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Highlights

- NDRC manages equity investment enterprises by filing
- Registration of debt-for-equity swap launches
- Business Tax is converting to Value-Added Tax in Shanghai

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Circular of the General Office of the National Development and Reform Commission on Promoting the Standardized Development of Equity Investment Enterprises

Fa Gai Ban Cai Jin [2011] No. 2864

Effective as of 23 November 2011

RAISING OF CAPITAL

An equity investment enterprises shall, only through private placement, raise capital from specific qualified investors who have the risk identification capability and the risk tolerance and shall not, through publishing an announcement on media (including various websites), posting a notice in any community, distributing leaflets to the general public, send short text messages to the mobile phones of the general public or holding a workshop or lecture or any other public means or public means in a disguised manner (including placing prospectuses at counters in such institutions as commercial banks, securities companies and trust and investment companies), directly or indirectly make recommendations to any non-specific or unqualified investors. The capital raisers of an equity investment enterprise shall fully disclose investment risk and possible investment losses to investors and shall not promise to investors the guarantee of the recovery of their funds or the attainment of a fixed return.

CAPITAL SUBSCRIPTION

All investors of an equity investment enterprise shall only subscribe for their capital contribution with their own lawful monetary funds. Capital

subscription and payment may take the commitment mode, that is, an investor signs a letter of commitment for capital subscription at the capital-raising stage of an equity investment enterprise and pay the capital contribution by installments according to the stipulations of the articles of association or the partnership agreement of the equity investment enterprise at the investment operation stage of the equity investment enterprise.

INVESTMENT FIELDS

The investment of an equity investment enterprise shall be limited to non-publicly traded equity and its idle funds shall only be deposited in banks or used to investment products with fixed income such as T-bonds; its investment direction shall comply with the industry policy, investment policy and macro control policy of the State. The investment projects of an equity investment enterprise shall go through the compliance management procedure for fixed assets investment projects. When a foreign-funded equity investment enterprise makes an investment, it shall go through the approval procedure for the investment project in accordance with the relevant provisions of the State.

SUBMISSION OF ANNUAL REPORTS

In addition to disclosing investment operation information to investors according to the articles of association and the partnership agreement, an equity investment enterprise shall, within 4 months of the close of each financial year, submit an annual business report and an annual financial report audited by an account-



ing firm to the filing management authority. The entrusted management institution and custodian of an equity investment enterprise shall, within 4 months of the close of each financial year, submit an annual assets management report and an annual assets custody report to the filing management authority.

SCOPE OF FILING MANAGEMENT

Except for any of the following circumstances, an equity investment enterprise shall, according to the requirements of this Circular, apply to file with the corresponding management authority within 1 month after the industrial and commercial registration is completed:

- (1) Where the equity investment enterprise has been filed as a venture capital investment enterprise according to the Interim Administrative Measures for Venture Capital Investment Enterprises; or
- (2) Where the equity investment enterprise is established wholly through the capital contribution of a single institution or natural person or through the joint capital contribution of an institution and its solely-owned subsidiary or the joint capital contribution of multiple solely-owned subsidiaries of an institution.



Administrative Measures for the Registration of Debt-for-equity Swap of Companies

Order of the State Administration for Industry and Commerce No. 55
Effective as of 1 January 2012

DEFINITION

For the purpose of these Measures, "debt-for-equity swap" shall refer to the act of swapping from any creditor the debt, which such creditor is entitled to in accordance with the laws, of a limited liability company or joint stock company (hereinafter the "company") established in the territory of China for the equity of such company to increase the registered capital of such company.

APPLICATION

If the administration of registration of debt-for-equity swap constitutes any of the following circumstances, these Measures shall apply:

1. The contractual debt arising between the creditor and the company in the operation of the company is swapped for the equity of the company and the creditor has performed the contractual obligations corresponding to the debt and has not violated the prohibitive provisions of laws, administrative regulations, decisions of the State Council, or the company's Articles of Association;
2. The debt confirmed by effective judgment made by the court is swapped for the equity of the company; or
3. During the bankruptcy reorganization or reconciliation period of the company, the debt listed in the reorganization plan approved by the people's court or in the reconciliation agreement accepted by the ruling of the people's court is swapped for

the equity of the company.

DIVISION

If the debt to be swapped for equity has two or more creditors, the creditors shall have made the division of the debt.

EVALUATION

The debt to be swapped for equity shall be evaluated by a lawfully established assets evaluation institution.

The evaluated capital contribution of debt-for-equity swap shall not exceed the evaluated value of such debt.

CAPITAL VERIFICATION

The debt-for-equity swap shall be verified by a lawfully established capital verification institution, which shall issue a certificate of capital verification.

The certificate of capital verification shall include the following particulars:

1. Basic information of the debt, including the time and the reason occurring of the debt, the names of the parties to the contract, the subject matter of the contract, the performance of obligations corresponding to the debt;
2. Information on evaluation of the debt, including the name of the evaluation institution, document number of the evaluation report, base date of evaluation, and evaluated value;
3. Information on completion of debt-for-equity swap, including the signed agreement on debt-for-equity swap, the discharge of corresponding debt of the company by the creditor, relevant accounting treatment of the company; and
4. Information on approval in the event the debt-for-equity swap shall be subject to approval in accordance with the laws.

Circular on the Implementation of the Pilot Change from Business Tax to Value-Added Tax in the Transportation and Certain Modern Service Industries in Shanghai

Cai Shui [2011] No.111

Effective as of 1 January 2012

APPLICABLE ENTITIES AND INDIVIDUALS

All entities and individuals which provide transportation services and certain modern services (hereinafter, the "taxable services") within the territory of the People's Republic of China (hereinafter, "domestic", or "domestically" as applicable) are VAT payers. In connection with their taxable services, such taxpayers shall stop paying business tax and instead pay VAT in accordance with these Measures.

"Entities" shall include enterprises, administrative agencies, public institutions, military agencies, social bodies and organizations of any other nature.

"Individuals" shall include individually-owned businesses and any other individuals.

TAXABLE SERVICES

Taxable services shall include land, water, air and pipeline transmission, as well as services of or in connection with research, development and technology, information

technology, cultural innovation, logistics supports, lease of corporeal movables, attestation and consulting.

The scope of taxable services shall be subject to the Notes to the Scope of Taxable Services attached hereto.

FOR VALUE

Providing taxable services means providing such services for value.

By "for value", it means the acquisition of cash, goods or any other economic benefits. Transportation and certain modern services provided as part of non-profit making activities shall not be deemed taxable services. Non-profit making activities shall mean:

1. The practices of non-corporate entities to collect or levy governmental fund or administrative charges for public undertakings in accordance with the applicable laws or regulations for the purpose of enabling national administration and public service functions;
2. Transportation and certain modern services provided by an employee, who is retained by an entity or individually-owned business, for such entity or his/her employer;
3. Transportation and certain modern services provided by an entity or individually-owned business to its employees; and
4. Any other activities defined by the MOF or the SAT.

