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"We don't just meet our clients' expectations, we always try to exceed." - Linda He

"Status of perfection is just a point that is constantly moving in its specific context. Thus even a perfect man or company will still need to make endless efforts for improvement in order to stay at the top." - Richard Xu

ADMINISTRATIVE APPROVALS / 行政审批

State Council Further Reduced Its Approval Authorities over Investment Activities 国务院进一步取消和下放投资领域的行政审批项目

On May 15, 2013, the PRC State Council promulgated and implemented the *Decision on Cancellation and Delegation of Administrative Examination and Approval Authorities over A Number of Items (Guo Fa [2013] No. 19)*, pursuant to which some 71 and 20 items previously requiring PRC government authorities' examinations and approvals are cancelled or delegated to lower level administrative organs from central ministries. In particular, approximately 25 items that related to the fixed-asset investments of great significance or in the restricted areas but without the

need of governmental funding as provided in the *Decision of the State Council on Reforming the Investment System (Guo Fa [2004] No. 20)* will no longer require approvals by NDRC's central or local offices.

In foreign investment fields, such review and approval requirements as those on foreign-invested commercial performances and Sino-foreign cooperative schools respectively by the Ministry of Culture and the Ministry of Education are also cancelled.

国务院于2013年5月15日发布并实施了《国务院关于取消和下放一批行政审批

项目等事项的决定》（国发[2013]19号）。

根据该《决定》取消和下放的行政审批项目分别为71项和20项，其中发改委主管的投资审批项目约25项，主要涉及《国务院关于投资体制改革的决定》（国发[2004]20号）中不使用政府性资金投资建设的重大和限制类固定资产投资项目。

此外，此次取消的行政审批项目中涉及外商投资领域的主要包括取消了文化部对外商投资营业性演出以及教育部对中外合作办学的审批权限。

REGIONAL INDUSTRIAL POLICY / 区域性产业政策

NDRC and MOFCOM Amended Catalogue for Priority Foreign Investments in Central and Western China 发改委、商务部发布《中西部地区外商投资优势产业目录（2013修订）》

On May 9, 2013, NDRC and MOFCOM jointly promulgated the *Catalogue of Priority Industries for Foreign Investment in the Central and Western Regions (Revised in 2013)* (the "Regional Catalogue") which will take effect as of June 10, 2013.

Some highlights of the Regional Catalogue include, among others, (i) more industries welcome foreign investments in central and western China - There are approximately 500 entries in the Regional Catalogue now with some 173 new items added into this round of amendments. To attract more foreign investments in inland China, for instance, manufacture of automobiles is introduced in the Regional Catalogue while it is no longer encouraged by the *Foreign Investment Industrial Guidance Catalogue (Revised in 2011)*, a general guideline for foreign investments across the whole country (the "National Catalogue"); (ii) the qualification requirements for investments enjoying preferential policies are further clarified or tightened up - For example, more detailed technological specifications are required to get qualified for the

encouraged investments in manufacture of automobile parts and components in central and western China; and (iii) the geographical cover of the Regional Catalogue is enlarged - The Regional Catalogue has now also included the whole Hainan Island in the central and western region by listing such investment projects fitting the local circumstances and conditions as manufacturing of cruises, deep-water marine engineering equipment, and development, operation and construction of ancillary facilities for ocean and non-reserved rainforest eco-tourism projects as the priority industries.

Both the Regional Catalogue and the National Catalogue will apply when foreign investors invest in central and western China. But foreign investments falling under the Regional Catalogue will enjoy preferential treatments that might not be available under the National Catalogue.

