

Tax Updates

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In our June 2022 Issue of Newsletter, we will discuss some of the important updates in PRC Tax in the first half of 2022.

在我們2022年6月的通訊中，我們將討論2022年上半年中國稅務的一些重要更新。

Limitation on Use of Capital for Wholly Foreign Owned Enterprise (“WFOE”) in Mainland China

The use of WFOE’s Registered Capital for Non Self-use Property and Listed Stock Investment is strictly forbidden in Mainland China

In May 2022, the State Administration of Foreign Exchange issued a FAQ to clarify its latest view on the use of proceeds from foreign exchange capital accounts (e.g., Registered share capital). In principle, such proceeds are disallowed to utilise such proceeds to make any Securities Investment or high-risk Wealth Management Products.

In the past, only investments in Principal-Guaranteed wealth management products were allowed. However, in 2018, there was a change in the regulations of wealth management products. The products are classified from R1 to R5 depending on the risk level (with R1 being a low-risk product, while R5 as a high-risk product). The words “Principal-Guaranteed” are not allowed for promotion of Wealth Management Products.

As such, there is a need to update the interpretation on Foreign Exchange Control Regulations on the permitted class of investment for proceeds from foreign exchange capital accounts.

The FAQ in May 2022 has clarified that the proceeds from foreign exchange capital accounts can be used to invest in products under the ranking of R1 and R2. Investments of R3 or above are strictly not allowed.

Reference for FAQ:

<https://www.safe.gov.cn/safe/2022/0509/20943.html>

Points to note

We expect the State Administration of Foreign Exchange shall exercise stricter control on foreign exchange. We have seen an increasing number of penalty cases for prohibited use of proceeds from Capital Account. With advanced technology, it is not difficult for the State Administration of Foreign Exchange to detect such non-compliance.

As a general reminder, besides the above restrictions, Multi-National Corporations should be fully aware of the below restrictions on the use of proceeds from Capital Account, especially the Registered Share Capital: -

1. It shall not be used for expenditures outside the business scope of the WFOE or prohibited by laws and regulations;
2. Unless otherwise expressly provided, it shall not be directly or indirectly used for securities investment or other investment and wealth management products other than those risk level at the ranking of R1 or R2;
3. It shall not be used to issue loans to non-affiliated enterprises, unless the business scope is expressly permitted;
4. It shall not be used for the construction or purchase of non-self-use real estate (except for real estate enterprises).

Based on the above, acquisition of real estate which are occupied by tenants and payment made on behalf of unrelated parties with close business relationship are strictly not allowed for the use of the proceeds from Capital Accounts. However, these are some of the common mistakes we have encountered in court cases.

When making China Inbound Investment, Multi-National Corporations are encouraged to consult with the advisors before they utilise their proceeds from Capital Accounts, while subsequent proceeds from Current Accounts (e.g., business profits) have much less restrictions.

Recent Court Cases of Foreign Exchange Violation [China Tax]

Time to consider legal means to expatriate profits from Mainland China

In April and June 2022, the State Administration of Foreign Exchange published a number of non-compliance cases in remitting money out of Mainland China, involving illegal trading in foreign currency.

The First Notice involves a total of 10 cases involving illegal use of remittances for Gambling outside the territory of Mainland China by individuals. In most cases, they swiped cards in the POS Terminal of Mainland China Merchants. Severe penalty of around 10% of the amount of money involved have been imposed on these individuals while the amount involved may not be significant. Such records will appear in the China Social Credit System of these individual.

The Second Notice involves a total of 10 cases involving illegal remittance of money out of Mainland China via "Underground Money Exchange" (地下錢莊) by individuals and corporates. Similarly, severe penalty of around 10% of the amount of money involved have been imposed. Such records will also appear in the Social Credit System in China.

Reference for the First Notice:

<https://www.safe.gov.cn/big5/big5/www.safe.gov.cn:443/safe/2022/0402/20814.html>

Reference for the Second Notice:

<https://www.safe.gov.cn/safe/2022/0610/21070.html>



Points to note

Based on our experience, the use of “Underground Money Exchange” is not uncommon for enterprises which have set up in both Hong Kong and Mainland China. With the advancement in technology and monitoring system in Mainland China, such kind of illegal actions are strictly not recommended.

To us, many of these corporations actually have legal means to transfer money in and out of Mainland China to fulfill their purposes. The costs of transfer (including China withholding tax (if any)) are quite low and similar to the illegal means. It was simply they did not realise that their group structure and business arrangements could be rearranged such that they could transfer money out of China in a legitimate manner.

