

The State Administration of Foreign Exchange

Notice Regarding Issues Related to Foreign Exchange Administration on Finance Lease Business

China Business Solution Office
RMB Internationalization Business Promotion Office

On October 12, 2017, the State Administration of Foreign Exchange (SAFE) promulgated the Notice Regarding Issues Related to Foreign Exchange Administration on Finance Lease Business (Huifa [2017] No.21, hereinafter “The Circular”). The Circular clarified that when finance lease enterprises conduct finance lease business, they are allowed to receive the lease fees in foreign currencies. The Circular aims to extend pilot policies which have been implemented in the China (Shanghai) Pilot Free Trade Zone (PFTZ) nationwide. The Circular became effective on its promulgation date, October 12, 2017.

1. Background of the Policy

In 2014, the SAFE Shanghai Branch promulgated the Detailed Rules for the Implementation of Regulations on Foreign Exchange Management in the China (Shanghai) PFTZ (Shanghai Huifa [2014] No.26¹) wherein it defines that finance lease enterprises in the Shanghai PFTZ are allowed to receive lease fees in foreign currencies. In December 2015, the SAFE Shanghai Branch announced “the Detailed Guidelines to Further Promote Foreign Exchange Reform of China's Shanghai Pilot Free Trade Zone (‘PFTZ’) on a Pilot Basis” (Shanghai Huifa [2015] No.145, hereinafter “No. 145”) and further defined the pertinent qualifications of receiving the lease fees in foreign currencies in PFTZ.

[Figure 1] Outline of No.145

- When finance lease enterprises, foreign-funded finance lease enterprises and Chinese-funded finance lease enterprises (hereinafter Finance Lease Enterprises) engage in finance lease business in PFTZ, 50% or above of the capital used to acquire the leased assets shall be domestic foreign currency loans/debts in foreign currencies.
- A lessee shall present payment notice or other supporting documents issued by the lessor indicating that the lease fee should be paid in foreign currency and conduct payment procedures to settle the lease in foreign currency at the bank.
- When Finance Lease Enterprises in PFTZ receive the lease fee in a foreign currency, the payment in foreign currency can be remitted to the lessor’s foreign currency bank account opened according to the regulations. The amount of foreign currency that exceeds the amount of debt/loan repayment can be settled into RMB at the bank.
- In leaseback transactions, the lessor can pay the lease in foreign currency or RMB to the lessee. When a lessee receives the lease in foreign currency, it cannot be exchanged for RMB.

In July 2017, the Notice regarding copying and rolling out the third batch of reform arrangements implemented in the Pilot Free Trade Zones nationwide by the Ministry of Commerce, the Ministry of

¹ Subject notice was annulled when Shanghai Huifa [2015] No. 145 became effective.

Transport, the State Administration of Industry and Commerce and the State Administration of Foreign Exchange (S.Z.H. [2017] No. 515) was promulgated by the relevant agencies, whereby they agreed to expand the pilot policies regarding the collection of lease fees nationwide. This notice aims to expand the pilot policies nationwide and clarify the rules on foreign currency administration regarding the collection of lease fees in foreign currencies in finance lease business.

2. Details of the Policy

The Circular clarified the finance lease enterprises which can collect lease payments in foreign currencies within the designated areas. Three types of enterprises - finance lease enterprises that are approved to be established by the China Banking Regulatory Commission, foreign-funded finance lease enterprises that are approved to be established by the Ministry of Commerce (hereinafter, “MOFCOM”), and Chinese-funded finance lease enterprises that are approved by the MOFCOM and the State Administration of Taxation – are allowed to receive lease payments in foreign currencies.

The condition to allow lessors to collect lease payments in foreign currencies is that 50% or above of the capital used to acquire the leased assets are domestic foreign currency loans/debts in foreign currencies. The Circular also clarified the foreign currency administration regarding bank procedures for lessee and lessor. (as shown in Figure 2)

[Figure 2] Bank procedures for lessee and lessor regarding lease payments in foreign currencies

Payer (lessee)	Payee (lessor)
<p>Documents Required for Payer:</p> <ul style="list-style-type: none"> ➤ Lease payment notice issued by the lessor indicating that the lease should be paid in foreign currency ➤ Documents to substantiate that “50% or above of the capital used to acquire the leased assets are domestic foreign currency loans/debts in foreign currencies” ➤ Other supporting documents required by the bank 	<p>Account for Receiving Foreign Currency: Foreign exchange account under the lessor’s name opened according to the regulations</p> <p><u>Whether the Foreign Currency Can be Exchanged for RMB:</u> The amount of foreign currency that exceeds the amount of debt/loan repayment can be exchanged for RMB at the bank</p>

3. Impact on foreign-funded enterprises

Compared with No. 145 by SAFE Shanghai, the details of the Circular are generally the same as No. 145 except for a deleted clause which allows the lessee to choose any foreign currency for the leasing fee in leaseback transactions (this clause is effective in Shanghai / Tianjin PFTZs).

It is also noted that when the payment of leasing fee in foreign currency will be made under the conditions described in the Circular, the lessee and the lessor must follow the operation process determined by the bank in addition to the paperwork and other procedures stipulated in the Circular.

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