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1. National

Circular on Foreign Exchange Administration of the Financing of Domestic Residents Through Special Purpose Company and the Backtracking Investment

关于境内居民通过境外特殊目的公司融资及返程投资外汇管理有关问题的通知

【Issued by】 State Administration of Foreign Exchange

【Subject】 Foreign Exchange

【Promulgated on】 October 21st 2005

【Effective from】 November 1st 2005

【Source】 <http://www.safe.gov.cn/>

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- COMPETITION LAW AND INTELLECTUAL PROPERTY LAW
- TAX

In order to encourage and promote the development of the non-public economy, further perfect the policy-supporting system for venture investments and regulate the trans-boundary transactions with regard to the investment and financing through special purpose company by domestic residents, the State Administration of Foreign Exchange released this Circular on October 21, 2005.

The Circular specifies that domestic residents (natural person and legal person) may establish a special purpose company as the financing platform from abroad. Domestic residents may choose to participate in the equity financing activities of the international capital markets and make lawful use of the foreign financial capitals to help the development of the enterprise.

It also elaborates the administrative registration procedure of the establishment of the special purpose company abroad and the backtracking investment. According to the Circular, as long as the special purpose company has applied for the foreign exchange registration or alteration registration of the investments abroad, the backtracking invested enterprises may file to the foreign exchange administration authority for the foreign exchange procedures with regard to foreign invested enterprises and carry out such activities as the remittance of funds in accordance with the relevant regulations.

The Circular will take effect since November 1, 2005. Circular Concerning Relevant Issues on Improving Foreign Exchange Administration for Merger and Acquisition with Foreign Investments and Circular on the Relevant Issues of Registration of Overseas Investments Contributed by Domestic Individual Residents and Foreign Exchange Registration of Merger or Acquisition with Foreign Investments will be invalidated simultaneously.

Circular Concerning Relevant Issues on Improving the Administration of Foreign Debts

关于完善外债管理有关问题的通知

【 Issued by 】 State Administration of Foreign Exchange

【 Subject 】 Foreign Exchange

【 Promulgated on 】 October 21st 2005

【 Effective from 】 November 1st 2005

【 Source 】 <http://www.safe.gov.cn/>

In order to encourage the enterprises within Chinese's territory to utilize the overseas investment and improve the administration of foreign loans, China's foreign exchange regulator, the State Administration of Foreign Exchange released this Circular on October 21, 2005.

According to the Circular, the deferred import payment above (including) the amount of USD 200,000 and with the agreed or actual period of more than (including) 180 days shall fall under the administration of foreign debts registration and be subjected to the quota control which equals to 10% of the gross import income in the previous year.

According to the Circular, if a transnational corporation registered in China operates the fund in aggregate and utilizes onshore the funds assimilated from the affiliated companies abroad, the utilization shall be subjected to the administration of foreign debts.

The Circular adjusts the administration of the foreign security for the project of foreign loans by transforming it from the registration one by one by the debtor to the periodical registration by the creditor. The foreign debt registration shall be based on the performed amounts instead of the contracted amounts.

Moreover, the Circular also makes the modifications on the administration of the loans by the special foreign invested enterprises.

Just as what the spokesman of the State Administration of Foreign Exchange said, the new policy of the Circular is expected to help the defense of the national economic and financial security.

Circular Concerning Relevant Issues on the Income Tax of the Internal Disposition of Assets by Foreign Invested Enterprises

关于外商投资企业内部处置资产有关所得税处理问题的通知

【 Issued by 】 State Administration of Taxation

【 Subject 】 Income Tax

【 Promulgated on 】 October 14th 2005

【 Effective from 】 October 14th 2005

【 Source 】 <http://www.chinatax.gov.cn/>

The State Administration of Taxation announced this Circular on October 14, 2005 that the internal disposition of assets (including the assets purchased from others or manufactured by itself) by foreign invested enterprises may not be clarified as income, except that the assets are transferred abroad. The historical income of relevant assets may be calculated in succession.

In this Circular, it defines the internal disposition of assets as the disposition of the assets the title of which remains unchanged both in form and in essence. The Circular lists five cases as the typical examples of internal disposition, e.g. producing, manufacturing and processing another product with the assets, changing the shape, structure or performance of the assets, changing the purpose of the assets, etc.

According to the Circular, the prevailing regulations with regard to the arrangement for the circulating tax and other taxes of the internal disposition still remain unchanged.

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