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# Transfer Pricing Requirements

### *Introduction*

China tax authorities have been tightening the transfer pricing ("TP") controls on various types of enterprises in China during the recent years. Relevant regulations mainly include:-

- Circular Guo Shui Fa [2009]2
- Circular Guo Shui Han [2009]363
- Circular Guo Shui Han [2010]323

Major TP disclosure/documentation requirements include:-

- TP forms ("TP Annual Forms") to be submitted together with the annual Corporate Income Tax returns (generally due by May 31 for the previous year): such forms should be properly completed and submitted to the in-charge tax authorities of the relevant enterprises and should indicate whether the enterprises have contemporaneous TP documentation in place and the applicable TP method. Please note that such requirement basically applies to all enterprises in China.

- TP documentation: all enterprises in China should prepare their contemporaneous documentation unless for an enterprise that meets one of the following conditions:-

    - Its annual intercompany transaction volume (buy-sell transactions) is below RMB 200 million AND its annual intercompany transaction volume (non buy-sell transactions) is below RMB 40 million.

    - It is covered under an Advanced Pricing Arrangement.

    - All of its intercompany transactions are incurred with related parties in China and its foreign shareholding percentage is less than 50%.

  However, it should be noted that even if it meets one of the above three conditions, an enterprise should still prepare contemporaneous documentation if it is regarded as an "enterprise with limited functions and risks" that only conduct manufacturing, distribution, contracted R&D activities, etc.

## *Possible Impact on Your Company and Suggested Approach*

Given the above TP requirements, every company in China should take the following actions to minimize its TP exposures:-

- Carefully prepare the TP Annual Forms and submit to the in-charge tax authorities before the deadline (generally May 31, 2011)
- Assess whether it is subject to the contemporaneous documentation requirement and whether there are possible approaches to legitimately avoid such requirement
- If so required, prepare the contemporaneous documentation as soon as possible
- Even if not required to prepare the contemporaneous documentation, it should still assess the potential risks in relation to its current pricing methodology on related party transactions, as well as the appropriate approach to minimize such potential risks

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The contents in this Texel Alert are for your reference purpose. Readers are suggested to consult professional advisors for detailed analysis before implementation. For more information or further advice on the above subject or analysis of other tax/business issues, please feel free to contact our Partners (contact information on the next page).

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