

# Broadening horizons

## China Newsletter

Latest News on law, tax and business in China

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## 国务院推出吸引外资新举措

**Vivian Yao / Frances Gu,**  
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近日，中华人民共和国国务院发布了《关于促进外资增长若干措施的通知》（国发[2017] 39号文，以下简称“通知”），在总体层面对于进一步鼓励外商来华投资的方式提出了意见，希望通过更多支持政策，促进外资增长，并提高利用外资质量。《通知》中提出的措施一共涉及以下几个方面：

### 减少外资准入限制

《通知》要求进一步推行外商投资负面清单管理制度，并扩大市场准入对外开放范围。涉及的行业包括新能源汽车制造、银行业、证券业、保险业等。这意味着中国将进一步放宽对外资企业的行业限制，并增强对外投资的规范化管理。

### 财税支持政策

《通知》中提出了多项财税优惠政策。首先，对境外投资者从中国境内居民企业分配的利润直接投资于鼓励类投资项目，实行递延纳税政策，暂不征收预提所得税。目前，在不享受双边税收协定优惠的情况下，境外投资者即便将从中国分配的利润用于在中国境内的再投资也需缴纳 10% 的预提所得税。可见，递延纳税政策无疑将极大减轻外资企业股利分配所得的税负，也有利于企业资金的周转，使企业更愿意长期将利润留在中国。

此外，《通知》还建议出台其他各项财税支持措施，包括将服务外包示范城市符合条件的技术先进型服务企业所得税优惠政策推广到全国，吸引设立跨国公司地区总部，引导外资进入西部和东北地区，鼓励中国企业对外投资等。这些政策意在引导外资更多地投向高附加值的先进服务行业以及经济发展较慢地区，促

## New Measures to Boost the Foreign Investment

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Recently, China published Circular of the State Council on Several Measures to Boost the Growth of Foreign Investment (Guo Fa [2017] No. 39, referred to herein-after as the "Circular"), issuing general guidelines on further encouraging foreign investment in China. It is expected that the Circular can promote the growth of foreign investment and improve the quality of foreign capital utilization by implementing more supporting policies. The major measures included in the Circular are summarized as follows:

### Reduction of foreign capital restrictions

The Circular demands the further implementation of the negative list administrative system for foreign investment. Market access is also required to be expanded in order to allow foreign capital to enter into more industries. The expanded industries include the manufacturing of new-energy vehicles, banking, securities, insurance, etc. This suggests that China aims to loosen the restrictions on the business sectors which allow the foreign enterprises to operate, and at the same time to enhance the standardization management of foreign investment.

### Fiscal and taxation supporting policies

The Circular suggests the implementation of various fiscal and taxation beneficiary policies. Firstly, the profits obtained by foreign investors from resident enterprises in China and directly reinvested in encouraged investment projects will be entitled to the tax deferral policy and accordingly be exempted temporarily from withholding tax obligations. At present, foreign investors are subject to a 10% withholding tax when they receive dividends from Chinese enterprises, provided that no double taxation agreement benefits can be applied, even the dividends are used for the re-investment in China. It can be expected that the tax deferral policy will undoubtedly significantly ease the tax burden of foreign enterprises and also improve their cash liquidity utilization, motivating foreign enterprises to leave profits in China in a longer term.

In addition, the Circular also covers other supporting policies, including promoting preferential enterprise income tax policies designed for technically advanced service enterprises that are located in demonstration cities featuring service outsourcing to the whole country, encouraging multinational companies to establish regional headquarters in China, directing foreign capi-

进服务行业发展和地区经济发展。

## 人才出入境

《通知》明确提出，在 2018 年出台外国人在中国工作管理条例，规范外国人才来华工作许可制度。同时，在 2017 年下半年，制定外国人才签证实施细则，放宽外国人才签证有效期。作为吸引外资的一个重要部分，中国在外国人才引进方面的管理却缺乏规范。此次颁布的《通知》提出了明确的改革时间表，表明国务院希望尽快改善现有问题，为吸引外资扫清障碍。

## 我们的观察

总体来说，此次《通知》的发布标志着中国经济对外开放程度的进一步提高，也显示了目前中国对于外资的需求仍然巨大。从内容来看，《通知》的目标主要包括三个方面。一是加大对外资的支持力度，主要体现在各种财税优惠政策上；二是引导外资投向特定行业和地区，以加快中国的产业转型和区域发展；三是改善外商投资环境，主要包括完善法律法规等政策。

对于外资企业来说，《通知》的发布无疑是利好消息。值得注意的是，《通知》仅仅起到纲领性的作用，具体的政策还有待各有关部门的后续制定。对于外资企业特别关心的股利分配纳税问题，根据《通知》规定，只有将分配所得利润直接投资于鼓励类项目的，才能够享受递延纳税政策，而鼓励类项目的定义则尚未明确。同时，一些实际操作中的问题，如递延的预提所得税未来在何时缴纳，缴纳时是否可以享受未来新颁布的双边税收协定优惠以及《通知》发布前留存的未分配利润是否适用递延纳税政策，也仍然尚未明确。因此，外资企业可以等到相关实施细则颁布后根据现有情况，评估是否可以享受潜在的政策优惠以及是否需要调整未来在华的投资策略。

tal to western and northeastern China, and encouraging overseas investment of Chinese enterprises. These policies aim to direct foreign capital into the advanced service sectors with more added values as well as economically less developed areas, thus promoting the development of service industry and regional economy.

