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## Legal

### Provisions on Implementing the Registration Administration System for Registered Capital under the Company Law of the People's Republic of China (Draft for Public Comments)

Issued by: State Administration for Market Regulation

Issue Date: February 06, 2024

Links: <https://www.shui5.cn/article/82/183086.html>

After the promulgation of the Company Law of the People's Republic of China (the "New Company Law"), the State Administration for Market Regulation (the "AMR") is publicly soliciting comments on Provisions on Implementing the Registration Administration System for Registered Capital under the Company Law of the People's Republic of China (Draft for Public Comments) (the "Draft"). The main contents of the Draft are as follows:

#### **1. Three-year grace period for existing companies**

- A three-year grace period on capital contribution from July 1, 2024 to June 30, 2027 is given for existing companies established before the implementation of the New Company Law.
- Existing limited liability companies with remaining contribution period shorter than five years from July 1, 2027, don't need to adjust their contribution period. However, those with remaining contribution period exceeding five years from July 1, 2027 must adjust within the grace period their contribution period to less than 5 years, meaning the latest contribution deadline would be June 30, 2032.
- Existing companies limited by shares shall fully pay up the subscribed shares within this three-year grace period.
- If the registered capital contribution period of an existing company exceeds thirty years or the amount of registered capital surpasses RMB10 billion, and the company registration authority identifies it as obviously abnormal after due procedures, it may legally require the company to adjust its contribution period and amount within six months, ensuring the adjusted contribution deadline not later than June 30, 2032.

#### **2. A simplified procedure for capital reduction during the grace period for existing companies**

- Qualified existing companies that apply for a reduction in registered capital without reducing actual contributions during the grace period can follow a simplified procedure. Instead of the usual forty-five-day announcement period, they only need to announce for twenty days and are exempted from sending separate written notices to creditors. If no objections are raised by creditors during the announcement period, the company can directly apply for capital reduction.

#### **3. Clarification of information disclosure requirements**

- Companies are required to disclose information regarding shareholder's subscribed and actually paid-in capital, method of contribution, equity changes and others through the National Enterprise Credit Information Publicity System within twenty working days from when such information is formed. In

addition, companies should upload shareholder registers, financial statements, and other supporting materials via the National Enterprise Credit Information Publicity System to illustrate the actual payment status of shareholders.

## **Measures of the Shanghai Municipality for the Management of Development Funds for the Regional Headquarters of Multinational Enterprises (revised)**

Issued by: Shanghai Municipal Commission of Commerce, Shanghai Municipal Finance Bureau

Issue No.: Hushangui (2024) No. 2

Release Date: February 1, 2024

Links: <https://www.shanghai.gov.cn/gwk/search/content/07af281937144d9ba83d28339368b7b6>

This Measures was revised on its last version of the Measures of the Shanghai Municipality for the Use and Management of Special Funds for Encouraging the Development of the Regional Headquarters of Multinational Enterprises (2018 Revision). The main changes include:

### **1. Subsidies extended to MNE Business Division Headquarters**

- Multinational Enterprises Business Division Headquarters (MNE Business Division Headquarters) can also enjoy various subsidies and incentives such as start-up subsidies, rental subsidies, incentives for high-level headquarters, operations and capital increase.

### **2. New incentives for capital increase**

- Regional headquarters of multinational enterprises and MNE Business Division Headquarters that invest in projects in line with Shanghai industrial development guidelines (excluding real estate, financial, and similar financial projects) through capital increase with the new investment amount of no less than USD 30 million within one calendar year, can receive a one-off incentive of RMB 2 million. Each headquarter can enjoy such incentive for capital increase only once during the implementation period of the Measures.

### **3. Changes in conditions for fund application**

- When regional headquarters of multinational enterprises and MNE Business Division Headquarters apply for start-up subsidies and rental subsidies, in addition to the requirement of a paid-in capital of no less than USD 30 million (USD 2 million for applying for rental subsidies), and a staff size of no fewer than 10 employees, a new requirement has been added that they must manage at least one domestic or foreign enterprise.
- The number of full-time R&D personnel required for R&D centers to apply for start-up and rental subsidies has been adjusted from 100 to 50.
- General requirements for applying for the fund are added, such as operating continuously for more than 1 year, having good financial and tax credit, and filing annual reports of foreign-invested enterprises as required.