2013年5月9日，国家发改委和商务部公布了《中西部地区外商投资优势产业目录（2013年修订）》（“《中西部目录》”或“新目录”），自2013年6月10日起实施。

《中西部目录》此次修订的亮点包括：(i)增加了中西部鼓励外商投资的项目。此次列入新目录的条目共计500条，比原目录增加了173条。比如为支持中西部地区发展，《外商投资产业指导目录（2011年修订）》（“《产业指导目录》”）下不再列为鼓励类条目的“汽车整车制造”被放到了《中西部目录》，继续作为中西部各省鼓励外商投资的项目；(ii)对一些具体行业或产业享受鼓励政策的投资项目提出了更高的要求。比如对于“汽车零部件制造”，新目录在零部件种类的基础上提出了具体的技术指标要求；以及(iii)扩大了目录涵盖的地域范围，首次将海南省纳入《中西部目录》，并将符合该省发展实际情况的邮轮制造、深水海洋工程设备制造以及海洋、非自然保护区的热带雨林生态旅游资源的开发、经营及其配套设施建设等项目作为鼓励外商投资的项目。

《中西部目录》与《产业指导目录》在外商投资中西部地区时同时适用。一般而言，《中西部目录》会在《产业指导目录》的基础上，对《产业指导目录》下部分允许类甚至限制类的项目有所放宽。列入《中西部目录》的外商投资项目，将享受外商投资鼓励类项目的优惠政策。

FOREIGN EXCHANGE / 外汇

SAFE Simplified Procedures for Foreign Debt Registrations 外汇局简化外债登记手续

On May 13, 2013, the *Administrative Measures for Registration of Foreign Debts* and the accompanying *Implementing Guidelines on the Administration of Foreign Debt Registrations* of SAFE came into effect, pursuant to which the administrative formalities of foreign debt registrations are significantly simplified.

Except for the foreign exchange (or forex) registration procedures

associated with the formation (i.e., registration for the execution of a foreign debt contract), change and termination of a foreign debt that are still subject to SAFE's prior review and verification on a case-by-case basis, such other foreign-debt related matters as opening up or closure of a foreign debt account, withdrawal of foreign debts, forex settlement, and repayment of foreign debt principal and interests will be processed by designated commercial banks directly.

2013年5月13日，国家外汇管理局（“外汇局”）发布的《外债登记管理办法》及《外债登记管理操作指引》开始实施，外债登记的管理手续籍此得以大幅简化，实现了由核准为主向登记为主的转变。

除外债签约登记、变更登记、注销登记仍需主管外汇局逐笔审核外，外债账户的开立、关闭、外债提款、资金结汇、还本付息等事项改由外汇指定的银行直接审核办理。

SAFE Further Clarified Foreign Exchange Rules for FDIs 外汇局进一步明确有关外国投资者境内直接投资的外汇管理规定

The *Provisions on the Administration of Foreign Exchange in Foreign Direct Investments* and the ancillary documents thereof (together, the “Provisions”) of SAFE also took effect as of May 13, 2013. The Provisions further specified and clarified various forex matters for FDIs, pursuant to which the case-by-case SAFE review and approval requirements for settlement of forex capital accounts are no longer required and will also be directly processed by designated banks based on the applicants' information registered with the competent SAFE offices. This signifies the general establishment of a registration-oriented forex policy framework (as opposed to the previous

approval- or verification-oriented system) for FDIs.

Furthermore, in order to curb inflow of international hot money betting on RMB's continuous appreciation, SAFE recently released the *Circular on Issues Concerning Intensification of the Administration of Foreign Exchange Inflows*, requiring commercial banks to handle forex settlement and sale businesses integrally based on genuine trade/investment activities, which somehow may also affect the relevant bank's business of “onshore security-backed offshore loans” (or *Nei Bao Wai Dai*/内保外贷).

