China Law Update

Posted at 12:54 PM on April 16, 2010 by Sheppard Mullin

Four Departments Jointly Clarify Tax Rules For Purchase Of Equipment by R&D Centers

On March 22, 2010, the Ministry of Commerce, State Administration of Taxation, General Admission of Customs and the Ministry of Finance jointly issued a circular (Shangzifa [2010] No. 93, "Circular 93") to clarify procedures for the examination and approval of tax exemptions and refunds for purchase of equipment in China made by foreign-invested R&D centers.

Background

On October 10, 2009, the State Administration of Taxation, Ministry of Finance and the General Administration of Customs jointly issued a circular (Caishui [2009] No. 115, "Circular 115"), setting conditions for import duty exemptions for foreign-invested R&D centers purchasing certain equipment. In order to implement these rules, Circular 93 provides detailed rules for the examination and approval of qualifications for the tax exemption or refund.

Main Points

Interpretation of Circular 115

According to Circular 115, an foreign-invested R&D center established before September 30, 2009 is qualified for the tax exemption if: (1) its total investment (if it is a separate legal entity) or total R&D investment (if it is an internal department or branch) is no less than USD 5 million, it has been established for less than 2 years, and the annual R&D expenditure is no less than RMB 10 million if it has been established for more than 2 years; (2) it has no less than 90 R&D specialists; and (3) the cumulative cost of equipment purchased since its inception must be no less than RMB 10 million.

An foreign-invested R&D center established after September 30, 2009 is qualified for the tax exemption if: (1) its total investment (of a separate legal entity) or total R&D investment (of an Internal department or branch) is no less than USD 8 million; (2) it has no less than 150 R&D specialists; and (3) the cumulative cost of equipment purchased since its set up must be no less than RMB 20 million.

According to Circular 93, for a R&D center that is not a separate legal entity and has been established for less than 2 years, "the total investment" equals to the assets invested within two years, for the establishment and construction of such R&D center by the foreign-invested enterprise to which it is affiliated, including the assets to be invested for the execution of purchase contracts. For a R&D center that has been established for more than two years, the "annual R&D expenditure" is the average annual R&D expenditure of the total R&D expenditure of the previous two years. If an R&D center has been established for less than two full accounting years, the "annual R&D expenditure" may be computed based on the amount of R&D funds that is actually disbursed during any 12 successive months since it is established. The input of cash and physical assets will be no less than 60% of the total input.

Circular 93 also clarifies that "R&D specialists" include full time personnel who engages in fundamental research, applied research or experimental development and have a contract with a term of more than one year with the R&D center. The number of R&D specialists on the day before the tax exemption application should be used in examining the qualifications of a R&D center.

When calculating the "cumulative cost of equipment", the cost of imported equipment and that of domestic equipment should both be included, including the cost to be incurred in a purchase contract that will be executed by 2010. It should be noted that such equipment should meet the criteria listed in Circular 115.

Examination of the qualifications and more

The commerce department, finance department, tax administration and admission of customs at the local levels (the "Competent Authorities") are in charge of examining the applications from R&D centers and confirming the list of qualified R&D centers. The Competent Authorities are to provide written opinions of unqualified R&D centers. They should examine the applications and publish the list of qualified R&D centers within 60 days after receiving the applications.

In addition, the Competent Authorities will reexamine the qualification of previously qualified R&D centers every two years.

Authored By:

Jingyuan Sun
jsun@sheppardmullin.com