



## **INTERNATIONAL CENTER FOR CIVIL SOCIETY LAW**

ROOM 474

3600 JOHN McCORMACK ROAD, NE

WASHINGTON, DC 20064

TEL: + 1 202 319 5451

FAX: + 1 202 319 4459

[WWW.ICCSL.ORG](http://WWW.ICCSL.ORG)

EMAIL: [SIMON@LAW.EDU](mailto:SIMON@LAW.EDU)

### **Important Developments in China's Legal and Fiscal Framework for the Support of Civil Society**

**March 2007**

In recent months three important developments have enhanced the legal and fiscal framework for China's civil society organizations (CSOs)<sup>1</sup> in ways that are designed to increase both individual giving and corporate social responsibility (CSR) to promote poverty alleviation, social cohesion, and economic development in the country. While often lamenting the extremely low involvement of China's elite in charitable giving, the leadership of the country is now clearly striving to increase such activities both in light of the upcoming Olympics and to promote a harmonious society. One of the recent developments is the project to draft a Charity Law. Others include efforts to enhance the fiscal framework for giving, and both are discussed here.<sup>2</sup>

---

<sup>1</sup> This term includes public welfare social organizations or associations (established under the 1998 Regulations on Social Organizations) and foundations (established under the 2004 Regulations on Foundations). The latter are required to be "public welfare" organizations.

<sup>2</sup> China Development Brief also reports that in February the Ministry of Civil Affairs launched the China Charity and Donation Center, available at [www.juanzhu.gov.cn](http://www.juanzhu.gov.cn).

**Background.** In 2003 the World Bank and the Ministry of Civil Affairs (MoCA) commissioned the International Center for Civil Society Law (ICCSL) and a Chinese expert who works for the Taxation Science Research Institute to produce a study of the procedural and substantive rules regarding the tax benefits for charitable giving in China. This project was supported by the Ministry of Finance (MoF) and the State Administration of Taxation (SAT), and resulted in a report, which is available on the World Bank website at [http://siteresources.worldbank.org/INTCHINA/1503040-1122886803058/20601839/NPO\\_tax\\_En.pdf](http://siteresources.worldbank.org/INTCHINA/1503040-1122886803058/20601839/NPO_tax_En.pdf). This report will be referred to as the Tax Report in the following discussion.

This report contains 32 recommendations, 19 of which are substantive and the rest are procedural. The recommendations would fundamentally restructure the then-current system governing giving to charity, and the recent changes indicate that they are beginning to be implemented, as many of the recent changes in the fiscal rules reflect those recommendations. In addition, as outlined in Section 3 of this memorandum, the drafting of the Charity Law is also aimed at codifying one of the most important recommendations in the Tax Report – the need to clarify the difference between public benefit (or public welfare) organizations and those that serve only mutual interests.

**1. Changes in law.** In March 2007, effective January 1, 2008, China’s Enterprise Income Tax was completely overhauled to eliminate the differences in tax treatment between foreign and domestic companies investing in China.

- Of significance in this regard is the decision to **permit the same percentage limitation (12%) on the charitable contribution deduction for both foreign and domestic companies.** This is an increase from 3 % to 12% for domestic companies.

**2. Changes in procedures.** In January 2007 MoF and SAT issued a Notice entitled: **“On the Policies and Relevant Management Issues Concerning the Pre-tax Deduction of Public Welfare Relief Donations.”**

a. This Notice clarifies the following issues with regard to **qualification of organizations** to receive tax deductible contributions as of January 2007 and **procedures for qualification.**

- **Tax deductible donations may be made to “all public welfare social associations or foundations established upon approval of the civil affairs administrative department.”** After several years of permitting deductions only if donations were made to several pass-through organizations, such as the China Charity Federation, the Government has

decided to make the situation much easier for donors. On the other hand, these are new procedures, and it will obviously take awhile to implement them

- In order to qualify as a public welfare organization to which such deductible contributions can be made, there must be a **“confirmation of the public finance and taxation authorities” that the organization so qualifies**. This confirmation will be made by the appropriate level MoF and SAT officials.
- In order to be confirmed as such an organization, **the CSO must apply for recognition**. It must show that it, among other things,
  - Is non-profit;
  - Is established and managed consistently with the law;
  - May not distribute any surplus upon dissolution or termination;<sup>3</sup>
  - May not engage in business activities unrelated to its public welfare purposes;
  - Has an oversight body that is not “profit-seeking”;<sup>4</sup> and
  - Has a sound financial and accounting system.
- The organization must submit the following in order to qualify for recognition:
  - An application;
  - The document approving its registration; and
  - Its charter.

The new rules reflect many of the recommendations in the Tax Report.

b. The Notice also clarifies how an organization **must handle the donations it receives and how it deals with its donors**.

