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【ATTENTION】

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LEGAL NEWS EXPRESS

01 Notice on Several Measures for Increasing the Attraction and Utilization of Foreign Investment in Shanghai Printed and Distributed by the General Office of Shanghai Municipal People's Government

In order to thoroughly implement the spirit of the 20th National Congress of the Communist Party, make greater efforts to promote high-level opening up, promote the expansion of foreign capital, stabilize its stock, and improve its quality, giving full play to the positive role of foreign capital in building a new development pattern and promoting high-quality development, the General Office of Shanghai Municipal People's Government proposed a number of measures to increase the attraction and utilization of foreign capital in Shanghai. The measures have been officially implemented since April 6, 2023, and the main contents are as follows:

1. Promoting high-level opening up

(1) Promote the opening of more fields and the implementation of projects. Implement the latest version of the negative list about foreign investment access in China and the pilot free trade zones, and deeply implement the

comprehensive pilot program of expanding the opening up of the national service industry. Support qualified foreign-funded securities, funds, futures, life insurance, pension management, wealth management, and finance companies to settle in Shanghai first and expand their business scope.

2. Improving the level of foreign capital introduction

(1) Optimize the industrial structure of foreign investment. Implement the Catalogue of Industries Encouraging Foreign Investment (2022 Edition), guide foreign capital to invest more in advanced manufacturing, modern services, high-tech, energy conservation and environmental protection, and support eligible foreign-invested projects in the encouraged category to enjoy free imports of self-use equipment in accordance with relevant regulations. Preferential tariff policies will be adopted to give priority to the supply of land to

encouraged foreign-invested industrial projects with intensive use of land.

(2) Support foreign-funded headquarters enterprises to improve quality and capacity. Implement the policies to support the development of headquarters enterprises, such as the Regulations on Encouraging Multinational Corporations to Establish Regional Headquarters in Shanghai and Several Opinions on Encouraging Enterprises to Establish Trade-oriented Headquarters in Shanghai, vigorously attracting foreign capital to set up regional headquarters, business department headquarters, trade headquarters and other headquarter institutions in Shanghai. Qualified headquarters enterprises can enjoy subsidies and rewards in accordance with the laws and regulations.

3. Increase support for foreign capital development elements

(1) Increase fiscal and taxation support for the landing of foreign-funded projects. Implement the policy of temporarily exempting withholding income tax for direct investment by foreign investors through the distribution of profits, optimize the handling process, and improve the convenience of foreign-invested enterprises in enjoying the policy. Each district may give rewards to foreign-invested enterprises, foreign-invested new investment projects, and foreign-invested enterprise profit reinvestment projects that meet Shanghai industrial development orientation according

to their comprehensive contribution to the economy and society of the region, within their statutory authority under the reality.

(2) Strengthen financial support services. Support qualified foreign-invested enterprises to list on Shanghai, Shenzhen, and Beijing stock exchanges, list on the New Third Board and regional equity markets, and issue corporate credit bonds for financing.

(3) Facilitate cross-border investment and financing. Expand the foreign investment channels of QFLP funds on a trial basis throughout the city, simplify foreign exchange registration, implement balance management, and support direct domestic related investment with overseas RMB raised.

(4) Facilitate the exchange of foreigners. Implement relevant entry-exit policies and measures for the state to support the construction of Shanghai Science and Technology Innovation Center and support the construction of high-level talent highland in Shanghai, and provide entry-exit, stay and residence convenience for the executives of foreign-invested enterprises, foreign technical personnel and their families. Promote the online processing of port visa pre-applications for foreigners to achieve "zero trips" for applications.

4. Optimizing foreign investment services

(1) Improve the construction of foreign-related service platforms. Expand the

functions of the Shanghai foreign investment promotion service platform and provide multilingual services. Enrich foreign-related services in "Government Online-Offline Shanghai", to realize the online processing functions in Chinese and English for high-frequency matters such as entry and exit of foreigners and work permits. Add Chinese and English information guidance services for the establishment, operation and policy compilation of foreign-invested enterprises in the app by "Government Online-Offline Shanghai".

(2) Improve the level of intellectual property protection. Fully implement the punitive compensation system for intellectual property infringement, and continue to carry out special rectification actions against intellectual property infringement and illegal activities such as patent infringement, online piracy infringement, malicious registration of trademarks, and counterfeiting and confusion. Carry out special actions for customs intellectual property protection, and intensify the crackdown on infringements and violations in import and export links.

02 Notice on the List of Minor Violations Not Subject to Administrative Punishment According to the Law in the Field of Human Resources and Social Security Printed and Distributed by Shanghai Municipal Bureau of Human Resources and Social Security

In order to deepen inclusive and prudent supervision in the field of human resources and social security, stimulate market vitality, continuously optimize a more internationally competitive business environment, and promote high-quality economic development, Shanghai Municipal Bureau of Human Resources and Social Security has formulated the following list, in accordance with the Administrative Penalties Law, Regulations on Optimizing the Business

Environment in Shanghai, and other laws, regulations, and rules. The list has come into effect on April 1, 2023 and will be valid until March 31, 2028.

