

中国法通讯 China Law Newsletter 跨境贸易与投资 Cross-border Trade and Investment

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编者按：本刊旨在报道与中国有关的跨境贸易与投资的最新动态与我们的实务经验，但本刊不可替代个案的正式法律意见。若您重复收到本刊或者要订阅、退订或进一步了解本刊的内容，请与大成的有关律师联系。

Editor's note: the purpose of this publication is to report the most recent developments in the field of cross-border trade and investment in connection with China, as well as our practical experience therein. However, this publication should not be treated as a substitute for a formal legal opinion in individual cases. If you have received this publication more than once, or would like to subscribe or unsubscribe to this publication, or follow up on any issues raised in this publication, please be in contact with the lawyer you usually deal with at Dacheng Law Offices.

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立法新闻

LEGISLATIVE NEWS

- 国家税务总局发布《关于非居民企业派遣人员在中国境内提供劳务征收企业所得税有关问题的公告》（来源：国税总局网站，2013 年 5 月 7 日）

SAT Releases Announcement on Issues Concerning Enterprise Income Tax on Labor Services Provided in China by Personnel Dispatched by Non-resident Enterprises (Source: www.chinatax.gov.cn, May 7, 2013)

2013 年 4 月 19 日，国家税务总局发布《国家税务总局关于非居民企业派遣人员在中国境内提供劳务征收企业所得税有关问题的公告》（《公告》）。

On April 19, 2013, the State Administration of Taxation (SAT) released the Announcement of the State Administration of Taxation on Issues Concerning Enterprise Income Tax on Labor Services Provided in China by Personnel Dispatched by Non-resident Enterprises (the "Announcement").

《公告》规定，非居民企业派遣人员在中国境内提供劳务，如果派遣企业对被派遣人员工作结果承担部分或全部责任和风险，通常考核评估被派遣人员的工作业绩，应视为派遣企业在中国境内设立机构、场所提供劳务；如果派遣企业属于税收协定缔约对方企业，且提供劳务的机构、场所具有相对的固定性和持久性，该机构、场所构成在中国境内设立的常设机构。

According to the Announcement, with regard to a person dispatched by a non-resident enterprise who provide a labor service in China, if the dispatching enterprise bears part or all of the liabilities and risks for the work result of such person and usually examines and assesses the performance of such person, the dispatching enterprise shall be deemed to have provided the labor service in its establishment or premise in China; if the dispatching enterprise falls within enterprises of the other contracting country under a tax treaty and has a relatively fixed and permanent establishment or premises for providing labor services,

such establishment or premises are to be regarded as the permanent office set up in China.

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- 国家外汇管理局印发《外国投资者境内直接投资外汇管理规定》及配套文件（来源：国家外汇管理局，2013 年 5 月 13 日）

SAFE issues Provisions on Foreign Exchange Administration of Domestic Direct Investment by Foreign Investors and supporting documents (Source: State Administration of Foreign Exchange, May 13, 2013)

5 月 10 日，国家外汇管理局发布《国家外汇管理局关于印发〈外国投资者境内直接投资外汇管理规定〉及配套文件的通知》（汇发[2013]21 号，以下简称“《规定》”），进一步规范和明确外国投资者境内直接投资（以下简称外商直接投资，即 FDI）外汇管理，《规定》自 2013 年 5 月 13 日起实施。

On May 10, the State Administration of Foreign Exchange (SAFE) issued the Notice of the State Administration of Foreign Exchange on Printing and Distributing the "Provisions on Foreign Exchange Administration of Domestic Direct Investment by Foreign Investors" and Supporting Documents (Hui Fa [2013] No. 21, hereinafter referred to as the "Provisions") which came into force on May 13, 2013, to further standardize and clarify the issues concerning foreign exchange administration of domestic direct investment by foreign investors (hereinafter referred to as the "foreign direct investment" or "FDI").

