

By Email

通过电子邮件

10 August 2020

2020年8月10日

Attn:

Ms. Wang Lei
Deputy Director General
Capital Account Management Department
State Administration of Foreign Exchange (SAFE)

Ms. Xiong Yan
Deputy Director General
International Taxation Department
State Taxation Administration (STA)

Mr. Gao Fei
Deputy Director General
Financial Market Department
People's Bank of China (PBoC)

Cc:

Ms. Li Ying
Division Director
Supervision Division VIII
Department of Fund and Intermediary Supervision
China Securities Regulatory Commission (CSRC)

敬启者:

王蕾女士
副司长
资本项目管理司
国家外汇管理局

熊艳女士
副司长
国际税务司
国家税务总局

高飞先生
副司长
金融市场司
中国人民银行

抄送:

李莹女士
监管八处处长
证券基金机构监管部
中国证券监督管理委员会

Re: Submission Seeking Clarification on Undertaking Letter on Taxation under Announcement 2
关于中国人民银行、国家外汇管理局公告（2020）第2号规定之税务承诺函的建议

Dear Ms. Wang, Ms. Xiong and Mr. Gao,
尊敬的王女士、熊女士与高先生：

The Capital Markets Tax Committee of Asia (“**CMTC**”)¹ and the Asia Securities Industry & Financial Markets Association (“**ASIFMA**”)² collectively represent many of the largest financial institutions in the world. The

¹ **CMTC** is a financial services industry body consisting of a number of banks, investment banks, securities firms and other diversified financial services institutions operating in Asia who are represented through their regional tax directors. The main objectives of the CMTC, according to its Constitution, are “to provide a forum for discussion by corporate tax managers responsible for the tax affairs of investment banks, securities firms, banks and other diversified financial services institutions of topical taxation issues in Asia affecting their capital and securities markets and similar activities; to keep members informed of up to date information on taxation matters affecting capital and securities markets, and to exchange views on the technical analysis thereof; and to represent the interests of its members through acting as the respected voice of investment banks, securities firms, banks and other diversified financial services institutions, and to participate in liaison or advocacy activities on tax matters either directly or indirectly through representation with other groups or societies concerned with or by fiscal matters.”

¹ CMTC是由世界众多大型金融机构组成的亚洲资本市场税收委员会。

² **ASIFMA** is an independent, regional trade association with over 135 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital

CMTC and ASIFMA have been actively consulting with the Chinese State Administration of Foreign Exchange (“SAFE”), the State Taxation Administration (“STA”) and the People’s Bank of China (“PBoC”) on various issues arising from the use of the Qualified Foreign Institutional Investor (“QFII”) and Renminbi Qualified Foreign Institutional Investor (“RQFII”) licenses by financial institutions as well as by qualified investors around the world (hereinafter collectively referred to as “Qualified Investors”).

亚洲资本市场税务委员会 (“CMTC”)¹ 和亚洲证券业及金融市场协会 (“ASIFMA”)², 作为全球许多大型金融机构的代表, 一直就金融机构以及境外合格投资者 (以下统称为 “合格投资者”) 使用合格境外机构投资者 (“QFII”) 和人民币合格境外机构投资者 (“RQFII”) 牌照而产生的各种问题, 与中国国家外汇管理局 (“SAFE”)、国家税务总局 (“STA”) 和中国人民银行 (“PBoC”) 进行积极沟通。

The purpose of this letter, which has been drafted with the assistance and input of KPMG China, is to set out our request in relation to Announcement [2020] No. 2, issued by the PBoC and SAFE, and formally titled *Administrative Provisions on Funds for Securities and Futures Investments in China by Foreign Institutional Investors* (“Announcement 2”). In particular, we wish to clarify the requirements, placed on Qualified Investors, with regards to the issuance of undertaking letters on tax obligations for the purpose of profit repatriations (hereinafter referred as the “Undertaking Letter on Taxation”).