## Cross-border mobility of talents

The Circular clearly states that in 2018, the administrative regulations for foreigners working in China will be announced to standardize the system of granting work permits to foreign talents. Meanwhile, in the second half of 2017, implementing rules on the visas issued to foreign talents will be published in an attempt to extend the valid period of their visa. As an important part of attracting foreign capital, the management on talent acquisition in China is not very regulated. This time, the Circular states clearly the schedule of the reform, indicating the State Council's determination to improve existing problems as soon as possible to remove the barriers of attracting foreign capital.

## Our Conclusion

In summary, the release of the Circular signals the further opening-up of Chinese economy to the world. Also, it suggests China's continuing huge demand for the foreign capital. In terms of the content, the Circular mainly covers three aspects. The first is increasing the support for foreign capital, which is mainly reflected in various fiscal and tax beneficiary policies. The second is directing foreign capital to invest in targeted sectors and areas to accelerate China's industrial transform and regional development. The third is improving foreign investment circumstances by improving laws and regulations.

For foreign enterprises, the Circular is no doubt good news. It is to be noted that the Circular serves more as a guideline, while the detailed policy implementations are still to be made by the relevant department in-charge. As for the taxation on the dividends income, the tax deferral policy is only applicable if the profits obtained by foreign enterprises are directly reinvested in encouraged projects. However, the definition of encouraged projects is yet to be determined. Also, some practical problems, such as when should the deferred withholding tax be paid in the future, whether it could enjoy the treaty benefit published later when actually being taxed, and whether the retained earnings generated before the issuance of the Circular are entitled to the policy, are still not clearly explained. Therefore, foreign enterprises are suggested to wait till the detailed implementation rules are issued to make self-assessment on if they are applicable to the potential beneficiary policies based on current situations and evaluate the necessity of adjusting investment strategy in China in the future.

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## 研发费用加计扣除范围进一步明确

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作为中国企业进行研发活动的税收优惠，纳税年度中发生的符合规定的研发费用可以在计算企业所得税应纳税所得额时享受 50% 的加计扣除。在实践中，不同税务机关对研发费用加计扣除的范围或有不同理解。2017 年 11 月，中国国家税务总局发布第 40 号公告（“40 号文”）进一步明确了相关范围。

40 号文扩大了研发费用中人员人工费用的范围，包括社保费用、股权激励支出以及派遣人员费用。劳务派遣情况下，企业可以向劳务派遣企业支付劳务费用而不直接向派遣人员支付工资。

如果企业在研发活动中生产的产品在未来纳税年度出售，40 号文明确，出于简单实践考虑，相应的材料费用可以在销售当年冲减当年的研发费用，而非进行追溯调整。

信息技术、机械制造、汽车制造、生物制药等鼓励类产业可以享受固定资产加速折旧，导致税收上可扣除的折旧费用不同于会计上的折旧费用存在差异，此前的加计扣除采用折旧孰小原则。40 号文取消了这种方

## Scope of R&D Expenses for Super-deduction Further Clarified

Monica Chen, Rödl & Partner Shanghai, China

As a tax incentive for research and development (“R&D”) activities by Chinese enterprises, qualified R&D expenses incurred during a tax year can enjoy 50% super deduction from the taxable income of Chinese corporate income tax (“CIT”). In practice, different tax authorities may have different understandings on the scope of qualified R&D expenses for super deduction. In November 2017, Chinese SAT released Public Notice No. 40 (“Circular 40”) to further make the scope clear.

Circular 40 enlarged the scope of qualified R&D personnel costs, which include social security costs, share-based incentive costs and costs incurred for dispatched labor involved, under which circumstances the enterprise may pay the labor costs to the dispatching company and does not need to make direct salary payments to the dispatched labor.

For enterprises who have products produced during the R&D activities and sell them out in future tax years, Circular 40 has made clear that only the material costs should be used to write down the qualified expenses, and the writing down can be made in the tax year when the products are sold out instead of making retroactive adjustments, out of easy practice consideration.