1. The following minor violations shall not be subject to administrative punishment if they are corrected in a timely manner and do not cause harmful consequences:

(1) In violation of the second paragraph of

Article 4 in the Labor Contract Law, although the employer's rules and regulations directly involving the vital interests of employees violate laws and regulations, the relevant rules and regulations have been implemented for less than three months.

2. If the following illegal acts occur for the first time, the harmful consequences are minor and they are corrected in time, no administrative punishment shall be imposed:

(1) In violation of the third paragraph of Article 3 in the Interim Provisions on Labor Dispatch, that the auxiliary position of the dispatched worker which is decided to use by the employing unit, has not been negotiated and determined through legal procedures, or has not been announced in the unit;

(2) In violation of Article 41 and 43 of the Labor Law, although the employer illegally extended employee's working hours, the illegal behavior involved the average monthly working hours per worker does not exceed 54 hours. And the employer has fulfilled the consultation procedure with the trade union and worker, to paid overtime wages in full and in a timely manner, which did not damage worker's physical health (except for those involving a large number of workers or causing certain social impacts).

3. No administrative punishment shall be

imposed for violations of the following circumstances:

(1) In violation of Article 53 in the Regulations on Employment Services and Employment Management, that the employment intermediary agency do not clearly indicate the employment intermediary license and supervision telephone number at the service site, which is first discovered and corrected voluntarily;

(2) In violation of Article 55 in the Regulations on Employment Services and Employment Management, although the employment intermediary agency failed to refund the intermediary service fee to the laborer due to service's unsuccessful, it was discovered for the first time and corrected voluntarily;

(3) In violation of the second paragraph of Article 19 in the Regulations on Employment Services and Employment Management, although the employer takes serological indicators of hepatitis B virus as the standard of physical examination while recruiting personnel outside of the prohibited jobs for hepatitis B pathogen carriers by the national laws, administrative regulations and the health administrative department of the State Council, there is no actual violation of worker's rights to equal employment and choice of occupation.

03 Notice on Relevant Issues Concerning the Phased Reduction of Unemployment Insurance and Work-related Injury Insurance Premium Rates by the Ministry of Human Resources and Social Security, the Ministry of Finance, and the State Administration of Taxation

In order to further reduce the burden on enterprises, enhance their vitality, and promote employment stability, the issues related to the phased reduction of unemployment insurance and work-related injury insurance premium rates are hereby notified as follows, with the approval of the State Council:

1. From May 1, 2023, the policy of gradually reducing the unemployment insurance premium rate to 1% will continue to be implemented, and the implementation period will be extended to the end of 2024. Within the administrative area of province (autonomous region, city), the unit and individual rates should be unified, and the individual one should not exceed that of the unit.

2. From May 1, 2023, continue to implement the policy of gradually reducing the rate of work-related injury insurance, in accordance with the relevant implementation conditions in the Notice on the Comprehensive Plan for Reducing Social Insurance Premium Rates of the General

Office Printed and Distributed by the State Council ([2019] No. 13). The implementation period will be extended to the end of 2024.

3. All localities should strengthen the analysis of the operation on unemployment insurance and work-related injury insurance funds, and balance the relationship between rate reduction and insurance payment. At the same time, localities not only have to ensure the implementation of the rate reduction policy, but also ensure that benefits are paid in full and on time, so as to guarantee the safe and stable operation of the system sustainable.

4. All localities shall continue to further standardize relevant policies such as payment ratios and payment bases in accordance with relevant national regulations, and shall not introduce policies that reduce fund income such as lowering payment bases, reducing or exempting social insurance premiums, etc.

5. Human resources, social security, and

taxation departments in all regions shall carry out fee reduction accounting work in accordance

with the regulations, and report relevant situations in a timely manner monthly.

04 Announcement on Further Improving the Pre-tax Super Deduction Policy for Research and Development Expenses by the Ministry of Finance and the State Administration of Taxation

In order to further encourage enterprises to increase research and development (R&D) investment and better support scientific and technological innovation, the issues related to the pre-tax deduction policy for R&D expenses of enterprises are hereby announced as follows:

1. If the research and development expense actually incurred in enterprise's R&D activities does not form an intangible asset to be included in the current profit and loss, 100% of the actual amount will be deducted before tax on the basis of actual deductions according to the regulations, starting from January 1, 2023; if it constitutes an intangible asset, it will be amortized before tax according to 200% of the cost of intangible asset from January 1, 2023.