本报告由毕马威中国协助起草, 旨在请求对中国人民银行、国家外汇管理局公告〔2020〕第 2 号-境外机构投资者境内证券期货投资资金管理规定 (“2 号公告”) 提出的有关合格投资者就利润汇出出具税务承诺函 (以下简称 “**税务承诺函**”) 的相关要求进行阐明。

The CMTC and ASIFMA wish to thank the SAFE and PBoC for the strong support given to the China capital markets and financial services sector through the issuance of Announcement 2. The further relaxation of the relevant regulatory rules in Announcement 2 is warmly welcomed by CMTC and ASIFMA and our members. It constitutes a significant step forward in further opening-up the China capital markets and financial services sector, and will no doubt attract more foreign capital into China through the use of the existing QFII and RQFII regimes.

CMTC 及 ASIFMA 在此感谢中国人民银行和国家外汇管理局发布的 2 号公告对中国资本市场以及金融行业的支持。CMTC 和 ASIFMA 及其成员均对 2 号公告所提供的宽松便利的政策环境表示热烈欢迎。此举是进一步开放中国资本市场和金融服务业的重要里程碑, 现有的 QFII 和 RQFII 制度无疑将吸引更多的外资进入中国。

However, there are still some uncertainties among our members with regards to the required contents of the Undertaking Letter on Taxation. We therefore suggest that SAFE, PBoC and STA consider providing further clarifications on the following issues relevant to the investment operations and activities of Qualified Investors as well as the obligations of custodian banks.

markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the [GFMA](#) alliance with [SIFMA](#) in the United States and [AFME](#) in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

² ASIFMA 是一家独立区域性贸易协会, 有 135 多家成员企业, 由诸多行业领先的买方和卖方金融机构构成, 包括银行、资产管理公司、律师事务所和市场基础设施服务提供商。

然而，我们成员对于税务承诺函所要求的内容仍存在不明确之处。因此，我们建议国家外汇管理局，中国人民银行和国家税务总局考虑就以下与合格投资者的投资运作以及托管银行所承担的义务有关的问题提供进一步的说明。

Key regulation discussed in this submission - Announcement 2 and STA and SAFE's Public Notice 2013 No. 40 ("PN40")

本提交文件中讨论的主要法规 - 2 号公告以及国家税务总局、国家外汇管理局公告 2013 年第 40 号（“40 号公告”）

According to Article 14 of Announcement 2³:

根据 2 号公告³ 第 14 条:

"where a Qualified Investor needs to make an outward remittance of realized accumulated profits/gains, its custodian may complete the relevant outward remittance formalities for the Qualified Investor based on the provision of a written application or instruction from the Qualified Investor, an Undertaking Letter on the full settlement of taxes pursuant to the relevant tax laws and regulations of China issued by the Qualified Investor.

In the event of the liquidation (including product liquidation) of a Qualified Investor, its custodian may complete the relevant formalities for outward remittance of funds and account closure for the Qualified Investor by requesting a written application or instruction from the Qualified Investor, a special audit report on investment profits/gains issued by a Chinese certified public accountant, a tax record filing form (except where no such document is required pursuant to the provisions), etc."

"第 1 款 - 合格投资者如需汇出已实现的累计收益，托管人可凭合格投资者书面申请或指令、合格投资者出具的承诺按照中国境内相关税务法律法规足额缴纳税费的承诺函等，为合格投资者办理相关资金汇出手续。

第 2 款 - 合格投资者清盘（含产品清盘）的，托管人可凭合格投资者书面申请或指令、中国注册会计师出具的投资收益专项审计报告、税务备案表（按规定无需提供的除外）等，为合格投资者办理相关资金汇出及关户手续。"

According to Article 1 of PN40⁴:

根据 40 号公告⁴ 第 1 条:

"for each covered remittance that exceeds USD50,000 (not including USD50,000), except under the circumstances stipulated in Article 3 of this Announcement, domestic institutional and individual payers shall perform tax record filing with its in-charge tax bureau for:

³ The regulation in Chinese: 中国人民银行、国家外汇管理局公告（2020）第 2 号，第四章汇兑管理，第 14 条 - 第 1 款 - 合格投资者如需汇出已实现的累计收益，托管人可凭合格投资者书面申请或指令、合格投资者出具的承诺按照中国境内相关税务法律法规足额缴纳税费的承诺函等，为合格投资者办理相关资金汇出手续。第 2 款 - 合格投资者清盘（含产品清盘）的，托管人可凭合格投资者书面申请或指令、中国注册会计师出具的投资收益专项审计报告、税务备案表（按规定无需提供的除外）等，为合格投资者办理相关资金汇出及关户手续。

⁴ The regulation in Chinese: 国家税务总局、国家外汇管理局公告 2013 年第 40 号，第 1 条 - 境内机构和個人向境外单笔支付等值 5 万美元以上（不含等值 5 万美元，下同）下列外汇资金，除本公告第三条规定的情形外，均应向所在地主管税务机关进行备案：（三）境外机构或個人从境内获得的融资租赁租金、不动产的转让收入、股权转让所得以及外国投资者其他合法所得。

(3) income derived from finance leasing, immovable property transfer, share transfer and other income legally obtained by the foreign investors or individuals.”

