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CHINA

HOT TOPIC - China Announces Policies to Further Attract Foreign Investment

In a significant move to attract more foreign investment, the Chinese State Council has unveiled a new policy aimed at optimizing the environment for foreign businesses. This policy, titled "*Opinions on Further Optimizing the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*" (the “**Opinions**”), reflects China's commitment to fostering a more open and investor-friendly landscape for international enterprises.

The Opinions outline several key aspects:

1. Enhancing the Quality of Utilization of Foreign Capital Funds

The Opinions encourage foreign companies to establish R&D centers in China and collaborate with domestic enterprises on technological innovation and industrial applications. Moreover, it advocates for promoting R&D projects by foreign-invested enterprises (the “**FIE**”) and their affiliated research centers. The pharmaceutical and biotechnology sectors will be encouraged for foreign invested projects (including expedited approval under certain conditions), fostering innovation and production.

2. Facilitating Foreign Investment and Trade

China intends to align its service industry with international high-standard trade regulations while expanding openness in this sector. The Opinions support knowledge-sharing agreements, equity pledges, and innovative cooperation mechanisms to drive service industry growth.

Certain areas of value-added telecommunications services will undergo experimental openness for foreign investment.

3. Ensuring National Treatment for FIEs

The Opinions guarantee that FIEs receive the same treatment as domestic counterparts, enabling them to participate in government procurement projects in a fair way in conformity with the relevant law. The government encourages to involve foreign investors in the standard-setting process. The Opinions also underscore the importance of fair application of the local support policies, with mechanisms to address discriminatory practices and promote transparency.

4. Strengthening Protection for Foreign Investment

To safeguard foreign investors' rights, the Opinions enhance the protection of intellectual property rights and implements measures against IP infringement. Special efforts will be made to prevent misinformation campaigns that undermine the legitimate rights of foreign investors. Furthermore, mechanisms will be established to manage and resolve international investment disputes effectively.

5. Streamlining Investment Operations

China will improve the policy framework for foreign employees of FIEs, making it easier for them and their families to reside in the country.

Compliance mechanism for data cross-border transfer will be improved to ensure the security while allowing efficient data mobility by adopting a white list of data could freely flow, which would be firstly tested in pilot cities and regions such as Beijing, Tianjin, Shanghai, and Guangdong-Hong Kong-Macau Greater Bay Area.

(DS note: These measures could to some extent lower the difficulty in data cross-border transfer compliance.)

Additionally, the Opinions aim to simplify foreign investment procedures and coordination, and to optimize and reduce the frequency of the inspections for FIEs with low credit risk.

6. Boosting Financial and Taxation Support

China will continue to allocate special funds to support foreign capital landmark projects and facilitate the speedy implementation of these projects. Within the scope of their statutory authority, various regional governments are encouraged to provide support for investment projects by key multinational corporations.

The Opinions also require to ensure and promote the application of several tax incentive policies:

- **Encouraging Reinvestment:** Ensuring and improving application of the temporary tax exemption for withholding tax on profits reinvested by foreign investors within China.
- **Assisting Foreign Individuals:** The Opinions require to guide and assist foreign individuals in enjoying tax exemptions for their employment allowances such as housing allowances, language training fees, and children's education expenses according to the relevant regulations.

(DS note: The cited tax exemption regime will expire on 31 December 2023. So far nothing has been announced regarding its extension, but it seems to become more likely given what is stated in the Opinions).

- **Support for Foreign-Invested R&D Centers:** The Opinions also require to assist foreign-funded R&D centers in benefiting from tax policies supporting technological innovation imports and VAT refunds for the purchase of domestically-produced equipment.

- **Support for FIEs Investing in Encouraged Sectors:** The Opinions allow local governments to grant package supporting policies to FIEs whose activities are on the *Encouraged Industry Catalogue*. The Opinions also require to ensure proper implementation of the duty-free policy for equipment imported for encouraged foreign-invested projects.

7. Improving Foreign Investment Promotion Methods

The Chinese government will conduct a series of events under the "Invest in China Year" initiative to promote foreign investment. Collaborative mechanisms will be established with key foreign corporations and embassies to encourage investment cooperation. To evaluate the effectiveness of foreign investment promotion, a comprehensive assessment system will be introduced to prevent inflated investment statistics and ensure accurate assessment.

Positive Sign for Foreign Companies

After COVID 19, there are doubts on China's direction moving forward. By implementing a range of measures to improve the quality of foreign investment policies and ensuring equitable treatment, the Chinese government is signaling its commitment to further opening up its economy and fostering global collaboration. The aim is to enhance foreign companies' confidence in investing in China and to show the country's ongoing efforts to achieve high-level openness and modernization.

At this stage, the policies in the Opinions remain general subject to concrete actions from different authorities. Also, most of the rules referred to are not completely new but already exist in the current law, the Opinions rather aiming to ensure a proper and more efficient implementation of them in practice. We will monitor closely the issuance of concrete rules or action plan within the context of the Opinions.