Consult with your tax advisor and usually there will be another way to solve your foreign exchange problems.



Higher Benefits but Strengthening Supervision on High and new Technology Enterprise (高新科技企業)

PRC R&D Tax incentives have been attractive, but taxpayers should evaluate their Overall Tax Position

The PRC Government has been encouraging the enterprise to carry out R&D activities in the PRC to enhance the technology level of the country. Meanwhile, it also would like to offer tax reliefs to relieve the burden of the enterprise during COVID-19.

In short, in addition to a lower Corporate Tax Rate of 15%, the following tax benefits are also offered to R&D Enterprises: -

1. Manufacturing Enterprise: Enhanced Tax Deduction from 175% to 200% for Quality R&D Expenditure starting from 1 January 2021;
2. Non-Manufacturing Enterprise: Enhanced Tax Deduction of 175% for Quality R&D Expenditure until 31 December 2023; and
3. Small Hi-Tech Enterprise: Enhanced Tax Deduction from 175% to 200% for Quality R&D Expenditure.

Having said the above, disqualification of High and New Technology Enterprise Status has been common in Year 2022. In the First Half of Year 2022, a total of 396 Enterprises were disqualified while only 148 Enterprises were disqualified throughout the Year 2021. In this regard, we are aware that around 2/3 of the disqualified enterprises have not developed any patents, which is an important indicator that the Enterprises may not have carried out the R&D activities as previously declared.

Nevertheless, we expect that the PRC authorities will continue to enforce close monitoring and investigation on the High and New Technology Enterprise Status. Taxpayers should not undermine the importance of maintaining the status continuously after being granted the status.

Points to note

R&D Tax incentives have been attractive in recent years. Meanwhile, it is our general experience that it is not difficult for the taxpayers to pursue High and New Technology Enterprise Status and pursue enhanced Tax Deduction Claim, while in Hong Kong, it is relatively more difficult for the Hong Kong Inland Revenue Department to accept an expense to be considered as qualifying R&D activities and thus eligible to 200% / 300% Enhanced Tax Deduction.

Having said that, from Transfer Pricing Perspective, an enterprise carrying out R&D activities should generally deserve higher profits margins. As PRC is generally a high-tax jurisdiction, it may not be beneficial to explicitly disclose that the PRC company of a Multi-National Corporations have been carrying out R&D activities in the PRC and provided the relevant details in order to pursue Enhanced Tax Deduction.

Corporations should therefore evaluate the pros and cons of each tax incentives to determine their overall PRC and global tax position.

中國內地外商獨資企業(以下簡稱“WFOE”)使用資本項目收益的限制

中國內地嚴禁使用WFOE結匯所得人民幣資金進行非自用房地產和上市股票投資

2022年5月，國家外匯管理局發佈了一份常見問題解答，闡明其對資本項目外匯收入(如結匯所得人民幣資金)使用情況的最新觀點。原則上，該等收入不得用於購買任何證券投資或高風險理財產品。

在過去，內地外商獨資企業只容許投資保本型理財產品。然而，2018年，理財產品的法規發生了變化。產品根據風險等級分為R1到R5(R1為低風險產品，R5為高風險產品)。理財產品之推廣不得使用「保本」字樣。因此，內地政府有必要更新《外匯管理條例》對資本項目外匯收入允許投資類別的解釋。

在2022年5月的那份常見問題解答中已經澄清了資本項目外匯收入可以用於投資R1和R2級別的產品。投資R3或以上級別的產品是不允許的。

常見問題解答參考：

<https://www.safe.gov.cn/safe/2022/0509/20943.html>



■ 注意事項

我們看到越來越多因違規使用資本項目結匯所得而受到處罰的案件，因此可以預計國家外匯管理局將對外匯管制實行更嚴格的監管。由於科技越來越先進，國家外匯管理局發現此類違規行為並不困難。

溫馨提示，除上述限制外，跨國公司應充分瞭解以下中國境內機構的資本項目結匯所得人民幣資金的使用規定：

- 一. 不得用於企業經營範圍之外或國家法律法規禁止的支出；
- 二. 除另有明確規定外，不得用於證券投資或除 R1 及 R2 級別產品之外的其他投資理財；
- 三. 不得用於向非關聯企業發放貸款，經營範圍明確許可的情形除外；
- 四. 不得用於建設、購買非自用房地產（房地產企業除外）。

