

Announcement of State Taxation Administration on Promulgation of the Administrative Measures on Non-resident Taxpayers Enjoying Treaty Benefits

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For further implementation of the reform of "streamlining government functions and administration and delegating powers while improving regulation, and optimising services", further optimising tax collection and the business environment, providing greater convenience for non-resident taxpayers in enjoying treaty benefits, the State Taxation Administration has formulated the Administrative Measures on Non-resident Taxpayers Enjoying Treaty Benefits which is hereby promulgated and shall be implemented with effect from 1 January 2020.

Announcement is hereby made.

14 October 2019

Administrative Measures on Non-resident Taxpayers Enjoying Treaty Benefits

Chapter 1 General Principles

Article 1 These Measures are formulated pursuant to the relevant provisions of the Enterprise Income Tax Law of the People's Republic of China (hereinafter referred to as the "Enterprise Income Tax Law") and its Implementation Regulations, the Individual Income Tax Law of the People's Republic of China (hereinafter referred to as the "Individual Income Tax Law") and its Implementation Regulations, the Administrative Law of the People's Republic of China on the Levying and Collection of Taxes (hereinafter referred to as the "Tax Collection Law" and its Implementation Regulations (hereinafter referred to collectively as the "provisions of domestic tax laws") for the purposes of implementing the treaties on double taxation avoidance entered into by the Government of the People's Republic of China (hereinafter referred to as the "tax

treaties") and the tax clauses of international transport agreements, and standardising administration of treaty benefits for non-resident taxpayers.

Article 2 These Measures shall apply to non-resident taxpayers who have tax liability in China and need to claim treaty benefits.

Article 3 Non-resident taxpayers claiming treaty benefits shall be handled in accordance with the principles of "self-assessment, claiming benefits, retention of the relevant materials for future inspection". Where a non-resident taxpayer self-assesses and concludes that it satisfies the criteria for claiming treaty benefits, it may enjoy treaty benefits at the time of tax declaration or at the time of withholding through the withholding agent, simultaneously gather and retain the relevant materials pursuant to the provisions of these Measures for future inspection, and accept follow-up administration by the tax authorities.

Article 4 Non-resident taxpayers referred to in these Measures shall mean taxpayers which are deemed as tax residents of the other contracting party pursuant to the provisions of the resident clauses of the treaty.

Tax treaties referred to in these Measures shall include tax treaties and international transport agreements. International transport agreements shall include aviation agreements, maritime agreements, land transport agreements, motor vehicle transport agreements, and other treaties or exchange of letters for mutual tax exemption of international transportation income.

Treaty benefits referred to in these Measures shall mean mitigation or exemption, pursuant to tax treaties, of enterprise income tax or individual income tax obligation which should be performed according to the provisions of domestic tax laws.

Withholding agents referred to in these Measures shall mean organisations and individuals bearing withholding obligation for income derived from China by non-resident taxpayers pursuant to the provisions of domestic tax laws, including statutory withholding agents and designated withholding agents stipulated in the Enterprise Income Tax Law.

The tax authorities in charge referred to in these Measures shall mean tax authorities responsible for tax collection and administration pursuant to the provisions of domestic tax laws from non-resident taxpayers which incur tax obligation in China.

Chapter 2 Applicability of Treaty and Tax Declaration

Article 5 Non-resident taxpayers making their own declaration shall self-assess whether they are entitled to treaty benefits and need to claim such benefits, and shall submit an "Information Report on Non-resident Taxpayers Claiming Treaty Benefits" (see Appendix) at the time of declaration, gather and retain the relevant materials pursuant to the provisions of Article 7 of

these Measures for future inspection.

Article 6 For withholding at source and designated withholding, a non-resident taxpayer asserting that it satisfies the criteria for claiming treaty benefits and need to claim such benefits shall complete an "Information Report on Non-resident Taxpayers Claiming Treaty Benefits" truthfully, submit to the withholding agent voluntarily, gather and retain the relevant materials pursuant to the provisions of Article 7 of these Measures for future inspection.

