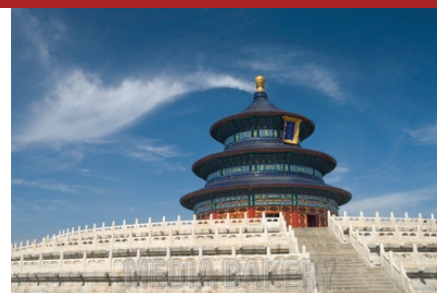


May 2009



## China Tax Bulletin

Welcome to White & Case's monthly China Tax Bulletin. This client bulletin includes updates and analyses on recent tax regulations, ensuring you stay up to date on tax developments important to your business.

### Long-awaited New Enterprise Reorganization Rules Finally Unveiled

The Ministry of Finance ("MOF") and the State Administration of Taxation ("SAT") have recently released long awaited income tax rules on enterprise reorganizations, the *Circular on Certain Questions regarding the Enterprise Income Tax Treatment of Enterprise Reorganizations* -- Circular Caishui [2009] No 59 ("**Circular 59**"). Circular 59 sets out detailed guidance on the income tax treatment of reorganizations and takes retroactive effect back to January 1, 2008.

As way of background, China used to have specific tax rules on the reorganizations of foreign investment enterprises and domestic enterprises, respectively. The two sets of rule were repealed by the new *Enterprise Income Tax Law* that became effective on January 1, 2008. The *Enterprise Income Tax Law* and the related *Implementation Regulations of the Enterprise Income Tax Law* contain only very general principles on reorganizations and authorize the MOF and the SAT to come up with detailed rules. After almost one and a half years since the *Enterprise Income Tax Law* was enacted, Circular 59 has finally arrived.

In general, if a transaction meets the conditions under Circular 59, no gain or loss is recognized at both the shareholder level and the enterprise level; any unrecognized gain or loss is reflected in the substituted basis of equity consideration received by a shareholder or an enterprise, and is preserved for recognition in a subsequent taxable disposition.

It is quite clear that the Chinese tax authorities have adopted the notion of "continuity of investment" that is widely recognized in other countries, i.e. investors are viewed as preserving their interest in a business enterprise through continuing equity ownership, regardless of the change in corporate form.

### Definition of enterprise reorganization

The term "enterprise reorganization" is defined by Circular 59 as a transaction that is beyond the normal operations of an enterprise and results in a material change to the legal structure or economic structure of the enterprise. The main forms of enterprise reorganization include the following:

- Change in legal form (e.g. change of enterprise name, registration address, form of legal entity, etc)
- Debt restructuring (e.g. forgiveness, debt to equity swap, etc.)
- Share acquisition
- Asset acquisition
- Merger
- Spin-off

White & Case LLP is a leading global law firm with lawyers in 34 offices in 23 countries. Whether in established or emerging markets, the hallmark of White & Case is our complete dedication to the business priorities and legal needs of our clients.

If you have questions or comments regarding this bulletin, please contact:

Yongjun Peter Ni  
Partner  
+ 86 21 6132 5930  
yni@whitecase.com

Linda L. Ng  
Counsel  
+ 852 2822 8787  
lng@whitecase.com

Under Circular 59, there are two types of tax treatment for enterprise reorganizations:

- General tax treatment; and
- Special tax treatment.

An enterprise can elect the special tax treatment if certain conditions are met.

### **Reorganizations subject to general tax treatment (i.e. Taxable transactions)**

Unless a transaction qualifies for the special tax treatment, the general tax treatment will apply, i.e. the transaction will be taxable.