- “No donor may participate by any means in the distributions of the assets of [a qualified] organization, nor may it/he have ownership to such assets.”
- “The public welfare relief donations they have accepted [must be used] for the scope prescribed by tax laws or regulations, namely, for education, civil affairs, other public welfare undertakings, or for the districts that suffer from natural disasters or the poverty-stricken districts.”
- The organizations must “separately use the vouchers for public welfare relief donations as uniformly printed under supervision of the central or

---

<sup>3</sup> There is a curious statement with regard to current earnings, which must only meet this test: “proceeds and operational surplus are *mainly* used for the activities aimed at the purposes for its creation.” (emphasis added) If that means that such proceeds may be invested but that they are not permitted to be distributed, then the organization would be more like a “typical” charitable organization. There should be more clarity about the intention of this terminology.

<sup>4</sup> This appears to create a rule that members of the board must be volunteers and thus to establish a minimal conflict of interest rule.

provincial public finance department according to the financial affiliation, and affix their respective special financial seals; and shall issue receipts if any individual asks for it for his donations.”

c. The Notice also clarifies what **a donor must do in terms of claiming a deduction**:

The donor must submit along with the tax return

- The certification of the donee organization when it claims the deduction;
- The receipt received from the donee organization; and
- “Other materials as required to be submitted.”

### **3. Developing the definition of public welfare activities.**

As described above, the Notice regarding the claiming of tax deductions further enhances the definition under Chinese law of what constitute “public welfare social associations and foundations,” which must use their donations “for education, civil affairs, other public welfare undertakings, or for the districts that suffer from natural disasters or the poverty-stricken districts.” Like the draft Charity Law, this attempt to refine the definition of public benefit (public welfare) is quite useful as it will clarify which CSOs in China may receive tax deductible contributions.

There are, however, some differences between the scope of benefited activities in the Notice and the definition of “charity” in the draft law, which includes the following in Article 3:

A list of 4 general purposes:

1. Emergency and crisis relief for regions, individuals and groups in difficulties;
2. Relief for disadvantaged people;
3. Education, health, science, culture, sports for social benefit; and
4. Promotion of urban and rural community development and environment.

In addition to the specifically enumerated categories, Art. 3, para. 5 includes “other charitable activities,” which provides for future development of the concept of charity.

It would obviously be useful to clarify whether there is in fact any difference between the two definitions – the one used by MoF and SAT and the one in the draft Charity Law -- and it can be assumed that this issue will be ironed out during the developing drafting process for the Charity Law within MoCA.

**Conclusion.** These legal changes are significant ones, and ICCSL will closely monitor legal and fiscal developments that may occur over the course of the next few months as the time for completing the drafting of the Charity Law draws closer. It is important to note as well, that there is increasing pressure within China to implement practical reforms that will enhance the environment for charitable giving. In a recent signed article in Beijing News the government has been called upon to implement the changes in fiscal policy as quickly as possible because of the difficulties faced by Chinese donors at the present time, when they seek to obtain tax deductions.

## Bibliography

Cao Li and Hu Yuanyuan, "Celebrities, experts want new charity law," in China Daily, March 28, 2007, available at [http://www.chinadaily.com.cn/china/2007-03/28/content\\_837988.htm](http://www.chinadaily.com.cn/china/2007-03/28/content_837988.htm)

"China faces 8 challenges in building harmonious society: experts," in People's Daily Online, October 8, 2006, available at [http://english.people.com.cn/200610/08/eng20061008\\_309907.html](http://english.people.com.cn/200610/08/eng20061008_309907.html)

China's Tax Rules for Not-for-Profit Organizations, available at [http://siteresources.worldbank.org/INTCHINA/1503040-1122886803058/20601839/NPO\\_tax\\_En.pdf](http://siteresources.worldbank.org/INTCHINA/1503040-1122886803058/20601839/NPO_tax_En.pdf)

IJCSL, Comments on the Draft Charity Law, January 2007, available at [http://www.iccsl.org/pubs/07-01\\_IJCSL.pdf](http://www.iccsl.org/pubs/07-01_IJCSL.pdf)

IJCSL-Newsletter, April 2007, available at <http://www.iccsl.org/pubs/07-04-IJCSL-N.pdf>

Ministry of Finance, People's Republic of China, Notice "On the Policies and Relevant Management Issues Concerning the Pre-tax Deduction of Public Welfare Relief Donations."  
[http://www.iccsl.org/pubs/China%20January\\_18\\_Notice%20\\_2\\_.pdf](http://www.iccsl.org/pubs/China%20January_18_Notice%20_2_.pdf)

"New Tax Law Helps Charity," in People's Daily Online for March 23, 2007, available at [http://english.people.com.cn/200703/23/eng20070323\\_360330.html](http://english.people.com.cn/200703/23/eng20070323_360330.html)

"Tax Policy on Charity Widened," in China Daily, January 20, 2007, available at <http://www.china.org.cn/english/government/196740.htm>