Encouraged industries such as IT, machinery, vehicle and biological medicine manufacturing can enjoy accelerated depreciation of fixed assets for CIT calculation, which resulted in the fact that the tax-deductible

法，将加速折旧费用的归集方法调整为就税前扣除的折旧部分计算加计扣除，而不考虑会计处理。这同样适用于无形资产的摊销。

40 号文还规定了其他相关费用的范围，即不得超过可加计扣除研发费用总额的 10%，其中包括书籍、翻译、保险、评估和知识产权登记等费用。此外，还特别包括了职工福利费、补充养老和补充医疗保险费用。

其他杂项问题也得到明确：出于鼓励目的而非单纯强调结果，失败的研发活动所发生的研发费用也可享受加计扣除政策。委托研发的加计扣除计算基础应为委托方实际支付给受托方的费用，同时，受托方应向委托方提供研发过程中实际发生的研发项目费用支出明细情况，同时受托方不得加计扣除。

40 号文适用于 2017 年度及以后年度汇算清缴，涉及追溯享受的，也可以适用。

### 我们的观点

总体而言，40 号文扩大了适用加计扣除研发费用的范围，同时提供了更为简便的税务实践操作方法。然而，其中涉及到的资料要求仍需要引起企业的关注。例如，若研发人员同时从事非研发活动的，或资产同时用于研发和非研发活动的，企业应对人员活动情况和资产使用情况做必要记录，将其实际发生的相关人员费用或摊销折旧费用按合理方法在研发和非研发活动间分配，否则未分配的不得加计扣除。

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depreciation expenses differ from the accounting depreciation expenses, between which the lower one used to be stipulated as the base of super-deduction calculation. Circular 40 eliminated such comparison but simply stipulated the super-deduction is based on the tax-deductible expense, i.e. the accelerated depreciation expenses, without considering the accounting treatments. The same applies to the amortization of intangible assets as well.

Circular 40 also specified the scope of other relevant expenses that should not exceed 10% of the total qualified R&D expenses, which include expenses of books, translation, insurances, evaluation and intellectual property registration, etc. In particular, the supplementary pension and medical insurances as well as staff welfare are included.

Other miscellaneous issues are also made clear. Out of encouragement purpose rather than result-oriented, R&D expenses incurred for failed projects are also qualified for super-deduction. For outsourced R&D activities, it is stipulated the calculation base should be the total payment made by the consigner, and the consignee should prepare the list of total expenses incurred while shall not enjoy super-deduction in any case.

Circular 40 applies to annual CIT settlement starting from 2017. Enterprises may also enjoy retroactive super-deduction where applicable.

### Our View

Circular 40 has in general enlarged the scope of qualified R&D expenses for super-deduction and provided easier tax practices at the same time. Nevertheless, there are still documentation requirements which are suggested to be noticed by enterprises. For example, when employees or use of assets are involved in both R&D and non-R&D activities, detailed records of working hours should be precisely made, and allocate the costs and expenses between R&D and non-R&D activities reasonably. Otherwise all the related expenses may not be included in the base of super-deduction calculation.

## 中国境外投资的巨大变革

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在中国政府“走出去”和“一带一路”战略的支持下，如今大量的企业将其注意力投入到境外投资上，因而对于建立完善的境外投资管理制度的需求也越发显著。2017年11月3日国家发展和改革委员会（以下“发改委”）发布《企业境外投资管理办法》（征求意见稿）（以下“新办法”）。

自去年11月起，国家相关监管部门通过加强对企业境外投资真实性和合规性的审查，着力防范境外投资风险。在这一背景下，发改委拟定该“新办法”并提交国务院。“新办法”旨在为中国投资者建立提供公开、透明、清晰的制度安排并同时为投资者指明对外投资监管机关层级以及监管方式，以促进境外投资健康发展。

### 取消“小路条”制度

小路条制度是指根据《境外投资项目核准和备案管理办法》（以下简称《发改委2014年规定》）第十条中方投资额3亿美元及以上的境外收购或竞标项目，投资主体对外开展实质性工作之前，应向发改委报送项目信息。

该制度的建立初衷是为避免中国投资者过于草率对境外项目进行投资，也对没有相关经验的中国企业在境外投资项目中进行保护，并避免中国企业之间互相恶意竞价。然而在实践中，中国企业与其他来自其他国家的竞争者就同一项目竞标时，该制度对中国投资者也带来了不利影响。中国投资者在与其他国家投资者竞争时，在竞价环节就会因该制度所确定的报告义务受到不利影响。

## Major Reform of Chinese Outbound Investments

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Given the Chinese government funding strategies - e.g. "Going-Out" and "One Belt, One Road" - numerous companies nowadays are focusing on foreign outbound investments. The demand to establish a comprehensive management system has therefore been increased. On the 3rd of November 2017 the "National Development and Reform Commission" (hereinafter referred to as "NDRC") has publicly announced the concept of "Administrative Measures for Outbound Investment by Enterprises" (hereinafter referred to as "New Measures").

Since November 2016, the relevant supervisory authorities - at state level - have intensified inspections regarding truthfulness and legitimacy of foreign investments, with the aim to lower risks. In light of this background, the "NDRC" has formulated the "New Measures" and submitted to the State Council. The "New Measures" intend to provide Chinese investors with a more public, transparent and also well-thought-out system, as well as to clarify general consulting and the introduction to supervision of outbound investments. By doing so, a decent development of foreign investments will be supported.

