CHINA
REGULATORY UPDATES

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CAPITAL MARKET / 资本市场

CSRC Further Limits Stock Sales by Certain Shareholders of Listed Companies
证监会进一步规范上市公司股东减持行为

2017年5月27日，为维护证券市场稳定、鼓励长期投资，证监会发布《上市公司股东、董监高减持股份的若干规定》（证监会公告（2017）9号，“《规定》”），上交所，深交所也分别出台与之配套的实施细则（与《规定》合称“减持新规”），2016年初发布的《上市公司大股东、董监高减持股份的若干规定》（“旧规则”）同时废止。减持新规自公布之日起施行。

与旧规则相比，减持新规扩大了适用主体范围，既限制大股东（即控股股东或持股5%以上股东）减持，也将限制上市公司首次公开发行前发行的股份以及非公开发行的股份（“特定股份”）的减持。同时，通过大宗交易和协议转让等非集中竞价方式减持也将受到不同程度的限制，以封堵旧规则下通过“过桥减持”规避集中竞价交易减持限制的操作。

减持新规针对不同的减持方式分别细化了减持限制：

(i) 通过集中竞价交易减持：在3个月内，大股东减持或特定股份减持的总数不得超过上市公司股份总数的1%。另外，持有上市公司非公开发行股份的股东，自股份解除限售之日起12个月内，减持数量不得超过其持有该次非公开发行股份数量的50%；

(ii) 通过大宗交易减持：在3个月内，大股东减持或特定股份减持的股份总数不得超过公司股份总数的2%，且受让方在受让后6个月内不得转让；以及

(iii) 通过协议转让减持：在通过协议方式进行减持后的6个月内，出让方、受让方基本上均应当遵守前述第(i)款通过集中竞价交易3个月内减持不得超过股份总数的1%的规定。

此外，减持新规还强化了减持的信息披露要求，进一步健全和完善上市公司大股东、董监高转让股份的事前、事中和事后报告、备案、披露制度。

本次减持新规的出台意在鼓励和倡导投资者形成长期投资、价值投资的理念。不过，由于减持股份一直以来都是私募和创业股权投资人重要的退出方式之一，而减持新规将减持限制的适用范围扩大到特定股份减持，并加强了对特定股份减持股份数量的限制，该等变化预计将延长相关投资人的退出周期、对投资人的退出带来一定的不利影响。对此情形，证监会在相关答记者问中提到，在下一步工作中，其将进一步研究创业投资基金所投资企业的上市解禁期与上市前投资期限长短反向挂钩的机制，对专注于长期投资和价值投资的创业投资基金在市场化退出方面给予必要的政策支持。

On May 27, 2017, with immediate effect, the China Securities Regulatory Commission (the “CSRC”) released the *Rules on Stock Sales by Shareholders, Directors, Supervisors and Senior Management of Listed Companies* (CSRC Announcement [2017] No. 9; the “CSRC Rules”), in response to massive stock sales by major shareholders and to promote a stable stock market. Shanghai Stock Exchange and Shenzhen Stock Exchange also shortly released corresponding implementation rules (with the “CSRC Rules”, collectively, the “Rules”). The *Rules on Stock Sales by Major Shareholders, Directors, Supervisors and Senior Management of Listed Companies* released by CSRC in early 2016 was repealed.

Under the Rules, not only stocks held by major shareholders (being the controlling shareholders and shareholders holding more than 5% of the outstanding shares, collectively, the “Major Shareholders”), but also shares issued before IPO and through non-public offerings (together with shares held by Major Shareholders, the “Restricted Shares”) are subject to various restrictions after those shares have expired respective lockup periods. Such restrictions cover sell-off through centralized bidding secondary market as previously regulated, but also that through block trading and transfer agreements, to prevent circumvented methods against stock sale restrictions under the previous rules:

(i) Sale through centralized bidding market: shareholders shall not sell Restricted Shares for more than 1% of the outstanding shares of a public company within a 3-month period. Furthermore, shareholders shall not sell more than 50% of Restricted Shares they obtained through a non-public offering within a 12-month period after such shares are unlocked;

(ii) Sale through block trading: the amount of Restricted Shares sold within any 3-month period through block trading shall not surpass 2% of the total outstanding shares of a listed company, and the transferees are not allowed to further sell the shares within 6 months thereafter; and

(iii) Sale by an agreement: both the transferor and transferee of Restricted Shares traded by an agreement shall generally, for 6 months after such a transaction, not sell Restricted Shares through centralized bidding secondary market for more than 1% of the total outstanding shares over a 3-month period.

