

The General Office of the Ministry of Commerce

Circular on Further Effectively Implementing Tax Relief on Imported Equipment for Encouraged Foreign-invested Enterprises

China Business Solution Office
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On September 5, 2017, the General Office of the Ministry of Commerce (MOC) issued the Circular on Further Effectively Implementing Tax Relief on Imported Equipment for Encouraged Foreign-invested Enterprises (Shang Ban Zi Han [2017] No.367, hereinafter “Circular”) whereby it aims to further develop the imported equipment tax relief procedures for the encouraged foreign-invested enterprises in the applicable scope of filing procedures. The Circular took effect on July 30, 2017.

1. Background of the Policy

The tax policy on imported equipment for foreign-invested enterprises was first stipulated by the Circular of the State Council on Adjusting Tax Policy of Imported Equipment (Guo Fa [1997] No.37, hereinafter “No. 37 circular”) issued in 1997. The No.37 circular stated that customs duty and value added tax on imported equipment would be exempted within the defined range for the domestic and foreign investment projects encouraged by the government. Further, this treatment would be applicable to equipment imported for own use within the total amount of investment in foreign business investment projects by enterprises under the category of encouragement and the restricted B category of the Catalog of Industries Guidance for Foreign Business Investment. (The restricted B category has been abolished in the current catalog.)

Along with the issue of Interim Regulation of the People's Republic of China on Value Added Tax (Order No. 538 of the State Council, amended in 2008) the deduction of input value added tax was further standardized. Subsequently, the Ministry of Finance, General Administration of Customs, and State Administration of Taxation released Announcement No. 43 (2008), which amended the No.37 circular. The exemption of customs duty within the scope of application of the No.37 circular was maintained, while the collection of value added tax on import, which would be deducted as input value added tax, was resumed.

The simplification of imported equipment tax relief procedures has also been proceeding thanks to the promotion of business system reform. The Notice of the Ministry of Commerce on Effectively Conducting the Follow-up Work on the Cancellation of the Confirmation and Approval of Encouraged Projects of Foreign-Funded Enterprises (S.Z.H. [2015] No. 160, hereinafter “No. 160 notice”) issued in 2015 stipulated that for foreign investment projects, competent commerce departments would no longer issue the Confirmation Letter on Domestic and Foreign Investment Projects Encouraged by the State and examine the list of imported duty-free equipment of foreign-funded enterprises but specify information related to encouraged projects of foreign-funded enterprises in their replies issued upon the establishment (capital increase) of enterprises. In the background that foreign investment admission system has been changed to the filing system from the approval system nationwide, the No. 37 circular is to clarify the relevant procedures for the tax relief for imported equipment.

2. Details of the Policy

As mentioned above, the Circular clearly indicates how to file an application for the tax relief, when encouraged foreign-invested enterprises import equipment to China.

(1) Scope of application of the policy



The following two conditions must be satisfied:

- Qualify for the encouraged industries of the Catalogue of Industries for Guiding Foreign Investment or the Catalogue of Encouraged Industries in Western China
- Foreign-invested enterprises established or whose capital increased through filing system

(2) Filing flow

See Figure 1 below for details.