### Annulment of the "Road Pass" Systems

"Road Pass" is considered as follows: According to Article 10 of the "Administrative Measures for the Verification and Approval and Record-Filing of Outbound Investment Projects" (hereinafter referred to as "NDRC 2014 Rules"), a so-called "Project-Information-Report of the NDRC" is to be handed in for investments exceeding USD 300 million. This requirement is to be completed before the foreign investors have practiced their essential activities.

This system was introduced to avoid recklessness from sides of the Chinese companies when proceeding with their foreign activities. Simultaneously, the inexperienced Chinese companies will be protected during their foreign investments projects. Furthermore, this system should prevent Chinese investors from entering destructive competitions among one another. Nevertheless, Chinese investors are faced with being in competition with other companies from other countries that show interest in the same object of purchase. However because of the obligation of reporting Chinese companies are disadvantaged by their own legal in these competitions, especially in bidding procedures.

“小路条”制度的取消使得中国投资者不需要在投资的前期阶段向主管机关进行报备。根据“新办法”投资者可以“先上路”，并在之后根据实际交易情况取得必要的批准。这对于国家发改委可以说是在“简政放权”的道路上迈出的一大步。

### “新办法”的适用范围

“新办法”扩大了《发改委 2014 年规定》的适用范围。《发改委 2014 年规定》仅适用于中国境内法人在境外的投资项目。而“新办法”将适用范围延伸到实际控制人为中国境内的自然人或法人的境外企业，因此其实际控制人通过这些境外企业为专门目的进行的“离岸”投资交易同样被纳入了监管范围。

### 简化申请备案程序

根据《发改委 2014 年规定》第二十五条，投资主体在对外签署具有最终法律约束效力的文件前，应当取得相关主管机关出具的核准文件或备案通知书。

为使中国的境外投资符合国际投资市场的交易惯例以及实际操作的情况，“新办法”对该规定进行了修改：获得政府审批将不再作为生效条件，而将作为交割条件。因此只要投资项目不涉及敏感国家和地区或敏感项目，投资者可以在没有取得核准文件或备案通知书的情况下签署最终具有法律约束效力的文件。

在现行规定下，地方企业的境外投资项目均向所在省级政府机关提交，并由省级政府机关向国家发改委进行转报。实际操作中特别是对于县级地方企业，其境外投资项目须从县级政府逐级上报至国家发改委，经常因为这种转报制度导致地方企业取得相关核准和备案的时间比规定的时间长。

为尽可能避免滞后取得核准和备案的情况发生或减少被拖延的时间，根据“新办法”地方企业可以直接向国家发改委进行提交申请和备案。这大大简化了申请程序，并使得投资者取得相关核准的时间相对可预计。

### 国家发改委对投资项目进行全程监管

首先“新办法”就变更登记的规定进行了修改：

According to the New Measures Chinese investors can be relieved of the reporting obligation in the preliminary stages of the transaction. The Chinese investor can now “run on the road” first, and, depending on the specific situation of the transaction, get a “pass” if it is necessary at all.

### Scope of the “New Measures”

The New Measures has enlarged the scope of the “NDRC 2014 Rules and find use in the investments of foreign companies, of whose actual owner consists of either legal persons or nature persons from China. Besides the enlargement also involves the transaction, which is accomplished by an offshore-method to achieve special purpose and ultimately controlled by the domestic side.

### Relief of the Registration- and Application Procedure

Based on Article 25 of the “NDRC 2014 Rules”, the Chinese investor is obligated to gather the approval of the competent authorities, before they “finally” take on a binding agreement.

To fully adapt a company’s conventions to the international M&A market, the “New Measures” adjusted the regulations accordingly, so that the approval process is no longer seen as a delaying condition but rather a completion condition. Thus it is now possible for the investor to sign a share-purchase-agreement before obtaining the permission, as long as such investment is not conducted in a sensitive country/region or involved with a sensitive industry.

In accordance with the current regulations, for an application concerning projects that are subject to approval; the application is to be handed in at the representative provincial authority, and thereafter referred to the “NDRC”. However in practice, the above described referral - in particular the ones moving forward from the district office - tend to cause delays in the receipt of approval.

In order to simplify the procedure and accordingly to shorten the delay as possible the “New Measures” allow the local company to directly hand the application to the “NDRC”. This facilitates the registration procedure enormously. Accordingly, the period of time for the receipt of approval is considerably easier to estimate.

### Supervisory Functions of the “NDRC” on the overall Investment Procedure

The New Measures have altered the regulations - in regard to the registration for the change of an investment.

