year with few restrictions or delays. The changes introduced by the Circular appear to be aimed at giving local businesses a similar flexibility when paying for services abroad.

These changes will make it easier for businesses in China to process payments in exchange for services that they receive from overseas affiliates and third party service providers. In principle, this should result in more efficient payment arrangements for both parties and result in faster settlement of invoices.

The Circular enables overseas remittances to be arranged more quickly and easily than ever before. The fast-tracking of payments under $50,000 will benefit smaller overseas service providers (eg: engineering, design and architecture firms) in particular because of the increased certainty of receiving payment on time.

Importantly, the new rules will also benefit overseas parent companies and affiliates that provide intra-group support to Chinese subsidiaries because they can now more easily recover many of the costs associated with providing that support. Such intra-group support frequently involve secondment of personnel to China and happily, the new rules coincide with updated guidelines issued recently by China's tax authorities that clarify how secondment arrangements can be structured to avoid triggering additional PRC taxes.

To take full advantage of the new rules on service fees, care must be taken to structure properly the relevant service delivery, invoicing and remittance arrangements, but few companies doing so have encountered difficulties with this.

Where modest amounts are involved, it will usually be possible to structure delivery of services and invoices to keep remittances below the $50,000 threshold. With arrangements involving larger amounts, it may be more efficient to arrange less frequent larger than $50,000 remittances because of the remitting bank's additional processing requirements.

For new service and licensing arrangements—even between a parent company and its subsidiaries—written contracts will need to be put in place in case these are requested by the remitting bank.

Before revising existing service arrangements, it would be prudent to have them reviewed by a lawyer familiar with the new rules to ensure that they comply with the Circular. SAFE now has discretion to impose a fine of between 30-100% of the remittance amount if it finds that payments have been intentionally split with the sole purpose of avoiding the $50,000 threshold.

Additional Information

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