Depending on the form of reorganization, the detailed tax treatment of each form is as follows:

#### **Change in legal form**

- If an enterprise that is a legal person is converted to an individual proprietorship or a partnership that is not a legal person, or if an enterprise changes its registration address from within mainland China to outside mainland China (including Hong Kong, Macao and Taiwan), such a change in legal form shall be treated as a liquidation of the old enterprise, followed by a distribution of its assets to its shareholder(s) and a subsequent contribution of such assets to the new enterprise. The parties shall recognize gain or loss based on the fair market value of the relevant assets.
- However, if it is a simple change in legal form, such as a change of name, a change of registration address within mainland China, or a change of the legal entity form like from equity joint venture to cooperative joint venture, the general tax treatment will not apply. The enterprise can simply modify the tax registration and generally all the tax attributes shall remain the same.

#### **Debt restructuring**

- If non-monetary assets are used to repay the debt, the transaction shall be treated as a sale of assets at fair market value, followed by a repayment of the debt.
- If it is a debt to equity swap, the transaction shall be treated as a repayment of debt, followed by an equity investment.
- In both cases, gain or loss shall be recognized to the extent of the difference between the repayment amount and the debt basis (but see the temporary relief on debt to equity swap below).
- The tax attributes of the debtor shall remain the same in principle.

#### **Share acquisition and asset acquisition**

- The seller shall recognize gain or loss upon the sale.
- The buyer's tax basis in the acquired shares or assets shall be determined based on their fair market value.
- The tax attributes of the target shall generally remain the same in the case of share acquisition.

#### **Merger**

- The basis in the acquired assets and liabilities of the acquiring enterprise (i.e. the surviving enterprise) shall be determined based on their fair market value.
- For the acquired enterprise (i.e. the disappearing enterprise) and its shareholders, the merger shall be treated as a taxable liquidation.
- The losses of the acquired enterprise cannot be carried forward to the acquiring enterprise.

#### **Spin-off**

- A spin-off enterprise shall recognize gain or loss based on the fair market value of the relevant assets.
- The spun-off enterprise(s) shall determine the basis in such assets also based on their fair market value.
- If the spin-off enterprise continues to exist, the consideration received by its shareholders is treated as a taxable distribution by the spin-off enterprise.
- If the spin-off enterprise ceases to exist, it shall be treated as being liquidated.
- The losses of the spin-off enterprise cannot be carried forward among the parties to the spin-off.

#### **Reorganizations subject to special tax treatment (i.e. Tax-free transactions)**

Nevertheless, if all of the following five conditions are met, Circular 59 allows enterprises to elect the special tax treatment:

1. Meeting the "business purpose" test -- The reorganization must have reasonable business purposes and the main purpose is not to reduce, avoid or defer tax;
2. Meeting the "substantially all" test -- The shares or assets being acquired must not be less than 75% of the total shares or assets of the target;

3. Meeting the “equity consideration” test -- No less than 85% of the total consideration must be equity;
4. Meeting the “continuity of business enterprise” test -- The substantial operation of the target must not change within 12 consecutive months after the reorganization; and
5. Meeting the “continuity of proprietary interest” test -- The main shareholders receiving equity as consideration must not transfer such equity within 12 consecutive months after the reorganization.

The special tax treatment refers to that, to the extent the reorganization is paid in equity, no gain or loss shall be recognized and all the assets and liabilities shall have a carry-over basis.

However, for the portion of the reorganization paid in cash or other property, which is commonly referred to as “boot” in other countries, gain or loss shall be recognized based on the following formula:

*Gains or losses = (Fair market value of the transferred assets – Tax basis in such assets) × (Boot amount ÷ Fair market value of the transferred assets)*

The specific tax treatment of each form of reorganization where the special tax treatment applies is as follows:

#### Debt restructuring

- If the debt restructuring income accounts for more than 50% of the total taxable income of an enterprise in a tax year, the debt restructuring income can be spread evenly over a 5-year period.
- As a temporary relief, debt to equity swap does not trigger any gain or loss recognition until further notice. The equity received by the creditor will carry a basis equal to its basis in the debt.

