

外汇管理

国家外汇管理局于 2010 年 11 月 9 日发布汇发【2010】59 号文《关于加强外汇业务管理有关问题的通知》，规定：

- 加强对外商投资企业境外投资者出资的管理。若实际缴款人与外商投资企业的境外投资者不一致，外商投资企业委托会计师事务所向外汇局验资询证时，须提交经公证的相关代为出资证明。
- 加强对境内机构和个人设立境外特殊目的公司的管理，对违规企业和个人进行处罚。

国家外汇管理局于 2010 年 11 月 15 日发布建房[2010]186 号文《关于进一步规范境外机构和个人购房管理的通知》，规定

- 在境内设立分支、代表机构的境外机构只能在注册城市购买办公所需的非住宅房屋。境外个人在境内只能购买一套用于自住的住房。
- 境外机构和个人申请购房结汇，应当严格按照《关于规范房地产市场外汇管理有关问题的通知》（汇发[2006]47号）办理。

个人所得税

国家税务总局于 2010 年 12 月 14 日发布 2010 年第 27 号公告《关于股权转让所得个人所得税计税依据核定问题的公告》，规定：

- 自然人转让所投资企业股权（份）（以下简称股权转让）取得所得，按照公平交易价格计算并确定计税依据。计税依据明显偏低且无正当理由的，主管税务机关可采用本公告列举的方法核定。
- 符合下列情形之一且无正当理由的，可视为计税依据明显偏低：
 - ✓ 申报的股权转让价格低于初始投资成本或低于取得该股权所支付的价款及相关税费的；
 - ✓ 股权转让价格低于对应的净资产份额的；
 - ✓ 股权转让价格低于相同或类似条件下同类行业的企业股权转让价格的；
 - ✓ 经主管税务机关认定的其他情形。
- 对申报的计税依据明显偏低且无正当理由的，可采取以下核定方法：
 - ✓ 参照每股净资产或纳税人享有的股权比例所对应的净资产份额核定股权转让收入。
 - ✓ 参照相同或类似条件下同一企业同一股东或其他股东股权转让价格核定股权转让收入。
 - ✓ 参照相同或类似条件下同类行业的企业股权转让价格核定股权转让收入。

Foreign Exchange Administration

State Administration of Foreign Exchange (SAFE) issued Circular on Some Issues regarding Foreign Exchange Administration (HuiFa [2010] No.59) on Nov. 9, 2010, stipulating that:

- Regulatory authorities shall tighten administration of registered capital contribution of foreign investors of foreign-invested enterprises. If the real capital contributor is not the foreign investor of a FIE, the FIE should provide notarized certificate of capital contribution on investor's behalf, when it engages CPA firm to conduct capital verification at SAFE.
- The authorities shall enhance the administration of offshore enterprises established with special purpose by inshore institutions and individuals, and impose punishment on those enterprises and individuals who have any breach of relevant laws and regulations.

SAFE issued Circular on Further Standardizing Administration on Foreign Institutions and Individuals Purchasing Properties in China (JianFang [2010] No.186) on Nov. 15, 2010, stipulating that:

- Foreign institutions that have branch or representative office in China are only permitted to buy properties used for business places in cities where they are registered. Foreign individuals living in China are allowed to buy only one residence for their living purpose.
- When handling exchange settlement for purchase of properties, foreign institutions and individuals should strictly abide by *Circular on Standardizing Administration of Foreign Exchange of Real Estate Market* (HuiFa [2006] No.47).

Individual Income Tax

State Administration of Tax issued Announcement on Recognition of Taxation Basis of Individual Income Tax on Proceeds from Transfer of Equity Stock (Announcement [2010] No.27) on Dec. 14, 2010, stipulating that:

- Individuals having proceeds from transfer of equity stock abide by arm's length price when recognizing taxation basis and calculating IIT. If the taxation basis is obviously lower than the normal level without justified reasons, competent tax authorities can check and determine it by the rules prescribed in this Announcement.
- The following cases are regarded as abnormally low taxation basis, if they are not justified:
 - ✓ The reported price of equity stock transfer is lower than original investment cost, or lower than the total payment (including relevant duties and commissions) of acquisition of the equity stock;
 - ✓ Equity stock transfer price is lower than the corresponding shares of net assets;
 - ✓ Equity stock transfer price is lower than the price of same transaction in the same industry and under the same or similar conditions;
 - ✓ Other cases specified by tax authorities.

- Refer to the following pricing method to appraise the proceeds from equity stock transfer, when the reported taxation basis is obviously low and no justified reason is available:
 - ✓ Net asset value per share, or net asset shares corresponding to percentage of equity stock held by the taxpayers;
 - ✓ Equity stock transfer price of the same or other shareholder of the same enterprise under the same or similar conditions;
 - ✓ Equity stock transfer price in the same industry under the same or similar conditions;
 - ✓ If taxpayers have objection to the pricing results made by tax authorities according to the above-said pricing method, they can present supporting proof to tax authorities for their verification and then adopt other reasonable pricing method.
- When taxpayers retransfer the equity stock they have acquired, the transfer cost is equal to transaction price of the last transfer plus relevant duties and commissions burdened by buyers.
- This Announcement shall come into effect as of the 30th day after the issuance day.

The Ministry of Finance and SAT issued Supplementary Circular on Levy of IIT on Individual Income from Transfer of Restricted Shares of Listed Companies (CaiShui [2010] No.70) on Nov. 10, 2010, stipulating that:

- In this Circular, the restricted shares refer to:
 - ✓ Restricted shares prescribed by *Circular on Levy of IIT on Individual Income from Transfer of Restricted Shares of Listed Companies* (CaiShui [2009] No.167);
 - ✓ Banned restricted shares acquired by individuals from relevant institutions or other individuals;
 - ✓ Restricted shares acquired by individuals from legal inheritance or allocation of family possessions;
 - ✓ Restricted shares held by individuals and transferred from Agency Share Transfer System to the mainboard market, middle to small board market or entrepreneurship market;
 - ✓ Other restricted shares.
- According to the regulations of article 8 and article 10 of Implementation Rules of Individual Income Tax Law, individuals are liable for paying IIT when acquiring cash, securities or other economic benefits by transferring restricted shares or making other transactions that are substantially equivalent to restricted shares transfer. If restricted shares have been transferred for many times before they are unbanned, transferors should pay IIT on their income from each transfer.
- When taxpayers are in the following cases, IIT payable shall be collected by way of a combination of advance withholding and prepayment by securities institutions, IIT filing by taxpayers themselves and direct withholding and payment by securities institutions:
 - ✓ Transfer restricted shares through centralized trading system or block trading system of securities exchange;
 - ✓ Subscribe for shares of Exchange Traded Fund with restricted shares;
 - ✓ Accept tender offers with restricted shares;
 - ✓ By exercising cash option, transfer restricted shares to the third party that offers cash option right.

Corporate Income Tax

SAT issued Announcement on Voucher of Trade Union Expense Deduction before CIT (Announcement [2010] No.24) on Nov. 9, 2010, stipulating that:

- Since July 1, 2010, corporate trade union expense can be deducted before CIT according to Special Receipt of Trade Union Funds issued by trade union, and the deduction is limited to 2% of total staff salary.
- Circular on Deduction of Trade Union Expense Before CIT (GuoShuiHan [2000] No.678) issued by SAT cease to be effective.

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