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Catalogue of Investment Projects Subject to Government Verification and Approval (2014 edition) (the "Catalogue") (政府核准的投资项目目录（2014 年本）), issued by the State Council

The Catalogue is an updated version of the previous 2013 edition, which is analyzed in our Legal Flash of January 2014. It mainly introduces the following changes:

Foreign direct investment

The Catalogue raises the threshold amount of various types of investment projects that are subject to governmental verification and approval, as follows:

- Subject to approval by the state-level National Development and Reform Commission (the "NDRC") or the Ministry of Commerce (the "MOFCOM"):
  - Encouraged projects specified under the Catalogue of Industries for Guiding Foreign Investment (the "Guiding Catalogue") that must be controlled by Chinese investors, with total investment (or an increase in the total investment) equal to or over USD 1 billion, and
  - Restricted projects (excluding real estate projects) with total investment (or an increase in the total investment) equal to or over USD 100 million.

- Subject to approval by the provincial-level government:
  - Real estate projects as restricted under the Guiding Catalogue, and
  - Projects restricted under the Guiding Catalogue with total investment (or an increase in the total investment) of less than USD 100 million are. In addition, the restricted project with total investment (or an increase in the total investment) equal to or over USD 2 billion shall be subject to record filing with the State Council.

- Subject to local government approval:
  - Encouraged projects that must be controlled by Chinese investors, with total investment (or capital increase) of less than USD 1 billion.

Outbound investment

The Catalogue removes the threshold of USD 1 billion above which outbound investment projects involving sensitive countries, regions or industries, had to be approved by the state-level NDRC or MOFCOM. Therefore, under the Catalogue, all investment projects, including inbound and outbound, that involve sensitive countries and regions or sensitive industries shall be subject to the verification and approval by the competent investment department (i.e. NDRC or MOFCOM) of the State Council.

<u>Other highlights</u>

Investment projects of enterprises under central management other than those explicitly listed by various industrial sectors, and projects with a total investment of at least USD 300 million invested by local enterprises shall be subject to record filing with the competent investment department of the State Council.

Date of issue: October 31, 2014. Effectiveness date: October 31, 2014.

Amendment Draft of Foreign Investment Industrial Guidance Catalogue (the "Draft Catalogue") (《外商投资产业指导目录》修订稿), issued by the National Development and Reform Commission (the "NDRC")

The Draft Catalogue introduces a series of amendments to the current *Foreign Investment Industrial Guidance Catalogue* (the "Current Catalogue"), which is one of the most important regulations under China's legal framework of foreign direct investment.

The Draft Catalogue includes a large number of policies that are applied in the China (Shanghai) Pilot Free Trade Zone in relation to foreign investment, aiming to lift the cap on foreign investment nationwide.

The Draft Catalogue maintains the basic framework of the Current Catalogue, by dividing the industrial sectors for foreign investment into three categories: Encouraged Sectors, Restricted Sectors and Prohibited Sectors.

The main highlights of these three categories are as follows:

<u>Encouraged Sectors</u>

The Draft Catalogue newly includes a few new sectors to the Encouraged Sectors and significantly relaxes foreign investment restrictions in the Encouraged Sectors, for example, it greatly reduces the number of sectors that are subject to foreign shareholding restriction.

The Encouraged Sectors newly open to 100% foreign ownership of the investment in various sub-sectors related to automobile electronics, technology for oil exploration, paper production, the manufacture of civil airplanes and vessels, the construction and operation of rail transit, and international maritime transport, accounting and auditing service, which means that foreign investors are permitted to set up Wholly Foreign Owned Enterprises (“WFOE”) to run business in the aforementioned sectors.

Encouraged Sectors may be privileged with exemption from tariff and import VAT for imported equipment. Also, they will be subject to the approval of lower level governmental authority compared to permitted sectors.

Restricted Sectors

The Draft Catalogue significantly reduces the number of Restricted Sectors. Foreign enterprises will be able to invest in the removed sectors once the Draft Catalogue takes effect.