“境内机构和个人向境外单笔支付等值 5 万美元以上（不含等值 5 万美元，下同）下列外汇资金，除本公告第三条规定的情形外，均应向所在地主管税务机关进行备案：

（三）境外机构或个人从境内获得的融资租赁租金、不动产的转让收入、股权转让所得以及外国投资者其他合法所得。”

Issues faced by Custodian Banks and their requests

托管银行面临的问题及其请求

Since the release of this Announcement 2, representatives of certain custodian banks in China raised the following concerns from the rules implementation perspective:

自 2 号公告发布以来，中国托管银行的代表从法规实施的角度提出了以下关切：

Custodian banks would like to seek clarification regarding the contents (or if any standard wordings) of the Undertaking Letter on Taxation to be signed by the Qualified Investors in the following areas

托管银行希望就合格投资者出具的税务承诺函之内容（或任何标准措辞），在如下方面寻求澄清

1. Based on the latest SAFE officials' interpretation regarding the contents of the Undertaking Letter on Taxation, we were advised that the Undertaking Letter on Taxation could be accepted by the custodian banks only when it declares that the QFII Investor has fulfilled all the PRC tax obligations. Furthermore, where the remittance amount exceeds USD50,000, evidence on the tax record filing as stipulated under PN40 would not be required, as long as the Undertaking Letter on Taxation is presented to the custodian bank for profits remittance.

1. 根据国家外汇管理局官员对税务承诺函内容的最新解释，我们获悉托管银行只接受明确声明 QFII 投资者已履行全部中国纳税义务的税务承诺函。此外，在汇款金额超过 5 万美元的情况下，则仍只需向托管银行出具税务承诺函以用于利润汇出即可，而无须提交 40 号公告所规定的税务备案证明。

2. With the above guidance, custodian banks would like to seek clarification that

2. 在上述政策指引下，托管银行希望澄清以下内容：

a. they have no obligations to verify the correctness of the statement represented by the QFII Investors in the Undertaking Letter on Taxation and they have no obligations to follow up with the Qualified Investors on their tax filing and tax settlement status.

a. 其无义务核实 QFII 投资者在税务承诺函中所陈述内容的正确性，亦无义务核实合格投资者的纳税申报和税款缴纳情况

b. Custodian banks emphasized that have no tax expertise to review the tax position/calculation of the QFII Investors. They could only rely on the Undertaking Letter on Taxation in handling outward remittance of realized profits. Therefore, they should not be penalized by SAFE as failing to properly

handle an outward remittance of realized profits, irrespective of whether all PRC taxes have been settled by the Qualified Investors.

- b. 托管银行强调，由于其不具备专业税务知识来审查 QFII 投资者的税务处理和计算，而仅能依据税务承诺函来就已实现利润的汇出事宜实施操作，因此无论合格投资是否已足额缴纳相关中国税款，外汇管理局均不应以托管银行未能恰当处理已实现利润汇出为由，对托管银行进行处罚。

Issues faced by Qualified Investors and their request

合格投资者面临的问题及其请求

Based on the feedback from our members, as well as other qualified financial institutions and investors who have (or will make use of) QFII/RQFII licenses to invest into China, a number of questions were raised. In particular it was queried how a Qualified Investor can satisfy itself that all PRC taxes are fully satisfied, on their investment activities through the securities market in Mainland China. This specific concern was raised due to many practical challenges highlighted below:

根据我们的成员以及其他拥有（或将使用）QFII / RQFII 牌照投资中国的合格金融机构和投资者的反馈，我们收集了一些问题，其中尤为突出的是对于合格投资者将如何确保其通过中国证券市场进行的投资活动能够完全符合中国的税收要求。这种疑虑源于实操中的诸多挑战，具体如下：

1. Our members are concerned on how to provide a commitment that all PRC tax obligations have been fulfilled when there is no official tax filing or tax clearance process in place.

