

## China Tax News

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### **Tax- Tax laws and regulations about non-resident enterprises**

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#### **The Notice of The State Administration of Foreign Exchange and the State Administration of Taxation on issues Relating to the Submission of Tax Certificate of Overseas Payment in Special Programs such as Service Trade Huifa 2008 No. 64**

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To improve the national foreign exchange management and tax management, the State Administration of Foreign Exchange and the State Administration of Taxation have jointly issued this notice on the issues relating to the submission of tax certificate of overseas payment in service trade, earnings, regular transfers and some capital special programs on November 25, 2008.

#### **Core Content :**

- Where Non-resident enterprises have foreign exchange funds from service trade, earnings, regular transfers and capital items from China and domestic institutions and individuals pay more than the equivalent of USD30,000 for a single payment (excluding the equivalent of USD30,000), they should apply to the tax authorities for “Tax Certificate of Overseas Payment in Service Trade, Earnings, Regular transfers and Some Capital Special Programs” according to relevant state regulations.
- Domestic institutions or individuals need not apply for and submit the “Tax Certificate” for items with actual expenses occurring overseas.
- Where it is required to submit the tax certificate in overseas payment to foreign companies of shipping income, it shall be implemented according to the regulations of the “The Supplementary Notice of the State Administration of Taxation and the State Administration of Foreign Exchange on strengthening the tax management of foreign company’s shipping income and the management of overseas payment of international maritime industry”.

**It is effected since January 1, 2009**

#### **The Notice of the State Administration of Taxation on Printing and Distribution of “The Provisional Measure for the Management of the Deduction of the Source of Income Tax of Non-resident Enterprises” Guoshuifa (2009) No.3**

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To carry out “the Corporate Income Tax Law of the People's Republic of China” and its implementing regulations and to regulate the management of deducting the source of the tax of non-resident enterprise income, the State Administration of Taxation has issued this notice on January 9, 2009.

- Where Non-resident enterprises obtain equity investment gains such as dividends, bonuses and interest, rents, licence income, transfer of property income and other income subject to corporate income tax from the territory of China, the source deduction will be applied with units or individuals who directly bear the obligation to pay the money as withholding agents in accordance with the relevant laws and contracts.
- The withholding agent should convert the before-tax income to after-tax income of non-resident enterprises, and then calculate tax.
- Non-resident enterprises who enjoy preferential tax reduction and exemption should process according to related tax relief management approaches and regulations of administrative examination and approval program. Without the approval or before the tax relief application is approved, withholding agents should be required to pay corporate income tax when payment occurred.
- Non-resident companies can apply for the implementation of the tax agreements, if this provision is inconsistent with the tax agreements which are applicable to Non-resident companies; If Non-resident companies has not applied for the implementation of the tax agreements, provisions from domestic tax laws and regulations will be carried out.
- Withholding agents shall suspend payments equivalent to tax liability to non-resident enterprises and report to its competent tax authorities within one day and submit a written note when non-resident enterprises refuse to deduct tax.

**It was effected since January 1, 2009**

### **The Management Methods of the State Administration of Taxation for the Exchange and Settlement of the Corporate Income Tax of non-resident Enterprises**

#### **Guoshuifa (2009) No. 6**

In order to regulate management on non-resident corporate income tax final settlement, according to "The Corporate Income Tax Law of the People's Republic of China " (Corporate Income Tax Law for short) and its implementing regulations and "The Tax Collection and Administration Law of the People's Republic of China " (Tax Collection and Administration Law for short) and its implementing regulations, the State Administration of Taxation issued the Methods on January 22, 2009.

- Non-resident enterprises subject to exchange and settlement

Non-resident enterprises which are established according to the laws of foreign countries (regions) with management departments outside China and have set up offices or places in China (Enterprises for short), regardless of profit or loss, should participate

in the exchange and settlement of the corporate income tax according to Corporate Income Tax Law and the provisions of the Methods.

- Non-resident enterprises not subject to exchange and settlement are
  - 1, those which undertake contracted projects or provide temporary services in China for less than a year and terminate business activities during the year and have settled the taxes.
  - 2, those which have cancelled during the period of exchange and settlement.
  - 3, others which may keep from participating in the exchange and settlement of the corporate income tax upon approval by the competent tax authority.
- Relevant Legal Obligations
  - 1, Enterprises which fail to apply for annual income tax within the prescribed period without the approval of the competent tax authority to extend the time of payment or submit information that is incomplete or does not meet the requirements should make up for the report within the prescribed period upon receipt of the “Notice of Correction in Limited Time” issued by the competent tax authority.
  - 2, Where the enterprises fail to go through the exchange and settlement of the corporate income tax within the prescribed period, apart from ordering them to going through in limited time, the competent tax authority will impose an overdue fine according to The Tax Collection and Administration Law if there is an overdue tax.
  - 3, Where a dispute arises between enterprises and tax authorities, The Tax Collection and Administration Law will be applied.

