

## 外商投资

中国商务部、国资委、国家税务总局、国家工商总局、证监会和外汇管理局于 2006 年 8 月 8 日联合发布 2006 年第 10 号令《关于外国投资者并购境内企业的规定》正式明确于 2006 年 9 月 8 日起外资可以利用股权的方式并购境内企业。同时限定：

- 依照《外商投资产业指导目录》不允许外国投资者独资经营的产业，并购不得导致外国投资者持有企业的全部股权；需由中方控股或相对控股的产业，该产业的企业被并购后，仍应由中方在企业中占控股或相对控股地位；禁止外国投资者经营的产业，外国投资者不得并购从事该产业的企业。

## 个人所得税

国家税务总局于 2006 年 7 月 18 日发布国税发[2006]108 号文《关于个人住房转让所得征收个人所得税有关问题的通知》强调：《中华人民共和国个人所得税法》及其实施条例规定，个人转让住房，以其转让收入额减除财产原值和合理费用后的余额为应纳税所得额，按照“财产转让所得”项目缴纳个人所得税。并再次明确规定：

- 对住房转让所得征收个人所得税时，以实际成交价格为转让收入。纳税人申报的住房成交价格明显低于市场价格且无正当理由的，征收机关依法有权根据有关信息核定其转让收入，但必须保证各税种计税价格一致。
- 对转让住房收入计算个人所得税应纳税所得额时，经税务机关审核后，允许从其转让收入中减除房屋原值、转让住房过程中缴纳的税金及有关合理费用。
- 对不能提供房屋原值等有关涉税资料的，税务机关可以在住房转让收入的 1%—3% 比例内核定应纳税个人所得税。
- 对出售自有住房并拟在现住房出售 1 年内按市场价重新购房的纳税人，其出售现住房所缴纳的个人所得税，先以纳税保证金形式缴纳，再视其重新购房的金额与原住房销售额的关系，全部或部分退还纳税保证金；对个人转让自用 5 年以上，并且是家庭唯一生活用房取得的所得，免征个人所得税。
- 本条规定自 2006 年 8 月 1 日起执行。

## 出口退税管理

上海市国家税务局于 2006 年 6 月 27 日发布沪国税进[2006]29 号文《关于印发〈来料加工贸易免税管理办法（试行）的通知〉》主要内容有：

- 出口企业取得税务机关出具的《来料加工贸易免税证明》后，可向主管税务机关申办免税手续。负责出具《免税证明》的税务机关是上海市国家税务局第三分局（以下简称市财税三分局）。

- 加工企业向来料加工出口企业收取加工费时，不得开具增值税专用发票，应开具普通发票。填开发票时，应注明所加工货物的名称、数量、加工费金额等，并在备注栏内注明《免税证明》编号。
- 本办法从 2006 年 8 月 1 日起执行

### 常设机构认定

国家税务总局于 2006 年 7 月 10 日发布国税函[2006]694 号文《关于外国企业在中国境内提供劳务活动常设机构判定及利润归属问题的批复》明确：

- 外国企业在中国境内未设立机构场所，仅派其雇员到中国境内为有关项目提供劳务，包括咨询劳务，当这些雇员在中国境内实际工作时间在任何十二个月中连续或累计超过六个月时，则可判定该外国企业在中国境内构成常设机构。
- 外国企业通过其雇员在中国境内为某项目提供劳务构成常设机构的，其源自有关项目境内劳务的利润应视为该常设机构的利润并征税。

### 国产设备退税

国家税务总局 国家发展和改革委员会于 2006 年 7 月 24 日发布国税发[2006]111 号文关于印发《外商投资项目采购国产设备退税管理试行办法》的通知对外商投资项目采购国产设备退税工作进行了规范要求。明确规定：

