

投资与税务

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中国企业境外放款与利润汇出外汇政策进一步放宽

国家外汇管理局(以下简称"外汇局")于2014年1月10日发布了2号文,就境内企业境外放款的规定作了进一步放宽。

对内资企业与外商投资企业而言,2 号文是个利好消息,该政策赋予境内企业境外放款更多灵活性,同时为外国投资者在中国投资遇到的现金截流问题提供新的解决途径。2 号文也改善了实际操作中支付中期股利难的问题。

2号文的变化主要包括以下两个方面:

- 1. 放款额度和"合资格借款人"的放宽
- 2号文将借款人资格进一步扩展到包括与提供境外放款的境内企业 "有股权关联关系"的境外企业。可以提供境外放款的"境内企业"包括内资企业及外商投资企业;
- 放款额度增加为提供放款境内企业所有者权益的30%。"所有者权益"包括注册资金、留存收益和盈余公积;及
- 2号文将之前的境外放款"额度审批"程序改为"额度登记"程序。
- 2. 利润汇出的放宽

2号文也简化了外商投资企业利润汇出管理:

- 等值5万美元(含)以下利润汇出,原则上可不再审核交易单证;
- 等值5万美元以上利润汇出,原则上可不再审核其财务审计报告和验资报告;
- 取消本年度处置利润金额原则上不得超过付款企业最近一期财务审计报告中属于外方股东"应付股利"和"未分配利润"合计金额的限制。一定程度上,这将改善实际操作中难以支付中期股利的问题。

外汇局境外放款相关政策概览

自2009年以来,外汇局逐步出台一系列文件以进一步深化资本项目外汇管理改革,从而简化相关管理程序。下面表格通过对境外放款的相关管理规定进行的总结和比较,显示出借款主体和放款额度逐渐放宽的进程。



境内企业境外放款外汇管理规定发展和逐渐放宽过程 The progressive relaxation of overseas lending by China entities 24 号文 59 号文 2号文 Circular 24 Circular 59 Circular 2 放款人资格 境内企业 (金融机构除外,包括境内外商投资企业) Lender's eligibility PRC entities (except financial institutions, including FIEs established in the PRC) 借款人资格 境外合法设立的全资附 外商投资企业的境 境内企业的境外与其具 属企业或参股企业 外母公司 有股权关联关系的企业 Borrower's eligibility Wholly-owned subsidiaries Offshore parent Offshore companies or joint stock companies companies of the PRC having equity relationships legally established abroad **FIEs** with the Chinese lenders 放款额度 不得超过放款 不得超过放款人所 不得超过放款人所 有者权益的30% 有者权益的30% 人的外国投资 Lending quota 30% of the lender's Up to 30% of the 者已分配未汇 owner's equity, lender's owner's 出利润以及按 OR equity 比例享有的未 不得超过借款人已 分配利润之和 办妥相关登记手续 Up to the aggregate of 的中方协议投资额 "dividends the PRC lender's payable" and total investment "undistributed amount in the profits" belonging borrower, to the foreign (whichever is lower) investors 同左 放款额度有效期 自获得外汇局核准 取消2年有效使用 Same as left 境外放款额度之日 期限制 Validity period of column Cancellation of the 2-起2年 lending quotas year restriction 2 years starting from 可根据实际业务需 the SAFE's approval date 求向所在地外汇局 期限届满后可申请 申请 展期 Application available Can be extended by to the local SAFE for application upon any reasonable term based on business expiry needs



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Overseas Lending and Profit Repatriation by China Entities eased under new Foreign Exchange Regulations

The State Administration of Foreign Exchange ("SAFE") released Circular 2 on 10 January 2014 to further relax regulations on overseas lending by China entities, amongst others.

Circular 2 is a welcome development for both domestic enterprises ("DE") and foreign invested enterprises ("FIEs"). The relaxed regulations allow more flexibility for China entities to undertake overseas lending and provide alternatives for foreign investors to overcome the "cash trap" problem encountered in China. Circular 2 should also allow interim dividend payments to be made more easily in practice.

The two main areas of change under Circular 2 are as follows:

- 1. Broadened lending capacity and "eligible borrowers":
- Circular 2 broadens the scope of eligible borrowers to include offshore companies that have equity relationships with the China entity providing financing. "China entities" capable of providing lending include domestic DEs and FIEs;
- The overseas lending quota is increased to up to 30% of the owner's equity of the China entity providing financing. "Owner's equity" includes the registered capital, retained earnings and surplus reserve;
- The previous approval procedures for overseas lending under Circular 2 are amended to a filing procedure.
- 2. Relaxed foreign exchange requirements on dividend remittance

Circular 2 also simplifies regulations for the remittance of profits abroad by FIEs, in particular:

- No examination of transaction documents is required in principle for dividend remittances of up to USD 50,000;
- No examination of audit reports and capital verification reports is required in principle for remittances of more than USD 50,000;
- The restriction of the profit repatriation amount to less than the aggregate of "dividends payable" and "undistributed profits" of the payee company's latest audited accounts has been removed. In principle, this payes the way for interim dividends to be made more easily in practice.

Overview of SAFE regulations relating to overseas lending

Since 2009, SAFE has progressively released a series of circulars expanding the reform of foreign exchange management over capital accounts, thereby streamlining the relevant administrative procedures. The table below provides an overview of the regulations that have progressively expanded the scope of eligible borrowers and the lender's lending quota.



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