1. 我们的成员关注在没有正式的税收备案或税收清算程序的情况下如何承诺已履行所有中国纳税义务的问题。

- a. Under the existing PN40 process where the amount of profit repatriated is to exceed USD50,000, Qualified Investors can submit a tax filing package proving that all PRC taxes in relation to the profit outward remittance were paid or withheld, along with an explanation letter to the in-charge local tax authority in the location of the custodian bank. Where tax was determined to be outstanding, the Qualified Investor was given the opportunity to satisfy such tax obligations by filing the tax to the in-charge local tax authority and providing an instruction to the custodian bank to settle any tax owing. Upon assessment and acceptance by the in-charge local tax official, the Approval Form will be provided and stamped by the in-charge local tax authority, which somewhat could serve as a tax clearance letter that all PRC taxes had been paid or withheld on the realized cumulative profit/gains being repatriated by the Qualified Investor.

- a. 在现有的 40 号公告规定下，在汇回利润金额超过 5 万美元的情况下，合格投资者可以向托管银行所在地主管税务机关提交相关纳税申报材料及情况说明，以证明其已足额缴纳或扣缴与其利润汇出相关的中国税款。若存在欠缴税款，则合格投资者可以通过向当地主管税局补申报税款并向其托管银行发送支付指令以清偿该欠缴税款，以此履行相关纳税义务。经当地主管税务官员评估并认可后，当地主管税务机关将签发税务备案证明，此文件在某种程度上可以用作清税证明，表明合格投资者欲将汇回的已实现累计利润所涉中国税款均已足额支付或扣缴。

- b. With the removal of the requirement of evidence on tax record filing on for profit repatriation under Announcement 2, it is now unclear if the tax authority would still handle PN40 tax record filing application for QFII profits remittance. If not, this could mean that formal tax clearance will be unavailable until the QFII/RQFII account is fully liquidated. At this point, per Article 14 Clause 2 of

Announcement 2, an audit report and tax record filing will then be required at the time of account liquidation.

- b. 随着 2 号公告对于利润汇回税务备案证明要求的取消，目前还不清楚税务机关是否仍会依据 40 号公告处理 QFII 利润汇出的税务备案证明申请。若否，则意味着在 QFII / RQFII 账户完全清算之前，可能无法取得当地主管税局出具的税务备案证明。因为根据 2 号公告第 14 条第 2 款，在账户清算时才需要提供审计报告和税务备案证明。
2. Our members requested to retain the option that the Qualified Investors can represent the PRC tax obligations will be fulfilled within a “specified period” in the Undertaking Letter on Taxation. This is utmost important for the intended purpose of relaxation or simplification on the process for profit repatriation which the market has a huge expectation on this. If QFII Investors need to have fully fulfilled all the PRC tax obligations before repatriation instead of providing a commitment that all PRC taxes have been or will be fulfilled, it appears that the purpose of relaxation/simplification on the profit repatriation process would be defeated.
2. 我们的成员请求保留选择权，即合格投资者可以在税务承诺函中作出其将在规定期限内履行中国纳税义务的承诺。这对于达到放松或简化利润汇出程序的预期目的是至关重要的，市场对此有很高的期望。如果 QFII 投资者在利润汇出前必须履行全部中国纳税义务，而不是有承诺已经或将要履行所有中国纳税义务的选择权，那么所谓的放宽/简化利润汇出程序则似乎失去了其原有的意义。
3. Our members expressed that they are not comfortable to provide a statement that the QFII has fulfilled all the PRC tax obligations without a formal tax clearance, such as the tax record filing under PN 40, they would like to seek confirmation that the tax record filing process under PN40 is still available and can be requested by Qualified Investors at anytime with the in-charge tax authority at the location of the custodian bank. The retention of the PN40 tax record filing process is important to Qualified Investors, in particular, when they are facing those uncertain tax issues listed in the **Appendix**. PN40 tax record filing could provide the Qualified Investors a channel to settle the uncertain tax issues with their in-charge tax authority, so that they are comfortable to make a representation in the Undertaking Letter on Taxation and can fulfil their tax obligation as committed in the letter.
3. 我们的成员表示，在未进行例如 40 公告中所要求的获取当地主管税局出具的税务备案证明等的正式税务清算的情况下，合格境外机构投资者无法确信其作出的已履行了所有中国纳税义务的声明是恰当的。因此，他们希望寻求澄清 40 号公告下的税务备案证明申请程序仍适用，合格投资者可随时向托管银行所在地的主管税务机关提出申请要求。保留 40 号公告下的税务备案证明流程对合格投资者至关重要，尤其是当他们面临附录中列出的不确定税务问题的情形时。40 号公告下的税务备案证明流程可以为合格投资者提供与其主管税务机关解决不确定性税务问题的沟通渠道，从而使其有依据在税务承诺函中作出陈述，并相应履行税务承诺。
4. While the QFII Investors choose to represent that all the PRC tax obligations have been fulfilled at the best of their knowledge and effect when they make some representation, to the extent that there are PRC taxes not yet paid and settled in a formal tax clearance at a later stage, the Qualified Investor should not be penalized due to the lack of effective automatic withholding of taxes at sources or due to the unresolved PRC tax issues currently faced by the QFII/RQFII investors (see **Appendix**). Similar relief should be provided for a QFII/RQFII account that is going to be liquidated.

