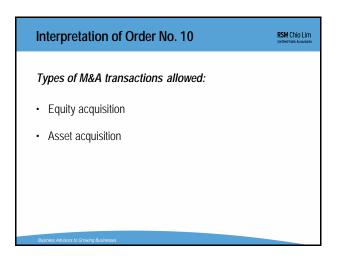
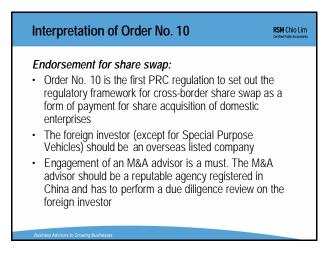
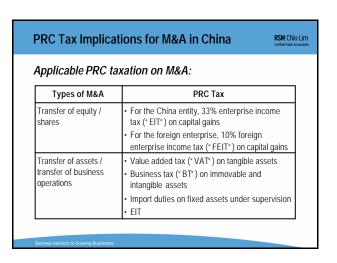


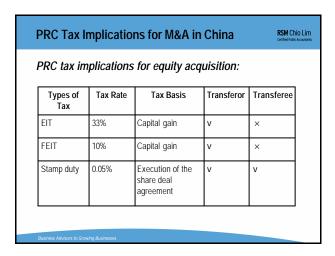
Interpretation of the new rule on M&A of domestic enterprises by foreign investors – Order No. 10 PRC tax implications for M&A in China Due diligence review on the target company Tax structuring of M&A in China











PRC tax implications for asset acquisition:				
Types of Tax	Tax Rate	Tax Basis	Trans - feror	Trans - feree
ВТ	5%	Transfer of immovable or intangible assets	v	×
VAT	17%	Transfer of inventory	v	×
	0% - 2%	Transfer of used equipment, boats, vehicles and motorcycles	v	×
Land appre - ciation tax	30% - 60%	Gain on disposal of land-use rights and buildings	v	×
Deed tax	3% -5%	Purchase of land-use rights or real estate property	×	v
Stamp duty	0.05%	Execution of the asset deal agreement	v	v

PRC Tax Implications for M&A in China Other PRC tax concerns for mergers / spin-offs: Asset valuation Tax preferential treatment Loss to be carried forward Taxable income attribution

Three levels of due diligence review:				
Stage of M&A	Purpose of Due Diligence			
Pre-acquisition	The target's current tax, financial, legal and human resource positions			
During a cquisition	uring a cquisition Actual transaction taxes that arise from acquiring the target			
Post-acquisition	Potential tax and other cost benefits that result from acquiring the target			

Due Diligence Review on The Target Company

RSM Chio Lim

Common tax due diligence issues in China:

- The target may have maintained multiple sets of accounting records for tax reporting and management purposes
- The use of offshore tax haven entities for booking profits overseas without proper justification and substantiation
- Under-reporting / withholding of taxable compensations of employees to the tax authorities
- Adopting aggressive tax schemes or relying on verbal special arrangements / tax concessions with local authorities without any legal basis
- Claiming fraudulent expense deduction
- Potential heavy penalties and late payment surcharges in relation to any late or under-payment of taxes

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Tax Structuring of M&A in China

RSM Chio Lim

Significant M&A tax considerations:

- Whether the deal should be structured as an equity deal or an asset deal
- What type of acquisition vehicle should be used, and for cross-border deals, whether the acquisition vehicle should be formed in a tax treaty or non-tax treaty jurisdiction
- Whether the transaction can be consummated on a tax-free basis
- How old and new debts can be structured into the acquisition structure for tax objectives

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