# New Measure for Remittance from China

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The State Administration of Taxation (SAT) and the State Administration of Foreign Exchange (SAFE) jointly issued the following new circular, Huifa [2008] No.64, otherwise referred to as Circular 64, on 25th November 2008.

Circular 64 will be effective from 1st January 2009 and it supersedes various circulars including those issued in 2008 for trial locations.

This article serves to discuss the salient points of Circular 64.

1. Under what conditions will tax certificates be required

For remittance of the following items to overseas recipients, including foreign companies or individuals, and in excess of the amount of USD30,000 per remittance, an application should be made to the governing PRC state tax bureau and local tax bureau for the issuance of tax certificates:

* PRC-sourced service fees, inclusive of services fees arising from transportation, tourism, telecommunication, construction and installation, labor services, insurance, financial services, IT services, technical know-how and royalties, sports and culture, entertainment, other commercial services etc.; and
* PRC-sourced employment remuneration, PRC-sourced dividends, interest, guarantee fees, donation, compensation for losses or damages; and
* PRC-sourced rental income under financial leases, disposal income of immovable assets and gains from disposal of equity interests by foreign enterprises or individuals.

2. Specific Items not requiring Tax certificates

* Traveling expenses, meeting expenses and exhibition expenses incurred by PRC companies in non-PRC jurisdictions;
* Operating funds for overseas representative offices established by PRC companies;
* Construction costs paid by PRC companies for overseas projects on behalf of the owner;
* Trading commission, insurance premiums and indemnities payable incurred by PRC enterprises relating to import and export activities carried out in non-PRC jurisdictions;
* International transportation fees payable to overseas carriers for imported goods;
* Miscellaneous expenses incurred by PRC carriers for overseas transportation activities, including repair, fuel and harbor expenses;
* Foreign currency payments for personal purposes such as studying abroad, traveling, visiting family or relatives; and
* Other items to be stipulated by the PRC authorities.

3. Who will issue the Tax Certificates

Tax certificates should be completed by the taxpayer and chopped by the governing state tax bureau and local tax bureau after the settlement of PRC tax liabilities, where applicable.

4. Who will review the Tax Certificates

Normally, tax certificates should be reviewed by the local banks to which the payers present all the supporting documents for remittance. The banks should mark down the amount of payment, date and seal with the bank chop in the original tax certificates. The banks should keep the original certificates for 5 years.

**1.** What items are included in Tax Certificates

The tax certificates include the full name of the payer and the overseas recipient, nature of service item, the total amount stipulated in the service agreement, the amount of remittance and the currency, the amount of PRC taxes paid to the PRC tax authorities etc.

**2.** Impact of Circular 64 and Our Suggestion

Circular 64 abolishes a series of circulars, inclusive of Huifa [1999] No.372, Guoshuifa [2000] No.66, Huifa [2008] No.8, Guoshuihan[2008] No.219 and Guoshuihan [2008] No.258. In other words, the advanced filing, which was promulgated in April 2008 regarding the remittance of service fees in six trial locations (Tianjin, Shanghai, Jiangsu, Sichuan, Fujian and Hunan) will be abolished by Circular 64. At present, the transitional arrangement for those pre-registered contract under the trial policy is unclear.

Furthermore, it is unclear what kind of tax documents (such as tax payment certificates or tax exemption certificates) should be submitted to the banks for review where the remittance amount is equal to or less than USD30,000 per remittance. Generally, remittance of amounts equal to or less than USD30,000 should be easier and fewer documents should be presented to the banks for review.

In China, remittance of foreign payments involves taxation and foreign exchange issues. It may not be easy for companies operating in China to keep track of all latest regulations and comply with the regulations. In addition, there may be local variations in actual remittance arrangement. Companies operating in China should seek professional advice before the actual remittance. Tax advisors could provide tailor-made tax planning advice regarding the remittance arrangement so as to minimize the potential PRC tax exposure, advise the type of documentation which should be well prepared and kept in order to remit the payments, review and comment on the draft contract and related documentation, assist in the remittance and perform tax filings where applicable.