



SUMMARY OF CONTENTS

■Anti-Monopoly Law

After 13 years on the drawing board, the Anti-Monopoly Law was passed by the Standing Committee of the National People's Congress, China's top legislature, and will come into effect on Aug. 1, 2008.

■Tax Treaty

The Chinese State Administration of Taxation recently clarified that foreign nationals and individuals residing in Hong Kong, Macau and Taiwan may claim treaty (arrangement in case of Hong Kong and Macau) relief on certain interest income.

■Foreign Exchange

The State Administration of Foreign Exchange recently issued new Administrative Rules of Foreign Exchange for Bonded Areas to further regulate the transactions concerning foreign exchange in bonded areas.

■Land Use Tax

The State Administration of Taxation released the Response Regarding Urban Land Use Taxes Levied upon Foreign-Invested Enterprises and Foreign Enterprises in its Circular No. 596 [2007].

■Property Management

On August 26, 2007, China's State Council announced that it has amended the Property Management Regulation to protect the legal rights of owners and property management service companies.



ECONOMIC LAW

■Anti-Monopoly Law

反壟斷法

Issuing Authority: the Standing Committee of the National People's Congress

Date of Issuance: August 30, 2007

Effective date: August 1, 2008

The Standing Committee of the National People's Congress (NPC), China's top legislature, on August 30, passed the Anti-Monopoly Law (the "Law"). The Law will be put into force as of August 1st, 2008, with 57 articles and 8 chapters, including *General Principles, Cartel Agreement, Abusing The Dominant Market Position, the Pool of Operators, Misuse in Administrative Power, Restriction on Competition, Investigation of Alleged Monopoly, Legal Liabilities and Appendix*.

Some of the more significant points of the new Law follow:

☆An Anti-Monopoly Commission will be set up under the State Council

The Law states that an Anti-Monopoly Commission will be set up under the State Council to deal with anti-monopoly issues. The State Council will also separately appoint an Anti-Monopoly Law Enforcement Authority which will be responsible for enforcement of the Law, including establishing guidelines and specific measures, investigating and evaluating market competition conditions, investigating and handling suspected monopolistic conduct, curbing monopolistic conduct, reviewing and approving notifications of pools of business, and other functions stipulated by the State Council. This body is given wide powers of investigation and examination to accomplish its mission.

☆M&A deals involving foreign investors and domestic companies are subject to national security checks

The requirement for a national security check was particularly added to the adopted Law as a result of increasing foreign mergers and acquisitions in the country. According to the Article 31 of the Law, "foreign mergers with, or acquisitions of, domestic companies or foreign capital investing in domestic companies' operations in other forms should go through national security checks according to relevant laws and regulations". China already has a basic security check system for foreign mergers and acquisitions. Foreign investors must apply for approval from the Ministry of Commerce (MOFCOM) if their purchase of domestic companies affect national economic security, take place in key sectors or lead to a transfer of the operating rights of famous domestic brands, according to existing relevant regulations. In December 2006, the State Council released a list of strategic sectors in which the State would retain control, including military-related manufacturing, power production and petroleum, gas and petrochemicals, telecom manufacturing, coal, civil aviation and shipping.



☆Companies which are found not to have dominant status will be cleared of monopoly charges

According to the Law, companies that can provide evidence to prove they have no Dominant Market Position should be cleared of monopolistic charges. According to the Law, Dominant Market Position refers to a controlling market position held by one company, or by several companies together, that is capable of controlling the price or quantity of products or other trading conditions in the relevant market, or that is capable of restricting or affecting other companies when they enter that market.

Tax Treaty

■SAT Circular No. 872 [2007]

国家税务总局关于外籍个人和港澳台居民个人储蓄存款利息所得适用协定税率有关问题的补充通知——国税函（2007）872号

Date of Issuance: August 7, 2007

Effective Date: August 7, 2007

The SAT recently clarified that foreign nationals and individuals residing in Hong Kong, Macau or Taiwan can claim treaty (arrangement in case of Hong Kong and Macau) relief on interest income from deposit savings derived from mainland China if the withholding tax rate in the treaty (arrangement) is lower than the rate under domestic law or regulations. However, the individual must submit a treaty relief application form to the tax office. If the treaty (arrangement) rate is higher than the domestic rate, the domestic rate applies automatically.

