



China Regulatory Updates

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- ▶ Standardization
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- ▶ Simplicity, but always with a focus on key points and attention to details

Our Values

- ▶ Professionalism
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- ▶ Constant Self-Improvement Towards Perfection



■ FOREIGN INVESTMENT / 外商投资

Provisions on Cross-Border RMB Direct Investment Formally Takes Effect

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Ten PRC Central Government Ministries and Commissions Jointly Issue Circular to Promote Globalization of Strategic Emerging Industries

十部委发文促进战略性新兴产业国际化

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FOREIGN INVESTMENT / 外商投资

Provisions on Cross-Border RMB Direct Investment Formally Takes Effect

跨境人民币直接投资相关规定正式开始实施

MOFCOM and PBOC recently promulgated the *Circular on Relevant Issues Concerning Cross-Border RMB Direct Investment* (the "Circular") and the *Administrative Measures for RMB Settlement for Foreign Direct Investment* (the "Measures") respectively, both became effective as of the date of promulgation, which indicate the formal launch of the cross-border RMB direct investment business.

MOFCOM previously issued a draft circular to solicit public opinions on cross-border RMB direct investment (the "Draft") (please refer to our September 2011 issue of *China Regulatory Updates* for details). Compared with the Draft, the Circular generally remains unchanged in all material aspects, except for two notable changes which lifted some restrictions on the investment scope of cross-border RMB direct investment, namely, (i) the Circular expressly permits foreign investors to purchase shares of domestic listed companies through private placement or contractual arrangement with their RMB proceeds legally obtained offshore pursuant to the *Administrative Measures for Strategic Investment in Listed Companies by Foreign Investors*, as an exception to the provision that cross-border RMB direct investment "may not directly or indirectly invest in marketable securities or financial derivatives"; and (ii) the Circular has lifted the restriction in the Draft that cross-border RMB direct investment may not be used for repayment of loans (extending entrusted loans is still prohibited though).

The PBOC Measures provided rather comprehensive provisions on RMB settlement business for foreign direct investment and expanded the pilot practice thereof to all-round implementation (please refer to our July 2011 issue of *China Regulatory Updates* for introduction of the pilot practice). According to the Measures, subject to applicable PRC laws and regulations, foreign investors may directly apply to relevant banks for RMB settlement when intending to invest in China with RMB funds and the banks may directly handle RMB funds settlement pursuant to relevant provisions. The applicable financial service formalities will become more convenient.

It is noteworthy that the parties involved in cross-border RMB direct investment are required by the Measures to open special deposit accounts based on the proposed different usages of RMB funds, and banks are required to examine the usage of RMB registered capital and RMB loans of foreign invested enterprises or FIEs from the truthfulness and compliance perspectives (e.g., banks may request FIEs to provide payment orders, certificates of capital usage and etc.). FIEs may only use their RMB registered capital and RMB loans within their specified business scope. In addition, the Measures provided that RMB and foreign exchange loans borrowed by FIEs from their foreign shareholders, affiliates

商务部和中国人民银行于近日先后发布了《关于跨境人民币直接投资有关问题的通知》(“《通知》”)和《外商直接投资人民币结算业务管理办法》(“《办法》”),正式开放跨境人民币直接投资业务。《通知》和《办法》均自发布之日起开始施行。

商务部此前曾就跨境人民币直投发布征求意见稿(请参见本所2011年9月期的《中国法律更新》)。与征求意见稿相比,《通知》的主要内容并未发生重大变化,主要的改动在于放宽了跨境人民币直接投资的投资范围限制,即:(i)明确允许外国投资者以其合法获得的境外人民币,按照《外国投资者对上市公司战略投资管理办法》的规定参与境内上市公司定向发行和协议转让股票,作为“不得直接或间接用于投资有价证券和金融衍生品”的例外情况;(ii)取消了征求意见稿中关于跨境人民币直接投资不得用于偿还国内外贷款的限制(但仍然不得用于发放委托贷款)。

央行发布的《办法》则将外商直接投资人民币结算业务从此前的个案试点阶段(相关介绍请参见本所2011年7月期的《中国法律更新》)扩大到了全面实施阶段,并对外商直接投资人民币结算业务作出了系统性的规定。根据《办法》,外国投资者以人民币来华投资,在遵守中国相关法律规定的前提下,可以直接向银行申请办理人民币结算业务,银行则可以按照相关规定直接办理相关人民币资金结算业务,相关金融服务的手续将更加便利。

值得注意的是,《办法》要求跨境人民币直接投资的相关当事方根据人民币资金的不同用途开立专用存款账户,且银行对于外商投资企业人民币注册资本和借款资金使用的真实性和合规性负有审查义务(比如应要求企业提供支付命令函、资金用途证明等材料)——外商投资企业可能只能将人民币注册资本和借款资金用于其经营范围明确记载的业务。此外,《办法》还明确规定,外商投资企业向其境外股东、集团

within a group and offshore financial institutions should all be calculated into the total debt amount.