The Draft Catalogue lifts the limitation on foreign shareholding proportion of the following sectors:

- Wholesale, retail, and distribution of plant oil, sugar and fertilizer; retail and distribution of grains and cotton (49% cap on foreign shareholding has been removed);
- E-Commerce (50% cap on foreign shareholding has been removed);

The Draft Catalogue removes the following sectors from the Restricted Sectors.:

- Mining of certain important non-metallic metals;
- Petroleum processing at a certain capacity;
- Manufacturing of various chemical raw materials and chemical products;
- Construction and management of luxury hotels, office buildings and international convention centers;
- Companies engaging in real estate secondary market trading and the real estate intermediary or brokerage business;
- Construction and management of large-scale theme parks and entertainment venues; and
- Performance brokerage agencies.

Prohibited Sectors

The Draft Catalogue also shortened the list of prohibited sectors and opened more industries to foreign investors. Sectors that have long been closed to foreign investors, such as the processing of green tea and other special tea with traditional Chinese techniques, are now open to foreign investment.

Date of issue: November 4, 2014. Deadline for soliciting public comments: December 3, 2014.

Notice of Ministry of Finance, State Administration of Taxation and China Securities Regulatory Commission concerning Enterprise Income Tax Exemption on Capital Gains from Domestic Share Transfer by QFII and RQFII (Caishui [2014] No.79) (财政部、国家税务总局、证监会关于 QFII 和 RQFII 取得中国境内的股票等权益性投资资产转让所得暂免征收企业所得税问题的通知)

On October 31, 2014, the Ministry of Finance (the "MoF"), the State Administration of Taxation (the "SAT") and the China Securities Regulatory Commission (the "CSRC") jointly released tax circular Caishui [2014] No. 79 ("Circular 79") in relation to the taxation of the Qualified Foreign Institutional Investor ("QFII") and the Renminbi Qualified Foreign Institutional Investor (RQFII).

QFII and RQFII are the foreign institutional investors qualified to invest in Renminbi ("RMB") denominated capital market (i.e. RMB denominated "A shares" listed in the Shanghai and Shenzhen Stock Exchanges).

The main highlights of Circular 79 are as follows:

- Starting November 17, 2014, the QFII and the RQFII generating capital gains from domestic share transfers, enterprise income tax (the "EIT") exemption shall apply. Capital gains generated by QFII and RQFII before November 17, 2014 are subject to EIT in accordance with the law.

- The above EIT exemption policy is applicable to QFII and RQFII which do not have an establishment or a place of business in China or whose capital gains mentioned above are not attributable to an establishment or a place of business in China.

Date of issue: October 31, 2014. Date of effectiveness: November 17, 2014.

Notice of Ministry of Finance, State Administration of Taxation and China Securities Regulatory Commission concerning Tax policies on the Shanghai-Hong Kong Stock Exchanges Link Pilot Program (Caishui [2014] No.81) (财政部、国家税务总局、证监会关于沪港股票市场交易互联互通机制试点有关税收政策的通知)

On October 31, 2014, MoF, SAT and CSRC jointly released tax circular Caishui [2014] No.81 ("Circular 81") to specify tax policies concerning the pilot program linking Shanghai and Hong Kong Stock Exchanges (the "Pilot Program"). The Pilot Program started functioning on November 17, 2014. These are the main highlights of Caishui 81:

- For mainland investors invest in shares that are listed in the Hong Kong Stock Exchange through the Pilot Program:

Nature of Investor	**Type of Income**	**Tax Policies**
Entity	Dividend	- EIT exemption for those derived from "H shares" held for at least 12 consecutive months.
	Capital Gain	- EIT subjection. - Business tax ("BT") exemption. - Stamp duty ("SD") in Hong Kong.
Individual	Dividend	- 20% individual income tax ("IIT").
	Capital Gain	- IIT exemption from November 17, 2014 to November 16, 2017. - BT exemption. - SD in Hong Kong.

- For Hong Kong investors of "A shares" that are listed in the Shanghai Stock Exchange through the Pilot Program:

Nature of Investor	**Type of Income**	**Tax Policies**
Entity	Dividend	- 10% EIT applies, unless the applicable tax treaty provides a lower rate.
	Capital Gain	- EIT exemption. - BT exemption. - 0.1% SD on the transaction value.
Individual	Dividend	- 10% IIT, unless the applicable tax treaty provides a lower rate.
	Capital Gain	- IIT exemption. - BT exemption. - 0.1% SD applies to the transaction value.

