Business circulars

Notice regarding matters related to the delegation of approval authority for foreign investment in the road transportation industry (Jiaoyunfa [2014] No. 70)

Synopsis

Pursuant to Guofa [2013] No. 44 ("Circular 44", i.e., notice regarding the cancellation of administrative approval procedures and the delegation of approval authority for certain administrative approval items) and MOT/MOFCOM Order [2014] No. 4 ("Order 4", i.e., Amendments to the “Administrative Measures on foreign investment in road transportation industry"), which delegated the approval authority of establishment of foreign invested road transportation enterprises (hereinafter referred to as “FIRTE”) from the Ministry of Transportation (MOT) to competent transportation departments at the provincial level, the MOT released Jiaoyunfa [2014] No. 70 ("Circular 70") to specify the follow-up works related to the delegation. (Please refer to CTIE2013047 for details of Circular 44.)

1 The scope of road transportation industry refers to road passenger traffic, road freight transportation, loading or uploading for road freight transportation, storage for road freight transportation, other related auxiliary services and vehicle repair.
Key features of Circular 70 are as follows:

**Application for the establishment of an FIRTE**

An applicant is required to submit the following application documents to the transportation department in charge at the provincial level:

- An application form covering the type of the proposed enterprise, amount of total investment and registered capital, investors, scope/scale of business, and operation period
- Certificates of incorporation of corporate investors and passport/ID of individual investors
- The name reservation certificate issued by the in-charge Administration Authority of Industry and Commerce (AAIC)
- Certificates of Hong Kong/Macau service suppliers for establishment of wholly foreign owned enterprises (WFOE) to be engaging in road passenger traffic or road transportation center in western regions of the Mainland

**Application for the business scope expansion of an established FIRTE or an existing foreign investment enterprise (FIE) to engage in road transportation services**

- An applicant is required to file an application form to the transportation department in charge at the provincial level covering scope/scale of business, and operation period.
- According to Guofa [2014] No. 7 (“Circular 7”, i.e., notice regarding the “Scheme on the Reform of Registered Capital Registration System”), applications for existing FIEs to engage in road transportation services are no longer required to submit capital verification reports proving the registered capitals have been fully contributed for a year.

**FIEs reinvest in road transportation**

According to Circular 70, FIEs that reinvest in the road passenger transportation in China should satisfy certain conditions as prescribed in Article 6 of Administrative Measures on Foreign Investment in the Road Transportation Industry (i.e., Attachment of Order 4, hereinafter referred to as the “Administrative Measures”), e.g., at least one of the major investors should be a road transportation enterprise that has been engaging in the passenger business in China for more than 5 years.

**Application for the establishment of a branch office of an FIRTE**

An applicant is required to file an application form to the in-charge transportation department at the provincial level covering the proposed business scope and operation period of the branch office to be established, which should not exceed the approved business scope and operation period indicated in the road transportation license obtained by the head office.

**Our observations**

According to the “Foreign Investment Industrial Guidance Catalogue (2011 Revised)” (hereinafter referred to as the “Catalogue”) and rules related to FIRTEs, FIEs are allowed to engage in road transportation within the below scope:

<table>
<thead>
<tr>
<th>Business scope permitted</th>
<th>Applicable form of investment</th>
<th>WFOE</th>
<th>Equity Joint Venture</th>
<th>Cooperative Joint Venture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road passenger transportation</td>
<td>√</td>
<td>√</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Road freight transportation</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Loading or uploading for road</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>freight transportation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Storage for road freight</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>transportation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Related auxiliary services</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Vehicle repair</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
</tbody>
</table>

2 According to MOT/MOFCOM Order [2003] No. 12 (“Order 12”, i.e., Supplement to “Administrative Measures on foreign investment in road transportation industry”), Hong Kong/Macau service suppliers are allowed to establish WFOEs in western regions to engage in road passenger transportation. Otherwise, foreign investment portion of FIRTEs engaging in road passenger transportation should not exceed 49%.
To accelerate the approval process and reduce the administration burden of government authorities and enterprises, according to Circular 44 and Order 4, pre-approval required for the establishment or alteration of FIRTEs is now delegated to a competent department of transportation at the provincial level. In this respect, Circular 70 is released to specify related matters upon the approval authority delegated to the provincial level.

Investors, who plan to invest in the road transportation industry, should also note that after obtaining the pre-approval from the in-charge department of transportation, applicants are required to apply to the competent department of commerce at the provincial level for an approval certificate and revisit the in-charge department of transportation to apply for a road transportation license. Upon receipt of the road transportation license, the FIRTE may apply with the AAIC in charge for a business license, and complete other registration formalities with other competent authorities (e.g. tax registration).

