

China Tax/Business News Flash

A New Road Map For Foreign Investors

With the issuance of the new Industry Catalogue for Foreign Investment ("new Industry Catalogue") by the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC"), a new road map for foreign investors to China will be effective from 1 April this year. From this new Industry Catalogue, you will note that the attitude of the Chinese government towards foreign investment has become much more open than before. The number of "encouraged" investment items increased a lot while the scale of prohibited areas reduced.

The most prominent change is in the service industries. Industries such as software programming, property development for ordinary apartments, wholesale and retail of ordinary commodities, logistics, warehousing and higher education have been opened up as encouraged industries. In addition, industries such as telecom services and the supply network for water, gas and heat in cities have been released from the prohibited category although they are still subject to certain restrictions under the "Restricted" category. Similarly, manufacture of general consumer goods have been changed from restricted industries to permitted industries.

Apart from a relaxation of restrictions on investment, the foreign shareholding caps for various industries, for instance, telecom, wholesale and retail, will be gradually lifted in accordance with the WTO market access timetable.

Meanwhile, with an introduction of the concept of "relatively Chinese majority shareholding", flexibility was further added for foreign investors. In some industries such as water supply network, the aggregate shareholding of foreign investors may exceed the shareholding of Chinese partners provided that the shareholding of Chinese partners is bigger than the share of any one individual foreign investor.

Uncertainties To Be Aware Of

Despite the above favourable developments, the new Catalogue has brought some uncertainties. Firstly, unlike the old Industry Catalogue that contains a

"Restricted A" category and a "Restricted B" category, the new Industry Catalogue only has a single "Restricted" Category.

Pursuant to an old circular, subject to certain conditions, customs duty exemption on plant and machinery imported within the total investment amount is available to those enterprises engaging in industries of the "Restricted B" category under the old Industry Catalogue. However, the "Restricted B" will disappear after 31 March 2002. Meanwhile, there is no specific duty exemption provision or new circular touching on this issue yet. Apparently, no customs duty exemption will be available to those industries under the "Restricted" category of the new Industry Catalogue.

For an enterprise which is approved before 1 April 2002 and entitled to the aforesaid customs duty exemption on its imported plant and machinery but which has not imported all of its plant and machinery before 1 April 2002, it is uncertain whether the enterprise can still import its plant and machinery free of customs duty after 1 April 2002.

Hopefully, the MOFTEC may soon issue a ruling to clarify this situation or even grant grandfather treatment for these affected enterprises.

Furthermore, this new Industry Catalogue will not be the only map followed by the foreign investor who plans to invest into Central and Western China. There is another catalogue called the "Catalogue of Favourable Industries in Central and Western China" ("C&W Catalogue"). Whenever a foreign investor invests in a project in Central and Western China and which falls into the C&W Catalogue, it may enjoy a more favourable treatment. Since this C&W Catalogue was issued in mid 2000, conflicting requirements with the new Catalogue may be found. Which catalogue should prevail is another question mark. We hope a new version of the C&W Catalogue will be available in the near future to harmonise the requirements laid down in the two different catalogues.

Given the uncertainties ahead, it is advisable for all of us to keep a close eye on any new developments posted by the MOFTEC.

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