4. 当 QFII 投资者选择在尽其所知的情况下承诺其已足额履行了中国的纳税义务，那么即使在后期的正式税务清算程序中存在未清缴税款，若该处境是由于缺乏有效的税款代扣代缴机制或者由于 QFII / RQFII 投资者目前面临的未决税务事项（请参阅附录）所造成的，则合格投资者仍不应受到处罚。类似豁免应同样适用于将要清算的 QFII / RQFII 账户。
5. In the situation where there are sub-accounts set up under a QFII/RQFII master account, and each sub-account may be used by different investment fund or institutional investor overseas, then it becomes unclear which party will be responsible for providing the Undertaking Letter on Taxation. As such, a clearer guideline should be provided.
5. 若在 QFII / RQFII 主账户下设置有子账户，并且每个子账户可能由不同的投资基金或海外机构投资者运作的情况下，由哪一方负责出具该税务承诺函则存在不确定性。因此，就该事项希望提供更明确的政策指引。
6. In addition to the specific PRC tax issues raised in our letter dated 21 November 2019 on the scope of "bonds" eligible for exemption under Circular 108, our members would also like to seek clarifications and resolution to the list of PRC tax issues as outlined in the **Appendix**. Qualified Investors, generally, do not feel comfortable issuing the Undertaking Letter on Taxation until all taxes are actually assessed and paid to the local tax authority, as such, it is important to seek clarity on all these tax issues which would certainly help gaining confidants of foreign investors investing into China through the use of QFII/RQFII.
6. 除了我们在 2019 年 11 月 21 日的建议书中所提出的有关财税 108 号文下获豁免的“债券”范围及其所涉的具体中国税务问题外，我们的成员还希望对于附件所列相关中国税务问题进行澄清和解决。合格投资者在取得主管税务机关就相关税务处理的认可和结清欠缴税款前，难以出具税务承诺函，因此，进一步对存在税务争议的相关问题进行明确具有重要意义，此举将无疑有助于增强外国投资者通过 QFII / RQFII 在中国投资的信心。
7. Under Article 25 of Announcement 2, if a Qualified Investor has provided false information and materials to SAFE or a custodian under Announcement 2, the Qualified Investor could potentially be penalized by the SAFE. As noted above, the Undertaking Letter on Taxation requires the Qualified Investor to provide a declaration on completeness of tax payments. However, there are certain types of income are not currently subjected to automatic withholding of taxes at source, and there is no formal nation-wide process in place to conduct tax filings to ensure that all PRC taxes are paid prior to the profit repatriation. Our members would like to seek clarification that what kind of measures they should take (e.g. to set aside a tax reserve with the custodian bank for the potential tax exposures of uncertain tax positions) so that they should not be considered as provided a false Undertaking Letter on Taxation nor penalized, where certain unresolved tax issues are later clarified by the tax authority with retroactive effect for tax assessment.
7. 根据 2 号公告第 25 条，若合格投资者向国家外汇管理局或托管银行提供虚假信息 and 材料，则其或将受到国家外汇管理局的处罚。如上所述，税务承诺函要求合格投资者提供完税声明。然而，目前某些类型的收入并未做到源泉扣缴相关税款，也未在全国范围内存在正式的税务备案证明程序以确保在利润汇出前已足额缴纳相关中国税款。我们的成员希望澄清，若现阶段存在的某些未决税务问题，后续因法规明确相关处理且具有追溯效力时，其应采取何种措施（例如通过托管银行提取税款准备金，以应对不确定税务状况下的潜在税务风险），可以使其不被视为提供虚假承诺函，从而免于受到相关处罚。