若投资者计划对投资项目进行变更，则必须就变更事项向国家发改委进行报备。国家发改委负责对投资项目整体流程进行监管。根据“新办法”投资者须就下列事项变更进行登记：

- 投资主体增加或减少，或投资主体在项目中的投资比例发生重大变化，或投资主体的实际控制人变更；
- 投资地点发生变化；
- 主要内容和规模发生重大变化；
- 中方投资额变化幅度超过原核准、备案金额的20%，或中方投资额变化超过1亿美元。

### 我们的观点

虽然《企业境外投资管理办法》尚未生效，但《企业境外投资管理办法》的修订将进一步优化现行的境外投资流程。我们认为新条例的实施给予中国投资者在进行境外投资广泛的灵活性，同时提高了境外投资交易的效率，加强了中国投资者在国际并购市场上的竞争力。

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Such change, which is by the investor foreseeable, has to be reported to the “NDRC” and the entire procedure of the investment will be supervised by the “NDRC”. According to the “New Measures” the investor is obligated to lead the registration, if:

- A new investor enters or withdraws, or individual shares of the respective investor substantially changes;
- The investment location is altered;
- The extent as well as the content of the investment has significantly changed;
- The sum of the registered and approved Chinese investment is altered by more than 20% or USD 100 million.

### Our Assessment

Although the “Administrative Measures for Outbound Investment by Enterprises” has not taken effect yet, these new regulations present a potential for optimizing the existing management system with outbound investments. Hence, according to our assessment the new regulations offer Chinese investors by the Outbound-investment extensive flexibility. At the same time, it also improves the transaction-performance efficiency and enhances the competence of the Chinese investors at the international M&A market.



## 环境污染强制责任保险

**Sebastian Wiendieck,**  
Rödl & Partner 中国上海

### 简介

中国企业正在为即将于 2018 年 1 月 1 日起实施的新环境保护税做准备。除了该新税收，高污染企业还须准备在不久的将来为环境损害投保。关于相应的草案已经开始公开征求意见，但该决议仍有待中华人民共和国国务院批准。在新制度下，中国企业将有义务为某些环境损害投保，否则将面临法定罚款。

### 背景

据一些消息来源说，对环境损害的赔偿占中国国内生产总值的 3%。此外，公民社会对环境问题的认识也越来越多。针对这些事态发展，中国政府要求公司对其可能造成的损害承担越来越大的责任。2013 年，一些公司在试点项目中被要求投保环境保险。该项目是基于所谓的《关于开展环境污染强制责任保险试点工作的指导意见》。两年后，新的中华人民共和国环境保护法也提出了这样的建议。最后，在 2017 年 6 月 9 日，中国保监会(CIRC)与中国环境保护部(MEP)共同公布了一项决议草案，将引入环境损害的强制保险。

### 草案

根据《环境污染强制责任保险管理办法（征求意见稿）》，在特定行业运营的中国公司将不得不为环境污染造成的一系列损害投保。如果没有强有力的理由，保险公司将不允许拒绝相关保单。

#### ■ 范围

这项规定针对的是环境污染风险较高的生产企业。草案中规定了 8 种情形，其中包括从事开采

## Compulsory Environmental Pollution Insurance

**Sebastian Wiendieck,**  
Rödl & Partner Shanghai, China

### Introduction

Businesses in China are preparing themselves for the new environmental tax which will be imposed from 1 January 2018. Besides this new tax, high-polluting companies have to be prepared to take out insurance against environmental damages in the near future. Opinions on a corresponding, publicized draft were already invited but the resolution still awaits approval of the Chinese State Council. Under the new regime, Chinese companies would be obliged to take out insurance for certain environmental damages or else face statutory fines.

### Background

According to several sources, reparation of environmental damages accounts for up to three percent of China's GDP. In addition, the civil society becomes more and more aware of environmental issues. In reaction to these developments, the Chinese government holds companies increasingly liable for the damages that they might have contributed to. In 2013, some companies were obliged to take out environmental insurance within a pilot project. This project was introduced on grounds of the so-called Guiding Opinions on Pilot Scheme for Compulsory Environmental Pollution Liability Insurance. Two years later, a suggestion to take out such coverage was included in the new Chinese Environmental Law. Finally, on 9 June 2017, the China Insurance Regulatory Commission (CIRC), together with the Chinese Ministry of Environmental Protection (MEP), publicized a draft resolution that would introduce a compulsory insurance for environmental damages.

### The Draft

According to the so-called Compulsory Environmental Pollution Insurance Rules – Discussion Paper, Chinese companies that operate in certain sectors would be obliged to take out insurance for a number of damages resulting from environmental pollution. Insurers would not be allowed to reject a respective policy without compelling reasons.