Additionally, the Rules strengthened information disclosure requirements for stock sales by insiders including Major Shareholders, directors, supervisors or senior managers of public companies and further improved disclosure and filing system that covers *ex ante*, in process and *ex poste* supervision.

The Rules are likely to influence exit dynamics of PE&VC investments, typically made prior to an IPO of a company, or through a non-public issuance in the current investment market (as those shares are Restricted Shares and are subject to sell-off restrictions under the Rules after their respective lock-up periods are expired). CSRC has mentioned in several circumstances that it will consider adopting different exit restrictions for investments by qualified VC funds, so as to echo the country’s support of startup and innovative businesses.

PE&VC INVESTMENTS / 私募和创业投资

Pilot Tax Incentives Introduced to Further Encourage Investments in Tech Startups
创业投资企业和天使投资个人税收试点政策出台

2017年4月28日，财政部、国税总局联合下发《关于创业投资企业和天使投资个人有关税收试点政策的通知》（“《通知》”），《通知》规定的企业所得税政策自2017年1月1日起试点执行，个人所得税政策自2017年7月1日（统称为“执行日期”）起试点执行。《通知》的试点地区包括京津冀、上海、广东、安徽、四川、武汉、西安、沈阳等八个全面创新改革试验区域和苏州工业园区。

根据《通知》，投资于符合《通知》所规定条件的初创科技型企业的公司制创业投资企业、有限合伙制创业投资企业的法人和个人合伙人以及天使投资个人，都可在直接投资（仅限于通过向被投资初创科技型企业直接支付现金方式取得股权投资，不包括受让其他股东的存量股权）于初创科技型企业满2年后，就其投资额的70%进行所得税抵扣。

初创科技型企业需在中国大陆注册，并满足成立不超过5年、从业人数不超过200人、资产总额和年销售收入均不超过3000万元、研发费用占总成本不低于20%等要求。创业投资企业和天使投资人需满足不属于被投资初创科技企业发起人、投资后两年内总投资不超过50%等要求，其中创业投资企业需在试点地区注册、符合发改委或证监会关于创业投资企业的规定，对于天使投资人而言，其所投资初创科技型企业需在试点地区注册。

比较此前的税收政策，《通知》的主要特点在于：(i)所得税优惠对应的被投资企业为《通知》所规定的“初创科技型企业”，而不是以往政策要求的“中小高新技术企业”（需通过高新技术企业认定）。(ii)除公司制创业投资企业和有限合伙制创业投资企业的法人合伙人外，《通知》下享受优惠的投资主体扩大到了个人投资者（包括有限合伙制创业投资企业的个人合伙人和天使投资个人）。

On April 28, 2017, the PRC Ministry of Finance (the “MOF”) and the PRC State Administration of Taxation (the “SAT”) jointly issued the *Circular on Pilot Tax Rules for Venture Capital Enterprises and Individual Angel Investors* (the “Circular”), with incentive rules on corporate income tax (the “CIT”) taking effect from January 1, 2017, and those on individual income tax (the “IIT”) effective from July 1, 2017. The pilot covers eight comprehensive innovative and reform areas, including Beijing-Tianjin-Hebei region, Shanghai, Guangdong, Anhui, Sichuan, Wuhan, Xi’an and Shenyang, as well as the Suzhou Industrial Park.

According to the Circular, qualified venture capital enterprises’ venture capital partners and individual angel investors may deduct 70% of their investment amounts in early-stage scientific and technological enterprises (the “Tech Startups”) from their respective taxable incomes, *provided* that the investment period is no less than two years, and the investments are new equity investments paid with cash to the Tech Startups (excluding those purchased from old shareholders).

Tech Startups are required to be incorporated in mainland China with no more than 5 years history, shall not have more than 200 employees, total assets and annual sales amount shall not exceed RMB30 million, and their R&D costs shall not be less than 20% of total operation expenses. VC and individual angel investors shall not be promotors of the Tech Startups, and their total investment in the target Tech Startups shall not exceed 50% equity interest. Further, VC investors shall be set up in the pilot areas in accordance with the applicable requirements by NDRC or CSRC; while for the individual angel investors, the target Tech Startups shall be incorporated in the pilot areas.

Compared with the previous rules, the Circular has made the tax deductions applicable to investments in Tech Startups, in addition to “small and medium-sized high-tech enterprises” which shall have a high-tech enterprise certification. Further, in addition to the venture capital enterprises and their legal-person partners, individual investors can also deduct their taxable incomes, including individual partners of limited-partnership venture enterprises and individual angel investors.