《规定》在 2012 年 12 月对 FDI 外汇管理政策调整实践的基础上，进一步简化并整合了外商直接投资所涉及的外汇登记、账户开立与使用、资金收付及结售汇等环节和政策。《规定》同时加大了外商直接投资外汇管理规定的清理力度，废止了《关于下发〈外商投资企业外汇登记管理暂行办法〉的通知》（[96]汇资函字第 187 号）、《关于境外企业承包境内工程外汇管理若干问题的复函》（[98]汇资函字第 204 号）等 24 项外商直接投资外汇管理法规。

The Provisions further simplify and integrate the processes and policies on FDI-related foreign exchange registration, account opening and use, receipt and payment of funds, and foreign exchange settlement and sales on the basis of adjusting FDI foreign exchange administration policies in December 2012. The Provisions also increase efforts on cleanup of FDI foreign exchange administration provisions, and repeal 24 regulations on FDI foreign exchange administration, including the Notice on Printing and Distributing the "Interim Measures for the Administration of Foreign Exchange Registration for Foreign-Invested Enterprises" ([96] Hui Zi Han Zi No. 187) and the Reply on the Issues Concerning Foreign Exchange Administration of Domestic Projects Contracted for by Overseas Enterprises ([98] Hui Zi Han Zi No. 204).

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- 国家发改委、商务部联合发布《中西部地区外商投资优势产业目录（2013 年修订）》（来源：国家发展和改革委员会，2013 年 5 月 15 日）

NDRC, MOFCOM jointly release Catalogue of Priority Industries for Foreign Investment in Central and Western China (Revised in 2013) (Source: National

Development and Reform Commission, May 15, 2013)

2013 年 5 月 14 日，国家发改委、商务部以第 1 号令联合发布了《中西部地区外商投资优势产业目录（2013 年修订）》。该目录自 2013 年 6 月 10 日起施行，2008 年 12 月 23 日国家发展和改革委员会、商务部发布的《中西部地区外商投资优势产业目录（2008 年修订）》（国家发展和改革委员会、商务部令 2008 年第 4 号）同时废止。

On May 14, 2013, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly released the Catalogue of Priority Industries for Foreign Investment in Central and Western China (Revised in 2013) under the Order No. 1. The Catalogue will go into effect on June 10, 2013. The Catalogue of Priority Industries for Foreign Investment in Central and Western China (Revised in 2008) (Order [2008] No. 4 of the National Development and Reform Commission and the Ministry of Commerce) released by the NDRC and the MOFCOM on December 23, 2008 will be repealed simultaneously.

根据《指导外商投资方向规定》（国务院令 2002 年第 346 号）的规定，属于《中西部地区外商投资优势产业目录（2013 年修订）》的外商投资项目，享受鼓励类外商投资项目优惠政策。符合该目录规定的外商投资在建项目，可按照该目录的有关政策执行。

According to the Provisions on Guiding Foreign Investment Direction (Order [2002] No. 346 of the State Council), the foreign investment projects in the Catalogue of Priority Industries for Foreign Investment in Central and Western China (Revised in 2013) will enjoy the preferential policies for foreign investment projects under the encouraged category. The foreign investment projects under construction and in line with the provisions of such Catalogue can also be implemented in accordance with the relevant policies of such Catalogue.

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投资动态

INVESTMENT DEVELOPMENTS

- 我国外资新政迎来密集发布期 完善外资审批程序（来源：经济参考报，2013 年 5 月 20 日）

China Releases New FDI Rules Intensively and Improves FDI Examination and Approval Process (Source: jjckb.xinhuanet.com, May 20, 2013)

日前从相关部门获悉，继外管局外商直接投资外汇管理新规、中西部地区外商投资优势产业目录之后，涉及完善外资审批程序、改善投资环境的系列政策有望年内出台。

According to sources from relevant authorities recently, following the new rules on the foreign exchange administration of foreign direct investments (FDI) issued by the State Administration of Foreign Exchange and the Catalogue of Advantageous Industries for Foreign Investment in the Central and Western Regions, a series of policies relating to the improvement of FDI examination and approval process and of the investment environment are expected to be released this year.

