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OUTBOUND INVESTMENTS / 境外投资

China Released a Series of Regulations Governing Outbound Investments 国家出台一系列企业境外投资管理文件

2017年以来，为进一步促进和规范境内企业“走出去”的行为，配合“一带一路”的国家战略，中国相关政府部门出台了一系列有关境内企业对外投资的法规政策，并计划在2018年进一步制定相关规定：

- 1月7日国资委颁布了《中央企业境外投资监督管理办法》（国资委令（2017）35号），设定“禁止类”和“特别监管类”境外投资项目，对央企境外投资项目进行分类监管，划定央企投资行为红线（具体分析请见我所《每月立法动态》2017年2月刊）；
- 8月18日国务院办公厅转发了国家发展改革委、商务部、人民银行、外交部《关于进一步引导和规范境外投资方向指导意见的通知》（国办发（2017）74号），确立了境外投资“鼓励发展+负面清单”的管理模式，明确了限制开展的境外投资类型（具体分析请见我所《每月立法动态》2017年9月刊）；
- 12月5日，国家外汇管理局下发了《国家外汇管理局综合司关于完善银行内保外贷外汇管理的通知》（汇综发（2017）108号），明确规定内保外贷下如境外债务人为境内居民直接或间接控制的境外机构，银行应重点审核其是否符合境外投资相关管理规定；对于内保外贷项下资金用于获得对境外其他机构的股权（包括新设、并购或向境外企业增资）或债权的情形，银行需审核该投资行为是否符合国家关于境外投资的相关规定及政策导向；此外，新规强调对于担保履约倾向的审核，以防范境内企业通过担保履约达到资金变相出境的目的；
- 12月18日国家发改委会同商务部、中国人民银行、外交部和全国工商联联合编制了《民营企业境外投资经营行为规范》，从完善经营管理体系、依法合规诚信经营、切实履行社会责任、注重资源环境保护及加强境外风险防控的五个方面对民营企业境外投资经营活动进行引导和规范；
- 12月26日国家发改委出台《企业境外投资管理办法》（（2017）第11号令），从扩大境外投资的监管范围、修改敏感类项目的定义、取消小路条制度和省级发改委的转报程序、放宽核准/备案的时限要求、延长核准/备案文件的有效期、加强事中和事后监管等方面，对现行的企业境外投资管理基础性制度进行了重大变革（该办法与国家发改委11月3日公布的《企业境外投资管理办法（征求意见稿）》相比内容相差不多，对征求意见稿的详细解读请见我所《每月立法动态》2017年12月刊）。该办法将于2018年3月1日起正式实施；以及
- 12月底，商务部相关负责人在全国商务工作会

China has introduced a slew of regulations and policies governing outbound investments since 2017 to better support and regulate the “going global” activities of domestic enterprises and implement the Belt and Road Initiative. It is anticipated that more regulations and guidelines concerning outbound investments will be introduced and implemented in 2018. Set forth below are some highlights for your review and easy reference:

1. On January 7, 2017, the State-Owned Assets Supervision and Administration Commission released the *Measures for the Supervision and Administration of Outbound Investments by SOEs under Central Government Supervision*, drawing red lines for investments by state-owned enterprises or SOEs under central government supervision, categorizing investment activities and subjecting them to different government guidance and regulations (*detailed introduction can be found in our February 2017 issue of China Regulatory Updates*).
2. On August 18, 2017, the General Office of the State Council circulated the *Notice of the National Development and Reform Commission, the Ministry of Commerce, the People’s Bank of China and the Ministry of Foreign Affairs on Further Guiding and Regulating the Directions of Outbound Investments*, which introduced a new management system by classifying outbound investments into encouraged, restricted and prohibited categories (*please refer to our September 2017 issue of China Regulatory Updates for details*).
3. On December 5, 2017, the State Administration of Foreign Exchange released the *Notice on Improving Foreign Exchange Administration on Overseas Lending Secured by Onshore Guarantees*, pursuant to which if the overseas borrower is under the control of a domestic Chinese enterprise or natural person, banks in charge of examination should review particularly on whether the underlying outbound investment complies with the applicable regulations. When the borrowings secured by onshore guarantees are used to obtain overseas stock rights (whether through new establishment, capital injection, mergers and acquisitions of foreign enterprises or otherwise) or creditor’s rights, the banks should exam and see if the proposed investment complies with the outbound investment administration and direction. The Notice also requires that the banks should carefully monitor the performing tendency of the guaranteed assets in order to prevent and curb any illegal capital outflow disguised as performance of guarantees.
4. On December 18, 2017, the National Development and Reform Commission (“NDRC”), jointed by several other government authorities, issued the *Rules on Outbound Investments and Business Activities by Private Enterprises*, with an aim to optimize guidance and regulations on outbound investments by private enterprises in such five aspects as improvements to the management system, requirements of legal and faithful business operation, fulfillment of social responsibilities, protection of local resources and environment, and continuing efforts in preventing and controlling risks associated with overseas investments.
5. On December 26, 2017, NDRC further released the *Administrative Measures for Overseas Investments by Enterprises*, which significantly modified the existing regulations governing outbound investments in various aspects, including, among others, the expansion of the scope of outbound investments subject to government administration, revision of the definition of sensitive