- 发改委负责办理《符合国家产业政策的外商投资项目确认书》和《项目采购国产设备清单》；省级、地市级国家税务局负责外商投资企业采购国产设备的认定、审批工作。
- 享受国产设备退税的企业范围是指，被认定为增值税一般纳税人外商投资企业和从事交通运输、开发普通住宅的外商投资企业以及从事海洋石油勘探开发生产的中外合作企业。外商投资企业包括中外合资企业、中外合作企业和外商独资企业。
- 国产设备是指鼓励类外商投资项目采购的在中华人民共和国境内生产、作为固定资产管理的设备，包括按照购货合同随设备购进的配套件、备件等。
- 属于增值税一般纳税人的外商投资企业购买国产设备后，应自购买设备开具增值税专用发票的开票之日起 30 日内，到其主管征税机关认证，未经过认证或认证未通过的一律不予办理退税。
- 外商投资企业应自购买设备开具增值税专用发票的开票之日起 90 日内，填写《外商投资项目采购国产设备退税申请表》向所在地主管退税机关申请办理国产设备的退税手续。
- 本办法自 2006 年 7 月 1 日起执行

编者按：本次新办法对退税主体有了限制；项目范围有了调整；设备范围有所放宽。特别需关注的是需办理备案登记

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## Foreign investment

**The Ministry of Commerce, the State-owned Assets Supervision and Administration Commission of the State Council, the State Administration of Taxation (“SAT”), China Securities Regulatory Commission and the State Administration of Foreign Exchange jointly issued Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (Order [2006] No. 10) on 8 August 2006**, which officially states that starting from 8 September 2006 foreign investors can merge with or acquire domestic enterprises by utilizing equity, and at the same time imposes restrictions as below:

- In the case of industries where no wholly foreign ownership is allowed under the Guidance Catalog of Foreign Investment Industries, any merger or acquisition of a domestic enterprise engaging in the industry shall not lead to the foreign investors' wholly ownership of all equity interest in the acquired enterprise. In the case of industries where the Chinese party is required to be controlling or relatively controlling, the Chinese party shall remain to be in the controlling or relatively controlling position in the acquired enterprise after any merger or acquisition of the domestic enterprise engaging in such industries. In the case of industries where operation by foreign investors is prohibited, no foreign investors may merge with or acquire any enterprise engaging in such industries.

## Individual Income Tax (“IIT”)

**The SAT issued Circular On Individual Income Tax Imposed On Income From Transfer Of Individual Residential Houses (Guo Shui Fa [2006] No. 108) on 18 July 2006**, which stresses that according to *Individual Income Tax Law of the People’s Republic of China and its Implementing Rules*, the amount of taxable income is determined according to proceeds from transfer of individual residential houses less property original value and reasonable expenses for the purpose of calculating IIT under the class of “Income From Property Transfer”. In addition, detailed rules are as follows:

- The amount of transfer income is determined by the actual transaction price for the purpose of calculating IIT imposed on income from transfer of a residential house. If the transaction price reported by a taxpayer is obviously lower than a market price for no legitimate reasons, the tax authority reserves a right to deem the income from property transaction by referring to related information according to law, and must ensure that prices for calculations of various taxes are all the same.
- Property original values, paid taxes on transfer of residential houses and related reasonable expenses can be deducted from transfer proceeds upon the tax authority’s review in calculating taxable income of IIT imposed on transfer of residential houses.
- In the absence of any documentary proof for the original value of a property, the tax authority may assess IIT liabilities arisen from transfer of property at a range from 1% to 3% of the sales proceeds.
- For a taxpayer who sells a self-owned residential house and also plans to purchase a new one within 1 year from the sale of the house, the IIT imposed on the sale of the house shall be paid in the form of guarantee deposit for tax paying, and be refunded completely or partially depending on the price amount of repurchased house and the sale proceeds of original residential house; the income from the transfer of a sole house used for family residential purpose for more than 5 years is exempt from IIT.
- The Circular shall be effective as of 1 August 2006.