[Figure 1] Filing flow of tax relief for import equipment

Filing method	Fill out and submit the record-filing report online through the integrated management information system (http://wzzxbs.mofcom.gov.cn/).			
Filing flow (*1)	<p>[Establishment] Within 30 days after the issuance of the business license, fill out and submit online the Filing Form of the Formation of Foreign-Funded Enterprises and relevant documents, and information related to encouraged foreign investment project (*2) through the integrated management information system.</p> <p>[Capital increase] Within 30 days after the occurrence of the modification, fill out and submit online the Filing Form of Modification of Foreign-Funded Enterprises and relevant documents, and information related to the relevant encouraged foreign investment project through the integrated management information system.</p>			
		<table border="1" style="width: 100%;"> <tr> <td style="text-align: center;"> Where the matter falls within the scope of filing The filing authority shall, within three working days, complete the filing and issues the filing results through the integrated management information system. </td> <td style="text-align: center;"> Where the matter falls outside the scope of filing The filing authority shall notify the foreign-funded enterprise or its investors online to undergo relevant formalities and notify relevant departments to handle the matter. </td> </tr> </table>	Where the matter falls within the scope of filing The filing authority shall, within three working days , complete the filing and issues the filing results through the integrated management information system.	Where the matter falls outside the scope of filing The filing authority shall notify the foreign-funded enterprise or its investors online to undergo relevant formalities and notify relevant departments to handle the matter.
	Where the matter falls within the scope of filing The filing authority shall, within three working days , complete the filing and issues the filing results through the integrated management information system.	Where the matter falls outside the scope of filing The filing authority shall notify the foreign-funded enterprise or its investors online to undergo relevant formalities and notify relevant departments to handle the matter.		
	<p style="text-align: center;">Obtain a receipt of completion of filing</p> <p>After the completion of filing, a foreign-funded enterprise may, by presenting the materials (photocopy) on pre-approval of the name of the foreign-funded enterprise or its business license (photocopy), obtain a Filing Receipt with information about the encouraged foreign investment projects on its remarks.</p>			

<p>Materials to be submitted online</p>	<ul style="list-style-type: none"> ✓ The materials on the pre-approval of the name of the foreign-funded enterprise or the business license of the foreign-funded enterprise ✓ The Letter of Undertaking for the Application for Filing of the Formation of Foreign-Funded Enterprises signed by all investors (or all promoters) of the foreign-funded enterprise or their authorized representative ✓ The certification of the representative designated by all investors (or all promoters) or the foreign-funded enterprise, or the jointly entrusted agent, including the power of attorney and the identity certificate of the entrusted person ✓ The certification of an investor or legal representative of the foreign-funded enterprise authorizing any other person to sign relevant documents, including the power of attorney and the identity certificate of the authorized person (not required, if the investor or legal representative of the foreign-funded enterprise does not authorize any other person to sign relevant documents). ✓ The certifications on eligibility status or natural person identity certificates of investors ✓ The natural person identity certificate of the legal representative ✓ A Chinese translation of the aforesaid documents, if they are written in a foreign language (The submitter shall ensure that the content of the Chinese translation is consistent with that of the original document in the foreign language.)
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*1. Actual filing shall be conducted under guidance of the related departments.

*2. Information related to relevant encouraged foreign investment projects includes applicable articles of the industrial policy, characteristics of the project, details of the project, total project investment amount (USD), amount of foreign currency used for imported equipment (USD), the project construction period, etc.

According to the Circular, if there are any changes to the information related to foreign investment projects, excluding the amount of foreign currency used for imported equipment and the project construction period, foreign-funded enterprise shall enter the changes online. If the amount of foreign exchange used for imported equipment and the project construction period need to be changed, enterprises shall submit explanatory materials to the competent customs, and have the changes examined and confirmed.

Attention needs to be paid to the items overlapping between the Catalogue of Encouraged Industries for Foreign Investment and The Special Administrative Measures (Negative List) for Foreign Investment Access. A foreign-funded enterprise can enjoy the preferential policies on encouraged projects, but must also comply with the rules related to foreign investment access. The procedures for the tax relief for imported equipment must be handled in accordance with the examination and approval procedures stipulated in the No.160 notice mentioned above, and the application result would be clearly described in the replies from competent commerce department.

3. Impact on foreign-funded enterprises

The Circular has further clarified the procedures for the tax relief for equipment imported by encouraged foreign-invested enterprises as part of filing management. Enterprises will be required to enter information related to the tax relief for import equipment online through the integrated management information system when filing for establishment or a capital increase. Compared to the previous examination and approval procedures, the procedures for foreign-invested enterprises that are subject to the filing system have been

simplified so that enterprises can introduce production equipment faster.

However, while simplification has advanced, enterprises will continue to be subject to supervision and management by the competent commerce departments. Projects that do not satisfy relevant conditions will be reported to the customs. Enterprises should check the procedures and requirements before and after filing in order to avoid operational troubles.

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