议媒体吹风会上透露，商务部牵头的《境外投资条例》初稿已经形成，目前正在进一步研究修改中；并提出2018年要特别遏制盲目并购等非理性投资行为，反对并制止企业借机向境外转移资产，对企业境外投资的真实性、合规性继续做好审查。

综观以上一系列规定和相关监管层释放的信息，总体反映了中国政府在境外投资方面简政放权、鼓励和支持各类企业“走出去”的监管方向，但与此同时，国家将继续加强对企业境外投资真实性和合规性的审查，以防范并遏制企业非理性境外投资（特别是针对房地产、酒店、娱乐业等领域的投资，及在境外设立无具体实业项目的股权投资基金或投资平台等）导致的资金外流现象。

investment projects, removal of the “Small Road Ticket” system as well as the pre-review and approval by provincial NDRC offices, relaxation of the time limits for approval or record-filing, extension of the period of validity for documents submitted for government approval or filing, and strengthening the in-process and post-investment supervisions. The Measures is generally consistent with its draft version for public comments (*please refer to our December 2017 issue of China Regulatory Updates for details*) and will come into effect on March 1, 2018.

6. A spokesman for the Ministry of Commerce revealed in late December 2017 that the draft *Regulations on Overseas Investments* is being finalized for publication. Efforts in this area by Chinese government in 2018 will be made to curb such irrational investment activities as blinded merge and acquisition, to prevent transfer of assets overseas in the name of outbound investments, and to improve the authenticity and legal compliance review and verification on overseas investments.

In general, the above-mentioned regulations and policies, along with signals released by relevant government authorities, reflect China's efforts in simplifying the administration over outbound investments. Both SOEs and non-SOE companies are encouraged to “going global”. In the meanwhile, the Chinese government will continue to reinforce the inspection of outbound investments in terms of authenticity and legal compliance so that capital outflows resulting from irrational outbound investments in such areas as real estate, hotels and entertainment, or through offshore shell companies could be more effectively monitored and contained.

FOREIGN INVESTMENTS / 外商投资

Profits Reinvested by Overseas Investors to Enjoy Tax Deferrals 境外投资者以利润再投资将享受递延纳税优惠

财政部、税务总局、国家发展改革委和商务部四部委于2017年12月21日联合发布了《关于境外投资者以分配利润直接投资暂不征收预提所得税政策问题的通知》（“《通知》”），提出将对境外投资者以分配利润在华直接投资实行递延纳税政策，暂不征收10%的预提所得税。

《通知》对境外投资者暂不征收预提所得税的具体条件（主要为：投资形式需为直接投资（但不包括新增、转增、收购上市公司股份（符合条件的战略投资除外）及向关联方收购境内居民的股权），投资项目需属于外商投资鼓励类，境外投资者分得利润的性质需为股息、红利等权益性投资收益，用于投资的资金或资产须直接转入被投资企业或股权转让方账户）、享受优惠政策的程序、后续管理及补缴时间（即在实际收回投资（包括股权转让、回购、清算等方式）后7日内）等方面均作出了明确规定。

《通知》的出台，一方面是对2017年8月国务院发布的《关于促进外资增长若干措施的通知》要求制定利用外资税收优惠政策的落实与细化；另一方面也是在一些国家为吸引投资纷纷改革税收政策的背景之下，鼓励境外投资者持续扩大在华投资，提高中国投资市场竞争力的重要举措。

On December 21, 2017, the Ministry of Finance, the State Administration of Taxation, NDRC and the Ministry of Commerce jointly issued the *Notice on Policy Issues Concerning Temporarily Exempting the Withholding Tax on Distributed Profits Used by Overseas Investors for Direct Investments* (the “Notice”), which explicitly states that profits distributable to overseas investors used for direct re-investment in China will enjoy tax deferral and be exempted from the 10% withdrawing tax on a temporary basis.