As the current reform of the registered capital registration system calls for “applying for a business license prior to obtaining a relevant operation permit” (先照后证), investors may choose to establish the FIEs first (obtaining the approval certificate with the department of commerce and the business license with the AAIC) before applying for the road transportation license. However, without the road transportation license, the FIEs established are not allowed to participate in the road transportation. If in doubt, consultations with tax professionals are always recommended.

You may click this link to access full content of Circular 70:  
http://www.moc.gov.cn/zfxxgk/bnssj/dlyss/201403/t20140313_1591572.html

You may click this link to access full content of Circular 7:  
http://www.gov.cn/zwgk/2014-02/18/content_2611545.htm

You may click this link to access full content of the Catalogue:  

You may click this link to access full content of Circular 44:  
http://www.gov.cn/zwgk/2013-12/10/content_2545569.htm

You may click this link to access full content of Order 4:  
http://search.moc.gov.cn:8080/was40/LawSearch/detail.jsp?id=05313C8CB.00000813.9869

You may click this link to access full content of Order 12:  
http://www.gov.cn/gongbao/content/2004/content_62921.htm

► Notice regarding opinions on promoting the integrated development of the culture creativities, design services and related industries (Guofa [2014] No. 10)

► Notice regarding opinions on accelerating the development of international cultural trade (Guofa [2014] No. 13)

Synopsis

To accelerate the development of international cultural trade, extend the new space of reforms, and open-up and boost cultural development in China, the State Council released Guofa [2014] No. 10 (“Circular 10”) and Guofa [2014] No. 13 (“Circular 13”) on 26 February 2014 and 3 March 2014 respectively.

Key points related to supportive tax policies are set out below:

A pilot run of recognition of High-and-new technology enterprises (HNTEs) engaging in the field of cultural creativities and design services

A pilot run would be initiated for the recognition of HNTEs engaging in the field of cultural creativities and design services. Upon recognition, the HNTEs engaging in the field of cultural creativities and design services would enjoy the following preferential Corporate Tax Income (CIT) treatments:

► Subject to a reduced CIT rate of 15%.

► Deduction of employee education expenses up to 8% of the total salary amount, whereas the normal rate is only 2.5%.

► Qualifying expenses incurred for creativities and design services would be applied for a super deduction.
Cultural enterprises engaging in outsourcing services

Cultural enterprises engaging in outsourcing services in the 21 model cities, which qualify for Technologically Advanced Service Companies (hereinafter referred to as “TASCs”) according to prevailing tax policies, would be subject to a reduced CIT rate of 15%, and the deduction of employee education expenses is up to 8% of the total salary amount.

Business Tax (BT)/Value-Added Tax (VAT) preferential policies for exportation

Exportation of key national encouraged cultural products would be subject to VAT at a zero rate. Exportation of key national encouraged cultural services would be exempt from BT. Where the aforementioned services are covered in the scope of VAT pilot arrangements, the exportation of the respective services would be subject to VAT at a zero rate or a VAT exemption would apply. Detailed scopes of key national encouraged cultural products and services qualifying for the BT/VAT preferential policies would be jointly regulated by the Ministry of Finance (MOF), State Administration of Taxation (SAT) and other relevant authorities.

VAT pilot arrangements

Progressively expand the scope of VAT pilot arrangements to cover the field of the cultural service industry.

Apart from the above mentioned tax supportive policies, Circular 10 and Circular 13 also cover some financial supportive policies, as well as upgrades of government services (e.g., provide convenient customs clearance services and reduce some administrative approval items) and public services to cultural enterprises. Businesses engaging in cultural creativities and design services should stay alert to the detailed tax rules to be released by the MOF, SAT and other relevant authorities, and the Catalogue of Key National Cultural Export Enterprises and Catalogue of Key National Culture Projects, which are expected to be released in the near future.

You may click this link to access full content of Circular 10:
http://www.gov.cn/zhengce/content/2014-03/14/content_8713.htm

You may click this link to access full content of Circular 13:
http://www.gov.cn/zhengce/content/2014-03/17/content_8717.htm

You may click this link to access full content of the Interpretation of Circular 13 from the Ministry of Commerce (MOFCOM):
http://www.gov.cn/xinwen/2014-03/18/content_2640374.htm

Notice regarding the “Catalog for Encouraged Import Technologies and Products (2014 Version)” (Fagaichanye [2014] No. 426)

Synopsis

In order to promote the importation of advanced technology, key equipment and components, as well as key resource products and materials, on 13 March 2014, the National Development and Reform Commission (NDRC), MOF and MOFCOM jointly released the “Catalog for Encouraged Import Technologies and Products (2014 Version)” (hereinafter referred to as the “2014 Catalogue”), which replaced the Catalog for Encouraged Import Technologies and Products (2011 Version) (hereinafter referred to as the “2011 Catalogue”) from its issuance.