Date of issue: October 31, 2014. Date of effectiveness: November 17, 2014.

Announcement of State Administration of Taxation concerning the Enterprise Income Tax Annual Declaration Form (Type A, 2014 Version) (SAT Announcement [2014] No.63) (国家税务总局关于发布《中华人民共和国企业所得税年度纳税申报表（A 类，2014 年版）》的公告)

On November 3, 2014, SAT issued the 2014 version of the Enterprise Income Tax Annual Declaration Form (the "New Form"), which taxpayers will use for the EIT declaration on actual profit basis.

The current EIT Annual Declaration Form (the "Old Form") has been in force since 2008. After several amendments over the years, it currently includes a set of 28 forms. However, the rapid changes of EIT regulations and SAT's need to reinforce tax administration have made it lack of clarity and completeness.

The New Form includes a set of 41 forms. Taxpayers can choose to fill in the ones that are applicable to their particular circumstances. The New Form arranges important items into separate forms to breakdown the information.

Below is a comparison of the items of each form:

Item	New Form	Old Form
Enterprise basic information	1 form	1 form
EIT annual declaration form	1 form	1 form
Income and cost forms	5 forms	6 forms
Period expenses form (including sales, administrative and financial expenses)	1 form	None
Tax adjustments	15 forms	6 form
Carried-forward losses	1 form	1 form
Tax incentives	11 forms	11 forms
Tax credits on foreign-sourced income	4 forms	2 forms
Consolidated EIT declaration	2 forms	None

The New Form will come into effect on January 1, 2015, applicable to the EIT annual filing and settlement of tax year 2014. Taxpayers should get familiar with the New Form and be prepared for the upcoming annual EIT declaration.

Date of issue: November 3, 2014. Date of effectiveness: January 1, 2015.

Announcement of State Administration of Taxation concerning Enterprise Income Tax Policies on Accelerated Depreciation of Fixed Assets (SAT Announcement [2014] No.64) (国家税务总局关于固定资产加速折旧税收政策有关问题的公告)

Following the issuance of the tax circular Caishui [2014] No. 75 ("Circular 75") concerning tax policies on accelerated depreciation of fixed assets (see our Legal Flash of October 2014), on November 14, 2014, SAT issued Announcement [2014] No. 64 ("Announcement 64") to facilitate the implementation of these tax policies.

The main highlights of Announcement 64 are as follows:

- Circular 75 provides that enterprises conducting businesses in the six industries listed in the circular can shorten the depreciation period or adopt accelerated depreciation methods for the fixed assets purchased after January 1, 2014.

  Announcement 64 points out that the scope of these six industries shall be in accordance with the Classification and Code of National Economic Industries (GB/14754-2011), which is compiled by the National Bureau of Statistics.

  An enterprise is deemed to conduct businesses in one of the six industries if the income deriving from that activity accounts for over 50% of its total items of income as defined by Article 6 of the EIT Law.

- Announcement 64 clarifies that specialized instruments and equipment for development purposes mentioned in Circular 75 shall be those under the scope of the Administrative Measures (Trial) on Enterprises' R&D Expenses Deduction before Tax (Guoshuifa [2008] No.116) or the Administrative Guidelines for Determination of High and New Technology Enterprise (Guokefahuo [2008] No. 362).

- Announcement 64 clarifies that the accelerated depreciation methods (i.e. double-declining-balance method and sum-of-year-digits method) mentioned in Circular 75 shall be interpreted in line with the definition provided in the

Notice concerning EIT Treatment for Accelerated Depreciation of Fixed Assets (Guoshuifa [2009] No. 81).

Announcement 64 also sheds light for the coordinated interpretation and application of the tax policies provided in Circular 75 and other tax circulars in relation to accelerated depreciation items, and on the administrative and follow-up monitoring measures for the these policies.

Date of issue: November 14, 2014. Date of effectiveness: January 1, 2014.

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