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Administrative Measures for Outbound Investment (the "Measures") (境外投资管理办法), issued by the Ministry of Commerce ("MOFCOM")

The *Catalogue of Investment Projects Approved by Government (2013 edition)* (《政府核准的投资项目目录（2013 年本）》) ("Catalogue"), referred to in our Legal Flash of February 2014, provides that, except for outbound investment projects involving sensitive countries, regions or industries (which are subject to approval by MOFCOM or its local counterparts), the default regime of regulating outbound investment projects is record-filing process.

Following the Catalogue, the Measures are enacted to set out the approval procedures and/or record-filing process for outbound investment projects carried out by domestic enterprises, such as new establishments, or mergers and acquisitions. Before the Measures are enacted, the old version of the Administrative Measures for Outbound Investment in 2009 will be repealed ("Old Measures").

The Measures' main highlights are as follows:

- The Measures specify the scope of overseas investments subject to approval procedures by defining the sensitive countries and industries:

    1) Countries subject to approval procedures are those without diplomatic relations with the People's Republic of China and countries subject to United Nations sanctions.
    2) Industries subject to approval procedures participate in the export of products and technologies whose export is restricted by China and industries that affect the interests of one or more countries.

    Unlike the Old Measures, under the Measures, overseas investment projects with certain thresholds or establishing offshore special purpose vehicles no longer need the relevant MOFCOM approval.

- The Measures provide hierarchical administration for outbound investments, both for approval procedures and record-filing, as follows:

    1) Central state-owned enterprises ("SOEs") must report outbound investment subject to record-filing to the state-level MOFCOM, while other enterprises must report outbound investment subject to record-filing to the provincial-level MOFCOM;

2) Central SOEs must submit an application for outbound investment subject to approval procedure to the state-level MOFCOM, while other enterprises must submit an application for outbound investment subject to approval via the provincial-level offices of MOFCOM, which shall refer the application to the state-level MOFOC.

– The Measures simplify the approval procedures for outbound investment by:

1) Lifting the restriction established in the Old Measures that made obtaining approval from the relevant authority a pre-condition for outbound investment projects.

2) Removing the requirement to submit a Pre-report Form for Overseas M&A Items, where overseas investments are related to merger and acquisition activities.

3) Shortening the time limit for authorities to approve outbound investments:

i. for centrally-administered enterprises subject to the approval procedure, the state-level MOFCOM must grant approval within 20 working days; and

ii. for all other enterprises, including the review by both state- and provincial-level MOFCOM, approval must be granted within 30 working days.

Date of issue: September 6, 2014. Date of effectiveness: October 6, 2014.

State Administration of Taxation Announcement concerning revision of Administrative Measures for Value-Added Tax Exemption on Cross border Taxable Services under the Value-Added Tax Reform (for trial implementation) (Announcement [2014] No.49) (国家税务总局关于重新发布《营业税改征增值税跨境应税服务增值税免税管理办法（试行）》的公告)

The State Administration of Taxation ("SAT") released Announcement [2014] No.49 ("Announcement 49") on August 27, 2014, which will come into effect on October 1, 2014. Announcement 49 will simultaneously replace the previous Administrative Measures for Value-Added Tax Exemption on Cross border

Taxable Services under the Value-Added Tax Reform (for trial implementation) (SAT Announcement [2013] No.52) issued on September 13, 2013.

Announcement 49 makes the following major revisions to SAT Announcement [2013] No. 52:

- With the expansion of the Value-Added Tax ("VAT") Reform, Announcement 49 includes the following services in the scope of cross border services eligible for VAT-exemption:

    - postal services provided for exported goods;
    - delivery services provided for exported goods; and
    - telecommunication services provided to foreign entities.

- SAT adjusts the following aspects:

    - Supplements cross border service contracts relating to flight management services and auxiliary logistics services provided to foreign air-transportation enterprises, so certain documents could qualify as contracts for the purposes of the exemption, such as the statutory flight plans.

    - Specifies situations in which income received from domestic entities may qualify as offshore income; e.g., where a taxpayer receives income from a domestic qualified third-party intermediary when providing cross border services to overseas affiliated companies.