自2013年5月13日起实施的外汇管理新

规还包括《外国投资者境内直接投资外汇管理规定》及其配套文件。该规定及配套文件进一步规范和明确了外国投资者境内直接投资（FDI）的外汇管理事宜，将原有外汇管理制度下外汇资本金逐笔审核、逐笔结汇的操作流程改为由外汇局及其分支机构办理外汇登记，并由银行依据外汇局的登记信息直接办理相关业务。至此，FDI外汇管理以登记为主的政策框架基本形成。

此外，为防范热钱流入，外汇局还于近期发布了《关于加强外汇资金流入管理有关问题的通知》，要求商业银行对结售汇启动综合头寸管理。在目前人民币持续升值的背景下，外汇局此举将限制脱离真实贸易与项目投资背景的热钱流入，在一定程度上可能会对有关银行的“内保外贷”业务造成影响。

TAXATION / 税收

SAT Clarified EIT Issues for Cross-Border Employee Secondment Arrangements 国税总局进一步明确非居民企业派遣人员在中国境内提供劳务的企业所得税问题

Starting from June 1, 2013, the *Announcement on Issues Concerning Enterprise Income Tax on Labor Services Provided by Persons Dispatched by Non-Resident Enterprises in China* (the “Announcement”) of the State Administration of Taxation (or SAT) takes effect.

The Announcement provided tests to determine whether the seconded person(s) of any non-resident foreign entity would be deemed a taxable presence in China, thus subject such foreign entity to the PRC enterprise income tax (or EIT) payments. Before the promulgation of this Announcement, SAT only set out tests for determining taxable presence where the home country of the dispatching entity has entered into bilateral tax treaties with China and the host Chinese entity is a subsidiary of the dispatching entity. Due in part to the lack of unified test rules and the

unfamiliarity of the PRC local tax bureaus with the tax treaties, the foreign entities under cross-border secondment arrangements reportedly were often levied on the EIT at 25%, the business tax and etc. based on ratified incomes from China in most cases on the assumption that the taxable presence had been established. The Announcement has now provided unified tests that would be applied to all kinds of cross-border secondment arrangements.

According to the Announcement, factors that will help determine the dispatching entity's EIT exposure in China include: first, the fundamental factors, i.e., whether the dispatching entity bears all or part of the responsibilities and risks of the dispatched persons' works (under tax treaty circumstances, to determine whether a taxable permanent establishment is created, it should also be taken into consideration that

whether the work place of the dispatched persons is relatively fixed and permanent); and second, the referential factors, such as the nature of the payment from the host entity to the dispatching entity, whether the payment from the host entity exceeds the actual costs incurred by the dispatching entity for the seconded person, whether the seconded person fully paid his/her individual income tax for salaries and remunerations in China, among others, to help assess whether the dispatching entity has gained profits from China through such secondment arrangement. If the answers to the above two tests are all “yes”, then a taxable presence would usually be deemed to have established. However, the dispatching entity will not be subject to any EIT obligation in China if the seconded person works solely for the purpose of exercising the dispatching entity's shareholder's rights and protect its legitimate shareholder's interests.

Base on the above, foreign entities should probably carry out tax planning in a more careful way from now on before sending anyone to work in China, and have all relevant documents properly prepared and maintained so that the associated PRC tax risks could be effectively managed.

2013年6月1日, 国家税务总局(“国税总局”)公告2013年第19号——《关于非居民企业派遣人员在中国境内提供劳务征收企业所得税有关问题的公告》(“《公告》”)开始实施。

《公告》明确了非居民企业(“派遣企业”)向中国境内企业(“接收企业”)派遣人员, 在何种情况下将会被认为在中国境内设立了机构、场所(或常设机构), 从而负有向中国税务主管机关缴纳企业所得税的义务。《公告》

实施前, 国税总局只就派遣企业是与中 国签订了税收协定的国家或地区的税收居民, 并且接收企业是其在华子公司的 人员派遣行为是否构成常设机构的情形 提供过判定标准, 但由于一些地方税务 部门并不熟悉税收协定以及缺乏统一适 用的参考依据等原因, 跨境人员派遣安 排经常会被认为在事实上构成非居民企 业在中国境内设立的机构、场所或者常 设机构, 并被税务机关以核定利润的方 式征收25%的企业所得税以及营业税等 其他税费。现《公告》提供了可以适用 于所有跨境劳务派遣安排的所得税判定 依据。

