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Update Catalogue of Priority Industries for Foreign Investment in Central and Western China

China's National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOC) jointly released the "Catalogue of Priority Industries for Foreign Investment in Central and Western China" on 14 May, which is scheduled to take effect on 10 June 2013. The Catalogue replaces its predecessor issued in 2008, and adds 173 categories to the original list.

According to the "Provisions on Guiding Foreign Investment", foreign-invested projects included in the Catalogue are entitled to the preferential policies granted for the foreign-invested projects under the encouraged category. The Catalogue is organized by province, covering 22 out of the 31 provincial-level administrative regions in Mainland China.

The new catalogue is aimed to further expand the industrial areas of central and western China, and relax some of the investment restrictions. The new provisions encourage enterprise to improve technical standards and to invest in those labor-intensive industries which at the same time can meet requirements on environment and promote resource conservation and comprehensive utilization. In addition to traditional manufacturing industries, relevant industries related to service and merchandising were added to the new catalogue. These include “cloud computing, networking, mobile Internet and other new generation of information technology development” in Shanxi Province and “animation creation, production and development of derivatives” in Heilongjiang Province, The catalogue however strictly limits the transfer of operations involving obsolete/ backward production, high energy consumption and high emission which do not meet the industrial policy to central and western regions.

SAT issues guidance on beneficial ownership of dividends under tax arrangement with Hong Kong

China’s State Administration of Taxation (SAT) issued guidance on 12 April 2013, Shuizonghan [2013] No. 165 (Circular No. 165), in response to enquiries from various provincial and city SAT offices as to whether certain Hong Kong companies should be regarded as beneficial owners of dividend received for purposes of the tax arrangement between Mainland China and Hong Kong. Although Circular No. 165 is addressed to the relevant local SAT offices, the guidance is expected to be followed generally by other tax authorities in China.

For a non-resident to benefit from reduced withholding tax rates, the non-resident must be considered the “beneficial owner” of the income. Some “negative factors” that could affect the status as a beneficial owner were set out in previous circulars which Circular No. 165 is meant to provide some interpretation:

- The negative factor is irrelevant in determining the beneficial owner status of a Hong Kong resident enterprise which distributes its profits only to other Hong Kong resident enterprises.
- “Business activities” include “investing in the shares in respect of which the dividends are received”.
- Tax authority should not merely focus on single factors such as registered capital and expenses but should also consider the risk the applicant bears in relation to its investments and the nature of the work.
- Tax authority should not conclude that the applicant does not possess the right to control or

dispose of its investments merely because the applicant is wholly owned by its immediate parent company.

Announcement on Corporate Income Tax for Non-resident Enterprises was issued

China's State Administration of Taxation (SAT) released the "Announcement on Issues Concerning Corporate Income Tax on Labor Services Provided in China by Non-resident Enterprises" (Announcement [2013] No. 19, hereinafter referred to as "the Announcement") on 19 April, which is scheduled to take effect on 1 June 2013.

According to the Announcement, if non-resident enterprises frequently examine and assess the performance of the personnel they dispatch to China to provide labor services and are wholly or partially responsible for their performance of such personnel, these enterprises shall be deemed to have established offices or premises in China.

However, if these enterprises send personnel to China only to exercise and/or protect their shareholders' rights/interests they will not be deemed to have established offices, premises or permanent offices in China. Activities to exercise and/or protect shareholders' rights/interests include:

- Providing investment suggestions
- Participating in meetings of shareholders and/or directors

China adopts law to regulate tourism

China's first Tourism Law was released on 24 April 2013 which is scheduled to take effect on 1 October 2013. It is designed to provide guidelines to address problems in the tourism market, such as rights of tourist and their protection against arbitrary price hikes. Under the new law, measures are outlined to address key problems including unfair competition, price hikes, and compelled purchases. All these have serious negative impacts on the industry and caused public concerns.

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Service Highlight

Knowing not only the regulations and theories in China but also the practices and practicality, we have been committed to assisting our clients to solving their problems and issues legitimately and with due regulatory compliance. Should you need any help from us, please do not hesitate to contact our Marketing Executive, Ms Mary Li, on +852 3579 8745 or email her at maryli@sinobridge-consulting.com.

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