#### Share acquisition

- For the shareholders of the target, the basis in the equity received shall be determined based on their original basis in the equity they have sold.
- The basis of the acquiring enterprise in the acquired equity shall also be determined based on the target’s shareholders’ original basis in such equity.
- The basis in other assets and liabilities of the target and the acquiring enterprise (commonly known as “inside basis”) as well as all the tax attributes shall remain the same.

#### Asset acquisition

- For the target, the basis in the equity received shall be determined based on its original basis in the assets sold.
- For the acquiring enterprise, the basis in the acquired assets shall also be determined based on the target’s original basis in those assets.

#### Merger

- The acquiring enterprise’s basis in the acquired assets and liabilities shall be determined based on the acquired enterprise’s original basis in those assets and liabilities.
- All the tax attributes of the acquired enterprise shall be carried over to the acquiring enterprise, except that the carryover of the losses of the acquired enterprise is subject to the following limitation:

*Limitation = Fair market value of the net assets of the acquired enterprise × Interest rate of the longest term government bond issued by the State as of the end of the year of the merger*

- The basis of the shareholders of the acquired enterprise in the equity received shall be determined based on their original basis in the acquired enterprise.

#### Spin-off

- The spun-off enterprise’s basis in the assets and liabilities received shall be determined based on the spin-off enterprise’s original basis in such assets and liabilities.
- The tax attributes attributable to the above assets shall be carried over to the spun-off enterprise.
- The losses of the spin-off enterprise that are allocated to the spun-off enterprise based on the ratio of the spun-off assets to the total assets can be carried over to the spun-off enterprise.
- For the shareholders of the spin-off enterprises, the determination of their basis in the equity received (new equity) shall depend on if they surrender their original equity in the spin-off enterprise (old equity). If they surrender all or a portion of the old equity, the basis in the new equity shall be determined based on the basis in the surrendered equity. If they don’t surrender the old equity, the basis in the new equity can be determined in the following way:
  1. To deem the basis in the new equity to be zero; or
  2. To reduce the basis in the old equity based on the ratio of the spun-off assets to the total assets and allocate the reduced amount evenly to the new equity.

## Special rules on cross-border transactions

The rules summarized above apply to reorganizations taking place within mainland China (excluding Hong Kong, Macao and Taiwan). In the case of cross-border reorganization, in order to elect the special tax treatment, in addition to the five conditions discussed above, the reorganization must meet certain extra conditions.

### Foreign to foreign transfer of equity in a Chinese enterprise

Circular 59 provides that when a foreign enterprise transfers its equity in a Chinese enterprise to a related foreign enterprise, the special tax treatment is available only when the following three additional conditions are met:

- The transferor must have a 100% direct ownership in the transferee;
- The transfer must not result in a reduction in the Chinese withholding tax on capital gains from future exit; and
- The transferor undertakes in writing that it will not sell the equity in the transferee within three years after the transfer.

### Foreign to domestic transfer of equity in a Chinese enterprise

In the case where a foreign enterprise transfers its equity in a Chinese enterprise to a related enterprise in China (e.g. a Chinese holding company), the special tax treatment is available only if the transferor has a 100% direct ownership in the transferee.

### Outbound investment

When a Chinese enterprise makes outbound investment using the assets or equity it has, the special tax treatment is available only if the Chinese enterprise has a 100% direct ownership in the investee enterprise. Furthermore, if a gain is recognized from the investment, such a gain can be spread evenly over a 10 year period.

### Other Situations

In all other circumstances involving cross-border reorganization, the special tax treatment is available only upon the special approval of the MOF or the SAT.

### Special rules on tax incentive carryover

Circular 59 provides for special rules on tax incentive carryover in the case of merger or spin off.

### Merger

If the merger is an absorption merger, i.e. an existing enterprise merges into another existing enterprise with the former being

dissolved, provided that the latter's operation nature and the conditions for enjoying tax incentives remain unchanged, regardless of the tax treatment of the merger (i.e. general tax treatment vs. special tax treatment), the surviving enterprise can continue to enjoy its own remaining tax incentives, subject to a cap that is equal to the amount of the taxable income of the surviving enterprise in the year prior to the merger. If the enterprise incurs a loss in that year, the cap is deemed to be zero.