In order to boost the confidence of foreign investors to participate in the China capital and asset management market through the QFII/RQFII regimes, we kindly request that you consider our requests as stated above.

为了增强外国投资者通过 QFII / RQFII 制度参与中国资本和资产管理市场的信心，我们恳请贵方考虑我们如上请求。

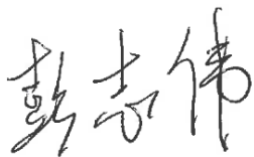
We would be pleased to elaborate on any of the points made in this submission, and we take this opportunity to thank you for your consideration of these important matters. Again, to reiterate, the CMTC and ASIFMA members warmly welcome the efforts of SAFE, PBoC and STA to continuously improve the China capital market investment environment, and the various measures being taken to further open-up the China financial services sector for foreign investors. For further information, please contact Patrick Pang (ppang@asifma.org or +852 2531 6520) and Patrick Donovan (patrick-j.donovan@ubs.com).

如对本报告中提出的任何问题有疑问我们很高兴为您详细阐述，并借此机会感谢您对上述重要事项的审议。CMTC 和 ASIFMA 的成员在此再次感谢国家外汇管理局、中国人民银行以及国家税务总局为持续改善中国资本市场投资环境和进一步向外国投资者开放中国金融市场所做的努力。如需了解更多信息，请联系彭志伟先生（电邮地址：ppang@asifma.org 或电话 +852 2531 6520）与 Patrick Donovan（电邮地址：patrick-j.donovan@ubs.com）。

Yours sincerely,

此致

敬礼



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Appendix – A non-exhaustive list of PRC tax issues on certain financial instruments invested through QFII/RQFII regimes

附录 – 通过 QFII/RQFII 制度投资的某些金融工具之相关中国税务问题（非详尽清单）

Other than certain specific exemption rules provided under the PRC Corporate Income Tax (“CIT”) law and related tax regulations as well as the PRC Value-added Tax (“VAT”) regulation for QFIIs and RQFIIs, there are still many unclear taxation issues around investment in mutual funds, Asset Backed Securities (“ABS”) or similar, private asset management products as well as derivative instruments. As such, Qualified Investors will struggle to obtain certainty on whether the investments they have made through their QFII/RQFII accounts should be and have been subjected to withholding taxes already, or if any PRC taxes are still due, and how to settle the tax payments. Specifically, these include, but are not limited to the following:

除了针对 QFII/RQFII 出台的相关中国企业所得税和增值税法规所规定的某些特定豁免规则外，对于共同基金，资产支持证券（“ABS”）或类似的私人资产管理产品以及衍生工具的投资仍存在许多不明确的税务问题。因此，合格投资者将难以确定其通过 QFII / RQFII 账户进行的投资是否已扣缴相关税款、是否存在任何欠缴中国税款的情形以及如何申报纳税的问题。具体来说，这些内容包括但不限于以下内容：