内关联企业和境外金融机构的人民币借款和外汇借款应当合并计算总规模。

TAX / 税收

Shanghai Tests Pilot Scheme of Replacing Business Tax by Value Added Tax, Facilitating Development of Modern Service Industry

上海将率先进行营业税改增值税试点，促进现代服务业的发展

In order to further address the double taxation existing in the commodity and service tax system, improve China's tax regime and support the development of modern service industry, the State Council made a statement at a recent executive meeting that, starting from January 1, 2012, the pilot reform of the value added tax or VAT system will be implemented in selected regions and industries, and the business tax currently applicable to certain industries will be gradually replaced by VAT. Specifically, (i) the pilot reform will first be tried in the transportation and certain modern service industries in Shanghai, and, when conditions are ready, the pilot program in selected industries will be expanded to the whole nation; (ii) two even lower VAT rates of 11% and 6% will be introduced in addition to the existing standard VAT rate of 17% and lower rate of 13%; and (iii) during the pilot reform, where business tax is replaced by VAT, the relevant tax income should still belong to the pilot place, and the original preferential business tax policy applied in the pilot industries may continue to be effective with proper adjustments be made according to the VAT features. VAT paid by taxpayers that are qualified under the pilot reform is deductible according to relevant rules. Shanghai is expected to issue detailed implementing rules in the near future.

Business tax has been viewed as a big obstacle in the tax regime that restricts the development of service industry (currently the whole service industry is subject to business tax), which leads to double taxation and other problems. The initiation of the VAT pilot reform will likely to put an end to such obstacle and facilitate the development of modern service industry.

为解决货物和劳务税制中的重复征税问题，进一步完善税收制度，支持现代服务业的发展，国务院在近日召开的常务会议上决定，从2012年1月1日起，在部分地区和行业开展深化增值税制度改革试点，逐步将目前征收营业税的行业改为征收增值税：(i) 在上海市交通运输业和部分现代服务业等领域率先展开试点，条件成熟时可选择部分行业在全国范围进行试点；(ii) 在现行增值税17%的标准税率和13%的低税率的基础上，新增11%和6%两档更低的税率；(iii) 试点期间原归属试点地区的营业税收入，改征增值税后收入仍归属试点地区，试点行业原营业税优惠政策可以延续，并根据增值税的特点进行调整。纳入改革试点的纳税人所缴纳的增值税可按规定抵扣。估计上海应该会在近期出台具体的细则。

营业税一直被视为是限制服务业发展的一个重要制度障碍（目前服务业均征收营业税），造成了重复征税等诸多问题。此次增值税改革试点的启动，将有望扫除服务业发展的重要障碍之一，促进现代服务业的发展。

INDUSTRIAL POLICY / 产业政策

Ten PRC Central Government Ministries and Commissions Jointly Issue Circular to Promote Globalization of Strategic Emerging Industries

十部委发文促进战略性新兴产业国际化

Some ten ministries and commissions of the PRC central government including MOFCOM, NDRC and the Ministry of Industry and Information Technology recently jointly issued the *Guiding Opinions on Promoting the Globalization of Strategic Emerging Industries* (Shang Chan Fa [2011] No. 310, the "Opinions"), with an aim to upgrade industrial development, realize innovative development and provide favorable policies and

商务部、发改委、工信部等10部委于近日联合出台《关于促进战略性新兴产业国际化的指导意见》（商产发〔2011〕310号，“意见”），旨在提升产业发展层次、实现创新发展，为战略性新兴产业的发展提供良好的政策法规环境。

regulations for the development of strategic emerging industries.

According to the Opinions, seven emerging industries of strategic significance, i.e., energy saving and environmental protection, new energy, new generation of information technology, biology, high-end equipment manufacturing, new materials and new energy vehicles, will be the focus of the “going global” strategy. The Opinions emphasized the importance of effective utilization of global innovation resources, improvement of the innovation capability of strategic emerging industries, innovation of the mode of utilizing foreign investment and promotion of the development of overseas investment. On innovation of the mode of utilizing foreign investment and promotion of the development of overseas investment, the Opinions encouraged foreign investment in strategic emerging industries and venture capital investment enterprises and urged further simplification of the approval procedures for overseas investment of enterprises.

根据《意见》，节能环保产业、新能源产业、新一代信息技术产业、生物产业、高端装备制造产业、新材料产业、新能源汽车产业等七大战略性新兴产业将成为产业国际化的重点推进对象。《意见》强调了利用全球创新资源，提升产业创新能力，创新利用外资方式，促进对外投资发展等多方面的内容。在创新利用外资方式、促进对外投资发展方面，《意见》特别强调了应鼓励外商投资战略性新兴产业和外商投资设立创业投资企业，简化企业境外投资审批程序等事项。

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

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