China Corporate Law ALERT

Recent Developments in the Chinese Regulatory Regime Governing e-Commerce

The Chinese regulatory regime governing e-commerce has been constantly evolving as domestic and cross-border e-commerce continues its rapid growth. Recently, the regulatory environment has opened up in several ways: restrictions on foreign shareholding have been eased, a more favorable tax treatment has been promulgated, and new zones are being opened to facilitate free trade and cross-border e-commerce.

Restrictions Eased on Foreign Shareholding in Chinese e-Commerce Companies

In June 2016, a wholly foreign-owned entity (WFOE) owned by Heiwado, a Japanese company, obtained the first e-commerce license for a WFOE in China. However, this occurred only after almost a year had passed since the Ministry of Industry and Information Technology (MIIT) had formally lifted its restrictions on foreign shareholding.

Until 2015, MIIT's official policy was to limit foreign investors to a maximum of 50% shareholding in a company that could apply for a license to conduct e-commerce. However, in practice it had been very difficult for any company with foreign investment, including those with less than 50%, to obtain an e-commerce license.

Although the shareholding restrictions have now been lifted, foreign-invested companies that want an e-commerce license will still need (1) to have at least RMB 10 million in registered capital and (2) to demonstrate that the majority foreign shareholder has experience, and a good track record, in operating an e-commerce business.

The lifting of shareholding restrictions may also help foreign investors who have been coping with the restrictions by using variable interest entities ("VIEs"). Under VIE structures, foreign investors have exerted control, through a series of contracts, over purely domestic Chinese companies that can operate in restricted areas such as e-commerce. Although VIE practices have come under greater scrutiny for circumventing regulatory restrictions, the lifting of shareholding restrictions may ease the concerns of a number of foreign companies who operate in the e-commerce area in China.

Favorable Tax Treatment for Retailing to China via Cross-Border e-Commerce

Importers of retail goods into China through e-commerce are now able, in some cases, to avoid customs duties and have a substantial discount apply to their import value-added tax (VAT).

In March 2016, the Ministry of Finance, the General Administration of Customs, and the State Administration of Taxation jointly issued a notice ("Joint Notice") on taxes applicable to goods sold to Chinese consumers through cross-border e-commerce platforms and imported into China.

The Joint Notice applies to certain imported retail goods that (1) are included in lists promulgated by relevant authorities from time to time, (2) sold through e-commerce platforms that share electronic transaction data with Chinese Customs, or shipped by logistics companies being able to share such electronic data with Customs, and (3) that do not exceed the value of RMB 2,000 for any single purchase, or RMB 20,000 for all purchases made by an individual in a calendar year.

Imported retail goods covered by the Joint Notice will be qualified for a 0% rate on Customs duties, and 30% off standard import value-added taxes and excise taxes. Chinese consumers will be responsible for the taxes levied on the imported retail goods, which can be withheld either by the e-commerce operators or logistics companies.

Seven New Free Trade Zones and 12 New Comprehensive Pilot Zones for Cross-Border e-Commerce

In the end of August 2016, it was announced that another provincial seven free trade zones are to be established, in addition to the four existing free trade zones. Earlier in January 2016, 12 comprehensive pilot zones for cross-border e-commerce were announced, after the first one was established in Hangzhou a few months earlier.

Free trade zones facilitate trade with bonded warehousing, simplified customs formalities, and more convenient payment and currency conversion arrangements, all of which benefit cross-border e-commerce.

Cross-border e-commerce zones are intended to provide a more liberalized and efficient regulatory regime. These zones have established online e-commerce platforms, and e-commerce sales are supposed to take place through these platforms. Foreign invested companies can be established in these zones, and import goods from abroad and store them in bonded warehouses until sales are made to consumers. When sales are made, customs duties will be due (assuming there are duties due at all under the new tax reductions), and the goods will be shipped after going through an expedited customs process. Customers will be able to pay in RMB, which is a great advantage for retail sales compared to shipping goods into China from a foreign country, given the foreign exchange control restrictions that apply to Chinese retail customers. The limit permitted for a single cross-border e-commerce transaction is also being increased by China's foreign exchange control authorities—this figure now is USD 50,000 in most zones, and USD 200,000 for e-commerce companies registered in Hangzhou zone.

***

These new measures may seem piecemeal in nature and may not yet be fully implemented in practice. For example, comparatively few foreign-invested companies have obtained an e-commerce license. Nevertheless, a lifting of long-held restrictions, a more favorable tax treatment, and the expansion of trial and free-trade zones all point to a more open legal regime for cross-border e-commerce in the near future.

We will stay close to further developments and keep you updated. If you would like further information, please contact Wan Li at *lwan@seyfarth.com* or any member of our International Corporate & Commercial Practice.