#### ■ Scope

The regulation aims at companies involved in production that carries a high risk of environmental pollution. Eight sectors are specified in the

石油和天然气、处置危险废物和化学品生产的公司。此外，该规定将适用于自 2005 年以来涉及严重环境污染的公司。

#### ■ 义务

这些保单应包括第三者人身损害和第三者财产损失、生态环境损害及应急处置与清污费用。故意和违法污染不包含在保单范围。保费将标准化并须经中国保监会批准。

这些保单还应规定被保险的公司必须对环境紧急情况采取措施。另一方面，保险公司进行各自的环境影响评估并将其附加到保单上。这些保单是要每年更新的。

#### ■ 登记及违反

这些保单将由保险公司通知当地环保主管部门。公司不符合保险要求的，主管机关可以处以三万元以下的罚款，并要求其办理适当的保险。

#### 进一步发展

该规定的生效日期仍不清楚。然而，由于中国政府越来越重视对环境的保护，在不久的将来，一种强制性的环境保险可能会被引入。受影响的公司应毫不犹豫地询问有关的保单。投保这样的保险并不一定会给公司带来负担。它还可能允许对潜在债务进行充分对冲。因此，涉及高风险业务的公司可以考虑自愿加入适当的保险协议。随着 2015 年中国新环境保护法的颁布，企业面临着越来越多的责任，无论其生产是否被认为是高风险的。然而，适当的环境保单也一直是国际保险产品范围的一部分。

draft which would include, among others, companies that engage in the extraction of oil and gas, in the disposal of harmful wastes and in chemical production. Additionally, the regulation would apply to companies that were involved in significant environmental pollution since 2005.

#### ■ Obligations

The policies should cover personal injuries and loss of property of third parties, ecological damages and costs of emergency service and environmental clean-up. Intentional and illegal pollution are exempted from the policies. The premiums would be standardized and subject to approval by the CIRC.

The policies should also impose an obligation on the insured companies to implement measures for cases of environmental emergencies. The insurer, on the other hand, conducts individual environmental impact assessments and attaches them to the insurance agreement. The policies are meant to be renewed annually.

#### ■ Registration and Violation

The policies will be filed with the local agency by the insurer. In case a company does not comply with the insurance requirements, the competent authority may impose a fine of RMB 30,000 and require it to take out appropriate insurance.

#### Further Developments

The date the regulation enters into force remains unclear. However, since the Chinese government puts ever greater emphasis on the protection of the environment, a compulsory environmental insurance is likely to be introduced in the near future. Affected companies should not hesitate to enquire about the available insurance policies. Taking out such insurance does not necessarily pose a burden to the company. It might also allow for sufficient hedging against potential liabilities. Therefore, companies that are involved in high-risk operations may consider entering into an appropriate insurance agreement voluntarily. With the new Chinese Environmental Law of 2015, companies face increased accountability, irrespective of whether their production is considered risky. However, appropriate environmental insurance policies have also long been part of the product range of international insurance companies.

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## 中国承认外国法院有效判决的新进步：对于美国法院判决的承认以及签署《海牙选择法院协议公约》

**Sebastian Wiendieck,**  
Rödl & Partner 中国上海

**引言**

2017年6月30日武汉市中级人民法院（相应地类似德国州法院）作出裁定承认一由美国法院作出的判决。然而至今只有很少一部分外国仲裁裁决被中国法院所承认并执行。尤其对于德国法院判决至今尚不明确。因此武汉法院的裁定会带来何种影响？

**关于判决**

在刘莉诉陶丽、童武一案中美国加利福尼亚州的某法院针对两名中国公民作出了缺席判决，然而该判决并不能在美国得到执行。因此武汉中级人民法院根据受害人的申请作出裁定承认该判决并予以执行。武汉法院认为中美两国之间存在双边互相保证判决执行的关系，也就是说中国可以认为，由中国法院作出的判决

## New Developments concerning the Enforcement of Foreign Judgements in China after the Decision of the People's Middle Court in Wuhan to Recognize a US Court Judgment and the Signing of the Hague Choice of Court Agreement

**Sebastian Wiendieck,**  
Rödl & Partner Shanghai, China

**Introduction**

In a decision of 30 June 2017, the People's Middle Court in Wuhan, comparable to a German district court, recognized the judgment of a court in the United States. So far, foreign judgements have been declared enforceable in China only in a few instances. There is no publicized decision that recognizes the judgement of a German court. How will this handling be affected by the decision of the court in Wuhan?

**The decision**

In Liu Li v. Tao Li and Tong Wu, a Californian court held a default judgement against two Chinese citizens, which was not enforceable in the United States. At the request of the injured party the court in Wuhan declared the judgment enforceable in China. The court reasoned that there was reciprocity between the two countries, i.e. that China could anticipate US courts to

在美国同样也会得到认可并被执行，因而作出上述裁定。该双边司法协助的依据源于 2009 年美国加州的某法院承认并执行了来自中国法院的生效判决。

### 德国法院生效判决在中国的执行

根据《中华人民共和国民事诉讼法》第 282 条规定，外国法院作出的生效判决可以得到中国法院的承认与执行。然而只有在中国参与了相关的双边或多边协议的情况下，该外国判决才有可能在中国得以执行。但是对于大多数国家，尤其是德国并非如此。也许这种情况在中华人民共和国签署《海牙选择法院协议公约》后会得以改善。（详见下文）

只有中国与其他国家之间建立互相协助的关系，使得中国法院的判决可以该国作出并得到保证的情况下，该国法院作出的判决才可能在中国得以执行。这种做法旨在保障中国法院作出的判决同样会在其他国家能够得到承认和执行。