### Spin-off

Similarly, in the case of spin-off, if the spin-off enterprise continues to exist after the spin-off, provided that its operation nature and the conditions for enjoying tax incentives remain the same, regardless of the tax treatment of the spin-off (i.e. general tax treatment vs. special tax treatment), it can continue to enjoy its own remaining tax incentives, subject to a cap. The cap in this case is equal to the amount of the taxable income of the spin-off enterprise in the year prior to the spin-off multiplied by the ratio of its remaining assets after the spin-off to the total assets prior to the spin-off. If the enterprise incurs a loss in that year, the cap is deemed to be zero.

### Step transaction notion

Circular 59 also provides that, under the substance over form principle, a series of formally separate steps taking place within a 12-month period before or after the reorganization shall be collapsed and treated as if they constituted a single integrated transaction.

### Documentation requirement

If an enterprise wishes to elect the special tax treatment, when the reorganization is completed, it must file the relevant supporting documents, together with its annual tax return, to the in-charge tax authorities. The documents should substantiate the enterprise's qualifications for special tax treatment. Failure to file such documents will result in the denial of special tax treatment.

## Guidance on How to Determine the Chinese Tax Residency of Chinese-controlled Foreign Enterprises

Under the new *Enterprise Income Tax Law*, a foreign enterprise will be treated as a Chinese tax resident and subject to Chinese enterprise income tax on its worldwide income, if it has its place of effective management in China. The SAT has recently issued Guoshuifa [2009] No 82 ("**Circular 82**") to set out guidance on how to determine the Chinese tax residency of a foreign enterprise. Circular 82 takes retroactive effect back to January 1, 2008.

Circular 82 specifically applies to those foreign enterprises that are controlled by Chinese enterprises through equity ownership, such as so called Red Chip companies (a Red Chip company commonly refers to a foreign incorporated company that is formed, owned and controlled by Chinese investors, and mainly used as a listing vehicle in overseas stock markets, e.g. HK. The main assets of a Red Chip company are the shareholding of the Chinese operating investee companies.). Therefore, without further clarification, theoretically speaking, Circular 82 should not apply to either foreign enterprises that are controlled by Chinese individuals or more importantly, foreign enterprises that are purely owned by foreign persons. Nevertheless, it is very likely that the SAT may decide to apply the same rules to foreign-controlled foreign enterprises.

We have summarized the salient points of the circular as follows:

### Criteria for determining the Chinese tax residency

Under Circular 82, a Chinese-controlled foreign enterprise will be considered a Chinese tax resident if the following criteria are met, subject to the principle of substance over form:

1. The place where the enterprise's senior management personnel execute their daily management duties is mainly located in China;
2. The finance decisions (e.g. borrowing, lending, financial risk management, etc) and personnel decisions (e.g. offering, terminating, compensation, etc) of the enterprise are made by the office(s) or individual(s) in China or need to be approved by the office(s) or individual(s) in China;
3. The main properties, accounting books, enterprise chop, and minutes of the board meetings and shareholder meetings of the enterprise are kept in China; and
4. 50% or more of the directors with voting rights or senior management personnel of the enterprise ordinarily reside in China.

### Treatment of the foreign enterprise

If a foreign enterprise is considered a Chinese tax resident, it will be subject to Chinese tax on its worldwide income.

On the other hand, to the extent that the foreign enterprise receives dividends from China, such dividends will generally be tax free under China's new dividend-received exemption rule (except that the relevant shares are public shares and have been owned for less than 12 months before the dividend declaration).