According to the Notice, overseas investors shall meet certain conditions in order to enjoy the tax exemption. Such conditions include, among others, the profits should be injected to projects that are encouraged for foreign investments in the form of direct investment which excludes acquisition of increased shares, subscription of shares using capital reserve, investment in listed companies (except for qualified strategic investment) and acquisition of domestic enterprises' equities from related parties. In addition, the profits obtained by overseas investors should be the returns of their equity investments, including dividends and bonus, while the underlying capitals or assets must be transferred directly into the investee company or the equity transferor's account. The Notice also specifies the procedure of applying the preferential tax policy, the follow-up management and the time limit for payment of the deferred tax (i.e., within 7 days after recovery of investments through equity transfer, share redemption, liquidation or the like).

The Notice implements and specifies the requirements of the *Circular on Several Measures to Promote Opening-Up and Active Use of Foreign Capitals* published by the State Council in August 2017. It is also considered an important move to improve the competitiveness of China's business environment and encourage foreign investors to retain and expand investments in China especially under the current wave of tax cut competition around the world to attract foreign and domestic investment.

PE&VC / 私募股权及创业投资

AMAC Updated Private Fund Manager Registration Guideline 基金业协会更新《私募基金管理人登记须知》

2017年12月22日，中国证券投资基金业协会发布了新版《私募基金管理人登记须知》（“登记须知”），在其此前发布的相关登记、备案、解答等各类文件的基础上，进一步总结、重申和明确了私募基金管理人登记事项的规范性标准（主要包括申请私募基金管理业务所需基本设施和条件、高级管理人员的资格和兼职要求、名称及经营范围、法律意见书等方面的监管要求、不予登记的六大情形以及完成首只产品备案前不得变更实际控制人等），并首次要求私募基金管理人在完成登记后10个工作日内需和当地证监局取得联系。登记须知的发布为私募基金管理人的登记提供了统一和更为明确的指引。

On December 22, 2017, the Asset Management Association of China (“AMAC”) promulgated the modified *Private Fund Manager Registration Guideline* (the “Guideline”). Based on a series of regulations and guidelines released by AMAC earlier with respect to the registration and filing of private funds and fund managers, the Guideline further summarizes, reiterates and specifies certain regulatory rules and standards which include, among others, the basic facilities and conditions required for engaging private fund management business, qualification requirements of senior management personnel, restrictions on trade names and business scopes, regulatory requirements on legal opinions, some six situations where the registration will not be granted, and the limitation on change of control before completion of first fund product registration. Fund managers for the first time are also required to connect with local offices of the China Securities Regulatory Commission within 10 business days upon completion of the registration. The Guideline is deemed a more unified and specific guidance for the registration of private fund managers so far.

CAPITAL MARKET / 资本市场

HKEx Proposes Way Forward to Expand Hong Kong’s Listing Regime 联交所拓宽香港上市制度

香港联合交易所有限公司（“联交所”）于2017年12月15日发布了《咨询总结-检讨创业板及修订<创业板规则>及<主板规则>》以及《咨询总结-建议设立创业板》（合称“咨询总结”），咨询总结将于2018年2月15日生效。咨询总结主要修改了联交所现行的相关上市原则，拓宽了上市制度：允许符合条件的、不同投票权架构的新经济公司和尚未盈利或未有收入的生物科技公司在本板上市；以及建立新的第二上市渠道，吸引已经在相关交易所上市的新经济企业赴港二次上市。

Hong Kong Exchanges and Clearing Limited (“HKEx”) announced on December 15, 2017 the *Consultation Conclusions on the Review of the Growth Enterprise Market (“GEM”) and Changes to the GEM Board and Main Board Listing Rules and Consultation Conclusions to the New Board Concept Paper* (the “Consultation Conclusions”), which will become effective on February 15, 2018. The Consultation Conclusions have mainly revised the existing listing rules of HKEx, broadening Hong Kong listing regime by allowing qualified innovative companies with weighted-voting arrangements and biotech companies not yet profitable to be listed on Main Board as well, subject of course to certain requirements and safeguards, and establishing a new concessionary system to attract public companies from emerging and innovative sectors that are already listed on other stock exchanges to take a second time listing in Hong Kong.

上述上市规则的调整被视为香港20年多来规模最大的一次上市制度改革，将大大提升香港资本市场的竞争力，预计将吸引更多新经济企业未来赴港上市或二次上市。

The above-mentioned changes are considered the largest innovation of Hong Kong listing regime in the last 20 years, which will greatly enhance the competitiveness of Hong Kong capital market and help attract more listings of companies from emerging and innovative sectors.

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