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The Regulations on Foreign Exchange Administration of Overseas Direct Investment of Domestic Institutions

境内机构境外直接投资外汇管理规定

Issued By	The State Administration of Foreign Exchange
Subject	Foreign Exchange
Promulgated on	July 13th, 2009
Source	http://www.safe.gov.cn

In order to support the development of overseas direct investment of domestic institutions, promote the facilitation of investment, and speed the opening-up process of cross-border capital transactions in a healthy and orderly manner, SAFE recently issued the Regulations on Foreign Exchange Administration of Overseas Direct Investment of Domestic Institutions (hereinafter referred to as the Regulations), which will systematically straighten out the separate regulatory documents regarding overseas direct investment issued during recent years. The Regulations were formally promulgated on July 13, 2009, and entered into force on August 1, 2009.

Based on the integration of the foreign exchange administration policies and measures for overseas direct investment issued during the recent years, and in conjunction with the online operation of the foreign exchange management information system for direct investment of the SAFE, the Regulations streamline and standardize foreign exchange administration modes and procedures for overseas direct investment, mainly reflected in:

The Circular also specifies the identification of overseas Chinese and the application of additional deduction method. The term “overseas Chinese” refers to Chinese citizens living abroad. The details are as follows:

- I. The examination and verification procedures have been streamlined. The examination and verification of foreign exchange fund sources for the overseas direct investment have been altered from ex ante examination to ex post registration, whereas the approval of outward remittances of overseas direct investment funds have been cancelled.
- II. The sources of foreign exchange funds for overseas direct investment have been expanded. Domestic institutions can make overseas direct investments by use of various fund sources, such as domestic foreign exchange loans in line with the regulations, own foreign exchange funds, foreign exchange purchased with RMB, tangible or intangible assets and profits retained overseas.

- III. Domestic institutions are allowed to provide support for follow-up financing of enterprises under overseas direct investment by means of commercial loans and financing guarantees
- IV. SAFE's administration of outward remittances of overseas investment funds by domestic institutions has been adjusted from the previous examination and approval system to a registration system. Foreign exchange designated banks can handle the outward remittances of investment funds for domestic institutions after conducting authenticity examinations and verifications of the relevant documents presented by the domestic institutions.
- V. Domestic institutions are allowed to remit outward the preceding expenses up to a certain proportion of the total amount of investment at the preparatory stage prior to the formal establishment of their overseas projects after obtaining approval from SAFE.
- VI. Clear disposal methods and management principles have been provided for domestic institutions, which retain the profits made from their overseas direct investment abroad, have income from capital variations such as capital reductions, equity transfer and liquidation of overseas enterprises or remit the profits back to China.
- VII. A comprehensive foreign exchange administration system for overseas direct investment has been established. The foreign exchange administration and applicability of regulations of overseas direct investment of domestic financial institutions have been clarified and standardized.
- VIII. The statistical and monitoring mechanism for cross-border fund inflows and outflows under overseas direct investment has been improved and perfected.

The Regulations will help promote the standardization and systematization of foreign exchange administration of overseas direct investment and are conducive for domestic institutions to timely grasp investment opportunities and increase the efficiency of overseas direct investment. On the other hand, the Regulations will play an active role in further perfecting the statistics and monitoring of overseas direct investment and promoting the basic equilibrium in the balance of payments.

Notice of the State Administration of Taxation on Strengthening the Monitoring and Investigation of Transnational Affiliated Transactions

国家税务总局关于强化跨境关联交易监控和调查的通知

Issued By	State Administration of Taxation
Subject	Tax Collection and Administration
Promulgated on	July 6th 2009
Effective from	July 6th 2009
Source	http://www.chinatax.gov.cn

On July 6, the State Administration of Taxation issued a Notice on Strengthening the Monitoring and Investigation of Transnational Affiliated Transactions (hereinafter referred to as the Notice). The Notice aims at preventing overseas companies from shifting losses to their related-parties in China against the backdrop of the financial downturn.

The Notice underlines that companies set up in China by multinational companies shall not burden risks of marketing and decision-making incurred by the financial crisis, given that such companies operate for limited functions and risks of production, distribution and contractual research and development.

In addition, the Notice clarifies that, if the foregoing companies show losses, the companies should prepare the transfer pricing contemporaneous documentation and other relevant documents (such as transfer pricing report, transfer pricing policy and connected transaction contract) in the year when such losses incurred, regardless of whether the underlying transactions have exceeded the threshold for the transfer pricing contemporaneous documentation. The companies shall submit those documents to tax administrations prior to June 20 of the following year.

Moreover, pursuant to the Notice, local tax administrations shall heighten the supervision of cross-border and related party transactions as well as decide a reasonable transfer pricing method. Multinational companies who are committed to shifting their overseas losses (including potential losses) to China and diverting their profits to tax heavens via various vehicles will be subject to more supervision and investigations by local tax administrations.

The Notice demonstrates the Chinese tax administrations' confidence that they strengthen the enforcement of transfer pricing as well as protect the tax base. Importantly, multinational companies, especially the aforementioned companies, should balance all

facts of their related party transactions and maintain stable policies regarding their transfer pricing by taking into consideration China's legal policies.

The National Fitness Rule

全民健身条例

Issued By	The State Council
Subject	National Fitness
Promulgated on	August 30st, 2009
Effective from	August 1th 2009
Source	http://www.gov.cn

Chinese premier Wen Jiabao recently approved the promulgation of a National Fitness Rule. The Rule will take effect from October 1, 2009.

The purpose of the Rule, which is composed of 40 clauses, is to promote the carrying out of national fitness activities and protect the right of the public to join in these activities to improve their body fitness.

The Rule says that all Chinese citizens are entitled to join the national fitness activities and local governments at various levels should protect their rights in this respect.

The rule states that the State will conduct a survey on the general fitness of the public as well as the periodic national fitness activities. August 8 of each year will be the national fitness day when all sports facilities shall be open free of charge to the public.

The Rule says that no organization or individual shall charge a fee or set up a barrier to national fitness activities. Therefore, schools should open their sports facilities to students after class and during holidays and arrange at least one hour of sports activities for the students every day. In addition, government-run schools should try to open their sports facilities to the public, parks and other public replaces should arrange fitness venues based on their conditions and residential complexes should be equipped with a fitness area.

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