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Profit Repatriation out of China for Foreign Investors

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Profit repatriation is a delicate subject for enterprises with foreign investment in China. Various regulatory, formality and tax factors surrounding the issue make it worthwhile for investors to define carefully their repatriation strategies, so as to entail tax and profit outcome to the extent that they should be legally entitled to. In this report, we give a brief introduction on several important aspects of profit repatriation out of China for foreign investors.

In accordance with Chinese laws and regulations, enterprises with foreign investment here refer to Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures, and foreign-capital enterprises registered within Chinese territory.

(1) Foreign-funded Enterprises Foreign Exchange Registration

In order to do business in China and remit foreign exchange profits abroad, enterprises with foreign investment first need to get a Foreign-funded Enterprises Foreign Exchange Registration from China State Administration of Foreign Exchange or its branches and sub-branches during the establishment of such enterprises, then they can open foreign exchange accounts with designated foreign exchange banks.

The State Administration of Foreign Exchange and its branches and sub-branches (SAFE) are the administration organs in charge of foreign exchange registration of enterprises with foreign investment. Enterprises with foreign investment shall, within 30 days of acquiring the Business License for a Legal Person of the People's Republic of China, go through the formalities of foreign exchange registration with the domiciled branch of SAFE.

When applying for the registration, such enterprises with foreign investment shall fill in the Registration Form on Basic Information of them and present following documents (duplicate copies):

1. Approval documents and Approval Certificate for establishment issued by the competent organ;
2. Business License for Legal Person of the PRC issued by the State Administration for Industry and Commerce;
3. Approved and valid enterprise contract and constitution;
4. Other documents required by SAFE.

Domestic or overseas subsidiaries of the enterprises with foreign investment that has registered with the domiciled branch of SAFE do not need to go through the formalities of foreign exchange registration separately.

After examining the documents submitted by the enterprises, SAFE shall issue Foreign Exchange Registration Certificate of Enterprises with Foreign Investment (Registration Certificate) to the qualified applicant. The Registration Certificate shall be designed centrally by SAFE headquarter.

(2) Open Foreign Exchange Accounts

After acquiring the Registration Certificate, such enterprises with foreign investment shall open foreign exchange accounts with designated foreign exchange banks on the strength of the Registration Certificate and Notice for Opening an Account issued by SAFE.

Foreign exchange accounts belong to current account items. When a foreign investment enterprise wishes to open a foreign exchange account relating to current account items, it shall apply to the Administration of Foreign Exchange by presenting an application for approval to open a foreign exchange account and a Foreign Exchange Registration Certificate of a Foreign Investment Enterprise. On the strength of the Notice of Opening of an Account and the Foreign Exchange Registration Certificate of a Foreign Investment Enterprise issued by the Administration of Foreign Exchange, it shall carry out the account-opening procedures with the account-providing financial institution. After the account-providing financial institution has opened a foreign exchange account for the foreign investment enterprise, it shall note the account number, currency and date of opening in, and affix its chop to, the appropriate columns of the Foreign Exchange Registration Certificate of a Foreign Investment Enterprise.

(3) Enterprises Income Tax before Profit Repatriation out of China

Before profit repatriation out of China, enterprises with foreign investment need to pay the relevant tax and get the tax paid proof, which need to be provided when remitting foreign exchange profits or stock bonuses abroad.

Per the original Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises issued in 1991, which is invalid now, income tax shall be exempted or reduced on the profit derived by a foreign investor from an enterprise with foreign investment shall be exempted from income tax.

According to the new Enterprise Income Tax Law of the People's Republic of China and its Implementation Regulations, enterprises with foreign investment belongs to the non-resident enterprises, which refer to Enterprises that are set up in accordance with the law of the foreign country (region) whose actual administration institution is outside China, but they have set up institutions or establishments in China or they have income originating from China without setting up institutions or establishments in China. Enterprises Income Tax shall be levied at the reduced rate of 10% for income derived by a non-resident enterprise.

With respect to the preferential policies on profits derived by foreign investors from enterprises with foreign investment, as for accumulated undistributed profits that had been formed by enterprises with foreign investment before January 1, 2008, the profits that are distributed to foreign investors after 2008 shall be exempted for enterprise income tax; as for newly-increased profits that are distributed to foreign investors in and after 2008, enterprises have to pay enterprise income tax according to laws.

(4) Outward Remittance of After-tax profits

With respect to the outward remittance of after-tax profits or bonuses of the foreign investors in outward remittance of after-tax profits after payment of tax according to law, payment shall be made from their foreign exchange accounts, or conversion and payment effected at designated foreign exchange banks, on the strength of the written resolutions of the board of directors on profit distribution. The documents need to be provided are as follows:

1. Tax paid proof and tax declaration form;
2. Audit reports of the profits or dividends, bonuses issued by the accounting firm this year;
3. Decision of the board of directors on distribution of profit, dividends and bonuses;
4. Foreign Exchange Registration Certificate of Enterprises with Foreign Investment;
5. Capital verification report issued by the accounting firm;
6. Other documents required by SAFE.

No enterprise with foreign investment whose registered capital has not been fully paid in as provided by the articles of contract is allowed to remit foreign exchange profits or stock bonuses abroad. If the delay in fully paying in registered capital as provided by the articles of contract is caused by special reasons, approval of the former inspection and approval institutions will be requested. Profits and stock bonuses distributed in accordance with the proportion of paid-in registered capital can be remitted abroad based on the approval documents issued by the former inspection and approval institutions and other documents specified in the Circular.

(5) Relevant Laws and Regulations

- 1) *Administration of the Settlement, Sale and Payment of Foreign Exchange Provisions*
- 2) *Circular of the State Administration of Foreign Exchange on Amending "Circular on Issues Concerning Outward Remittance of Profit, Stock Dividends and Stock Bonuses Processed by Designated Foreign Exchange Banks"*
- 3) *Circular on Issues Concerning Outward Remittance of Profit, Stock Dividends and Stock Bonuses Processed by Designated Foreign Exchange Banks*
- 4) *Income Tax Law of the People's Republic of China for Enterprises with Foreign*

*Investment and Foreign Enterprises Designated Foreign Exchange Banks
(Invalid)*

- 5) *Enterprise Income Tax Law of the People's Republic of China*
- 6) *Implementation Regulations of the Corporate Income Tax Law of the People's Republic of China*
- 7) *Notice of the Ministry of Finance and State Administration of Taxation on Several Preferential Policies in Respect of Enterprise Income Tax*
- 8) *Administration of Foreign Exchange Accounts inside China Provisions*