Hendersen Taxand

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China Tightening Anti-avoidance Enforcement – GoldmanSachs' case

The tax authority of Luohe City Henan Province is contemplating to impose RMB 420 million on GoldmanSachs for its indirect transfer shares of a Chinese company.

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GoldmanSachs has disposed shares of Henan Shuanghui Investment Development Co., Ltd ("Shuanghui Development"), which is registered in China, in the last 3 years through transferring shares of intermediate holding company. The intermediate holding company is ShineB Holdings I Limited ("ShineB") registered in British Virgin Islands and Rotary Vortex Limited ("Rotary Vortex") registered in Hong kong. In year 2006, GoldmanSachs indirectly held 31% shares of Shuanghui Development, through indirectly transferring the shares, by the end of 2009, GoldmanSachs only indirectly held 3.3% shares of Shuanghui Development.

China introduced general anti-avoidance rules ("GAAR") in 2007 when issuing the new Enterprise Income Tax law. Guoshuihan [2009] No. 698 was issued on December 12, 2009 in relation to GAAR. According to circular Guoshuihan [2009] No. 698, article 6, where the foreign investing party (who is the actual controlling party) indirectly transfer the equity of the Chinese resident enterprise by arrangement such as abuse of the organization form for an unreasonable commercial purpose to evade the taxation obligation of paying the enterprise income tax, the competent tax authorities may, upon to the State Administration of Taxation for examination, re-define the nature of such equity transfer transaction in accordance with the economic substance thereof and deny the existence of the offshore holding company used for such taxation arrangement.

Currently the tax authority is collecting the relevant documents to see whether ShineB and Rotary Vortex have substance. And according to tax experts, as GoldmanSachs indirectly holds many Chinese companies through intermediate holding company, it may become a full investigation on GoldmanSachs' investment structure in China.

It is not the first case, in May 2010, Jiangdu Municipal Jiangsu Province tax authority imposed RMB 173 million on a multinational company for indirectly transfer the equity of a Chinese company.

Hendersen comment: Multinational companies shall examine its investment structure and to be very carefully in disposal shares of Chinese company through intermediate holding company.

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