据了解，商务部等相关部门已经把“在稳定利用外资规模的基础上提高利用外资质量”、“更好引导外资投向服务业、高附加值制造等领域和中西部地区”等内容确立为 2013 年吸收外商投资工作的主要目标。为了完成这一目标，系列政策措施将密集推出。

According to reports, the Ministry of Commerce and other relevant departments have determined "improving the quality in foreign investment utilization based on the size of stably utilized foreign investment", "better guiding foreign capital to invest in service industries, high added-value manufacturing and other sectors, and the central and western regions" and other points as the main goals for the efforts in attracting foreign investment in 2013. A series of policies are to be released intensively to attain the goals.

在外资审批方面，将深化政府职能转变，积极稳妥推进简政放权，着力构建服务型政府。目前，由商务部主导的外资“三法”（外资企业法、中外合资经营企业法、中外合作经营企业法）修订正在加速推进中。据了解，外资三法分别在 2001 年前后做过修订，距今已经有十年的时间，亟待再次修订。而此次修订的一项核心内容就是完善外资审批程序。

In terms of FDI examinations and approvals, efforts will be made to deepen the transformation of government functions, actively yet prudently streamline administration and delegate more power to lower levels, and build a service-oriented government. At present, the revision to the "three laws" on foreign investment (the Law on Sino-foreign Equity Joint Ventures, the Law on Sino-foreign Cooperative Joint Ventures and the Law on Foreign Investment Enterprises) led by the Ministry of Commerce is being expedited. It was learned that the three laws on foreign investment have been revised respectively around

2001. This was ten years ago and as such these laws require a further revision. Moreover, a core objective of this revision is to improve the FDI examination and approval process.

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- 海南 22 个条目将执行外商投资优惠政策（来源：南海网，2013 年 5 月 29 日）

Hainan 22 Clauses to Be Subject to Foreign Investment Preferential Policies (Source: www.hinews.cn, May 29, 2013)

近日从海南省发改委获悉，经国务院批准，日前发布的《中西部地区外商投资优势产业目录(2013 年修订)》将于 6 月 10 日起正式施行。该目录首次将海南省列入执行省份，将与其他 21 个省份一起享受鼓励类外商投资项目支持、国家减免税收等优惠政策。

According to a source from the Hainan Development and Reform Commission, the Catalogue of Advantageous Industries for Foreign Investment in the Central and Western Regions (Revised in 2013) (the "Catalogue") promulgated recently will become effective as of June 10, 2013, upon approval by the State Council. The Catalogue includes for the first time Hainan Province as a covered province which will, with other 21 provinces, be subject to preferential policies such as support in encouraged foreign investment projects and tax reduction and exemption by the State.

国务院《关于推进海南国际旅游岛建设发展的若干意见》第二十八条提出：按照国际旅游岛的总体要求，研究将海南省增列为《中西部地区外商投资优势产业目录》执行省份。

Article 28 of the Certain Opinions on Propelling Construction of Hainan as an International Tourism Destination issued by the State Council provides: according to the overall requirements for the construction of an international tourism destination, Hainan shall be added as a province covered in the Catalogue of Advantageous Industries for Foreign Investment in the Central and Western Regions.

尤其值得注意的是，《目录》列出的我省 22 个条目中，有 12 个条目属于旅游产业或与旅游产业密切相关的交通、医疗和基础设施建设领域，充分显示国家对我省发展旅游产业的大力支持。

In particular, among Hainan Province's 22 clauses as listed in the Catalogue, there are 12 clauses involved tourism sector and the sectors of transport, medical and infrastructure construction that are closely related to tourism, which fully reflects the State's support in the development of the Hainan tourism.

