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Measures on Administration of the Overseas Investment (Exposure Draft)

境外投资管理办法 征求意见稿

Issued By **The Ministry of Commerce**
Subject **Registration of Overseas Investment by Chinese Enterprises**
Promulgated on **January 7th 2009**
Source <http://www.mofcom.gov.cn>

On January 7, the Ministry of Commerce, which is China's regulatory organ for overseas Investment, published an exposure draft of the Measures on Administration of the Overseas Investment (hereafter as Exposure Draft). This is deemed as China's most recent attempt to strengthen controls on overseas investment. By unifying and updating its regulations on cross-border investment by domestic enterprises, China increases the intensity of monitoring over overseas investments during a time of a dramatic financial crisis.

Before the promulgation of the Exposure Draft, China's governing regulations on cross-border investment by domestic enterprises are Provisions on the Examination and Approval of Investment to Run Enterprises Abroad and Provisions on Particulars to Be Ratified for Inland Enterprises to Invest in Hong Kong or Macao Special Administrative Region to Establish New Enterprises.

Compared with these two regulations, the new Exposure Draft makes major changes in the following aspects:

1. Conditions under which overseas investments shall be subject to the examinations and approvals of the Ministry of Commerce are (Article 6 of the Exposure Draft):
 - a) Investment in countries with which China does not have diplomatic relations;
 - b) Investment in countries (or territories) which have high risk of security;
 - c) The amount of investment by the Chinese party amounts to 100 million US dollar above;
 - d) Investment in cross-border infrastructure projects;
 - e) Setting up SPV.
2. Conditions under which local enterprises shall apply to the provincial competent commerce authorities for examinations and approvals are (Article 7 of the Exposure Draft):
 - a) The amount of investment by the Chinese party amounts to 10 million US dollars or above, but less than 100 million US dollars;

- Investment in countries with which China do not have diplomatic relations;
- b) Investment in the fields of energy and mineral resources;
 - c) Investment in commodity cities;
 - d) Investment in development of real estate.
3. The conducts of Chinese investors abroad are regulated in the Exposure Draft e.g. in the following way:
- a) Before the examination and approval on an abroad investment by the Ministry of Commerce or the provincial competent commerce authorities, Chinese enterprises shall not sign any legally binding documents with other parties.
 - b) The name of enterprises abroad shall conform to the respective laws and regulations, and no enterprise may be titled with words such as "China (Zhong Guo)", "Chinese (Zhong Hua)", "National (Guo Jia)", etc., without permissions of the competent authorities.
 - c) Investors are responsible for their abroad enterprises' registrations at China's economic and commercial institutions based abroad.
 - d) Investors are responsible for its abroad enterprises' reports of business conditions and statistics to the Ministry of Commerce and the provincial competent commerce authorities.
4. In the case of an overseas investment, China's foreign-invested enterprises are treated equal to their counterparts who are funded merely by domestic investors.
- According to Article 12 of the abovementioned Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, a foreign-invested enterprise, which makes an investment into an enterprise abroad, shall abide the relevant laws and regulations. They shall be subject to the examination and approval of the provincial commerce administrative department or superior authority. Among the said foreign-invested enterprises, those established upon approval of the Ministry of Commerce shall be subject to the examination and approval of the Ministry of Commerce before they make an investment into an enterprise abroad, the others shall be subject to the examination and approval of the provincial commerce administrative departments before such investment. The *Exposure Draft* deletes these regulations, which are only applicable to foreign-invested enterprises.

Notice of the Ministry of Finance and the State Administration of Taxation on Some Issues Concerning the Collection of Real Estate Tax on Foreign-funded Enterprises and Individuals

财政部国家税务总局关于对外资企业及外籍个人征收房产税有关问题的通知

Issued By **The Ministry of Finance and the State Administration of Taxation**
Subject **Real Estate Tax**
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Source <http://www.chinatax.gov.cn>

On December 31st 2008, Premier Wen Jiabao signed the No. 546 Order of the State Council of the People's Republic of China to abolish the Provisional Regulations Governing the Urban Real Estate Tax (hereafter: the Old Provision), which was promulgated on August 8, 1951. As a result, from January 1, 2009, foreign-invested enterprises, foreign enterprises and foreign individuals shall pay real estate tax according to Provisional Regulations of the People's Republic of China on Real Estate Tax.

In 1986, China published the Provisional Regulations of the People's Republic of China on Real Estate Tax and started to levy real estate tax. Before the abolishment of the abovementioned Old Provision, foreign enterprises and individuals were only responsible for the payment of urban real estate tax for their houses in cities, while real estate tax is levied to the houses of domestic taxpayers not only in cities but also towns in the countryside, townships and industrial or mining areas. In addition, the real estate owned by foreign enterprises and individuals for non-business purposes had been exempted from paying the urban real estate tax. In practice, only several provinces and cities imposed urban real estate tax on foreign enterprises and individuals.

These different tax regimes resulted in the different tax rates applicable for domestic and foreign tax payers. In case of house lease, the tax shall be levied on the basis of 12% of the annual rental under Provisional Regulations of the People's Republic of China on Real Estate Tax, while the tax rate for house lease is 18% according to the Old Provision. It is quite obvious that tax burden on foreign enterprises and individuals is higher than tax burden on domestic tax payers and the foreigner will not profit from the same or preferred tax treatment as required by the National Treatment Principle.

To provide a fair tax system for both domestic and foreign tax payers, the Ministry of Finance and the State Administration of Taxation jointly implemented and promulgated the Notice of the Ministry of Finance and the State Administration of Taxation on Some Issues Concerning the Collection of Real Estate Tax on Foreign-funded Enterprises and Individuals (hereafter: the Notice) to clarify certain issues involving collections of real estate tax on foreign tax payers. The major content of the Notice are as follows:

1. The levying scope, the basis for the calculation of tax, tax rate, preferential tax treatments and management of tax collection shall be implemented according to Provisional Regulations of the People's Republic of China on Real Estate Tax.
2. Where a taxpayer chooses a currency other than RMB as their recording currency, it (he) shall convert it into RMB according to the exchange rate of the last day of the month preceding the day of payment.
3. The collectors for the real estate tax are local taxation authorities.

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