相关德语文献中对中国与德国之间是否存在这样双边司法协助关系尚存有分歧，虽然德国法院没有明示，但已在其他案件中侧面作出肯定的回答。与之相对地中国法院尚未作出任何与之相应的公开裁决，而是一再拒绝双方之间这种协助。对于那些法律中具有哦类似德国的执行条件的国家，他们与中国的双边司法协助也同样经常被拒绝。

除此以外，对于外国法院判决的执行也不得影响中国的国家基本原则，以及领土主权和国家安全，或者其他公共利益。这也在政治经济方面设立了诸多条条框框的规定。

### 裁决的影响

然而武汉法院的裁决可视为中国司法机关在承认外国法院判决方面取得的一些进步。2015 年中华人民共和国最高人民法院要求降低对于确定是否执行外国法院判决所相关的双边协助关系的认定要求。在之后的一年南京法院裁定执行新加坡法院的某一判决，该裁决的依据是此前中国法院的判决已在新加坡得到执行。

如按照这种思路，之后中国法院就德国法院的判决在中国执行所涉及是否存在双方协助关系应当作出肯定的回答。然而武汉法院的裁决对于中国境内的其他法院并不产生约束效力，因此并不能保证其他法院会认同该裁决。

recognize and enforce judgments of Chinese courts. The grounds for this reasoning a Chinese judgment that had been executed by a Californian court in 2009.

### Enforcement of German judgments in China

The enforcement of foreign judgments in China is subject to Art. 282 of the Chinese Civil Procedure Code. Enforcement is possible where a bilateral or multilateral agreement was made with the People's Republic of China. This is not the case for most countries, including Germany, but change may come along as China signs the Hague Choice of Court Agreement.

At the time being, enforcement of foreign judgment requires reciprocity between the PRC and the country in which the judgement was made. Reciprocity means that judgements of Chinese courts are also recognized and enforced in the other country.

While German scholars disagree whether reciprocity with China exists, the question has already been addressed by German courts, which indirectly ruled in favor of it. On the other hand, no decision that would support this view has been published in China. On the contrary, Chinese courts have repeatedly rejected reciprocity between the two countries. They also refused to acknowledge reciprocity with countries that apply similar conditions for enforcement as German law.

Besides reciprocity, enforcement of the foreign judgment must also not conflict with any basic principles or the sovereignty and security of China or any public interest. Especially with respect to political economic interests, this provision allows for a wide range of interpretations.

### Aftermath of the decision

However, the decision of the Middle Court in Wuhan could be seen as part of a new development towards the recognition of foreign judgments. In 2015, the Supreme Chinese Court called upon other instances to facilitate the establishment of reciprocity in the enforcement of foreign judgments. The following year, the ruling of a court in Singapore was declared enforceable by the Nanjing Intermediate Court on grounds that a Chinese judgment had previously been recognized in Singapore.

Accordingly, Chinese courts should rule in favor of reciprocity with Germany, because PRC judgments have already been recognized by German courts. However, whether other courts will subscribe to this new trend remains uncertain, since they are not bound by the recent decision. And even if they will, the un-specific ordre-public provision, i.e. the public interest

中国于 2017 年 9 月 12 日签订的《海牙选择法院协议公约》将给德国投资者在诉讼方面带来的有利影响。一旦该协议经中国政府批准同意后，中国法院将承认关于法律适用和民商法范畴下公约成员国法院作出的生效判决。对此值得注意的是，德国已经是该公约的成员国了。

### 总结

在《海牙选择法院协议公约》于中国境内生效前外国公司需谨记，外国法院的判决仍应视为在中国得不到执行。因此在包含受理地法院条款的协议中，应当避免约定外国法院作为具有管辖权的法院。所谓的本地保护优势可能因在中国寻求判决执行而转为劣势。鉴于中国作为《纽约公约》的成员国，原则会执行成员国仲裁机关作出的裁决。所以为保持上述的优势，建议在合同中约定仲裁条款，由某一仲裁机关予以管辖。

of China, bars the establishment of a clear legal situation.

As to certain disputes, German investors should nonetheless benefit from the signing of the Hague Choice of Court Agreement by China on 12 September 2017. Once ratified, Chinese courts will have to recognize judgments that were made in other party states to the agreement. The convention applies if the contracting parties made an exclusive choice of law and the dispute revolves around civil or commercial law matters. It should be noted that Germany is a party to the agreement.

### Conclusion

Until the Hague Choice of Court Agreement enters into force, foreign companies should not rely on the recognition of foreign judgments in China. Therefore, parties should refrain from including a provision in their agreement that declares foreign courts as the competent place of jurisdiction. The downside of resolving a dispute in one's home state is that the decision might not be enforceable after all. Consequently, it is more advantageous to include an arbitration clause that selects a particular arbitration body in contracts. Since China is a party to the so-called New York Convention, the arbitral award from another member state is generally enforceable in China.

