

上海自贸区的正式成立带来新的营商机遇

中国（上海）自由贸易试验区（以下简称“上海自贸区”）于2013年9月29日正式挂牌，无论是外商对华投资还是中国企业投资海外，都将使其得益并带来新的营商机遇。

投资管理便捷化

总体而言，上海自贸区内的外商投资将享受国民待遇。也就是说，除了在“负面清单”中列明的行业，所有外商投资企业或项目将和内资企业一样只需备案，而不再需要核准。管理模式的简化将大大减轻外国投资者进入中国市场的行政负担。

上海自贸区还致力于鼓励中国企业投资海外。自贸区内的中国企业只需对境外投资“一般”项目进行备案，而无需再经历相关政府部门冗长的核准程序。不过，有关部门将如何定义境外投资“一般”项目尚不得而知。

工商登记灵活化

对于上海自贸区内的所有企业来说，无论是外资还是内资，工商登记将更为灵活。工商部门将只登记企业股东认缴的注册资本，一般不再登记实收资本。这一变化将可能使投资者免于繁琐的验资。而对于需要特别许可的生产经营活动，该特别许可将不再成为工商登记的前置条件。企业可以先取得营业执照并从事一般不需要许可的经营活动，随后再向主管部门为需要特别许可的生产经营活动申请许可。另外，对自贸区内所有企业，年度报告公示制度将代替现行的年检制度。

服务业扩大开放

《总体方案》提出了金融服务、航运服务、商贸服务、专业服务、文化服务以及社会服务6个领域18类行业的开放措施，包括对投资者资质、最低资本要求、持股比例和营业范围的放开。这些开放措施主要针对外国投资者，也有部分是针对内资企业的。

然而须注意的是，一些扩大开放的外商投资行业（例如人才中介服务，旅行社、教育培训等）也出现在“负面清单”上，需要取得核准方能经营。另外，根据现行法律法规，上述部分行业仍需获得相关部门的特别许可（例如增值电信服务，医疗机构等）方能经营。

税收优惠

总体方案提出了一些支持上海自贸区投资和贸易的税收优惠，举例如下：

- 注册在自贸区的企业或个人股东，因非货币性资产对外投资等资产重组行为而产生的资产评估增值部分，可在不超过5年期限内，分期缴纳所得税。
- 对自贸区内企业以股权形式给予企业高端人才和紧缺人才的奖励，实行已在中关村等地区试点的股权激励个人所得税分期纳税政策。
- 融资租赁企业在自贸区内设立的项目子公司可享受融资租赁出口退税试点。
- 对自贸区内注册的国内租赁公司购买特定类型的飞机并租赁给国内航空公司使用的，享受相关进口环节增值税优惠政策。

上述部分税收优惠将使上海自贸区内的企业享受到与注册在中国其他鼓励区域内的企业或内资企业同等的优惠政策。

税务总局出台新办法提高跨国税收争议解决效率

税务总局近期发布 2013 年第 56 号公告——《税收协定相互协商程序实施办法》（以下简称“新办法”），于 2013 年 11 月 1 日起实施。

相互协商程序的适用范围

税收协定缔约双方的主管当局对协定中的解释或适用问题不能达成一致时，可以按照税收协定的相互协商程序条款的规定开展协商，争取达成一致意见，并解决存在的争议。

提请启动相互协商程序的主体

- 如果中国居民（国民）认为，外国税务机关采取的措施，已经或将会导致不符合税收协定规定的征税时，可就该措施向中国的主管当局（即税务总局）提请启动相互协商程序；
- 如果外国居民（国民）遇到类似的情况，可以向其所在国的主管当局寻求帮助，该主管当局可以向税务总局提请启动相互协商程序；
- 特定情况下税务总局可以主动向缔约对方主管当局提出启动相互协商。

可以提请相互协商程序的事项

- 对居民身份的认定有异议，特别是相关税收协定规定双重居民身份的情况
- 对常设机构的判定，以及常设机构的利润归属存有异议的
- 对被动性收入（即：股息、利息和特许权使用费）的征税及适用税率存有异议的
- 违反税收规定非歧视待遇条款的规定，可能或已经形成税收歧视的
- 对税收协定其他条款的理解和适用出现争议而不能单方面自行解决的
- 其他可能或已经形成不同税收管辖权之间重复征税的

提请启动相互协商程序

新办法对相互协商程序的每个步骤都制定了详细的条件和时限。

如果中国居民和外国税务机关产生了税收争议，该中国居民可以按照在税收协定规定的时限内向省级主管税务机关申请启动相互协商程序，大多数税收协定规定的时限通常是征税措施第一次送达之日起的三年以内，超过规定时限才提请启动相互协商程序请求有可能遭到主管当局的拒绝。

