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China Tax/Business News Flash

It's a Matter of Transparency

For the first time, China's laws and regulations affecting trade in goods, services, intellectual property and foreign exchange are to be provided in English and in advance for comment before implementation. This is a requirement in the Protocol under which China joined the WTO on 11 December, 2001. Prior to that, the laws and regulations were only officially available in Chinese and interested parties had to look for differing versions of unofficial English translations in the marketplace. International agreements, such as tax treaties, were available in English but not the domestic laws that also affect foreign investors.

China undertook to provide its laws and regulations in an official gazette and it would only enforce those laws and regulations that are published and readily available to the businesses. This commitment applies to laws and regulations and other measures affecting trade in goods, services, intellectual property and foreign exchange controls. This would be a big leap forward from the days when foreign investors complained about being assessed or fined by the local authorities for violating rules that the investors are not even aware of or that might be retroactive in application.

China also undertook to provide its proposed legislation for public comment before its implementation. It is expected that the period for comment will be 90 days. In effect, for almost a decade now, China has been providing proposed tax legislation for public comment before its implementation. It is good to see the practice being extended to laws and regulations affecting trade and intellectual property and foreign exchange controls and it is good to see that there will be one official channel for such publication. Of course, in matters of national security or monetary policy or setting foreign exchange rates, no advance exposure of proposed laws is required.

China has set up a WTO Notification and Enquiry Centre to handle enquiries about information published in the official gazette. Replies will be provided within 30 days. More complicated enquiries will be handled within 45 days.

China has committed to administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations and rules applied at the sub-national government levels. Again, this commitment applies to trade in goods and services, intellectual property and foreign exchange. The local governments shall have no autonomous authority over issues of trade policy to the extent that they were related to the WTO agreement and Protocol. All individuals and enterprises could bring to the attention of central government authorities cases of non-uniform application of China's trade regime.

On a larger scale, there are at least 16 subsidiary bodies of the WTO that have a mandate to review different aspects of China's compliance with its commitments. This review will be done every year for eight years after China's accession and each report will go to the General Council of the WTO. The Council may make recommendations to China and other WTO members as the need arises. A final review will be undertaken ten years after China's accession.

Both the central government and the local governments in China have completed their own reviews for laws and regulations that are not consistent with the WTO agreement and Protocol and over a period of time such legislation will be repealed or amended. Many such amendments should have been made by 11 December, 2001 but it will take longer than that because of the sheer volume of the legislation and the involvement of foreign advisors to fine-tune such legislation.

While all of the above point to a more transparent operating environment for foreign investors in China, there will naturally be transitional pains. Foreign investors thinking they can run into a local government ministry with a copy of the law in English and argue a point of law will be disappointed. Many government officials charged with administering the new laws and regulations across the country do not read or speak English. Further, China has always kept its laws brief. The local officials will still need to interpret the laws that they administer. Charges of non-uniform interpretation of the law may be difficult to be sustained within the bigger context of policy commitments.

One thing is sure. While the future will be less opaque for foreign investors, those who have obtained operating advantages through special relationships may now find themselves exposed. As a WTO member, China is under pressure to enforce its laws. Several months ago, the Chinese authorities picked out for rectification 200 foreign-invested entities that were using irregular structures to operate retail or wholesale businesses. Such structures are beyond what is allowed by the central regulations and are also ahead of the WTO market access timetable. Some representative offices that were operating beyond their business scopes were also closed down. Further, tax reform is on the way. China will have to consider its tax changes in conjunction with the massive tariff reductions that it has committed to in order to join the WTO. If it is to maintain its fiscal revenues while keeping many tax incentives, an obvious place to start is to enforce its tax regulations more strictly. It is time for foreign investors to examine their operating structures to see whether it can withstand the oncoming transparency.

This publication is prepared for clients of PricewaterhouseCoopers and others interested in our services. Comments are not intended to be comprehensive and detailed advice should be obtained by contacting a partner or director listed below. Additionally, we welcome you to visit our PricewaterhouseCoopers China website at <http://www.pwcglobal.com/cn> for practical insights and professional solutions to current and emerging business issues.

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