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## 最近出台的重要法规回顾

### 国务院正式废止营业税

日前，国务院发布第 691 号令，决定废止营业税，并同时修订增值税相关规定，完善了增值税征税范围，将实行营改增的纳税人规定为增值税的纳税人并明确相应税率，根据已实施的简并增值税税率改革将销售或进口粮食、图书、饲料等货物的税率由 13% 调整为 11%，还对准予从销项税额中抵扣的进项税额以及不得抵扣的进项税额作了相应调整。

### 推广实施技术先进型服务企业所得税政策

国务院决定将服务外包示范城市的技术先进型服务企业（即提供信息技术外包服务、技术性业务流程外包服务和知识流程外包服务的企业）所得税优惠政策推广到全国，使全国范围内符合条件的技术先进型服务企业均可享受企业所得税优惠，而不必限制在某几个城市注册或经营。

### 京津等九地开征水资源税

自 2017 年 12 月 1 日起，在北京、天津、山西、内蒙古、山东、河南、四川、陕西、宁夏 9 个省市区扩大水资源税改革试点。为抑制不合理用水，按不同取用水性质实行差别税额，对特种行业从高征税。

### 全国推广海关减免税申请无纸化

日前，海关总署发布公告，决定自 2017 年 12 月 15 日起，在全国海关推广减免税申请无纸化，同时取消减免税备案。公告称，除海关总署有明确规定外，减免税申请人可通过中国电子口岸向海关提交减免税申请表，无需以纸质形式提交，并且可在首次办理进口货物减免税手续时一并向海关提交相关信息相关材料，无需提前单独向海关办理政策项目备案。

## Recent Important Regulation Highlight

### The State Council Officially Abolishes Business Tax

The Chinese State Council has recently issued the Order No. 691 to abolish the Business Tax and update the VAT regulations. Scope of VAT levies is improved, taxpayers under VAT reform are stipulated as VAT taxpayer and relevant tax rates are specified. Additionally, according to the reform of streamlining VAT rates, the previous 13% tax rate on sales or import of grain, books, fodder etc. is reduced to 11%, and the provisions on input tax deduction and non-deductible input tax are adjusted.

### Promoted Implementation of CIT Policy on Technology Advanced Service Enterprise

The Chinese State Council has decided to expand the preferential tax treatment in service outsourcing pilot cities for enterprises engaged in one or more of stipulated outsourcing services with advanced technology (i.e. IT Outsourcing, Business Process Outsourcing and Knowledge Process Outsourcing) to national wide. More enterprises can enjoy the CIT benefit and enterprises' registration and manufacturing premises are no longer limited to one of the pilot cities.

### Water Resource Tax Levied in Beijing, Tianjin and Other Places

From December 1, 2017, the expansion of the pilot water resource tax is launched in Beijing, Tianjin, Shanxi, Inner Mongolia, Shandong, Henan, Sichuan, Shaanxi, and Ningxia. In order to restrain unreasonable use of water, different taxes shall be applied according to the nature of water taken and the special industries shall be taxed from a high level.

### Paperless Applications for Tax Reliefs in Nationwide Customs Offices

The General Administration of Customs ("GAC") has recently issued the announcement, deciding to promote the paperless applications for tax reduction and exemption in nationwide and simultaneously abolish the record-filing regime for tax reduction and exemption since December 15, 2017. The announcement states that an applicant may submit the application form for tax reduction or exemption through the declaration system of China electronic ports, instead of submitting any written materials. In addition, the applicants may provide relevant materials to the customs at the same time when they initially handle formalities for tax reliefs for imported goods, but they do not need to file a record for a policy-oriented project with the customs in advance.

### 建筑服务增值税简易计税方法备案流程简化

国家税务总局发布 2017 年 43 号公告，明确增值税一般纳税人提供建筑服务，按规定适用或选择适用简易计税方法计税的，实行一次备案制。纳税人备案后提供其他适用或选择适用简易计税方法的建筑服务，不再备案。该公告自 2018 年 1 月 1 日起实行。

### Record-filing Procedure Streamlined on Calculating VAT under Simplified Calculation Method for Construction Services

The SAT has issued the Announcement No. 43 to clearly specify that, for general VAT taxpayers who render construction services and are qualified to or voluntarily select to calculate VAT under the simplified calculation method, the one-time record-filing system applies. After filing the record, such taxpayer does not have to file a record again for its provision of other construction services that are eligible for the simplified calculation method or subject to such method as it selects to. The announcement will be taken into effective from January 1, 2018.

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**Broadening horizons**

*„We must be continuously on alert for new developments to be able to master challenges in the best possible way. With curiosity and an innovative approach, we are creating forward-looking solutions.“*

*Rödl & Partner*

*„The building of human towers requires each team member to again and again attempt something new. In this way, we are able to rise above the challenge together.“*

*Castellers de Barcelona*



„Each and every person counts“ – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today. „Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

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