同样，如果外国纳税人认为中国税务机关的税收征管措施不符合税收协定的规定，该外国纳税人可以在规定的时限内向其主管当局提请启动相互协商程序。

相互协商程序的运作

相互协商程序并不是在纳税人和税务机关之间进行的，而是在协定国主管当局之间开展。鉴于此，除非受到相关主管当局的邀请，纳税人通常只能提请启动相互协商程序而不能参与到相互协商的谈判中。然而新办法明确了中国税务机关要告知纳税人相互协商程序开展过程中每一步的结果。这一规定符合国际惯例，并有助于让整个协商程序更加透明。

相互协商程序能达到的结果

中国签订的税收协定的相互协商程序条款均规定，主管当局只有义务尽力达成一致的意见，因此，任一方都难以保证通过相互协商程序一定能解决税收争议。

以上信息仅提供德安客户及对本公司业务感兴趣之人士参考，我们将尽量确保上述信息的准确性，我们提请读者注意，上述内容系有关文件的摘要，在实际应用时，须参照全文为准。同时，我们欢迎各位就上述信息咨询本公司的专业人士，也欢迎各位登陆我们的网站 www.deancpa.com.cn。我们将为我们的客户提供实实在在的增值服务。上述摘编如中、外文不一致的，以中文为准。

New horizon for doing business in Shanghai – launch of the Pilot Free Trade Zone

China (Shanghai) Pilot Free Trade Zone (Shanghai PFTZ) officially commenced on 29 September 2013. The launch of the Shanghai PFTZ will bring benefits and new business opportunities for both foreign and domestic investors on their inbound and outbound investments respectively.

Simplified administration on investment

In general, foreign investment into the Shanghai PFTZ will enjoy national treatment. In other words, except for the sectors specified in the ‘negative list’, all foreign investment enterprises and projects are subject to a record filing system (just like their domestic counterparts) instead of the normal approval system. The simplified administration is expected to largely alleviate the foreign investors’ administrative burdens at the entry stage.

From an outbound investment perspective, the Shanghai PFTZ is committed to encouraging domestic companies to invest abroad. Domestic companies in the Shanghai PFTZ are only required to file a record for ‘general’ outbound investment projects, rather than going through the normal time-consuming approval process with relevant government authorities. It remains to be seen how the relevant authorities will define the scope of ‘general’ outbound investment projects.

Flexible system for business registration

Business registration is more flexible for all companies in the Shanghai PFTZ, irrespective of their source of capital. The amount of registered capital of a company will generally be based on the amount of capital committed by the investor instead of the paid-in amount. This change is likely to save investors from the administrative burden of capital verification. Where certain business activities are subject to special permits, such permit will no longer be a prerequisite for business registration. In other words, companies can first register for the business license, start other business activities that do not require the permit, and then apply for the special permit for specific business activities. In addition, the corporate annual inspection system will be replaced by an annual reporting system for all companies in the Shanghai PFTZ.

Further opening-up of service sectors

The General Plan provides relaxed investment policies for 18 sectors in 6 service categories covering finance, shipping, commerce, professionalism, culture and social services. It includes relaxation of regulations on investor qualification, minimum capital, shareholding percentage and business scope. Most of the relaxation is intended for foreign investors with some are for domestic companies.

However, it is noted that foreign investment into some of the opening-up sectors (e.g. job intermediary, travel agency, education, etc.) is also included in the ‘negative list’ and subject to the approval process. In addition, according to existing laws and regulations, a special permit from relevant authorities is still required for some of the sectors such as value-added telecommunication operations, healthcare, etc.

Preferential tax treatment

The General Plan does outline some tax incentives to promote investment and trading in the Shanghai PFTZ. To name just a few:

- Investors injecting non-monetary assets as capital into the companies in Shanghai PFTZ may average the premium arising from the asset appreciation over five years for CIT and Individual Income Tax (IIT) purposes.
- High demand talent or professionals in short supply may enjoy preferential IIT treatment equivalent to those available in Zhongguancun in respect of gains derived from share-based payment granted by companies in the Shanghai PFTZ.
- Branches of financial leasing companies in the Shanghai PFTZ may be eligible for pilot VAT refund.
- Certain aircrafts purchased from overseas by domestic leasing companies in the Shanghai PFTZ and subsequently leased to other domestic airline companies may be entitled to preferential import VAT treatment.

Some of the above tax incentives will enable companies in the Shanghai PFTZ to enjoy the same benefits available to certain other encouraged regions in China and/or to their domestic counterparts.

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