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FOREIGN INVESTMENT / 外商投资

NDRC Released New Catalogue of Industry for Guiding Foreign Investment 国家发改委发布新《外商投资产业指导目录》

On March 10, 2015, NDRC released the amended *Catalogue of Industry for Guiding Foreign Investment* (the "2015 Revision"), which is the 6th edition of this Catalogue and will come into force as of April 10, 2015.

Compared to the 2011 version of the Catalogue, this 2015 Revision made a much more open gesture towards foreign investments. For instance, the total number of restricted foreign investment fields has been reduced from 79 to 38, while those requiring Sino-foreign equity or cooperative joint venture operations have been reduced from 43 to 15. Specifically, this 2015 Revision further opens up the general manufacturing industry and service industry to foreign investments by removing or lifting foreign ownership limitations in such areas as steel, ethylene and paper manufacturing, e-commerce, chain business, marine transportation and performance venue management, among others. Additionally, foreign investments in modern agriculture, new and high technologies, advanced manufacturing, energy saving and

environmental protection and modern services are highly encouraged. It is noteworthy though that sectors such as cultural and publications once proposed to be opened up to foreign investors in the draft revisions released for public comments in 2014 remain prohibited from foreign investments according to the promulgated 2015 Revision.

This round of revisions to the *Catalogue of Industry for Guiding Foreign Investment* is believed to be among the transitional measurements taken by the Chinese government authorities before the "Catalogue of Special Administrative Measures for Foreign Investments" as proposed by the draft *Foreign Investment Law* (please refer to our January 2015 *Issue of China Regulatory Updates for more information*). We will closely follow up with any major developments in this connection.

2015年3月10日, 发改委发布《外商投资产业指导目录(2015年修订)》(“2015版目录”), 自2015年4月10日起施行。这是继《外商投资产业指导

目录(2011年修订)》(“2011版目录”)之后,《外商投资产业指导目录》自发布以来的第6次修订。

相比2011年版目录, 2015版目录加大了对外开放的力度: 一是限制类条目从79条减少到38条; 二是要求“合资、合作”的条目从43条减少到15条。具体来说, 2015版目录进一步放宽了一般制造业和服务业外资准入, 取消或放宽了钢铁、乙烯、造纸、电子商务、连锁经营、海上运输、演出场所经营等行业的外商投资股比限制, 并鼓励外商投资现代农业、高新技术、先进制造、节能环保、现代服务业等领域。值得注意的是, 发改委去年11月发布的《外商投资产业指导目录(征求意见稿)》中拟放宽外资准入限制的部分行业(主要集中在文化出版类行业领域)在正式发布的目录中并未放开。

此次《外商投资产业指导目录》的修订和颁布, 是中国政府在外国投资特别管理措施目录(相关内容请参见我所2015年1月刊*China Regulatory Updates*)正式发布前对外商投资准入政策的过渡性调整。未来《外国投资法》及外国投资特别管理措施目录正式颁布后, 外资准入是否进一步放宽, 我们将持续关注。

CAPITAL MARKETS / 资本市场

CBRC Further Relaxed Requirements on M&A Loans Made by Commercial Banks 银监会进一步放宽商业银行并购贷款条件

With a view to improving financial services for mergers and acquisitions, the China Banking Regulatory Commission (or CBRC) recently released the newly revised *M&A Loan Risk Management Guidelines for Commercial Banks* (the "New Guideline").

Compared to its previous version, the New Guideline further relaxed requirements on M&A loans extended by commercial banks, mainly in terms of the following aspects: (a) permitting policy banks, branches of foreign banks and finance companies of corporate groups to extend M&A loans; (b) extending the maximum term of an M&A loan from 5 years to 7 years; (c) allowing 60% (instead of

50% as formerly set) of the transaction price in an M&A deal to be funded by M&A loans; and (d) no longer putting more stringent requirements on security interests created for M&A loans, while letting commercial banks make reasonable decisions based on their own judgements.

As bank loans are considered to be an important financial source for M&A deals, adoption of the New Guideline is expected to benefit M&A deals especially those demanding large amounts of funds and long-term corporate integrations.