The 2014 Catalogue consists of four sections, i.e., encouraged advanced technology, key equipment, main industries, along with key resource products and materials. More items are covered in four sections of the 2014 Catalogue comparing to that of the 2011 Version. Among which, technologies related to shale gas development and technologies related to ground extraction and comprehensive utilization of coal bed gas have been added to the 2014 Catalogue.

Our observations

Upon approval, importation of encouraged technologies and products listed in the 2014 Catalogue under normal trading may enjoy import discount interests (进口贴息) according to Caiqi [2012] No. 142 (“Circular 142”, i.e., Administrative Measures on funds of import discount interests). Relevant businesses should study the 2014 Catalogue, as well as Circular 142 carefully.
Notice regarding “Measures of the Customs of the People’s Republic of China for the Supervision of Goods under the Processing Trade” (GAC Order [2014] No. 219)

Synopsis


The new Measures are applicable to the establishment of handbooks, customs declaration, processing, supervision and verification of goods under the processing trade (hereinafter referred to as “processing trade goods”).

Some revisions to the supervision of processing trade goods under the new Measures as compared to those stipulated in the old Measures may include:

- **Pursuant to the old Measures, operating enterprises shall go through formalities of a record filing of processing trade goods with the local Customs where the processing enterprises are located.** The new Measures replace the “record filing of processing trade goods” with the “establishment of handbooks for processing trade goods”, which is in response to Circular 44, i.e., approval for a record filing of processing trade goods by the Customs under the GAC shall be removed.

- **Processing trade shall be subject to classification supervision (分类监管) of the Customs.** Detailed administrative measures for the classification supervision shall be formulated by the GAC separately.

- **According to the new Measures that change the “record filing” to “establishment of handbooks”, if the information filed and documents submitted by operating enterprises during the establishment of handbooks are found not true, they can continue to execute contracts instead of returning the goods on the basis that customs security deposit equivalent to tax payable, or bank guarantee (银行保函) or non-banking financial institution guarantee (非银行保函) is provided.** Compare to the old measures, the new Measures expand the scope of guarantee to include a non-banking financial institution guarantee.

- **The new Measures specify that processing trade enterprises are not allowed to go through formalities for deep processing transferring business (深加工结转), if one of the following situations occurred:**
  - Under a rectification supervision period by the Customs due to incompliance with customs supervisory requirements
  - Fail the verification and settlement of handbooks on time
  - Under investigation of smuggling

For processing trade enterprises that fail to deliver or take delivery of goods according to customs regulations, reapplication of deep processing transferring would not be allowed.
The documentation requirements for customs verification purposes are revised, i.e., “processing trade handbooks, special customs declaration forms for import and export of processing trade goods (加工贸易进出口货物专用报关单) and other documents required by the Customs” are replaced by “relevant certificates and documents as prescribed”. This amendment may pave the path of online customs declaration and verification.

3 Pursuant to the new Measures, operating enterprises refer to various import and export enterprises and FIEs that have signed import and export contracts for processing trade, as well as enterprises that have been granted toll manufacturing operating permits and approved to provide processing and assembly services to overseas entities.

4 According to the new Measures, processing enterprises refer to manufacturing enterprises with legal person status that are entrusted by operating enterprises to process or assemble import materials, and factories without legal person status that are established by operating enterprises, but adopt relatively independent accounting standard and have obtained business licenses.

5 Processing trade enterprises include operating enterprises and processing enterprises registered with the Customs.

Our observations

The old Measures that were effective from 1 April 2004 and modified twice through Orders 168 and 195 have played an important role to standardize the supervision of processing trade goods by the Customs. To cope with the rapid development of processing trade businesses and new business environment, the GAC announced the new Measures that took effect and abolished the old Measures on 12 March 2014. Enterprises engaging in processing trade businesses should become familiar with the new provisions and understand how they will affect their business operations.

