

Reporting Requirement for China Transfer Pricing Documentations

Celia Hui [December 2008]

On 16th December 2008, the State Administration of Taxation (“SAT”) issued Guo Shui Fa (2008) No. 114 (“the Circular”) requiring taxpayers to report in the 9 specific forms the details of related party transactions as well as the prescribed transfer pricing methodology applied to such transactions. These forms have to be filed to the tax bureau together with the normal annual enterprise income tax (“EIT”) return. The first filing deadline will be due on 31st May 2009.



Under the Chinese tax laws and regulations, related party relationship is widely defined. Related party can be one or more of the following kinds of the relationship :

- a. Shared ownership
- b. Debtor or creditor
- c. Shared management
- d. Shared directors
- e. Patent or licence dependency
- f. Controlled purchases or sales of goods and services; and
- g. Others based upon effective control.

The Circular can be seen as a pioneer to the essential introduction of contemporaneous transfer pricing documentation requirements in China that is expected to be promulgated at the early next year.

Information To Be Disclosed

The 9 specific forms require taxpayers to provide detailed information regarding related party transactions as well as the prescribed transfer pricing methodology applied to such transactions.

Specific Forms	Information To Be Disclosed
Form 1 Related Parties	<ul style="list-style-type: none"> - details of the related party (e.g. full name, address, relationship with the taxpayer etc)
Form 2 Summary of Related Party Transactions	<ul style="list-style-type: none"> - a general summary of related party transactions which should be covered in Forms 3 to 7 - the amount of all controlled transactions carried out with both domestic and foreign related parties - an indication of whether contemporaneous documentation are required or exempt - an indication of whether cost sharing agreement has been arranged

Specific Forms	Information To Be Disclosed
Form 3 Purchases and Sales	<ul style="list-style-type: none"> - total quantum sales and purchases with foreign and domestic, related and unrelated parties - an indication of whether sales to and purchases from foreign related parties account more than 10% of total sales and purchases - details of the prescribed transfer pricing methods applied (e.g. the comparable uncontrolled price, resale price, cost plus, transactional net margin, profit split method) - an indication whether a toll processing arrangement has been entered into
Form 4 Services	<ul style="list-style-type: none"> - total quantum service fees with foreign and domestic, related and unrelated parties - an indication of whether there is any service fee to and from foreign related parties account more than 10% of total sales and purchases - details of the prescribed transfer pricing methods applied (e.g. the comparable uncontrolled price, resale price, cost plus, transactional net margin, profit split method) - an indication whether a toll processing arrangement has been entered into
Form 5 Transfer of Intangible Assets	<ul style="list-style-type: none"> - the amount of all sales and purchases of intangible assets, as well as receipt or license of intangibles to and from all domestic and foreign, as well as related and unrelated party transactions
Form 6 Transfer of Fixed Assets	<ul style="list-style-type: none"> - the amount of income and expense of all transactions relating to the use or sales and purchase of fixed assets.
Form 7 Financing	<ul style="list-style-type: none"> - details of the debt-to-equity ratio of any related party financing - the terms and conditions (e.g. total loan amount, interest rate, interest expense, commencement and end date, name of guarantor, amount of guarantee fee and guarantor percentage fee) of the financing agreement with domestic and foreign related parties
Form 8 Outbound Investment	<ul style="list-style-type: none"> - basic information on the overseas invested enterprise - whether the foreign invested enterprise is located in a non-low tax country listed by the SAT - whether the invested enterprise's annual profit is less than RMB5 million - details of shareholding, the taxable income, tax expenses, effective tax rate, profit and loss statement and balance sheet of the invested enterprises - amount of dividend receivable and dividend received from the outbound investment
Specific Forms	Information To Be Disclosed

Form 9 Outbound Payments:	<ul style="list-style-type: none"> - details of all payments to overseas (e.g. dividends, interest, royalties, asset transfer, marketing expense and commission fee) made by the taxpayers to their related parties, including those that are booked but not remitted - an indication whether such payments have been subject to withholding tax and were entitled to any preferential tax treatments
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Implications to the Taxpayers

The new filing requirements established a view to the tax authorities in the collection of inter-company information and the extension of transfer pricing investigations.



With all these sensitive information to be filed, taxpayers are highly recommended to fully understand their potential risk on any types of controlled transactions being carried out such that they could perform a benchmarking analysis to determine the arm's-length nature and pricing methodology before completing the forms. In the long run, taxpayers should prepare detailed documentation for purposes of meeting the forthcoming contemporary transfer pricing documentation requirements.

If you are not familiar with these issues, please seek professional advice for good. ✂

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