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Legal

Official Reply on the Validity of the Agreement between Large Enterprises and Small and Medium-sized Enterprises that Payment is Contingent upon Receipt of Payment from a Third Party

Issued by: Supreme People's Court
Issue No.: Fashi No.11[2024]
Release Date: August 27, 2024
Links: <https://www.court.gov.cn/fabu/xiangqing/441281.html>

The official reply clarified the following:

- In the context of large enterprises undertaking construction projects or purchasing goods and services, any clause stipulating that payment to a small or medium-sized enterprise is contingent upon the receipt of payment from a third party is considered invalid.
- Upon establishing the invalidity of the aforementioned clause, it is imperative to set a fair payment schedule for the large enterprises and to define the corresponding liability for breach of contract.
- If both parties have agreed upon a specific interest calculation method for outstanding payments, this agreement shall govern the process. In the absence of such an agreement or if the agreement is deemed unlawful, the interest should be calculated based on the one-year Loan Prime Rate published by the National Interbank Funding Center.

Notice on Issuing the Implementation Plan for Streamlining the One-Stop Deregistration Process for Enterprise

Issued by: Shanghai Municipal Administration for Market Regulation, Shanghai Municipal Tax Service, State Taxation Administration, Shanghai Customs District P.R.China, Shanghai Municipal Human Resources and Social Security Bureau, Shanghai Branch of the People's Bank of China, Shanghai Public Security Bureau, Shanghai Medical Security Bureau, Shanghai Housing Provident Fund Management Center
Issue No.: Hushijianzhuce [2024] No. 357
Release Date: July 29, 2024
Links: <https://scjgj.sh.gov.cn/152/20240801/2c984a7290b92f7801910d290b207c9d.html>

This plan achieves one-stop service for deregistration of enterprises in Shanghai through information sharing and synchronized guidance. The deregistration results can be obtained through multi-terminal access. The main contents are as follows:

1. Process integration

After an enterprise applies for deregistration through the website of "Shanghai Online Business Registration", the relevant information is synchronously pushed to the departments of tax, customs, human resources, banking, public security, medical, housing provident fund and others. These government agencies will then process and handle the information in accordance with established legal procedures.

2. Pre-check and reminder functions

Integrate pre-deregistration checks within the platform to provide timely notifications to enterprises regarding unresolved tax issues, outstanding social insurance payments, unpaid wages, customs declaration filings, housing provident fund remittances, and employee transfer processes. This allows enterprises to prepare and address these matters proactively before proceeding with the official deregistration process.

Tax

Notice on Further Facilitating the Cross-regional Migration of Taxpayers to Serve the Construction of a National Unified Market

Issued by: State Administration of Taxation
Issue No.: Shuizongzhengkefa (2024) No. 38
Release Date: July 29, 2024
Effective date: September 1, 2024
Links: <https://fgk.chinatax.gov.cn/zcfgk/c102424/c5233779/content.html>

The State Administration of Taxation has issued the following notice on further optimizing the services for handling the cross-regional migration for taxpayers:

- Optimize the handling of unfinished matters. The electronic tax bureau will proactively deliver guidance on tax-related matters for cross-regional migration to taxpayers, and synchronize the unfinished tax-related matters to the taxpayers and relevant tax officials.
- Simplify the procedures for using invoices. For taxpayers using fully electronic invoices, the information system automatically transfers their invoice quota to the destination location.
- Categorize and handle tax-related risks. For taxpayers with unfinished risk tasks, those with low risk will have their migration procedures handled immediately, and the risk tasks will be pushed to the destination for continued processing; those with medium or high risk will have their migration procedures handled after completing risk responses within the specified time limit according to regulations.
- Optimize the tax refund process. If taxpayers have overpaid taxes, the information system will automatically remind them to deal with tax refunds.
- Keep the rights and qualifications of taxpayers. The tax authorities transferred in must ensure that taxpayers' rights and qualifications, such as tax credit level, invoice quota, prepaid taxes, income tax loss compensation, value-added tax (VAT) general taxpayer status, and undeducted input VAT, are maintained as before after the transfer.

Announcement on the Implementation of Classified and Graded Tax and Surcharge Management and Services

Issued by: Guangdong Provincial Tax Service, State Administration of Taxation
Issue No.: Announcement of (2024) No. 6 Guangdong State Administration of Taxation
Release Date: August 2, 2024
Links: <https://guangdong.chinatax.gov.cn/gdsw/ssfggds/2024-08/02>

The main content of the announcement is as follows:

- Guangdong Province has completely terminated the fixed relationship between the tax administrator and the taxpayer, and has implemented classified and graded management based on tax (and surcharges) matter categories. Tax authorities at all levels adopt a task list and team collaboration approach to undertake tax and surcharges management tasks.
- Taxpayers can conduct tax consultations and tax affairs through: 1) the "Taxpayer-Tax Collector Interaction" module in the Guangdong Electronic Tax Bureau; 2) the "Intelligent Consultation" module in the "Guangdong Taxation" WeChat public account and local tax WeChat public accounts; 3) the "Intelligent Consultation" on the homepage of the Guangdong Provincial Tax Service official website; 4) the "Intelligent Consultation" in the YueShuiTong WeChat mini-program; 5) the intelligent customer service "Yue Yue" in the Electronic Tax Bureau APP.