### Treatment of the foreign shareholder

If a foreign enterprise is considered a Chinese tax resident, the dividends paid to its foreign shareholder(s) will be considered China sourced dividends and therefore subject to Chinese withholding tax. The current rate is 10%, which can be reduced by tax treaties.

Circular 82 is silent on the tax treatment of capital gains from the transfer of such a foreign enterprise. In other words, if a foreign shareholder sells its shares in such a foreign enterprise and has a gain, it is not clear under Circular 82 whether the gain will be considered China sourced as well. Based on the relevant rules in the *Enterprise Income Tax Law*, it can however be reasonably concluded that the gain should be considered China sourced and thus subject to Chinese capital gains tax.

### Treatment of the Chinese shareholder

Based on the dividend-received exemption rule, Circular 82 further provides that, if a foreign enterprise is considered a Chinese tax resident, the dividends paid to its Chinese shareholder(s) will be tax free in the hands of such shareholder(s).

### Other tax implications

Circular 82 has also clarified certain issues that may give rise to confusion.

- Regardless of the Chinese tax resident status of a foreign enterprise, to the extent the foreign enterprise has Chinese subsidiaries, the foreign investment enterprise ("FIE") status of such subsidiaries will not be affected.
- A foreign enterprise that is considered a Chinese tax resident will not be treated as a controlled foreign corporation ("CFC") within the meaning of Article 45 of the *Enterprise Income Tax Law*. However, the CFC rules still apply to the foreign subsidiaries owned by the foreign enterprise.

### Procedures for Chinese tax residency recognition

Under Circular 82, a foreign enterprise that wishes to be treated as a Chinese tax resident can file for recognition through the tax authorities in charge of the location where the place of effective management is located or in charge of its main Chinese investor. Alternatively, the Chinese tax authorities in charge of the main Chinese investor can initiate the recognition process. In either case, the final approval has to be granted by the SAT.

## Guidance on Income Tax Treatment of Liquidations

Another important circular Caishui [2009] No 60 (“**Circular 60**”) was recently issued by the MOF and SAT on the same day as Circular 59. To some extent, Circular 59 and 60 can be considered sister circulars as Circular 60 deals with the income tax treatment of a very important part of reorganizations – liquidations, including both normal liquidations and deemed liquidations.

### When to apply

Under Circular 60, the following enterprises must go for income tax liquidations:

- Enterprises that must go for normal liquidations under the *Company Law*, the *Enterprise Bankruptcy Law*, etc; and
- Enterprises that are deemed to be liquidated under the new reorganizations rules (discussed earlier in this month’s bulletin).

### Treatment of the liquidated enterprise

The liquidated enterprise must treat the period from the date it ceases operations to the date it completes the tax deregistration as a separate tax year and calculate the so called liquidation income.

Liquidation income is calculated based on the following formula:

*Liquidation income = Realizable value or transaction price of total assets - Tax basis in such assets - Liquidation expenses - Relevant taxes and expenses + Debt repayment income/- Debt repayment loss - Loss carryover*

Liquidation income is subject to enterprise income tax at 25%.

### Treatment of the shareholder

The liquidated enterprise must then calculate the value of the residual assets that can be distributed to its shareholder(s) at the end of liquidation.

The value of distributable residual assets is calculated using the following formula:

*Value of distributable residual assets = Realizable value or transaction price of total assets - Liquidation expenses - Employee wages, social security payments and mandatory severance payments - Income tax on liquidation income - Outstanding tax dues - Repayment of debt*

When the residual assets are distributed to the shareholder(s), each shareholder shall recognize dividend income to the extent of its share of the undistributed earnings and legal reserves of the liquidated enterprise. The difference between the residual asset value and the dividend income shall first be treated as a tax free return of capital. Any surplus (or deficit) after deducting the returned capital will be treated a capital gain (or loss).

The shareholder(s) will have a basis in the assets received equal to the realizable value or transaction price of such assets.