### **4. Changes on application time and fund management**

- Start-up and rental subsidies: Enterprises must submit applications within three years after being

recognized as regional headquarters of multinational enterprises, MNE Business Division Headquarters, or global R&D centers.

- Operational incentives: Enterprises must submit applications in the following year after their revenue achieving the threshold for operational incentives.
- Incentives for capital increase: Enterprises must submit the application in the following year after the actual capital injection. It's important to note that enterprises can only benefit from either the incentives for capital increase or the start-up subsidies but not both in the same year. The enterprises must make a written commitment not to reduce, withdraw, or transfer the capital into domestic investors within 3 years.

## **Several Provisions on Deepening the Reform of Enterprise Business Scope Registration in Pudong New Area**

Issued by: People's Government of Pudong New Area, Shanghai  
Issue No.: Pufuguangui (2024) No. 1  
Issue Date: February 4, 2024  
Effective Date: February 18, 2024  
Links: [https://www.pudong.gov.cn/zwgk/14470.gkml\\_zhzw\\_zcwj\\_qtzcwj/2024/57/324069.html](https://www.pudong.gov.cn/zwgk/14470.gkml_zhzw_zcwj_qtzcwj/2024/57/324069.html)

The Administration Department for Market Regulation of Pudong New Area (the "Registration Authority") has implemented reforms in the registration of business scopes of enterprises, with key contents outlined as follows:

- The business scope of enterprises is no longer directly printed on the business license, but loaded into the "entity ID code" on the business license and publicly displayed on the National Enterprise Credit Information Publicity System.
- Enterprises only need to file registration of their licensed business scope and main business scope with the Registration Authority, while other business scopes are displayed independently by the enterprise through the "Government Online-Offline Shanghai" or "Shanghai Online Business Registration".
- It creates a specialized list of unique business scope alongside the standard descriptions, giving examples like retail of specific traditional handicrafts (Sanlin embroidery) and a renowned local agricultural product (Nanhui 8424 watermelon).

## Tax

### Tax Impact of the New Company Law

Issued by: The Standing Committee of the Fourteenth National People's Congress of the PRC  
Issue No.: Decree No. 15 of the President of the PRC  
Effective Date: July 1, 2024  
Links: [http://www.npc.gov.cn/c2/c30834/202312/t20231229\\_433999.html](http://www.npc.gov.cn/c2/c30834/202312/t20231229_433999.html)

With the promulgation of the new Company Law, several revised provisions have notable implications for corporate tax. The major implications are as follows:

#### **1. Restrictions on pre-tax deduction of interest expenses**

The new Company Law stipulates that registered capital contributions from all shareholders in a limited liability company shall be fully paid up by the shareholders within five years from the establishment date of the company in accordance with the Company's Articles of Association.

According to No. [2009]312 from the State Taxation Administration ("No. [2009]312"), where a company's investors fail to fully pay up their due capital contribution within the prescribed period, the interest incurred on loans taken out by the company that is equivalent to the difference between the amount of capital actually contributed by the investor and the amount they should have contributed during the specified period cannot be deducted before corporate income tax ("CIT").

Under the previous Company Law, since the deadline for actual capital contribution was determined by investors themselves, in practice, corporate investors could evade the restriction on interest deduction before CIT set forth by No. [2009]312 by setting a sufficiently long period for capital contribution. However, under the new Company Law, any investor's unpaid subscribed capital within the five-year period starting from the company's establishment would now fall into the category of "not fully paid-up within the prescribed period."

#### **2. Unpaid taxes may result in shareholders of a company advancing their capital contributions**

The new Company Law stipulates provisions on the early expiry of capital contribution period. If a company is unable to settle its due debts, the company itself or creditors with matured claims have the right to demand that shareholders who have subscribed but not yet reached their contribution deadlines to pay up their capital contributions in advance.

