China Business Advisory

2015 Issue 2 February 2015

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New Tax Rules on Indirect Disposal of Chinese Properties by Non-resident Enterprises

Further to the Administrative Measures on General Anti-avoidance Rules taking effect from 1st February 2015 (CBA 2014 Issue 12 referred), the State Administration of Taxation ("SAT") promulgated, on 3rd February 2015, a very important regulation, SAT Announcement [2015] No. 7, with special regard to indirect transfer of Chinese Taxable Properties by non-resident enterprises, to replace relevant regulations stipulated in the prominent circular, Guoshuihan [2009] No. 698, and to consolidate sophisticated practices emanating from the past decade or so. The key points of this promulgation are:

- It expands the scope to all indirect transfer of Chinese Taxable Properties, which do not only cover equities but also immovable properties and properties of an establishment or a place of foreign companies in China;
- It spells out tax rules for the intra-group restructuring or reorganization;
- The compulsory reporting requirement is dispensed with. The seller, the buyer and the relevant target enterprise in China has to exercise their judgment as to whether the transaction needs to be reported to the Chinese Tax Authority for statutory compliance;
- If the subject transaction is subject to taxes, the party who has the payment responsibility, usually the buyer, is the withholding agent who will bear severe tax consequences if it fails to report the transaction and pay the relevant taxes in good time;

- Other critical definitions and clarifications include:
  - The steps to determine the amount of Chinese Taxable Properties;
  - The factors to be considered to justify the reasonable business purpose of the transaction giving due regard to substance over form;
  - Practical examples to illustrate reasonable business purpose and otherwise;
  - Transactions which are exempt from reporting; and
  - Consequences and penalties for failure to comply.

While this new regulation does clarify on a number of aspects of the implementation of the old regulation in the past years, it also brings new challenges and some uncertainties. For instance, when the relevant parties cannot determine whether a transaction is taxable in China and approach the Chinese Tax Authority for their opinion, there is no detailed information about the procedures to be adopted by the Tax Authority. What is clear though is this comprehensive regulation reflects the strong resolution of the Chinese government to combat tax avoidance and endorse the OECD's Base Erosion and Profit Shifting ("BEPS").

New Rules for Foreigners Visiting China for Short-term Assignments

In view of more and more foreign nationals visiting China for working or employment purposes, the State Council announced the Administrative Rules of Exit and Entry in 2013 in an attempt to put forth unambiguous and specific regulations for this through the issue of different visa types. To reinforce the implementation, the Ministry of Human Resources and Social Security, Ministry of Foreign Affairs, Ministry of Public Security and Ministry of Culture of China jointly issued a new circular (Notice No.78) at the end of last year, the Relevant Formalities for the Entry of Foreigners for Short-term Assignments (Trial Version), which took effect on 1st January 2015.

The highlihgts of Notice 78 are:

- The definition of "entry for short-term assignments";
- The procedures and requirements for the entry of foreigners for short-term assignments;

- The list of situations which will not be treated as “entry for short-term assignments” with relevant visa and employment approval requirements for different durations of residence in China.

In addition to the immigration aspects, we would like to prompt our readers to also pay due attention to other implications such as Individual Income Tax and Social Security Contributions in China.

More Convenience for Tax Compliance of Small Businesses

The Chinese government has been releasing various preferential policies for small businesses to boost their growth and success. A new initiative to this end is SAT Announcement [2015] No. 6 dated 2nd February 2015 which abolished the separate approval procedures to establish the eligibility of certain small businesses for exclusive entitlement.

With the annual tax filing of 2014 is in progress currently, we alert our CBA readers to the following preferential treatments to see if any of them are applicable to their business.:

- The lower Corporate Income Tax (“CIT”) rate at 10%;
- The 50% taxable income free of CIT;
- The exemption of Stamp Tax for loan contracts;
- The exemption of Business and Value Added Tax;
- The special treatment of fixed assets depreciation;
- The exemption of governmental funds (Education Surcharge and so on).

Please note the definition and criteria of small businesses for different taxes could vary and they are not applicable to non-resident enterprises. The constructive and effective communication with local tax authorities is also critical to conclude on the entitlement to such preferences.

Service Highlight

The Chinese government has been making continuing efforts to converge the domestic regulations with the international practices to cope with the fast-growing economy and attract foreign investors. With more than 20 years of operation in China assisting foreign investors from different countries, we are confident to help our clients to build their business with success in this nation. For any help or queries, please do not hesitate to contact our Marketing Executive, Ms. Yannes Lam, on (852) 3579 8745 or at yanneslam@sinobridge-consulting.com.

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