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### **China Releases Final Transfer Pricing Rules**

by Mary Swire, Tax-News.com, Hong Kong 15 January 2009

It has been reported this week that China's State Administration of Taxation (SAT) has signed into law new rules updating the country's transfer pricing regime, expected to become effective immediately

The final version of the Implementation Measures for Special Tax Adjustments, put in place by the circular Guoshuifa (2009) No. 2, aims to update the tax treatment of matters including transfer pricing, advance pricing arrangements  $contemporaneous\ documentation,\ cost\ sharing\ agreements,\ controlled\ for eign\ corporations,\ thin\ capitalisation,\ and\ anti-policy\ corporations,\ anti-policy\ cor$ avoidance in general.

Commenting on the new rules following their signature into law, accounting firm, KPMG observed that:

"The Regulations come at a challenging time for many multinational corporations. In addition to having to adjust to the  $sudden\ decrease\ in\ demand\ caused\ by\ the\ current\ economic\ crisis,\ they\ face\ an\ increased\ risk\ of\ a\ transfer\ pricing\ audit."$ 

"Given impending transfer pricing deadlines, there is not much time to prepare all the necessary 2008 filing forms as well as  $the \ documentation \ reports for \ 2008 \ and \ subsequent \ y \ ears. \ Therefore, companies should \ consider \ issues for \ 2008 \ and \ 2009 \ and \ 2009$ at the same time, planning ahead to better manage all risks.

And further revealed that:

"With the promulgation of the Regulations, existing transfer pricing rules, such as Circular [1998] No. 59, Circular [2004] No.143, and Circular [2004] No.118, are now annulled."

Fellow Big Four firm Ernst and Young added a similar warning with regard to the possible compliance issues raised by the new rules, stating that:

"With the issuance of the Final Measures, China's transfer pricing disclosure and documentation requirements are firmly in  $place.\ For\ the\ 2008\ year,\ the\ tax\ filing\ disclosure\ will\ be\ due\ in\ May\ 2009,\ and\ the\ contemporaneous\ documentation\ due\ docum$ December. We strongly encourage you to develop an action plan for immediate implementation towards timely compliance.

Among other changes contained in the Final Measures, the threshold for exemption from the contemporaneous documentation requirement has been changed to RMB200m (USD29.2m) with regard to related party purchase or sale transactions, and RMB40m for transactions such as those involving services, financing transaction interest, and intangibles.

In addition, the criteria for Advance Pricing Agreement (APA) applications have been relaxed, most significantly in terms of the years of operating history required prior to application

The updated legislation also removed the need for the State Administration of Taxation's prior approval for cost-sharing agreements with regard to related-party labour services.

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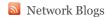
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