2. Other policy calibers and management requirements for enterprises to enjoy the super deduction policy for R&D expenses, will be implemented in accordance with the Notice on

Improving the Pre-tax Super Deduction Policy for R&D Expenses by the Ministry of Finance, State Administration of Taxation and Ministry of Science and Technology ([2015] No. 119), the Notice on the Policies Concerning Pre-tax Super Deduction of Overseas R&D Expenses Entrusted by Enterprises by the Ministry of Finance, the State Administration of Taxation, and the Ministry of Science and Technology ([2018] No. 64) and other documents.

Among them, the specific policies for the super deduction of R&D expenses are as follows (for details, please refer to the Guidelines for the New Policies on the Pre-tax Super Deduction of R&D Expenses):

(1) Applicable Subject

In addition to tobacco manufacturing, accommodation and catering, wholesale and retail, real estate, leasing and business services, entertainment, etc., other industries and

enterprises can enjoy it.

(2) Applicable Activities

It refers to the systematic activities with clear objectives that enterprises continue to carry out to acquire new scientific and technological knowledge, creatively apply new scientific and technological knowledge, or substantially improve technology, products (services), and processes.

The following activities are not applicable to the pre-tax super deduction policy: routine upgrading of enterprise products (services); direct application of a certain scientific research achievement, such as direct adoption of public new processes, materials, devices, products, services or knowledge, etc.; technical support activities provided by enterprises to customers after commercialization; repetition or simple changes to existing products, services, technologies, materials or process flows; market research, efficiency research or management research; quality control, test analysis, repair and maintenance as industrial (service) process link or routine; research in social sciences, arts or humanities.

(3) Scope of Fee

i) Personnel labor cost

Wages and salaries, basic pension insurance premiums, basic medical insurance premiums, unemployment insurance premiums, work-related injury insurance premiums,

maternity insurance premiums and housing provident funds for personnel directly engaged in R&D activities, as well as labor costs for external R&D personnel.

ii) Direct input cost

(a) Material, fuel and power costs directly consumed in R&D activities.

(b) Expenses for the development and manufacture of molds and process equipment for intermediate tests and trial production of products, purchase fees for samples, prototypes and general testing methods that do not constitute fixed assets, and inspection fees for trial production products.

(c) Expenses for the operation, maintenance, adjustment, inspection, and repair of instruments and equipment used for R&D activities, as well as rental fees of instruments and equipment used for research and development activities leased through operating leases.

iii) Depreciation cost

Depreciation expenses for the instruments and equipment used in R&D activities.

iv) Amortization of intangible asset

Amortization of the software, patent rights, and non-patented technologies (including licenses, proprietary technology, design and calculation methods, etc.) used in R&D activities.

v) Cost of new product design, new process specification formulation, clinical trial for new drug development, field trial for exploration and

development technologies

vi) Other related costs

Other expenses directly related to R&D activities, such as high-tech R&D insurance premiums, search, analysis, review, demonstration, identification, review, evaluation, and inspection fees for R&D results, application fees, registration fees, and agency fees for intellectual property rights. The total amount of such expenses shall not exceed 10% of the total R&D expenses eligible for super deduction.

3. This Announcement has come into effect on January 1, 2023. The Announcement on Further Improving Policies for Pre-tax Super

Deduction of R&D Expenses by the Ministry of Finance - State Administration of Taxation (No. 13, 2021), the Announcement on Further Increasing the Pre-tax Super Deduction Ratio of Research and Development Expenses of Sci-tech SMEs by the State Administration of Science and Technology (No. 16, 2022), and the Announcement on Increasing Support for Pre-tax Deductions on Scientific and Technological Innovation by the Ministry of Finance, the State Administration of Taxation, and the Ministry of Science and Technology (No. 28, 2022) have been abolished simultaneously.

05 Announcement on Continuing the Implementation of the Preferential Policy on Employment Security Funds for the Disabled by the Ministry of Finance

In order to promote the development of small and micro enterprises and further reduce the burden on employers, the relevant preferential policy for the continuation of the Announcement on Adjusting the Collection Policies for Employment Security Funds for Disabled Persons by the Ministry of Finance (No. 98, 2019) is hereby announced as follows:

1. Continue to implement the policy on reducing the payment of employment security

funds for the disabled in different stages. Among them, if the proportion of employment arranged by the employer for the disabled reaches 1% (inclusive), but does not reach the ratio stipulated by the government in province, autonomous region, or municipality where the employer located in, 50% of the prescribed payment amount shall be paid as the employment security fund for the disabled; and if the ratio is less than 1%, 90% of the amount

shall be paid.

2. Enterprises with employees less than 30 (including 30) shall continue to be exempted from the employment security fund for the disabled.

3. The implementation period of this

announcement is from January 1, 2023 to December 31, 2027. For those who meet the reduction and exemption conditions stipulated in this announcement, the payers who have paid the fees can apply for a refund in accordance with the regulations.

(THE END)



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