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Market Insights

China's 12th Five-Year Plan: Incentives for Clean-tech Industries

This article is the second in a series of articles covering several industry specific Five-Year Plans.

Apart from the Renewable Energy Law and Sustainable Economy Law, China's 12th Five-Year Plan (also "12th FYP") has put further emphasis on clean-tech industries and highlighted seven strategic emerging industries, including new energy, energy conservation and environmental protection, and clean-energy vehicles.



In the 12th FYP, Chinese central government plans to invest over RMB 3 trillion (USD 457 billion) in clean-tech industries, double the investment during the 11th FYP. Mandatory targets are set in the 12th FYP to cut carbon intensity (emissions/ unit of GDP) by 17% and energy intensity (energy consumption/ unit of GDP) by 16%. Strong incentives for developing clean-tech industries can be seen in the following initiatives:

- **Encourage development of clean technologies** - Further investment will be encouraged on hybrid and electric vehicles, high-efficiency batteries, new environmental building materials, new energy-efficient equipment, etc.
- **Spur technology commercialization** - Advanced and feasible laboratory technologies will gradually be commercialized in China, e.g. membrane technology for wastewater treatment, renewable energy, nano carbon materials, energy-saving technologies, etc.
- **Enhance international collaborations in building clean-tech based economy** - The Chinese government has cooperated with international financial institutions in many energy efficiency credit programs and established preferential policies to attract foreign investment in clean technologies.

Significant opportunities may exist for foreign clean-tech companies considering entry into China; however, the underdeveloped legal and regulatory environment (although improving each year), especially in protection of intellectual property rights, poses challenges to the potential development.

For companies approaching the China market, it is recommended that all risks and benefits are understood before taking any significant action.

For inquiries about this article or other work of our consulting division, please email mark.ray@ijigroup.com.

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Tax Updates

Export VAT Rebate (Exemption) Clarification



The issue of value-added tax (VAT) rebate for exported goods is often a cause for confusion in China, and one of the top issues we help our clients with. The rebate is often referred to as an exemption but in reality it is often limited and may not cover the entire input VAT cost. In addition the rebate is not automatic and involves a particular application process with certain timing.

Currently the export refund rates range from 0% to 17%, while input VAT is generally 17%, but can also range from 7% to 13% depending on the type of product. Product classification types are

based on the HS product code system and individual product refund rates are issued by the Ministry of Finance and the State Administration of Taxation. There are several cases where the refund rate is lower than the input VAT rate, resulting in a VAT burden for the exporter. The refund rates are subject to change based on market conditions and economic policies.

VAT rebates are handled by the tax rebate department of the local tax bureau. The rebate should be applied for within 90 days of the date the goods are declared for export. If circumstances require additional time, an extension may be applied for, but if the application is not filed within a maximum of 210 days, the export sales are deemed to be local sales for VAT purposes and the exporter will face the full VAT burden.

In addition, exporters should submit bills for forex receipt on exports when they apply for VAT rebate. But if payment is not yet due, the procedures for rebate can still continue and the bills for forex receipt can be submitted at a later date. If the relevant bills of forex receipt are not submitted within 210 days of the date goods are declared to export, any rebate granted will be revoked, and if not yet granted will be withheld.

For more information on VAT and other tax issues in China, please email georgia.zhu@ijigroup.com.

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Human Resources

Canceling a Job Offer: A Case Study

Finding the right talent and providing solid offers when you do, is important for any company. But after an offer is made, situations can arise where canceling that offer is needed. This can result in severe repercussions, even if the offer was not yet replied to.



According to the regulations of China's Labor Contract Law, formal job offers can usually be canceled before the receiver replies, but in certain cases the offer may not be withdrawn. Cases where offers cannot be withdrawn include:

- If the offer guarantees a specific effective date or indicates in other ways that the offer could not be withdrawn.
- If the offer recipient has valid reasons to consider the offer to be irrevocable and has been preparing to enter into the employment contract.

The following case study, based on a real example, illustrates a case where an offer could not be legally withdrawn, and the repercussions of doing so.

Jack worked for company A in Tianjin and had earned a good reputation in the industry. Through the introduction of a headhunter, company B in Shanghai invites him for several rounds of interviews and later invites him to join the company.

Jack then begins to prepare to resign from company A, which involves paying compensation for ending his labor contract early. He also begins to prepare for new accommodation in Shanghai to start his new job. During this time company B provides Jack a formal offer and he accepts immediately. The offer stipulated the title, term, compensation and the date to begin work.

The resignation with company A was completed and Jack reported for work at Company B on the agreed upon date. However, he was told by the company that they could no longer hire him due to economic reasons. As a result Jack requested company B provide him compensation and the case was taken to court.

Jacks request for compensation was well founded and as per the arbitration of the court, company B was required to compensate Jack for the cost of health check, transportation, house rent, house agency costs, the compensation paid to company A by Jack, as well as compensation for Jack's unemployment.

For more information on managing HR in China, email vicky.chen@ijigroup.com.

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China FDI

Foreign Invested Partnership Enterprise



The Foreign Invested Partnership Structure was announced last year giving foreign entities and individuals a new way to set up operations in China; adding to the existing forms of wholly foreign owned enterprise, equity joint venture, and cooperative joint venture (collectively FIEs). Although interest in FIEs is quite high, clear understanding is still low.

There are some similarities between FIEs and the other FIEs, but also several differences - these are outlined below:

Business FIEs can engage in: Similar to WFOEs, FIEs are limited in the type of business activities they can perform and they must comply with the Guidance Catalogue of Foreign Investment. They are only allowed to establish under categories where 100% foreign ownership is allowed.

Forming a FIE: FIEs may be registered by 2 or more foreign enterprises or individuals as well as between foreign enterprise or individuals and Chinese individuals, enterprises or other organizations. They are not allowed to be set up with Chinese state-owned companies, listed companies, public good institutions or social organizations as partners.

A FIE does not need to provide registered capital for registration purposes and there is no timeline for mandatory contributions as required for other FIEs. Investors in the partnership contribute capital based on partnership agreement and may contribute cash, assets in kind, intellectual property, land use or proprietary rights, and in some cases labor contributions. When investing cash, freely convertible foreign currencies may be used as well as locally sourced RMB as long as it is proven to be legally obtained.

The registration procedure for a FIE is generally much shorter than other FIEs since Ministry of Commerce approval and capital verification is not needed. The registration takes place at the local level with the Administration of Industry and Commerce. If all required documentation is in order, the approval can be done within 20 days of applying. But, if the business scope of the FIE includes areas which need additional approval or certification from relevant authorities, such approval must be gained before the registration can begin.

Taxation of FIEs: Exact regulations in regard to taxation for FIEs has not yet been issued, though it can be pieced together from various circulars and laws regarding foreign invested enterprises and general partnerships.

FIEs are not income tax payers; it is the partners who report and pay income tax. In general, partners are required to pay at the enterprise income tax level of 25%. In some cases, depending on local regulations, partners who are natural persons will be required to pay a flat 20% tax or at rates based on China's progressive individual income tax rates. Currently FIEs do not qualify for preferential tax treatment policies, and since they are not general tax payers they cannot apply for VAT deductions or rebates.

Use of a FIE structure can be viable in certain situations, but business scope and tax implications should be carefully considered. Before choosing any type of China investment structure, all current and future needs should be considered.

To learn more about setting up a legal entity in China, contact us at fdi@jljgroup.com.

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