

## Appendix 1

# Circular of the State Administration of Taxation Concerning the Payment of Enterprise Income Tax by Foreign-Invested Venture Capital Investment Enterprises

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*Please note: This is an unofficial Mayer Brown JSM translation of the official Chinese language document.*

To: state taxation bureaus and local taxation bureaus of all provinces, autonomous regions, municipalities directly under the Central Government and cities separately listed on the State plan

In order to encourage foreign companies, enterprises, other economic organisations or individuals (hereinafter referred to as foreign investors) to engage in venture capital investment in China, the Ministry of Foreign Trade and Economic Cooperation<sup>1</sup>, the Ministry of Science and Technology, the State Administration for Industry and Commerce, the State Administration of Taxation and the State Administration of Foreign Exchange have jointly promulgated the Provisions on Administration of Foreign-Invested Venture Capital Investment Enterprises (2003 No. 2 Decree, hereinafter referred to as the Administration Provisions) in January of 2003. Regarding the issues related to enterprise income tax of foreign-invested venture capital investment enterprises (hereinafter referred to as the FIVCIE), it is hereby clarified as follows pursuant to the Income Tax Law of the People's Republic of China for Foreign-invested Enterprises and Foreign Enterprises (hereinafter referred to as the Tax Law) and its detailed implementation rules.

### Article 1

According to the relevant regulations, the FIVCEs are engaged in equity investment and divestment as well as providing venture capital investment management service and consultative service to enterprises, they do not belong to manufacturing-oriented enterprises stipulated in Article 72 of the Tax Law and cannot enjoy the preferential tax treatment as stipulated in the Tax Law for manufacturing-oriented enterprises with foreign investment.

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<sup>1</sup> Now the Ministry of Commerce

**Article 2** A legal person FIVCIE shall be the taxpayer to declare and pay enterprise income tax according to the Tax Law.

**Article 3** For a non-legal-person FIVCIE, its income tax may declared and paid by its respective investors according to Article 7 of the detailed implementation rules of the Tax Law; or the FIVCIE may, upon approval of its application by local tax authorities, declare and pay the enterprise income tax as a whole<sup>2</sup> according to the Tax Law.

If the investors of a non-legal-person FIVCIE declare and pay enterprise income tax respectively, the foreign investors shall calculate and pay enterprise income tax as foreign enterprises with place and establishment in China. If a non-legal-person FIVCIE does not engage in venture capital investment management or consultation business by itself but authorise a venture capital investment management enterprise or another FIVCIE to manage and operate its daily investment activities, its foreign investors may declare and pay enterprise income tax as foreign enterprises without place and establishment in China.

**Article 5** This circular shall enter into force as of 1 March 2003.

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<sup>2</sup> As a taxable entity

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