## Hong Kong Provides Guidance on Double Tax Relief for Transfer Pricing Adjustments

Hong Kong’s Inland Revenue Department (“**IRD**”) issued Departmental Interpretation and Practice Notes No. 45 (“**DIPN 45**”) in April 2009. DIPN 45 sets out the IRD’s views and practices regarding the granting of relief from double taxation due to a transfer pricing or profit reallocation adjustment under a double taxation agreement (“**DTA**”).

### Types of double taxation

DIPN 45 generally recognizes two types of international double taxation in the context of DTAs:

1. economic double taxation; and
2. juridical double taxation.

Economic double taxation arises where two enterprises resident in different states are assessed to tax on the same profit or income, without relief provided by either state for tax imposed by the other. This double taxation may arise as a consequence of non-arm’s length transactions. The profits of one enterprise are adjusted upwards increasing the tax charged on that enterprise in one state (i.e., a primary transfer pricing adjustment), without a corresponding downward adjustment to the tax payable of the associated enterprise in the other state.

Juridical double taxation occurs where an enterprise is charged to tax on the same profit or income in two different states (e.g., a single legal entity having a head office in its state of residence has set up a permanent establishment in another state), without either state providing relief for tax imposed by the other. This double taxation may arise where the profits that are taken to have arisen from the enterprise’s operations in a state are adjusted upwards to increase the tax payable in that state (i.e., a primary profit reallocation adjustment) without a corresponding downward adjustment to the enterprise’s profits from its operations in the other state.

## Relief from double taxation under DTAs

Hong Kong has concluded comprehensive DTAs with Belgium, mainland China, Luxembourg, Thailand, and Vietnam, and is actively seeking to expand its DTA network.

In each of Hong Kong's DTAs, the Associated Enterprises Article, which is modeled on Article 9 of the OECD Model Tax Convention on Income and on Capital (the "**OECD Model**"), provides for primary transfer pricing adjustments by a DTA state. The Associated Enterprises Article also provides a mechanism for relief from the resultant economic double taxation to be given by the other DTA state. If Hong Kong's Commissioner of Inland Revenue ("**Commissioner**") agrees with a DTA state that the transfer pricing adjustment by it is correct both in principle and amount, the relevant assessment of the Hong Kong enterprise will be revised in accordance with the relief provision in the Associated Enterprises Article of the DTA and section 79 of the Hong Kong Inland Revenue Ordinance ("**IRO**") to refund the excess tax paid or to reduce the tax that would otherwise be payable on the assessable profits of the Hong Kong enterprise. The claim for an appropriate adjustment to the amount of tax charged must be made by the Hong Kong enterprise under section 79 of the IRO within 6 years of the end of the relevant year of assessment.

The Business Profits Article and the Methods for Elimination of Double Taxation Article, which are modeled on Article 7 and Article 23 respectively of the OECD Model, in each of Hong Kong's DTAs provide for both primary profit reallocation adjustments and relief from the resultant juridical double taxation. Juridical double taxation suffered by a Hong Kong enterprise arising from the application of the domestic tax law of the source DTA state can be relieved by way of a tax credit under section 50 of the IRO for the foreign tax paid. Any claim for allowance by way of tax credit must be made not later than 2 years after the end of the relevant year of assessment. A claim by a non-resident enterprise for a refund under section 79 of the IRO must be made within 6 years of the end of the relevant year of assessment. The Commissioner will provide relief from juridical double taxation only to the extent that the Commissioner agrees both in principle and in amount with the profit reallocation adjustment made by the DTA state.

## Mutual agreement procedure

Each of Hong Kong's DTAs contains a Mutual Agreement Procedure ("**MAP**") Article that is modeled on Article 25 of the OECD Model. It enables the competent authorities to consult with each other with a view to resolving double taxation, but does not compel agreement.

The MAP Article in Hong Kong's DTAs enables a taxpayer to initiate the procedure if it is considered that the actions of the competent authority of one or both of the states concerned result or will result in taxation not in accordance with the provisions of a DTA.