PE Funds and Fund Managers Will Soon Need to Report Their Non-Resident Equity/Partnership Accounts to Tax Authorities
私募基金及私募基金管理人需向国税总局报告非居民金融账户

2017年5月19日，为了履行金融账户涉税信息自动交换的国际义务，国家税务总局、财政部、人民银行、银监会、证监会和保监会共同发布了《非居民金融账户涉税信息尽职调查管理办法》（“《管理办法》”），自2017年7月1日起施行。

《管理办法》将私募投资基金、私募基金管理公司和从事私募基金管理业务的合伙企业（合称“私募基金及私募基金管理人”）列入了“金融机构”的范畴，并规定私募基金及私募基金管理人需就非居民金融账户（包括私募投资基金的股权或合伙权益等）开展涉

On May 19, 2017, to fulfill the country’s international obligations to exchange relevant tax-related information of financial accounts, SAT, MOF, the People’s Bank of China, the China Banking Regulatory Commission, CSRC and the China Insurance Regulatory Commission jointly released the *Measures for Due Diligence on the Tax-related Information of the Non-resident Financial Accounts* (the “Measures”), which will take effect from July 1, 2017.

According to the Measures, the PE funds, fund managers and partnerships engaging in the management of PE funds (collectively, the “PE Institutions”) are defined as financial institutions and are required to carry out due diligence on the tax-

税信息尽职调查。自此，除向基金业协会的登记和信息报送义务外，作为金融机构的私募基金及私募基金管理人，如果其合伙人或投资人中存在税法下的非居民企业或个人，则还需要建立非居民金融账户尽职调查管理制度，在2017年底前于国家税务总局网站办理注册登记，并且每年按要求报送其非居民账户有关信息（比如账户持有人基本信息、账户余额、净值、收入、赎回款项等）。

related information of non-resident financial accounts (including equity and partnership interest). As a result, in addition to the various compliance obligations with the Asset Management Association of China or AMAC, PE Institutions with partners or equity investors who are not PRC tax persons may need to establish due diligence management system on the partnership/ equity interest accounts involving such non-resident partners or investors, make registration on SAT official website by the end of 2017, and report on an annual basis relevant non-resident financial account information (such as account holder's name, country of tax residence, tax identification number, income and redeemed amount of the account, etc.).

FOREIGN INVESTMENT / 外商投资

MOFCOM Plans to Apply Filing System to M&As by Foreign Investors
外国投资者并购境内企业或将被纳入备案制管理

2017年5月27日，商务部发布了《外商投资企业设立及变更备案管理办法（征求意见稿）》（“征求意见稿”），向社会公开征求意见。

相比于此前的规定，征求意见稿最大的变化是将外国投资者并购负面清单之外的境内非外商投资企业（“外资并购”）也纳入备案制的适用范围：非外商投资企业转变为外商投资企业的，参照外商投资企业设立备案手续进行；而并购设立外商投资企业交易基本信息变更的（包括并购支付对价、并购支付方式、被并购股权/资产评估值变更），应在该等变更发生后的30日内进行变更备案。与外资并购纳入备案制管理相对应，征求意见稿明确将外国投资者战略投资非外商投资的上市公司纳入备案范围。

如果征求意见稿通过并施行，则除被列入“负面清单”的领域外，外商投资企业的设立和变更均实行备案管理，外资并购和外国投资者投资境内上市公司的程序将更加简便。

On May 27, 2017, the PRC Ministry of Commerce (the "MOFCOM") released for public comments its draft *Measures for Filing Administration on the Establishment and Change of the Foreign-invested Enterprise* (the "Draft").

Compared with the current rules, the most noteworthy point under the Draft is that the filing administration will also apply to the merger and acquisition of a domestic enterprise (whose business is outside the negative list) by foreign investors, (the "Foreign Investor M&A"), i.e., if a domestic enterprise is converted into a foreign invested enterprise or FIE as a result of the Foreign Investor M&A, the parties no longer need to obtain an approval, but only need to file such a transaction with the competent MOFCOM office within 30 days with basic transaction information disclosed, a procedure currently applicable to the incorporation and subsequent change of an FIE. The Draft also clarified that this filing system will also apply to strategic investments made by foreign investors in listed domestic companies.

If the Draft is approved and implemented, the previous approval-based system for the foreign investment administration will be overall replaced by a much more efficient and straightforward filing system, except for foreign investments in industries falling into the negative list.

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