- SAT also clarifies in Announcement 49 that taxable services provided to Hong Kong, Macau and Taiwan are considered cross border services, and the VAT exemption polices in Announcement 49 are applicable, unless otherwise stipulated.

Date of issue: August 27, 2014. Date of effectiveness: October 1, 2014.

State Administration of Taxation Announcement concerning Issues related to the Tax Refund and Exemption Administration on Exportation of Goods and Services (Announcement [2014] No.51) (关于出口货物劳务退（免）税管理有关问题的公告)

To improve the tax refund and exemption administration for exportation, SAT released Announcement [2014] No.51 ("Announcement 51") on August 28, 2014, which came into effect on the same day.

Announcement 51's main highlights are as follows:

- Announcement 51 re-categorizes export companies that must provide foreign exchange receipt certificates to the tax authorities for tax refund and exemption purposes into five categories (SAT Announcement [2013] No.30 ruled nine categories):

  - Type C companies as classified by the foreign exchange authorities.
  - Types C and D companies as classified by the customs authorities.
  - Companies with credit rating D for tax payment assessed by the tax authorities.
  - Export companies that declare falsified reasons to the tax authorities for uncollectible foreign exchange.
  - Export companies that give the tax authorities forged documents related to receiving foreign exchange.

- Under the relevant VAT reform regulation, to apply for tax refunds and exemptions, companies providing zero-rated R&D and design services abroad must provide receipt certificates proving that the income for the services is received from the pertinent overseas service recipients.

  However, for multinational companies approved by the foreign exchange authorities to implement centralized fund management for foreign exchange, within the approval period, instead of providing the abovementioned documents, the group's service-providing entity can provide the tax authority with the receipt certificates issued by the bank to the group's centralized fund management entity, if the following conditions are met:

  - The payer entity is the overseas entity that signs the R&D or design service contracts with the service-providing entity, or the payer entity is an overseas entity appointed in the R&D or design service contracts to make this payment.

  - The payee entity or the payee shown in the postscript on the receipt certificates specifies the name of the service-providing entity.

Date of issue: August 28, 2014. Date of effectiveness: August 28, 2014.

State Administration of Taxation Announcement concerning Issues related to Monitoring and Administration of Special Tax Adjustments (Announcement [2014] No.54) (国家税务总局关于特别纳税调整监控管理有关问题的公告)

On August 29, 2014, SAT released Announcement [2014] No.54 ("Announcement 54"), specifying issues related to monitoring and administration of special tax adjustments.

Announcement 54's main highlights are as follows:

- Where tax authorities identify special tax adjustment risks of taxpayers through monitoring and administration methods (such as, among others, reviewing related-party transaction declarations and the contemporaneous documentation), they must alert taxpayers of the risks, by issuing a notice and requesting taxpayers to provide contemporaneous documentation or other related documents within 20 days of the request. Taxpayers must examine and analyze the reasonableness of the transfer pricing principles and methodologies they have applied to their related-party transactions, making self-adjustments and paying any resulting taxes accordingly. If taxpayers ask the tax authorities to confirm their transfer pricing principles and methodologies, the tax authorities must initiate formal special tax inspection and adjustment procedures to establish reasonable adjustment methodologies and conduct the appropriate tax adjustments.

- Where taxpayers make self-adjustments and pay any resulting taxes during the monitoring and administration stage of special tax adjustments, the tax authorities are still entitled to conduct special tax inspections and adjustments under relevant regulations.

- Where taxpayers provide contemporaneous documentation and other relevant documents during the monitoring and administration stage of special tax adjustments at the tax authorities' request, the interest levied on the make-up taxes must be calculated by applying the benchmark interest rate on an RMB loan published by the People's Bank of China for the same period as the make-up taxes. The 5% mark-up on the benchmark interest rate will not be imposed in this case.

Multinational companies with related-party transactions should be familiar with SAT's new monitoring and administration measure for special tax adjustments. These companies should examine and review their own transfer pricing policies to avoid or mitigate transfer pricing risks.

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