

MEMO# 28708

February 4, 2015

Draft Letter on China Capital Gains Tax

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TO: TAX COMMITTEE No. 7-15

INTERNATIONAL COMMITTEE No. 6-15

ICI GLOBAL TAX COMMITTEE No. 4-15

ICI GLOBAL ASIA-PACIFIC CHAPTER No. 1-15 RE: DRAFT LETTER ON CHINA CAPITAL GAINS TAX

Substantial uncertainty has existed for several years regarding how, if at all, a 10% capital gains tax enacted by the People's Republic of China (PRC) would be applied to non-Chinese investors such as funds. This uncertainty arose in part from the absence of any procedures for paying the tax and no attempts by the Chinese tax authorities to assess the tax.

In November, the Chinese tax authorities issued guidance – Circular (2014) 79 (the “Circular”) – regarding the retroactive and prospective application of the tax. The guidance among other things clarified that China would be collecting the tax on securities sold before a “temporary exemption” came into effect on 17 November.

Recently, Chinese tax authorities began to collect information from custodians and others that will be used to assess tax on these previously-realized gains. We understand that local offices that are making these informational inquiries have been given wide latitude to determine how the tax will be calculated and paid; no centralized process appears to have been implemented.

The attached draft letter, circulated for your review, requests guidance clarifying how the tax will be applied retroactively to non-PRC funds. The letter urges that generally applicable guidance be issued to these local offices to ensure consistent application to funds of the retroactive collection effort. The letter also identifies a number of interpretative issues for which guidance will be needed. These issues include:

- the period for which collection should be pursued (e.g., three years, five years, back to the Corporate Income Tax' enactment in 2008, back to the first QFII investments in 2003, etc.);
- the accounting methodology (FIFO, etc.) for calculating the tax;
- whether funds may net gains and losses to determine taxable gains;
- whether to charge interest on any amount due;
- whether to charge penalties on any amount due;

- whether a treaty exemption applies;
- the procedures for claiming treaty relief; and
- whether collection efforts will be pursued for transactions other than those involving equities.

The letter also requests guidance on the scope of the temporary exemption. These questions include the length of the exemption (i.e., the date on which the exemption ends) as well as the transactions to which it applies.

Finally, the letter requests guidance on how the tax will be calculated, reported, and paid prospectively.

Please provide your comments on the attached letter by Tuesday, February 10 to the undersigned at lawson@ici.org or 202-326-5832.

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[Attachment](#)

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