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- 中国企业去年海外并购额创新高购额增加 5 倍多（来源：北京日报，2013 年 5 月 29 日）

China Enterprises Overseas Acquisitions Peak with 5-Fold Surplus Increase in 2012 (Source: www.bjd.com.cn, May 29, 2013)

昨天，普华永道会计师事务所最新统计显示，期间中国企业海外并购额增加 5 倍多。2012 年，中国企业的并购交易额达 652 亿美元，创下历史新高，而 2008 年这一数字还只是 103 亿美元。

According to the latest statistics of Price Waterhouse Coopers LLP ("PwC") yesterday, China enterprises achieved 5-fold surplus increase in overseas acquisitions last year. In 2012, China enterprises made acquisitions abroad worth USD65.2 billion, a record high. However, it was USD10.3 billion in 2008.

普华永道报告显示，在全球市场的并购热潮中，中国自 2009 年以来已占据五大新兴市场中的领先地位，2012 年中国的占比达到历史新高，就交易金额而言，近 70% 新兴市场对成熟市场的投资来自于中国。

PwC report shows that, in the global acquisition boom, China has taken the leading position in the five emerging markets since 2009, and China proportion hit a record high in 2012, among which 70 percent of the investments from emerging markets to mature markets were made by China.

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大成律师事务所建立了覆盖全国、遍布世界重要地区和城市的大成全球法律服务网络。大成的总部设在北京，在中国境内的长春、长沙、常州、重庆、福州、广州、哈尔滨、海口、杭州、合肥、黄石、吉林、济南、昆明、南昌、南京、南宁、南通、内蒙古、宁波、青岛、上海、沈阳、深圳、四川、苏州、太原、天津、温州、武汉、乌鲁木齐、无锡、厦门、西安、西宁、银川、郑州、舟山、珠海等 39 个城市设有分所。

Dacheng Law Offices has built a global network of legal service covering China as well as the major regions and cities worldwide. With its head office based in Beijing, Dacheng has established branch offices in 39 Chinese cities, including Changchun, Changsha, Changzhou, Chongqing, Fuzhou, Guangzhou, Harbin, Haikou, Hangzhou, Hefei, Huangshi, Jilin, Jinan, Kunming, Nanchang, Nanjing, Nanning, Nantong, Inner Mongolia, Ningbo, Qingdao, Shanghai, Shenyang, Shenzhen, Sichuan, Suzhou, Taiyuan, Tianjin, Wenzhou, Wuhan, Urumqi, Wuxi, Xiamen, Xi'an, Xining, Yinchuan, Zhengzhou, Zhoushan, Zhuhai.

大成律师事务所在纽约、洛杉矶、芝加哥、巴黎、新加坡、香港、台湾设立了当地的大成律师事务所，可以为客户提供全面本地业务的法律服务。大成还吸收了 5 家外国律师事务所作为大成网络境外成员单位，并与 9 家外国律师事务所建立了长期稳定的战略合作伙伴关系。

Dacheng Law Offices has incorporated local Dacheng law firms in New York, Los Angeles, Chicago, Paris, Singapore, Hong Kong and Taiwan, which is qualified to render a full range of local legal services. Dacheng has 5 foreign associated firms in its oversea network and maintain long standing steady strategic partnership with another 9 foreign law firms.

2009 年，大成作为中国区唯一成员加入了世界最大的、汇集全球顶级律师事务所、会计师事务所、投资公司、金融机构等专业性服务企业 and 公司的独立专业服务组织 World Service Group (世界服务集团)，与 100 多个国家的律师事务所、8 万多名律师建立起了长期稳定的信息交换渠道和业务合作平台，将大成全球化法律服务网络与 WSG 全球网络实现了链接，使大成客户服务体系更广泛地覆盖全球，更有效地满足法律服务市场多样化、多层次的需求。

In 2009, Dacheng Law Offices joined the World Services Group (WSG) as its only member in China. WSG is the world's largest independent multidisciplinary professional service organization with members including professional service providers such as leading law firms, accounting firms, investment companies and financial institutions in the world, whereby Dacheng has established long term steady channel for exchanges, communications and cooperation with law firms and more than 80000 lawyers from more than 100 countries. Dacheng' global network of legal service is linked with WSG's global network through its membership, which launches Dacheng' client service system to the international arena and puts Dacheng into a better position to serve the diversified and comprehensive demands of the legal service market.