## **Administration Of Export Tax Refund**

**Shanghai State Tax Bureau issued Circular On Circulating “Measures For Administration Of Tax Exemption For Imported Material Processing Trade (Trial)” (Hu Guo Shui Jin [2006] No.29) on 27 June 2006.** The key points are as follows:

- Exporting enterprises can apply to the competent tax authority for tax exemption upon the receipt of Tax Exemption Certificate For Imported Material Processing Trade (“Tax Exemption Certificate”) issued by the tax authority. The tax authority in charge of issuing the Tax Exemption Certificate is No. 3 Branch, Shanghai State Tax Bureau (“No. 3 Branch For Finance & Tax”).
- Processing enterprises shall issue ordinary invoices rather than special VAT invoices when collecting processing fees from exporting enterprises engaging in imported material processing. Names and amounts of processed goods and amounts of processing fees shall be indicated in the invoices, and the No. of Tax Exemption Certificate shall be put in the column of Remarks.
- The Measures shall be effective as of 1 August 2006.

## **Determination of Permanent Establishments**

- **The SAT issued Reply to Issues of Determination of Permanent Establishments and Profit Attribution Concerning Foreign Enterprises Providing Services In China (Guo Shui Han [2006] No.694) on 10 July 2006,** clarifying that:
- A foreign enterprise is determined to have a permanent establishment in China when the foreign enterprise has no establishments or sites in China, only assign its employee(s) to render services for a relevant project(s), including consulting services and the employee(s) stay for the purpose of rendering services consecutively or accumulatively for more than 6 months within any 12 months.
- If a foreign enterprise is determined to have a permanent establishment for its employees rendering services for certain project(s) in China, its profit(s) derived from rendering services in China for relevant project(s) shall be deemed as the profit(s) of the permanent establishment and subject to taxes.

## **Domestically manufactured equipment Tax Refund**

**The SAT and National Development and Reform Commission issued Circular On Circulating Trial Administrative Measures For Tax Refund On Domestically Manufactured Equipment Purchased In Foreign Invested Projects (Guo Shui Fa [2006] No.111) on 24 July 2006,** setting forth regulatory requirements for tax refund on domestically manufactured equipment purchased in foreign invested projects. It clarifies that:

- National Development and Reform Commission is in charge of processing Confirmation Letter For Foreign Invested Project In Line With The State Industry Policies and List Of Domestically Manufactured Equipment Purchased In Foreign Invested Project. State Tax Bureaus at the provincial, city and county levels are in charge of confirmation, examination and approval for foreign invested enterprises purchasing domestically equipment.
- The scope of enterprises enjoying tax refund on domestically manufactured equipment is defined as:

foreign invested enterprises deemed as general VAT payers, foreign invested enterprises engaging in transportation, development of ordinary housing properties and Chinese-foreign cooperative joint ventures engaging in offshore oil exploration, development and production. Foreign invested enterprises are Chinese-foreign equity joint ventures, Chinese-foreign cooperative joint ventures and foreign wholly owned enterprises.

- Domestically manufactured equipment is the equipment manufactured in China and managed as fixed assets after being purchased in “encouraged” foreign invested projects, including accessories and spares purchased together with the equipment according to purchase contracts.
- After purchasing domestically manufactured equipment, foreign invested enterprises with the status of general VAT payer shall apply to its competent tax authority for authentication within 30 days starting from the issuance date of special VAT invoices. Tax refund shall not be processed if the special VAT invoices are not authenticated or are authenticated to be unqualified.
- The foreign invested enterprises shall fill in Application Form For Tax Refund On Domestically Manufactured Equipment Purchased In Foreign Invested Projects to apply to the competent tax authority of the places where they are located for tax refund on domestically manufactured equipment within 90 days starting from the issuance of the special VAT invoices upon the purchases of the equipment.
- The Measures will be effective as of 1 July 2006.

✎ Editorial Comments: the new Measures have imposed restrictions to tax refund applicants, made adjustments to project scope, relaxed regulations on equipment scope. What deserves special attention is the requirement of archival filing and registration.

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