**It is effected since January 1, 2008.**

**The Provisional Methods for the Management of the Tax from the Undertaking of Projects and the Provision of Service by Non-resident Enterprises**  
**The State Administration of Taxation Decree No. 19**

In order to regulate Tax Collection management on undertaking contracted projects or service provision by non-residents in China, the State Administration of Taxation issued the interim provisions on February 5, 2009.

**Core content :**

- Non-resident enterprise which fails to submit “Report Form for Non-resident Enterprises contracted engineering work and the provision of services enjoying the tax treaty treatment” and the relevant supporting materials or does not meet the tax treatment conditions due to project execution changes shall not enjoy the tax treaty treatment, and shall pay taxes in accordance with the provisions of the Corporate Income Tax Law.
- The certificate of payment domestic institutions and individuals obtain from abroad, if the competent tax authorities doubt on their authenticity, it may be required to provide a confirmation statement from overseas notary public or Certified Public Accountants, after audited and approved by the tax authorities, can be accounted

for as an accounting certificate. It will affect pre-tax deduction of corporate income.

- The legal representative of the non-resident enterprises or non-resident individuals in tax arrears don't settle tax liability in accordance with the provisions and late payment penalty without providing tax guarantee before exit, The tax authorities may notify the immigration authorities to prevent its exit.

**It is effected since March 1, 2009.**

### **The Notice of the State Administration of Taxation on further strengthening the non-resident tax management”**

#### **Guoshuifa (2009) No.32**

To implement the spirit of National Tax Work Conference, Further improve tax collection and management work, strengthen the management of non-resident tax effectively, further improve quality and efficiency of the non-resident tax management, the State Administration of Taxation issued this Notice on March 9, 2009.

- Strengthen management on non-resident corporate income tax reporting and exchange and settlement.
- Strengthen tax collection management on undertaking contracted projects or service provision by non-residents
- Strengthen deducting the source of the tax of non-resident corporate income.
- Strengthen the management of Tax Certificate of overseas payment.
- Do well on the prediction and analysis of tax revenue.
- Make full use of modern information technology.
- Internal Revenue Service and the Local Taxation Bureau should strengthen coordination and cooperation, establish a joint working mechanism.

Carry out special tax inspections of non-resident enterprises.

### **The Notice of the Ministry of Finance and the State Administration of Taxation on Business Tax Transition Policy on Cross-year Old Contract**

#### **Tax (2009) No.32**

The Ministry of Finance and the State Administration of Taxation issued about the Notice on Sales Tax Transition Policy on Cross-year Old Contract on August 25, 2009, which clarify that those labor contracts Signed with Offshore companies or individuals before December 31, 2008 (including December 31), and have not yet completed the execution of those contracts until December 31, 2008, are suitable for old or new business tax policy.

- About whether it is domestic business tax act or how to determine the turnover, if it expired before December 31, 2009, those contracts are suitable for Pre-amended business tax policy.

- Matters such as suitable tax rate for cross-year old contract, occurrence time of tax liability, tax location, withholding agent, RMB conversion rate, Preferential policy about tax reduction and exemption and other matters, those contracts are suitable for Revised business tax policy since January 1, 2009.
- Business tax Enterprise have paid, Overpaid, have been withheld, can be deducted from the tax liability in future or apply for tax refund.

**The State Administration of Taxation issued the notification about Chinese-holding enterprises registered Overseas should be identified as resident enterprises based on actual administration standard.**

### **Guoshuifa (2009) No.82**

In order to regulate the implementation of judgment standard of resident enterprises according to enterprise income tax law , Strengthen the management of corporate income tax, The State Administration of Taxation issued the notification about enterprise income tax of Chinese-holding enterprises registered Overseas(overseas Chinese-funded enterprises for short), identified as resident enterprises based on actual administration on April 22,2009.

#### **Core content:**

- If overseas Chinese-funded enterprises meets the following conditions at the same time ,they should be identified as resident enterprises with actual administration in china.

1,High-class administrators responsible for implementing daily production and operation management and the places they perform their duties are Mainly located in the territory of China.

2,Corporate financial decisions (such as borrowing, lending, financing, financial risk management, etc.) and personnel decisions (such as appointment, dismissal and remuneration, etc.) are decided by institutions or personnel located in China, or those decisions need to be approved by institutions or personnel located in China.

3,The main business of property, accounting books, corporate seal, minutes of board of directors and shareholders meeting or deposited in the archives of the territory of China.

4,More than 50% of (including 50%) directors or senior managers who have the right to vote should reside in the territory of China constantly.

- Those overseas Chinese-funded enterprises which have been identified as resident enterprises, are to be exempt from taxation when they obtain the dividends, bonuses and other equity investment income from the resident enterprises, while those enterprise investors should submit 10% corporate income tax when they obtain dividends, bonuses and other equity investment income.
- Those overseas Chinese-funded enterprises which have been identified as resident enterprises, then become Dual-resident status enterprises, are suitable for the tax

agreement (or arrangement) entered into between China and other countries (or regions).

**It is effected since January 1, 2008.**

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※Verification Services: internal verification, annual inspection, tax verification report; domestic and foreign audit

※Investment and Financing Advice: enterprise private financing, IPO financing consultancy

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