You may click this link to access full content of the new Measures:
http://www.customs.gov.cn/publish/portal0/tab399/info700275.htm

You may click this link to access full content of Order 113:
http://www.customs.gov.cn/publish/portal0/tab519/info4209.htm

You may click this link to access full content of Order 168:
http://www.customs.gov.cn/publish/portal0/tab519/info95625.htm

You may click this link to access full content of Order 195:
http://www.customs.gov.cn/publish/portal0/tab399/info245430.htm

Notice regarding “Administrative Measures of the Customs of the PRC for the Modification and Revocation of Declaration Forms for Import and Export Goods” (GAC Order [2014] No. 220)

Synopsis

To enforce the administration on modification and revocation of customs declaration forms for import and export goods (hereinafter referred to as the “declaration forms”), and standardize the declaration by consignees/consigners for import/export goods or their agents, the GAC released GAC Order [2014] No. 220 (“Order 220”, i.e., “Administrative Measures of the Customs of the PRC for the Modification and Revocation of Declaration Forms for Import and Export Goods”) on 13 March 2014. Order 220 took effect from its promulgation date and abolished GAC Order [2005] No. 143 (“Order 143”, i.e., “Administrative Measures of the Customs of the PRC for the Modification and Revocation of Declaration Forms for Import and Export Goods” (2005 version)) on the same day.
Key features of Order 220 are as follows:

<table>
<thead>
<tr>
<th>Items</th>
<th>Details</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declaration forms that can be modified or revoked</td>
<td>Except for otherwise stipulated, if one of the following situations occurred, consignees/consigners for import/export goods or their agents (hereinafter collectively referred to as the “applicants”) may modify or revoke declaration forms with their Customs in charge where declarations were completed:</td>
<td>Order 220 stipulates the documentation requirements for modification or revocation of declaration forms under each of the foresaid situations.</td>
</tr>
<tr>
<td></td>
<td>• Released export goods were partially or entirely shut out due to reasons related to shipment, transportation or change of means of conveyance.</td>
<td>The modification of declaration forms shall follow the principle of priorities. In case the declaration forms cannot be modified, the Customs shall withdraw the declaration forms.</td>
</tr>
<tr>
<td></td>
<td>• Inconsistency of actual goods and declared data due to excess or shortage of import/export goods during shipment, transportation, storage, or damages caused by force majeure</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Other customs procedures such as tax refund, tax payment for underpaid tax, or guarantee for customs matters, which require modification or revocation of declaration forms</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Transactions concluded on tentative prices and settled on actual prices according to qualify recognitions or actual prices on international market according to international trade custom</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Direct return of declared imported goods</td>
<td></td>
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<tr>
<td></td>
<td>• Errors of electronic declaration data due to technical reasons such as computer or internet system</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Errors of electronic declaration data due to operation or typo of individuals who filed the declaration</td>
<td></td>
</tr>
<tr>
<td>Modification or revocation of declaration forms required by the Customs</td>
<td>Where the Customs finds that declaration forms needed to be modified or revoked, the Customs may require applicants to modify or revoke the declaration forms in the following manners:</td>
<td>For import/export goods already obtain the certification page of the declaration form, the applicants are required to return the certification page of the declaration form for the modification or revocation.</td>
</tr>
<tr>
<td></td>
<td>• Withdraw the electronic declaration forms and specify reasons and requirements of the modification required. Applicants are required to modify the declaration forms as required and shall not amend other contents of the declaration forms.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Notify applicants with “Notifications for modification or withdrawal of declaration forms for import and export goods” (hereinafter referred to as “Notifications”). Upon receiving Notifications, the applicants should confirm the modification or withdrawal made by the Customs within 5 days.</td>
<td></td>
</tr>
<tr>
<td>Electronic declaration forms directly withdrawn by the Customs</td>
<td>Except for force majeure, the Customs may directly withdraw relevant electronic declaration forms if one of the below situations have occurred:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Applicants fail to resend electronic declaration forms within the prescribed time limit upon receiving the withdrawn declaration forms from the Customs.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Applicants fail to submit the declaration forms in paper within the prescribed time limit upon completion of verification of electronic declaration forms by the Customs.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Exporting goods fail to be delivered to the customs supervisory area within the prescribed time limit.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Other situations as stipulated by the GAC.</td>
<td></td>
</tr>
</tbody>
</table>
Our observations

Order 220 specifies situations, where modification, revocation or withdrawal of declaration forms are applicable, and clarifies procedures and documentations required. Moreover, Order 220 literally removes the word “application”, instead, applicants may complete the modification and revocation with the Customs in charge where the prescribed situations occurred. However, Order 220 did not update the relevant forms and sample of notification by the Customs as attached in Order 143. Applicants should stay alert to further updates from the Customs.