根据《公告》, 判定非居民企业派遣人 员在中国境内提供劳务是否构成机构、 场所(对于税收协定缔约对方企业而 言, 是否构成常设机构)的因素主要包 括两个方面: 一是基本判定因素, 即, 派遣人员工作结果的全部或部分责任和

风险是否由派遣企业承担(对于税收协 定缔约对方企业而言, 是否构成常设机 构还要看派遣人员提供劳务的机构、场 所是否具有相对的固定性和持久性); 二是参考判定因素, 主要是从接收企业 向派遣企业支付款项的情况, 包括款项 的性质、款项金额是否超过派遣企业因 派遣人员而实际发生的费用、被派遣人 员的工资、薪金是否在中国全额缴纳个 人所得税等方面, 考察派遣企业是否因 此取得了来源于中国境内的所得。如果 答案均为肯定, 则派遣企业通常将会被 认定为在中国境内设立了机构、场所或 常设机构。但派遣企业仅为在接收企业 行使股东权利、保障自身合法股东权益 而派遣人员的除外。

据此, 非居民企业今后向驻华企业派遣 人员应有必要进行更有效的税收筹划, 并制备相应的文件资料, 以防范不利的 税务风险。

DISPUTE RESOLUTION / 争议解决

Former CIETAC Shanghai and Shenzhen Chapters Re-Instituted and Adopted New Arbitration Rules CIETAC原上海、华南分会更名并启用新的仲裁规则

The former Shanghai chapter and South China chapter (located in Shenzhen) of the China International Economic and Trade Arbitration Commission (or CIETAC) recently changed their names to the Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center (“SHIAC”) and the South China International Economic and Trade Arbitration Commission/Shenzhen Court of International Arbitration (“SCIA”), respectively. Both SHIAC and SCIA have adopted their own arbitration rules and panel of arbitrators as well. This has generally completed the separation process for CIETAC’s Shanghai and South China chapters from their Beijing headquarters and indicated the formal institution of two new PRC arbitration agencies.

SHIAC and SCIA also announced respectively that they will continue to

accept and hear cases agreed by the parties to arbitrate before the previous CIETAC Shanghai chapter or South China chapter as the case may be. In contrast, CIETAC Beijing headquarters argued that in such cases, the parties should still submit the disputes to its Secretariat in Beijing so that the latter will further allocate the cases for arbitration in Shanghai or Shenzhen and manage the process in an integrated and more smoothly way. It is noteworthy though that according to applicable PRC arbitration laws and regulations, the arbitration agreement would be deemed void if the parties fail to spell out a clearly designated and sole arbitration tribunal. Therefore, due attention should be paid by the parties going forward when they intend to use any previous CIETAC chapter other than its Beijing headquarters so that no confusion or dispute will be made on which arbitration tribunal has indeed be agreed.

中国国际经济贸易仲裁委员会 (CIETAC) 原上海分会和华南分会近期已分别更名为“上海国际经济贸易仲裁委员会/上海国际仲裁中心”和“华南国际经济贸易仲裁委员会/深圳国际仲裁院”, 并各自启用新版的《仲裁规则》和《仲裁员名单》。这基本上意味着 CIETAC 上海和华南分会已经正式自立门户, 不再和 CIETAC 有任何组织关系。

上海国际仲裁中心和深圳国际仲裁院分别宣布, 将受理当事人约定由 CIETAC 上海分会或华南分会仲裁的案件, 而 CIETAC 则表示, 当事人约定将争议提交其上海分会或华南分会仲裁的, 应将申请提交至 CIETAC 北京总部, 由其秘书局统一受理和管理, 并安排在上海或深圳进行仲裁。需要注意的是, 根据中国现行仲裁法, 如果根据仲裁协议不能确定明确且唯一的仲裁机构, 当事人事后又无法达成一致意见的, 仲裁约定无效。鉴于此, 交易当事方应注意区分仲裁机构的名称, 并在订立合同时予以明确, 以避免日后不必要的纠纷。

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