- According to Caishui [2014] No. 79, QFII/RQFIIs currently enjoy a temporary CIT exemption for gains on trading of equity investment assets, including listed shares. It does not specifically cover bonds, fixed income instruments, mutual funds (redemption), asset management products, foreign currencies, derivatives, etc. For these there is currently no withholding tax mechanism in place to ensure that PRC taxes owing, if any, have been paid.
- 根据财税[2014] 79号文，QFII / RQFII 目前就其取得来源于中国境内的股票等权益性投资资产转让所得，享受暂免征收企业所得税。然而此文件并无明确涵盖债券、固定收益工具、基金（赎回）、资产管理产品、外币及衍生品等。对于这些投资，目前尚无税款扣缴机制可确保相关中国税款（如有）已足额缴纳。
- According to Caishui [2016] No. 36 and Caishui [2016] No. 70, QFII/RQFIIs currently enjoy VAT exemption for gains on trading of securities. Under general market practices this is taken to include listed shares and bonds. However, it does not specify whether other fixed income instruments such as ABS (or similar), mutual funds, asset management products, foreign currencies, derivatives, etc. will be subject to VAT or not. As such, as the QFII/RQFII regime continues to open-up and enable more diversified PRC investment opportunities, including in these asset classes, the uncertainty on how and when VAT could be charged will only become more challenging for foreign investors.
- 根据财税[2016] 36号和财税[2016] 70号的规定，QFII / RQFII 目前就其从事证券买卖业务的收益，享受免征增值税。根据一般市场惯例，“证券”被视为包括上市股票和债券。然而，该文件并无明确说明其他例如 ABS（或类似资产）的固定收益工具、基金，资产管理产品，外币及衍生品等，是否需要缴纳增值税。因此，随着 QFII / RQFII 制度的不断开放和包括这些资产类别在内的更多投资机会出现在中国，如何以及何时收取增值税的不确定性只会给外国投资者带来更大的挑战。
- While Circular 108 provides a tax exemption for bond coupon interest, it is not clear how to treat interest arising before the circular became effective on 7 November 2018. Uncertainty exists in particular for corporate bonds in the absence of an effective VAT withholding mechanism. There is also uncertainty on the treatment of bond interest arising before the May 2016 VAT reform rules entered into effect (namely, the application of the previously existing Business Tax). The practices adopted by

local tax authorities are also inconsistent. As such, if a Qualified Investor is seeking to repatriate cumulative income from these prior tax years, but has no plans to liquidate the account, the Qualified Investor will not be able to issue the Undertaking Letter on Taxation when there is still uncertainty whether they are still liable to historical VAT or BT.

- 尽管财税 108 号文通知对债券利息收入免税，但对于该通知生效日（2018 年 11 月 7 日）之前产生的债券利息收入相关的税务处理尚不明确。在缺乏有效的增值税扣缴机制的情况下，公司债券尤其存在不确定性。在 2016 年 5 月增值税改革生效之前（即适用营业税），债券利息的处理也存在不确定性，各地税务机关采取的做法并不一致。因此，如果合格投资者正在寻求汇出以前年度累计利润，且并无计划清算账户时，则合格投资者在无法确定是否存在历史增值税/营业税的风险下，可能难以出具税务承诺函。
- In addition to the interest issue relating to the Circular 108, there is still some market uncertainty regarding scope of debt instruments eligible for such exemption under Circular 108. In absence of clear scope of debt instruments eligible for such exemption, it is unclear to the market whether definition of “bond instrument” would differ from definitions set by PBoC or other relevant authorities which are the primary concern to potential investors. For details, please also refer to our submission letter dated 21 November 2019 on the scope of “bonds” eligible for exemption under Circular 108.
- 除了与财税 108 号文有关的利息问题外，对于可以享受免税政策的债务工具范围，市场仍存在一些不确定性。由于没有明确适用免税的债务投资工具类型或范围，潜在投资者最关心的问题就是税务机关对于债券的定义与中国人民银行或其他监管机构是否一致。详情请参阅我们于 2019 年 11 月 21 日提交的关于财税 2018[108]号规定的“债券”豁免范围的建议书。
- According to Caishui [2008] No.1, distributions from security investment funds are exempt from CIT. However, it is not clear if this applies to non-resident taxpayers such as QFII/RQFII, and the practices adopted by local tax authorities are inconsistent. As an example, a profit distribution from an exchange traded fund (“ETF”) received by a QFII/RQFII was taxed as a dividend and subject to 10% withholding tax in a local tax district at the time of profit repatriation. Meanwhile, a profit distribution from a money market fund (“MMF”) received by a QFII/RQFII was taxed as interest in another local tax district and subject to both withholding tax and VAT at the time of profit repatriation. This is because the VAT rules stipulate that for investments that provide returns that are “fixed, guaranteed or principal-protected”, the returns should be treated as “interest on a loan”, and be subject to VAT. However, in practice, there are many ambiguities on the meaning of fixed, guaranteed or principal-protected investment returns. As such, distributions from a fund, especially from an MMF, that invest in bonds, are treated in practice as bond interest by some local tax authorities and subject to VAT. So overall, due to the inconsistent local practices on the withholding tax as well as VAT on fund distributions, a Qualified Investor will face difficulties in certifying, in the Undertaking Letter on Taxation, that all PRC tax obligations have been fulfilled at the time of profit repatriation.
- 根据财税[2008] 1 号文，对投资者从证券投资基金分配中取得的收入，暂不征收企业所得税。但是，目前尚不清楚此项豁免是否适用于包含 QFII / RQFII 在内的非居民纳税人，各地税务机关就此采取的做法也并不一致。举例，QFII / RQFII 投资交易型开放式指数基金（“ETF”）取得的收益被视为股息，于利润汇回时征收 10% 的预提所得税。然而，QFII / RQFII 投资货币市场基金（“MMF”）取得的收益则被视为利息，于利润汇回时同时征收预提所得税和增值税。这是因为增值税法规规定，对于金融商品持有期间取得的“保本、固定”性质的投资收益，应视作“贷款利息”，并相应缴纳增值税。然而实际上，对于所谓“保本、固定”投资收益的含义仍存在很多歧义。因此，一些地方税务机关在实践中，将从基金（尤其是投资于债券的 MMF）取得的投资收益视作贷款利息收入，并

