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China Clarifies Nonresidents' Eligibility For Treaty Tax Benefits

On August 25, 2009, China's State Administration of Taxation (SAT) issued Administrative Rules on Nonresident Enjoying Tax Treaty Treatment (Guoshuifa 2009 No.14) ("The Rules"). The Rules provide detailed guidance for nonresidents seeking concessions (except for international traffic) provided in applicable tax treaties. The Rules will take effect on Oct 1, 2009.

The PRC has signed 90 tax treaties with different countries, among which 87 have been ratified, and it also has similar tax arrangements with both Macau and Hong Kong. A wide range of individuals and enterprises can reduce tax pursuant to the Rules.

<u>Scope</u>

The Rules define a nonresident who is not a Chinese tax resident as a taxpayer in accordance with China's laws and tax treaties, including both nonresident individuals and nonresident enterprises. A nonresident must submit supporting documents pursuant to the Rules to the Chinese tax authorities to obtain a treaty tax reduction or exemption. The tax benefit applies to four types of incomes including: dividends, interests, royalties and capital gains.

The Rules allow nonresident taxpayers to retroactively enjoy treaty benefits. A nonresident can apply to the tax authorities for, tax refund if it has overpaid, applicable treaty protection within the past three years.

When a Chinese representative office is used merely for the purchase of goods and merchandise for its foreign home office, that office will be able to file for tax-free protection. No profits should be attributed to the Chinese offices as a result of its purchases under China's tax treaties.

<u>Procedure</u>

According to the Rules, the tax authorities will approve or deny the application and notify the applicant in writing within 20, 30, or 40 working days from the date of acceptance of the application, depending on the level of the authority. The notification deadline may be extended by 10 working days with notice in writing to the applicant. Failure to inform the applicant in writing within the stipulated period will result in automatic approval of the application. The Rules also list the documents that a taxpayer or tax agent must file with the tax authorities before or at the time when the relevant tax liability is reported.

In addition, the Rules exclude duplicate application within three calendar years (including the calendar year concerned) from the initial approval of the treaty benefits for income from the same item subject to the same treaty treatment. Incomes from the same items include dividends derived from the same equity investment in the same enterprise, interest earned from the same creditor's right from the same debtor, and royalties gained from the same licensed right from the same license. "The same tax treaty treatment" refers to the treaty benefits provided under the same conditions in the same tax treaty.

Conclusion

The treaty tax benefit clarified in the Rules will be increasingly important for foreign investors, since the new Corporate Income Law has changed the income tax benefits given to foreign companies. Meanwhile, Chinese companies which invest abroad will also benefit from the Rules.

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