This means that, as creditors, tax authorities have the right to demand shareholders who have subscribed capital contributions but have not yet reached their payment deadlines to make those contributions in advance if the company fails to pay its due taxes on time.

#### **3. Unpaid taxes may lead to joint and several liabilities for related companies**

The new Company Law stipulates that where shareholders use two or more companies under their control to evade debts, each of these companies shall bear joint and several liability for the debts of any one company among them. In such cases, when a company owes taxes, tax authorities are entitled to pursue collection

from other companies controlled by the same shareholder.

Moreover, if a company subjected to the "joint and several liability" incurs an economic outflow as a result, this expenditure is likely not considered a "reasonable expense directly related to the generation of income" as explicitly defined in Article 8 of the Enterprise Income Tax Law. Consequently, there is a risk that such expenditures may not be deductible before corporate income tax.

## **Announcement on Annual Filing of Individual Income Tax on Comprehensive Income for 2023**

Issued by: State Taxation Administration  
Issue No.: Announcement No. 2 (2024) of the State Taxation Administration  
Issue Date: January 31, 2024  
Links: <https://fgk.chinatax.gov.cn/zcfgk/c100012/c5221099/content.html>

The Announcement specifies matters regarding the annual filing of individual income tax on comprehensive income for the year 2023, with key points covering:

### **1. Clarify the methods, timing, and locations for combined declaration of multiple equity incentives**

- For individual residents who receive equity incentives multiple times within one tax year from the same employer, the said employer shall combine to calculate and withhold the individual income tax.
- For individual residents who receive equity incentives from different employers within one tax year, they may provide information about the equity incentives received from previous employers to their current employer, allowing the current employer to combine to calculate and withhold the individual income tax. Alternatively, individual residents can also choose combined declaration of the equity incentives income themselves at the local tax authority between March 1st and June 30th of the following year.

### **2. Extension of confirmation period for agent-assisted annual filing**

- Unlike previous years, taxpayers who need to entrust their employers to handle their annual filing of comprehensive individual income tax no longer have to confirm their agency relationship with the employer by April 30th. This measure grants taxpayers who require agent services a more generous period of time.

### **3. Reminder on the accuracy of special additional deductions**

- If taxpayers file in special additional deductions that do not comply with tax regulations, once detected, the tax authority will issue notifications through channels such as the Individual Income Tax APP, the website (etax.chinatax.gov.cn), and the withholding agents.
- For taxpayers who refuse to make corrections or explanations, the tax authority will suspend their eligibility for special additional deductions. Only if taxpayers make corrections in accordance with tax regulations or provide a satisfactory explanation, they can continue enjoying the special additional deductions.

## The Notice on Administration of Cross-Border Tax Payment and Refund

Issued by: People's Bank of China, Ministry of Finance, State Taxation Administration  
 Issue No.: Yin Fa (2024) No.4  
 Issue Date: January 4, 2024  
 Links: <https://fgk.chinatax.gov.cn/zcfgk/c100013/c5220573/content.html>

The Notice clarifies the cross-border tax payment process, mainly including:

- Clarify the procedures and requirements for cross-border tax remittances by way of electronic tax collection through the Treasury Information Processing System (TIPS).
- In cases where taxpayers remit foreign currency from abroad to pay their taxes in China, fluctuations in the exchange rate at the time of remittance often result in a refund as necessary. The Notice accordingly stipulates the operational process and prescribed time limits for handling cross-border tax refund services in such instances.

