

Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Tax Matters about the Restructuring of Foreign Bank Branches into Solely Foreign-invested Banks

Cai Shui [2007] No. 45

The public finance departments (bureaus), state taxation bureaus and local taxation bureaus of each province, autonomous region, municipality directly under the Central Government and city specifically designated in the state plan, and the Public Finance Bureau of Xinjiang Production and Construction Corps.,

The Regulations of the People's Republic of China on Administrating Foreign-invested Banks (Order No. 478 of the State Council) promulgated by the State Council on November 11, 2006 and the detailed rules for the implementation thereof provided that: where the related conditions are met, a foreign bank may set up a solely foreign-invested bank within China, and a foreign bank branch set up within China may be restructured into a solely foreign-invested bank (or the subsidiary bank thereof). During the process of restructuring, the solely foreign-invested bank (or the subsidiary bank thereof) shall inherit the creditor's rights and debts of the former foreign bank branch. As regards the related tax matters about the restructuring of foreign bank branches into solely foreign-funded banks (or the subsidiary banks thereof), it is the principle that the business activities before and after the restructuring should be taken as continuous business activities. The related specific tax treatments are hereby informed as follows:

1. Business Tax and Value-added Tax

When the foreign bank branches are restructured, as regards the transfer of enterprise property rights or stock rights to the restructured solely foreign-invested banks (or the subsidiary banks thereof), no business tax or value-added tax may be levied .

2. Enterprise Income Tax

(1) . As regards assets transfer

Where a foreign bank branch is restructured into a solely foreign-invested bank (or the subsidiary bank thereof), all assets thereof shall be transferred in light of their respective book value and in accordance with the Circular of the State Administration of Taxation Concerning the Tax upon the Incomes Generated from the Transfer of Stock Rights by Foreign-invested Enterprises and Foreign Enterprises (Guo Shui Han [1999] No. 207).

(2) . As regards making up losses

The business losses suffered by a foreign bank branch in the years before its restructuring may be made up continuously by the restructured solely foreign-invested bank (or the subsidiary bank thereof), and the fixed number of years for making up losses shall be calculated continuously after the year when the former foreign bank branch suffered the losses according to the fixed number of years as provided for in Article 11 of the Income Tax Law of the People's Republic of China on Foreign-invested Enterprises and Foreign Enterprises (hereinafter referred to as the

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Foreign-invested Enterprise Income Tax Law).

(3) As regards the item of tax preferences

If the preferential tax reduction and exemption treatments for a certain term have not been enjoyed by a foreign bank branch in accordance with the provisions in the Foreign-invested Enterprise Income Tax Law before its restructuring, or if the term has not expired, the corresponding restructured solely foreign-invested bank (or the subsidiary bank thereof) may enjoy them until the term expires. If the term has expired, the restructured solely foreign-invested bank (or the subsidiary bank thereof) may not enjoy them again.

(4) As regards consolidated payment of taxes

In accordance with Article 5 of the Detailed Rules for Implementing the Foreign-invested Enterprise Income Tax Law, after a foreign bank branch is restructured into a subsidiary bank of a solely foreign-invested bank, the headquarters of the solely foreign-invested bank shall pay enterprise income tax on a consolidated basis.

3. Stamp Tax

In accordance with the Circular of the Ministry of Finance and the State Administration of Taxation Concerning Related Policies on the Stamp Tax in the Process of Enterprise Restructuring (Cai Shui [2003] No.183), after the restructuring of a foreign bank branch into a solely foreign-invested bank (or the subsidiary bank thereof), if the capital book accounts and taxable contracts, have been affixed with the tax stamps in the foreign bank branch, tax stamps will not be affixed with in the restructured solely foreign-invested bank (or the subsidiary bank thereof) again.

4. Deed Tax

In accordance with the Circular of the Ministry of Finance and the State Administration of Taxation Concerning Related Policies on the Deed Tax in the Process of Enterprise Restructuring (Cai Shui [2003] No.183), the deed tax may be exempted if the house property rights a foreign bank branch owns before the restructuring are transferred to the solely foreign-invested bank (or the subsidiary bank thereof) set up after the restructuring.

5. Where a foreign bank branch is restructured into a solely foreign-invested bank (or the subsidiary bank thereof), in case the transfer is not carried out on the basis of book value, tax shall be levied pursuant to the current related tax law.

The Ministry of Finance

The State Administration of Taxation

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