TAX NEWS CHINA

2024 (No.06 issue)

December 2024

Stamp duty relief expanded to support M&A

In brief

- China's finance and tax authorities have issued a pivotal notice on stamp duty revision to support corporate restructuring, effective from 1 October 2024 to 31 December 2027.
- This updated notice, replacing the 2003 version, provides clearer guidelines on stamp duty applications in reorganization and restructuring scenarios.

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In detail

On 4 September 2024, China's Ministry of Finance (**MoF**) and the State Taxation Administration (**STA**) issued a new tax notice titled "*Stamp Duty Policies Relating to Enterprises' Reorganization and Restructuring, and Public Institutes' Reorganization*". This notice updates the 2003 version, clarifying previously ambiguous issues and expanding the scope of stamp duty (SD) incentives. Key highlights include:

- **Broader coverage** : More parties, events, and documents involved in reorganizations and restructurings (*see their definition in the table below*) are now eligible for stamp duty incentives.
- **Temporary validity** : The notice is effective from 1 October 2024 to 31 December 2027.

These changes aim to facilitate a clear SD treatment for reorganization and restructuring. The major changes brought about by the new notice are summarized below:

Areas	Details	2003 Stamp duty rules	2024 stamp duty rules
Title	Ref. number	• Caishui [2003] No. 183	• MoF/STA Notice No. 14, 2024
Definition	Re-organization	Limited to the following re-organization approved by the government: • State-owned enterprises (SOEs) converted into companies; • Limited liability companies (LLCs) converted into joint-stock companies (JSCs); and • New LLCs or JSCs formed by existing assets, debts or premium properties of non-company entities.	It covers the following re-organization: • Entities converted into LLCs or JSCs, or LLCs converted into JSCs (or vice versa); **and** • The original shareholder(s) continue to hold over **75%** of the shares after the conversion.
	Restructuring	• Not covered.	• It covers merger, split, in-kind capital injection, asset transfer, debt restructuring, etc.
	Public institutions (PIs)	• Not covered.	• It covers PIs converted into companies with their original shareholder(s) continue to hold over 50% of the shares.
Application	Scope	Applicable to re-organization.	Applicable to re-organization **and** restructuring.
Capital booked	Definition of "capital"	• It mentions "*capital*" vaguely.	• It uses specifically the terms "*paid-up capital plus capital reserve*".
	1. Set-up capital	• Dutiable only for the additional value of the paid-up & new capital.	• Dutiable only for the additional value of the paid-up & new capital.
	2. Post-merger/split capital	• Dutiable for the additional capital of post-merger or -split companies.	• Dutiable position should remain (though not mentioned).
	3. Debt-turned capital	• Dutiable for additional value	• Dutiable (Exemption for State-approved restructuring).
	4. Appraised capital	• Dutiable for the additional value	• Dutiable for the additional value
	5. Capital sources from other accounts	• Dutiable for paid-up capital & capital reserve converted from other accounts.	• Dutiable.
Dutiable agreements	If duty were paid before re-org.	• Not applicable even the ownership of the agreement has changed.	• Not applicable even the ownership of the agreement has changed.
Property Rights transfer instruments	Exemption scope	• Exemption is granted only to instruments in re-organization.	• Exemption for instruments in both organization and restructuring.
	Government-ordered transfer	• Not mentioned.	• Exemption is granted if the transfer is due to administrative policies.
	Intra-group transfer	• Not mentioned.	• Exemption for the transfer between parties under 100% ownership.
Validity	Period setting	• No setting.	• 1 Oct. 2024 to 31 Dec.2027

In brief, the following are the major changes to the stamp duty (SD) application.

1 **Expanded scope of application**

- The 2003 notice had a limited scope, applying only to non-company entities converting into companies under the approval of a government above the county level. The 2024 notice brings good news by expanding coverage to include public institutions and companies (both LLCs and JSCs). This broader scope, encompassing both reorganization and restructuring, is particularly appealing as it allows more entities, including foreign-invested enterprises (FIEs), to benefit from the relief.

2 **Refined capitalization assessment**

- The notice clarifies the application of SD in various capitalization scenarios during reorganization or restructuring. "Capital" is now precisely defined as the **sum** of paid-up capital and capital reserve. Additionally, capital gain assessment is categorized into five distinct situations, consistently applying the principle that only untaxed portions are subject to duty.

3 **More relief to M&A**

- Good news for companies undergoing structural changes: SD exemption is now offered to property rights transfer instruments, under a wider range of restructuring scenarios, including mergers, splits, bankruptcy liquidations, asset transfers and debt restructuring. This relief can result in certain savings for large and complicated restructuring cases.

- It should be noted that some key criteria are set for duty exemption under corporate changes:

  - **Shareholding**: Re-organization is subject to a 75% shareholding requirement. The original shareholder must retain over 75% equity post-reorganization, with the new company inheriting the original entity's rights and obligations. This threshold is reduced to 50% for public institutions (i.e. state-owned or public duty performing entities). However, a more favorable relaxation is observed for restructuring without the setting of similar limitation.

  - **Intra-group transfer:** For the first time, the SD regime has included the relief for intra-group transfers. The exemption applies to property right transfers between subsidiaries **100%** owned by the **same** shareholder, or between a parent (a company or a natural person) and a **wholly-owned** subsidiary.

WTS China's observation

The recent SD revision aligns with the central government's push for corporate modernization and restructuring, particularly among industrial leaders and public companies.

These changes are part of broader tax reforms aimed at fostering economic growth. For example, the China Securities Regulatory Commission (CSRC) and the National Financial Regulatory Administration (NFRA) both issued statements recently in September and December advocating reforms and progress in the M&A and restructuring market for listed companies and financial institutions.

The new SD guidelines offer clearer definitions, more exemptions, and wider scope of application, to ensure a level playing field for all companies.

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China Contact

Martin Ng
Managing Partner
martin.ng@wts.cn
+ 86 21 5047 8665 ext.202

Ened Du
Partner
ened.du@wts.cn
+ 86 21 5047 8665 ext.215

Julia Zhu
Associate
julia.lj.zhu@wts.cn
+ 86 21 5047 8665 ext.205

WTS China Co., Ltd.
Unit 06-07, 20th Floor, Building 1, Shengbang International Tower, No.1318 North Sichuan Road, Hongkou District, Shanghai, China 200080
www.wts.cn
info@wts.cn

WTS Global website: www.wts.com

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