Foreign Exchange

Regulations on the Administration of Investment Funds for Foreign Institutional Investors in Domestic Securities and Futures Markets

Issued by: The People's Bank of China, State Administration of Foreign Exchange
Issue No.: The Announcement No. 7 of 2024 by the People's Bank of China and the State Administration of Foreign Exchange
Release Date: July 26, 2024
Effective date: August 26, 2024
Links: <https://www.safe.gov.cn/safe/2024/0726/24815.html>

The regulation further optimizes and improves the management of securities and futures investments made by foreign institutional investors in China. The main contents are as follows:

1. Further simplification of the procedures for funds registration

Clearly defines that after obtaining the license to operate securities and futures business from the China Securities Regulatory Commission (CSRC), qualified investors should provide relevant materials to the principal reporting entity (custodian) and complete the business registration through the principal reporting entity on the Digital SAFE Platform for Banks under the relevant module of the Capital Account. This process no longer requires applying for administrative permission from the State Administration of Foreign Exchange (SAFE). Additionally, the regulation extends the time limits for change registration and deregistration.

2. Further optimization of account management

No longer distinguishing between RMB dedicated deposit accounts used for securities transaction and

those used for derivatives transaction, the regulation merges the income and expenditure scopes of these accounts. This reduces the number of accounts that market entities need to open with the same custodian for different types of investments, thereby lowering their cost burden.

3. Further improvement of exchange management

Optimize the cross-border fund flow management for QFII and RQFII, improving the principles for managing the currencies of inflows and outflows. Previously, investment principal and earnings that were remitted in foreign currency could only be remitted out in foreign currency. Now, they can be remitted out either in foreign currency or RMB, further meeting the foreign investors' needs for convenient fund conversion

Customs

Measures for the Administration of the Issuance of Certificate of Origin for Exported Goods of the People's Republic of China

Issued by: General Administration of Customs
Issue No.: Decree No.270 of 2024
Issue Date: July 30, 2024
Effective date: September 1, 2024
Links: <http://www.customs.gov.cn/customs/302249/302266/302267/6012527/index.html>

The measures optimize and integrate the issuance management process of Certificate of Origin, ensuring its issuance is standardized. The main contents are as follows:

- Abrogate the requirement for enterprise's record-filing of origin for export goods. The applicants for Certificate of Origin who have not yet completed the record-filing in the General Qualification System of Customs Enterprises can independently input the necessary information via the interface in the system. Once the enterprise information is successfully maintained, they may proceed to apply for the Certificate of Origin;
- In accordance with the Regional Comprehensive Economic Partnership Agreement (RCEP) and other preferential trade agreements, the scope of Certificate of Origin applicants has been expanded to include manufacturers. Exporters and manufacturers of goods are now entitled to apply for Certificates of Origin from issuing authorities either directly or through their agents.
- Promote pre-verification of the origin of export goods to enhance the efficiency of the certification process.
- Allow issuing authorities to use electronic signatures and electronic seals to issue Certificate of Origin.

Announcement on Simplifying the Document Submission Requirements for Goods Transported via Third Countries(Region) under Preferential Trade Arrangements

Issued by: General Administration of Customs
Issue No.: Announcement No. 110 of 2024 by the General Administration of Customs
Issue Date: August 23, 2024
Links: <http://www.customs.gov.cn/customs/302249/302266/302267/6061968/index.html>

This announcement simplifies the document submission requirements for import clearance. The main contents are as follows :

When importers declare the application of agreement rates or preferential rates, if they can provide specific documents, they are no longer required to submit a non-manufacturing certificate issued by the third country (region) through which the goods passed. Specific documents include:

- Transport documents issued by the carrier showing the place of departure and destination;
- Documents proving that the container numbers and seal numbers did not change during transportation (for goods transported entirely in containers);
- CIM or CMIC waybill(for goods transported by international rail freight trains);
- Supervisory documents issued by the customs of the third country (region) that prove the goods were only in transit, transshipped, or through-transported;
- Transit Confirmation Certificate issued by the Hong Kong Customs, China Inspection (Hong Kong) Limited, or the Macao Customs (for goods transshipped through Hong Kong or Macao).

Recent Hot Topics

- The special nature of REITs project companies may lead to anomalies in tax comparisons. How should enterprises respond to this?
- Since January 2024, eligible non-financial enterprises in the pilot regions (Shanghai, Jiangsu, Guangdong, Beijing, Zhejiang and Hainan) can apply for foreign loan under the macro-prudential management mode (i.e. the foreign loan quota is calculated based on the value of the enterprise's net assets) directly through banks. Is pre-approval from the National Development and Reform Commission required for banks to issue the medium and long-term foreign loan?
- As the 5-year transition period for the implementation of the Foreign Investment Law will expire on 31 December 2024, how should foreign-invested enterprises established under the old laws amend their articles of association and make necessary adjustments? What are the consequences of failing to do so in a timely manner?

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