You may click this link to access full content of Order 220:
http://www.customs.gov.cn/publish/portal0/tab399/info700318.htm

You may click this link to access full content of Order 143:
http://qingdao.customs.gov.cn/Portals/105/files/baoguanyuan/6%E4%B8%AD%E5%8D%8E%E4%BA%BA%E6%8B%91%E5%85%B1%E5%92%8C%E5%9B%B8%E6%B5%B7%E5%85%B3%E8%BF%9B%E5%87%BA%E5%8F%A3%E8%B4%A7%E7%89%A9%E6%8A%A5%E5%85%B3%E5%8D%95%E4%BF%AE%E6%94%99%E5%92%8C%E6%92%A4%E9%94%80%E7%AE%A1%E7%9B%86%E5%8A%9E%E6%B3%95%E7%9B%BC%E8%8E%6B%E5%B7%E5%85%B3%E6%80%B8%E7%BD%B2%E4%BB%A4%E7%AC%AC143%E5%8F%B7%EF%BC%89.html

Notice regarding “Administrative Measures of the Customs of the PRC for the Direct Return of Imported Goods” (GAC Order [2014] No. 217)

Synopsis

On 12 March 2014, the GAC released GAC Order [2014] No. 217 announcing the new “Administrative Measures of the Customs of the PRC for the Direct Return of Imported Goods” (hereinafter referred to as “new Return Measures”). The new Return Measures came into effect on its promulgation date and superseded the old Return Measures that were released through GAC Order [2007] No. 156 on 2 February 2007.

Where consignees and consignors of imported goods, original responsible person of carriers and their agents (hereinafter referred to as “interested parties”) would directly return all or part of imported goods after the goods entered into China but before completion of customs clearances, or the direct return is instructed by the Customs according to prevailing rules, the new Return Measures shall apply. Some revisions to the administration on the direct return of imported goods under the new Return Measures as compared to those stipulated in the old Return Measures may include:

► The new Return Measures revised the wording of “interested parties apply for the direct return of imported goods” to “interested parties would directly return imported goods”. This is consistent with Circular 44 that cancelled the approval requirement for direct return of imported goods by the Customs under the GAC.

► The new Return Measures specified that interested parties can go through formalities for the direct return of imported goods with the Customs where the goods are located.

► The new Return Measures specified the timeframe for direct return reporting by interested parties whose return of goods are ordered by the Customs, i.e., within 30 days upon receipt of the notification of direct return order.

► The sample form for direct return of imported goods and notification of direct return order introduced by the new Return Measures would be formulated and announced by the GAC separately.

You may click this link to access full content of the new Return Measures:
http://www.customs.gov.cn/publish/portal0/tab399/info700273.htm

You may click this link to access full content of the old Return Measures:
http://www.customs.gov.cn/publish/portal0/tab49659/info58045.htm
Notice regarding the abolishment of certain customs regulations (GAC Order [2014] No. 216)

Synopsis

To cope with the economic and social development, streamline administrative approvals and delegate approval authority to lower levels, promote the transformation of government functions and strengthen the reform of administrative approval system, the GAC released GAC Order [2014] No. 216 (“Order 216”) on 12 March 2014 to abolish the following circulars:

► GAC Order [2004] No. 109 (“Order 109”, i.e., Administrative Measures of the Customs of the PRC for cross-customs regions deep processing transferring of bonded goods under the processing trade)

Order 216 took effect on its promulgation date.

You may click this link to access full content of Order 216:
http://www.customs.gov.cn/publish/portal0/tab49564/info700313.htm

You may click this link to access full content of Order 109:
http://www.customs.gov.cn/publish/portal0/tab519/info4478.htm

You may click this link to access full content of Order 119:
http://www.customs.gov.cn/publish/portal0/tab38320/info4458.htm

You may click this link to access full content of Order 146:

You may click this link to access full content of Order 187:
http://www.customs.gov.cn/publish/portal0/tab38320/info216952.htm

Other business and customs related circulars recently announced by central government authorities:

► Notice regarding the “Implementation Rules of the Shanghai Stock Exchange on Securities Exchange for Qualifying Foreign Institutional Investors (QFII) and Renminbi QFII” (Shangzhengfa [2014] No. 12)

► Notice regarding the “Administrative Regulations of the Customs of the PRC on the Registration of Declaration Entities” (GAC Order [2014] No. 221)
http://www.customs.gov.cn/publish/portal0/tab399/info700322.htm

► Notice regarding the public opinion solicitation on the “Implementation Measures of the Ministry of Industry and Information Technology for the Approval of Enterprises’ Investment Projects”
http://www.miit.gov.cn/n11293472/n11293832/n12845605/n13916913/15922787.html
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