Foreign nationals and individuals residing in Hong Kong, Macau or Taiwan refers to individuals who are subject to Chinese individual income tax only on income derived from sources in China, in accordance with article 1(2) of the PRC Individual Income Tax Law and relevant tax treaty provisions.

FOREIGN EXCHANGE

■Administrative Rules of Foreign Exchange for Bonded Areas

保税区外汇管理办法

Issuing Authority: the State Administration of Foreign Exchange

Date of Issuance: August 15, 2007,

Effective Date: October 1, 2007



The SAFE recently issued "Administrative Rules of Foreign Exchange for Bonded Areas", according to which transactions between enterprises located in bonded areas and overseas shall be paid in foreign currency unless there are specific rules that provides otherwise. The trading of goods between bonded and non-bonded areas within the territory of mainland China may be settled either in RMB or foreign currency.

The currency for expenses related to the trading of goods should be that used in accordance with standard business practices. However, RMB should be used in services trade between a bonded area and a non-bonded area. The Rules stipulate that, provided valid business documents are available, an enterprise located in a bonded area may request a bank to process payments to an overseas or non-bonded area as follows:

If the goods are imported directly from overseas or purchased from an overseas enterprise but through a bonded/non-bonded area, it is allowed for an enterprise to make the payment from its foreign exchange account or purchase the necessary foreign exchange to make the payment.

Where the enterprise has concluded a sales agreement with an overseas purchaser, but the goods are to be exported and shipped overseas by another enterprise located in a non-bonded area, the foreign exchange income received by the enterprise can be transferred to other enterprise without conversion.

The enterprise can make a direct payment to a supplier located in a non-bonded area from which the goods are purchased. A bank will receive or sell foreign exchange income for such a supplier according to the relevant provisions.

LAND USE TAX

■Response Regarding Urban Land Use Taxes Levied upon Foreign-Invested Enterprises and Foreign Enterprises

关于外商投资企业和外国企业征收城镇土地使用税问题的批复

Issuing Authority: State Administration of Taxation

Date of Issuance: June 1, 2007,

Effective Date: June 1, 2007

In June, the SAT released the *Response Regarding Urban Land Use Taxes Levied upon Foreign-Invested Enterprises and Foreign Enterprises* ("the Response"), in which it restates and emphasizes that the Chinese government will unify tax policies and rates on FIEs and Chinese enterprises, thus equalizing the tax burden. The Response suggests that to include FIEs and foreign enterprises into the Chinese urban land use tax scheme will be a priority and all localities shall adhere strictly to the terms of the interim provisions regarding FIEs, foreign enterprises and urban land use taxes.



PROPERTY MANAGEMENT

■ Decision Concerning the Amendment to Property Management Regulations

国务院关于修改《物业管理条例》的决定

国务院关于修改《物业管理条例》的决定

Issuing Authority: the State Council

Date of Issuance: August 26, 2007,

Effective Date: October 1, 2007

China's State Council, in its Decision promulgated on August 26, 2007, announced that it has amended the property management regulation to protect the legal rights of owners and property management service companies.

The amendment came amid efforts to ensure the smooth implementation of the Property Law, which will also come into effect on October 1, 2007. The amendment is made in accordance with the Decision. The 70-article regulation aims to "standardize property management and protect the legal rights of the owners and property service companies". The regulation stipulates that "owners are entitled to appeal to the People's court to repeal any decision by owners committee that violates their legitimate rights." The newly amended regulation underscores that owners' meeting shall represent more than half of the total owners possessing more than half of the total building area. Under the new regulation, raising or using special funds for maintenance and reconstruction and affiliate facilities should be approved by over two thirds of the owners possessing more than two thirds of the total building area, which conforms to Article 76 of the Property Law.

SHANGHAI OFFICE

10/F, Long Feng Tower, 1566 Yan'an
West Road

Shanghai 200052, China

Tel: (8621) 5258 2666

Fax: (8621) 5258 7968

E-mail: master@jzfz.cn

Website: www.jzfz.cn

SINGAPORE OFFICE

9 Temasek Boulevard, #36-01A Suntec City
Tower Two

Singapore 038989

Tel: (0065) 6337 5029

Fax: (0065) 6337 1965

E-mail: master@jzfz.cn

Website: www.jzfz.cn

This is intended to keep our clients and friends apprised of industry, regulatory and legislative changes that may have an impact on the way business is conducted and operated in China. This publication is for general information only, and is not a substitute for legal consultation. For further information please contact us at J&F PRC LAWYERS.