为完善企业兼并重组金融服务, 中国银监会近期发布了经修订的《商业银行并

购贷款风险管理指引》(“新《指引》”)。

相比修订之前的版本, 新《指引》进一步放宽了商业银行并购贷款的条件, 主要体现在以下四个方面: (a) 放宽贷款人的主体限制, 允许政策性银行、外国银行分行和企业集团财务公司开办并购贷款业务; (b) 延长并购贷款期限, 贷款期限从5年延长到7年; (c) 将并购贷款金额占并购交易价款的比例从50%提高到60%; 和(d) 不再要求并购贷款担保条件应高于其他种类贷款, 允许贷款人根据实际情况合理确定。

银行贷款是并购交易的重要融资渠道, 新《指引》的发布和实施将更好地满足那些整合周期长、资金需求量大的并购交易的融资需求。

PE&VC / 私募股权投资

AMAC Introduced Classified Disclosure System for Fund Managers 基金业协会发布私募投资基金管理人分类公示方案

The Asset Management Association of China (or AMAC) publicised the *Notice on Implementing the Classified Public Disclosure System for Private Equity Fund Managers* on March 19, 2015, requesting the information filed by each registered PE fund manager to be classified into some 3 categories and disclosed to the general public based on the scales of the funds under management, compliance and good

faith status of the fund manager, among others. Information in question now can be reviewed on AMAC's official webpage with an attempt to help investors make more reasonable investment decisions.

2015年3月19日, 基金业协会发布《关于实行私募基金管理人分类公示制度的公告》(“《公告》”), 在原有信息公示的基础上, 根据所管理基金的规

模、运作合规情况、诚信情况等, 对在基金业协会登记的私募基金管理人实行分类公示。

《公告》发布后, 私募基金管理人的信息将分为规模类、提示类和诚信类进行公示。公众可通过基金业协会官方网站信息公示栏目查询相关公示信息。分类公示制度的实施有助于投资者客观地了解私募基金管理人的综合情况, 以做出合理的投资决策。

NEEQ Strengthened Scrutiny on Shareholder PE's Compliance Status 中小企业股权转让系统加强私募基金股东合规性审查

Following CSRC's requirements on review and examination of PE funds' compliance status by intermediary agencies in securities offering and M&A applications involving listed companies (*relevant introduction could be found in our February Issue of China Regulatory Updates*), the National Equities Exchange and Quotations Co., Ltd. (or NEEQ) released a Q&A letter on March 20, 2015, urging principal underwriters and legal counsels to carefully exam and issue opinions on the compliance status of PE funds (including, among

other things, fulfilment of the required filling and registrations by them) for participating, as shareholders, in proposed listings, asset reorganizations and etc. of the underlying entities through NEEQ system. It is expected that promulgation of this NEEQ requirement will further encourage the compliance efforts by PE funds.

2015年3月20日, 全国中小企业股份转让系统有限责任公司(“股转系统”)在其官网上发布了《关于加强参与全国股转系统业务的私募投资基金备案管理

的监管问答函》(“《问答函》”), 要求主办券商和律师(统称“中介机构”)在企业申请挂牌环节以及在挂牌公司发行融资、重大资产重组等环节对参与其中的私募基金的合规性及其是否已按相关程序履行了备案程序进行核查并发表意见。此前, 证监会已发文要求中介机构对参与证券发行和上市公司并购重组的私募基金进行同样的核查并发表意见(相关内容请参见我所2015年2月刊*China Regulatory Updates*)。《问答函》的发布将使现行私募基金管理规范性文件对未备案私募基金的约束力进行进一步加强。

TAXATION / 税收

SAT Tightened up Regulations on Transfer Pricing in Outbound Payments 国家税务总局加强企业对外支付费用转让定价管理

On March 18, 2015, the State Administration of Taxation (or SAT) released the *Notice on Enterprise Income Tax Concerning Payments by Enterprises to Overseas Affiliated Parties* (the “Notice”), emphasizing that payments by onshore enterprises to offshore related parties should be made on the arm's length basis. Otherwise, the Chinese tax authorities may make special tax adjustment when calculating taxable incomes of the underlying onshore enterprises.

Pursuant to the Notice, the following four situations should not be deemed as transactions made on the arm's length basis: (a) payment to related parties that perform no functions, assume no risks or are not engaged in any substantial business activities; (b) payment to related parties for services that cannot bring direct or indirect economic benefits to the payers; (c) payment of royalties to related parties that hold legal titles of intangible

assets but contribute little to the value of the assets; and (d) payment of royalties to related parties for incidental benefits arising out of IPO-related activities. In addition, the Notice provided that the Chinese tax authorities may also require onshore enterprises to submit contracts or agreements signed with offshore related parties as well as other supportive materials to verify the authenticity of the underlying transactions and the compliance status of the arm's length principle.