## Others

### Rules on Fixed Assets Loans (Revision) and Rules on Working Capital Loans (Revision)

Issued by: National Financial Regulatory Administration("NFRA")  
 Issue No.: NFRA Order (2024) No.1 and No.2  
 Issue Date: February 2, 2024  
 Effective Date: July 1, 2024  
 Links: <https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1151060&itemId=928&generalType=0>  
<https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1151066&itemId=928&generalType=0>

The newly released 'Rules on Fixed Assets Loans' (referred to as the "ROFAL") and the 'Rules on Working Capital Loans' (referred to as the "ROWCL"), compared with the original relevant regulations, mainly include the following revisions:

Contents	Revisions of ROFAL	Revisions of ROWCL
Loan purpose	<ul style="list-style-type: none"> <li>• The minimum investment amount requirement for "fixed asset investment" has been lifted.</li> <li>• It has been explicitly clarified that construction, acquisition, and renovation activities of fixed assets all fall under the category of "fixed asset investment".</li> </ul>	<ul style="list-style-type: none"> <li>• In the form of a negative list, it is clearly stipulated that working capital loans must not be used for shareholder dividends or investments in financial assets.</li> </ul>



Contents	Revisions of ROFAL	Revisions of ROWCL
Entrusted payment	<ul style="list-style-type: none"> <li>• It is explicitly prescribed that when a single payment made by the borrower to any transaction counterparty exceeds RMB 10 million, the entrusted payment method which the lender makes the payment on behalf of the borrower should be adopted. This revision eliminates the previous entrusted payment standard of "5% of the total project investment."</li> <li>• The period for entrusted payment has been suitably extended, with a general principle of 5 working days and a maximum extension to up to 10 working days. In cases of force majeure, the timeframe can be mutually determined through negotiation between the borrower and lender.</li> </ul>	<ul style="list-style-type: none"> <li>• It is now explicitly stated that when a single payment made by the borrower to any transaction counterpart exceeds RMB 10 million, the entrusted payment method which the lender makes the payment on behalf of the borrower should be adopted. This revision deletes the vague description of "a large single payment amount" from the original regulations.</li> </ul>
Loan term	<ul style="list-style-type: none"> <li>• It is explicitly stated that the term for fixed asset loan generally should not exceed 10 years. However, if there is a genuine need to extend the loan period beyond 10 years, such approval shall be handled by the head office of the lending institution, or prudently delegated to the corresponding level of management for approval according to actual circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>• It is explicitly specified that the term for working capital loans should, as a principle, not exceed 3 years, but can be appropriately extended up to a maximum of 5 years.</li> </ul>
Repayment requirements	<ul style="list-style-type: none"> <li>• The date for the first repayment of the loan principal has been adjusted, with the latest possible date set at "one year after the project reaches its intended usable state."</li> <li>• In principle, the principal repayment frequency should not be less than twice a year; however, under circumstances where the lender, upon evaluation, deems it necessary to reduce the principal repayment frequency, it is allowed to extend principal repayment frequency up to once per year at the longest.</li> </ul>	<ul style="list-style-type: none"> <li>• It is explicitly stipulated that for working capital loans with terms exceeding one year, the principal should generally be repaid in installments on a basis of negotiation between the borrower and the lender.</li> </ul>



Contents	Revisions of ROFAL	Revisions of ROWCL
Extension period	<ul style="list-style-type: none"> <li>A uniform standard on cumulative extension periods has been established for both medium and long-term fixed asset loans and working capital loans, it is stipulated that they shall not exceed half of the original loan term.</li> </ul>	

## Recent Hot Topics

- Recently, tax authorities have been conducting extensive examinations on the interest rates of entrusted loans between related enterprises. How should enterprises respond to these inspections and how can they demonstrate that the interest rates for related-party borrowings are determined at fair market levels?
- Recently, tax authorities in multiple regions have raised concerns over the reasonableness of rent and property management fees stipulated in leasing and management contracts for industrial real estate companies. How should rental income and property management income be properly allocated to mitigate the risk of Value-Added Tax? When facing such inquiries from tax authorities, what measures should enterprises take to respond appropriately?
- Foreign exchange registration is crucial in the registration of equity transfer (from foreign to domestic investors) when foreign investors transfer their equities in a company incorporated in China and withdraw from the China market. What are the key points for banks or the State Administration of Foreign Exchange to review in such registrations? How can companies comprehensively consider these reviewing points in the early stage of the transaction?

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