綜上所述，資本項目結匯所得嚴禁用於收購承租人佔用的房地產，以及代業務關係密切的非關聯方代收代付。然而，這些都是我們在法庭案件中遇到的一些常犯錯誤。

跨國公司在進行對華投資時，在使用資本項目結匯所得前應先向專業顧問諮詢，相反，往來賬戶收入（如營業利潤）的使用限制相對寬鬆。



近期有關違反外匯管理條例的 法庭案件【中國稅務】

企業是時候考慮採取合法手段把利潤匯出中國內地了

2022年4月和6月，國家外匯管理局分別通報多起非法對外匯款的案件，包括非法外匯交易。

第一項通報共涉及10起個人在境外非法使用匯款賭博的案件。大多數情況下，他們都是透過中國大陸招商局的POS機刷卡。雖然涉案金額可能並不顯著，但這些涉案人均被處以金額約為涉案金額10%的大額罰款。同時，這記錄將出現在個人的中國社會信用體系。

第二項通報涉及個人或公司通過“地下錢莊”非法將資金匯出中國內地的10起案件。相同地，這些涉案人已被處以金額約為涉案金額10%的大額罰款。這記錄將出現在個人的中國社會信用體系。

第一項通報參考：

<https://www.safe.gov.cn/big5/big5/www.safe.gov.cn:443/safe/2022/0402/20814.html>

第二項通報參考：

<https://www.safe.gov.cn/safe/2022/0610/21070.html>

■ 注意事項

根據我們的經驗，“地下錢莊”的使用對於在香港和中國內地設立的企業來說並不罕見。隨著中國內地科技和監控系統的進步，這種違法行為是絕對不建議的。

對我們來說，很多公司實際上都有合法的途徑將資金匯入匯出中國內地，以實現他們的目的。轉讓的成本(包括中國預扣款(如果有的話))實際上相當低，並與非法手段類似，只是他們沒有意識到他們的集團結構和業務可以重新安排，以便他們能夠以合法的方式將資金匯出中國內地。

諮詢你的稅務顧問，找尋另一種出路來解決你的資金問題吧。



更多的稅收優惠但對高新科技企業的監管愈發愈來愈嚴謹

中國研發活動稅收優惠政策頗具吸引力，但
納稅人應評估其整體納稅狀況

中國政府一直鼓勵企業在內地開展研發活動，以提高國家的技術水平。同時，政府也願意為他們提供稅收減免，減輕其在疫情期間的負擔。

簡單來說，研發企業除享受15%較低的企業所得稅稅率外，還可享受以下稅收優惠：

1. 製造業企業：2021年1月1日起，製造業企業研發費用加計扣除比例由75%提高至100%；
2. 非製造業企業：製造業以外企業適用75%加計扣除比例的政策執行期限延長至2023年12月31日；和
3. 小型高新技術企業：研發費用加計扣除比例從75%提高到100%。

然而，2022年高新科技企業被取消資格的情況屢見不鮮。2022年上半年，共有396家企業被取消資格，而2021年全年只有148家企業被取消資格。對此我們瞭解到，在不符合條件的企業中，約有2/3的企業沒有發明任何專利，因此，是否擁有發明專利成為高新科技企業稽查的關注重點，因這是企業有否按照申報進行研發活動的重要指標。

儘管如此，我們預計中國當局將繼續對高新科技企業狀況進行密切監測和調查，因此納稅人不應忽略在獲得高新企業資格後繼續達到相關門檻的重要性。

■ 注意事項

近年來，研發活動稅收優惠政策頗具吸引力。與此同時，根據我們的經驗，納稅人追求高新科技企業地位並申請研發費用加計扣除並不困難。相對來說，在香港，稅務局較難批准給予200% / 300%加計扣除予研發活動支出。

話雖如此，從轉讓定價的角度來看，從事研發活動的企業一般應獲得更高的利潤率。由於中國在大部份情況下是一個高稅收管轄區，跨國公司明確地披露其中國公司一直在中國開展研發活動，並提供相關細節以申請研發費用加計扣除未必得到最大的好處。

因此，公司應評估每種稅收優惠的利弊，以確定其在中國以致全球的整體稅收狀況。


Contact Us.

For further information regarding the above,
please feel free to contact us.

如有任何查詢，歡迎隨時與我們聯絡。

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