要求缴纳增值税。总体而言，由于各地对于基金分配收入的预提所得税和增值税处理存在不一致，合格投资者将难以在税务承诺函中证明其已于利润汇出时足额履行了中国纳税义务。

- VAT and CIT treatment of FX gains of QFII principals give rise to further issues. According to the relevant FX regulations, a QFII traditionally could only inject investment capital in foreign currency (under the old set of rules) and then converted it into RMB for investment. If a QFII wants to remit funds out of China (including both profit and principal), it has to convert its RMB back into foreign currency. Due to the FX conversion, it becomes unclear whether the realized FX gains on the principal (when all of which has been remitted) should be subject to taxes. The question of whether FX gains on QFII principals should be subject to taxes will arise when most, if not all, of the original principals are repatriated and any excess cash remains in the onshore account that is not attributable to any realized net income or gains would be seen as FX gains by the in-charge tax authority. As such, a Qualified Investor could run into the risk of PRC tax exposures on FX gains at the time of the account liquidation.
- QFII 本金汇兑收益相关的增值税和企业所得税处理也存在争议。根据外汇相关规定，QFII 早期只能以外币（按照旧规则）注入投资资本，然后将其转换为人民币进行投资。如果 QFII 想要从中国汇出资金（包括利润和本金），则其必须将人民币转换回外币。目前对于外汇兑换产生的本金汇兑收益（即在本金已全额汇出时）是否涉及相关中国税问题尚不明确。当大部分（如果不是全部）原始注入本金被汇回，并且在岸账户中剩余的现金不属于任何已实现利润时，就会出现该笔剩余现金是否会被主管税务机关视为 QFII 本金的汇兑收益，从而应征税的问题。因此合格投资者在账户清算时可能会面临汇兑收益带来的中国税收风险。
- While the new Announcement 2 further relaxes the profit repatriation process for certain Qualified Investors, such as foreign sovereign wealth funds, these face specific China tax issues that have still not been resolved. Sovereign wealth funds are frequently eligible for tax treaty exemptions or reliefs on dividends and interest withholding tax, but in practice they are still subject to automatic withholding of income taxes by listed companies and bond issuers. There are still no nationwide rules on how these Qualified Investors can apply for tax refunds under a streamlined, straightforward process. This is an important factor for foreign sovereign wealth funds deciding whether to invest or not into the China capital markets.
- 尽管新的 2 号公告进一步放宽了某些合格投资者（如外国主权财富基金）的利润汇回程序，但这些投资者面临的具体中国税务问题仍未解决。例如，主权财富基金通常有资格获得税收协定下的股息和利息预提所得税豁免或减免，但实践中，该预提所得税仍已于支付时由上市公司和债券发行人自动扣缴。对于这些合格投资者如何通过简化直接的流程申请退税，目前尚无明确的全国性相关法规规定，而这是外国主权财富基金决定是否投资中国资本市场的重要考量因素。