The MAP Article permits a taxpayer to present a case to the relevant competent authority within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTA.

The MAP Article provides taxpayers with an avenue for review in addition to the rights:

- (a) to object to an assessment or a reassessment under section 64(1) of the IRO; and
- (b) to dispute the amount of a tax credit under section 50(9) of the IRO.

The Commissioner will consider concurrently a case presented to her under the MAP Article and an objection lodged by the taxpayer under the provisions of the IRO.

If the competent authorities have reached an agreement but the taxpayer does not agree with the implementation of the agreement, the taxpayer can continue to seek relief using its domestic objection and appeal rights, if still applicable.

## If no DTA exists

If either the Commissioner or the tax administration of another state makes a transfer pricing or profit reallocation adjustment and no DTA exists, there are no bilateral procedures to provide relief from the resultant double taxation. There are no provisions in the IRO for unilateral relief.

# Tax at White & Case

White & Case provides clients with the most effective tax-related legal advice available. We consistently deliver excellent results for our clients by providing innovative, efficient tax solutions. The breadth and depth of the Tax practice's success is evidenced by the numerous awards we've received from organizations, such as *International Tax Review*, *Chambers & Partners*, *Legal 500*, *Chambers Global* and *Global Counsel*, including:

- Tier One for China Tax (Foreign Firms)—*Asia Pacific Legal 500*, 2009
- Tier One China Tax Practice (Foreign Firms)—*Chambers Asia*, 2008
- Tier One for China Tax (Foreign Firms)—*Asia Pacific Legal 500*, 2007
- A leading law firm for China and Hong Kong tax—*International Tax Review*, 2008
- Tier One for Hong Kong tax planning—*International Tax Review poll*, 2009
- Firm of the Year for Hong Kong Tax—*Pacific Business Press Asian-Counsel*, 2008

Our Tax practice in China and across the globe works with clients to meet international tax challenges. We help clients execute international tax-planning strategies and resolve the tax controversies that often accompany cross-border investments and transactions. Our tax controversy experience helps clients resolve tax audits, domestic appeals and government-to-government negotiations.

Our team in China is comprised of preeminent lawyers based in Shanghai, Beijing and Hong Kong, who are recognized for their accomplishments in transfer pricing, as well as for the tax aspects of corporate mergers, acquisitions, reorganizations and joint ventures. Additionally, they provide counsel on inbound and outbound syndicated investment structures involving real property, distressed debt and other assets, financial products and global trading, mutual funds and other domestic and cross-border taxation advisory matters.

## Our Firm

White & Case is a leading global law firm with lawyers in 34 offices in 23 countries. Among the first US-based law firms to establish a truly global presence, we provide counsel and representation in virtually every area of law that affects cross-border business. Our clients value both the breadth of our network and depth of our US, English and local law capabilities in each of our offices and rely on us for their complex cross-border transactions, arbitration and litigation.

We work with the world's most established and respected companies, including two-thirds of the *Global Fortune 100* and half of the *Fortune 500*, as well as with start-up visionaries, governments and state-owned entities. Leading industry publications consistently recognize White & Case for exemplary work, including:

- A Top Ten Global Law Firm—*The American Lawyer*, 2007
- Firm of the Year 2007—*Asian Counsel*
- Top International Law Firm 2008 Vault Guide to the—*Top 100 Law Firms*
- Project Finance Team of the Year 2008—*Legal Business*
- Ranked Number One in Global Bank Finance 2007—*Mergermarket Tables*
- One of the Top Ten Law Firms for Global M&A 2007—*Thomson Financial/Bloomberg*

This bulletin is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons.

This bulletin should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the White & Case website.

White & Case has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This bulletin is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.

[www.whitecase.com](http://www.whitecase.com)

In this bulletin, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, corporations and undertakings.

© 2009 White & Case LLP