The promulgation of the Notice comes as another attempt by SAT to curb international taxation avoidance following its efforts on strengthening the general anti-tax avoidance management with respect to indirect property transfers by non-resident enterprises.

2015年3月18日, 国家税务总局发布《关于企业向境外关联方支付费用有关企业所得税问题的公告》(“《公

告》”), 自发布之日起生效。《公告》强调境内企业向境外关联方支付费用应符合独立交易原则。如不符合独立交易原则, 税务机关可以在计算境内企业应纳税所得额时进行纳税调整, 对相关费用不予扣除。

《公告》列明了不符合独立交易原则支付费用的4种情形: (a)向未履行功能、承担风险, 无实质性经营活动的境外关联方支付费用; (b)就关联方提供的不能给企业带来直接或间接经济利益的劳务支付服务费; (c)向仅拥有无形资产法律所有权而未对其价值创造做出贡献的关联方支付特许权使用费; (d)因融资上市活动所产生的附带利益向境外关联方支付特许权使用费。《公告》同时规定, 主管税务机关可以要求企业提供其与境外关联方签订的合同或者协议, 以及证明交易真实发生并符合独立交易原则的相关资料备案。

《公告》的发布是国家税务总局继发文规范一般反避税管理和非居民企业间接转让财产企业所得税之后, 推出的又一项打击跨国避税的举措。

SAT Temporarily Exempted Land VAT on Corporate Reforms and Reorganizations 国家税务总局暂免征收与企业改制重组有关的土地增值税

On March 20, 2015, SAT and the Ministry of Finance jointly circulated a notice to implement some new policies on land value added tax (or land VAT) in respect of corporate reforms and reorganizations (the "Notice"), with tentative effect from January 1, 2015 to December 31, 2017.

The Notice clarifies that the existing preferential tax policies on land VAT will continue to be applied to transfer of real properties by entities (other than real estate development companies) for purpose of capital contributions and corporate mergers and acquisitions. In addition, the aforesaid preferential tax policies could also be applied to corporate reforms and company divisions/spin-offs.

Pursuant to the Notice, the land VAT will be temporarily exempted under the following circumstances: (a) where there is a substantial corporate reform, the original entity transfers state-owned land use rights and building titles to the new entity; (b) where two

or more entities are consolidated and merged into one entity and the principal investors of the original entities will stay in the new entity, the original entities transfer state-owned land use rights and building titles to the new entity; (c) where an entity is split off into two or more entities which share the same principal investors as the original entity, the original entity transfers state-owned land use rights and building titles to the new entities; and (d) where any entity or individual contributes or otherwise transfers state-owned land use rights or building titles to investee companies during corporate reform and/or reorganizations.

The Notice intends to ease tax burdens to be incurred during corporate reform and reorganizations, with an attempt to enhance the competitiveness and integration of resources of the involved enterprises.

2015年3月20日，财政部和国家税务总局联合印发《关于企业改制重组有关土

地增值税政策的通知》（“《通知》”），执行期限为2015年1月1日至2017年12月31日。

《通知》延续了企业以房地产作价投资、企业兼并免征相关土地增值税的既有优惠政策，并将企业公司制改造、企业分立纳入优惠范围。而房地产开发企业仍然不得享受改制重组土地增值税优惠政策。

根据《通知》的规定，以下情形暂免征收土地增值税：(a)在企业改建过程中，改建前的企业将国有土地、房屋权属转移、变更到改建后的企业；(b)两个或两个以上企业合并为一个企业，且原企业投资主体存续，原企业将国有土地、房屋权属转移、变更到合并后的企业；(c)企业分立为两个或两个以上与原企业投资主体相同的企业，原企业将国有土地、房屋权属转移、变更到分立后的企业；以及(d)单位、个人在企业改制重组时将其名下国有土地、房屋权属转移、变更到被投资的企业。

《通知》进一步减轻了企业改制重组的税收负担，有利于企业通过兼并重组加强资源整合、提高竞争力。

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For further information, please write us at inquiry@hanyilaw.com.

CONTACT US

Shanghai Office

Suite 1801, Tower I, Huayi Plaza
2020 West Zhongshan Road
Shanghai 200235, China
Tel: (86-21) 6083-9800
Fax: (86-21) 6083-9811

Beijing Office

Unit B039, 12/F South Tower
8 East Guanghua Dongli
Beijing 100020, China
Tel: (86-10) 5989-2212
Fax: (86-10) 5989-2296