Upon receipt of the "Information Report on Non-resident Taxpayers Claiming Treaty Benefits", where the withholding agent confirms that the information completed by the non-resident taxpayer is complete, the withholding agent shall make withholding pursuant to the provisions of domestic tax laws and the provisions of the treaty, and submit the "Information Report on Non-resident Taxpayers Claiming Treaty Benefits" as an appendix to the withholding declaration to the tax authorities in charge.

Where the non-resident taxpayer does not submit the "Information Report on Non-resident Taxpayers Claiming Treaty Benefits" voluntarily, or where the materials and the information stated in the relevant reports and statements provided to the withholding agent or completed are incomplete, the withholding agent shall withhold tax pursuant to the provisions of domestic tax laws.

Article 7 Materials to be retained for future inspection as referred to in these Measures shall include:

(1) tax resident identity proof issued by the tax authorities of the treaty contracting party to prove the taxpayer's obtaining tax resident status in the current year or the preceding year; to claim benefits under the international transport clause of a treaty or benefits under an international transport agreement, the tax resident identity proof may be replaced by a certificate proving that the taxpayer satisfies the identity stipulated in the treaty or agreement;

(2) ownership proof materials such as contract, agreement, board resolution or shareholders' meeting resolution, proof of payment etc which are related to the income derived;

(3) to claim benefits under dividend, interest or royalty clauses under a treaty, the relevant materials proving "beneficiary owner" identity shall be retained; and

(4) any other materials for which the non-resident taxpayer deems to be able to prove its satisfaction of criteria for claiming treaty benefits.

Article 8 Non-resident taxpayers shall bear legal liability for the veracity, accuracy and legitimacy of the information completed in the "Information Report on Non-resident Taxpayers Claiming Treaty Benefits" and the materials retained for future inspection.

Article 9 Where a non-resident taxpayer becomes aware that it is not eligible for but has

claim the treaty benefits, and it has underpaid tax or has not paid tax, it shall voluntarily declare to the tax authorities in charge and make retrospective tax payment.

Article 10 Where a non-resident taxpayer is entitled treaty benefits but has paid excess tax due to non-claiming of treaty benefits, it may apply for a refund of overpaid taxes, on its own or through the withholding agent, to the tax authorities in charge within the period stipulated in the Tax Collection Law, and simultaneously submit the reports, statements and materials stipulated in Article 7 of these Measures.

The tax authorities in charge shall verify the application within 30 days from receipt of the application from the non-resident taxpayer or the withholding agent, and process refund of overpaid taxes that are eligible for treaty benefits.

Article 11 Materials retained by non-resident taxpayers claiming treaty benefits for future inspection shall be retained for the period stipulated in the Tax Collection Law and its Implementation Regulations.

Chapter 3 Follow-up Administration by Tax Authorities

Article 12 All levels of tax authorities shall, through strengthening follow-up administration for non-resident taxpayers enjoying treaty benefits, implement treaties accurately, and prevent abuse of tax treaties and tax avoidance risks.

Article 13 In the course of follow-up administration, the tax authorities in charge may require a non-resident taxpayer to provide the retained materials within a stipulated period.

During follow-up administration and tax payment refund investigation conducted by the tax authorities, where it is discovered that the materials stipulated in Article 7 of these Measures are inadequate to prove that the non-resident taxpayer satisfies the criteria for claiming treaty benefits, or that the non-resident taxpayer is suspected of tax evasion, the tax authorities may request the non-resident taxpayer or the withholding agent to provide the relevant materials within a stipulated period and to cooperate in the investigation.

Article 14 Where the original copy of a document stipulated in these Measures is written in a foreign language, when it is provided as required by the tax authorities in charge, the Chinese translation shall be attached, and the applicant shall be responsible for the accuracy and integrity of the Chinese translation.

The non-resident taxpayer or the withholding agent may provide photocopies of the relevant materials to the tax authorities in charge, but shall state on the photocopies the location where the original copy is stored, and affix the seal or signature of the accountable person. Where the tax authorities in charge request for inspection of the original copy, the original copy shall be submitted for inspection.

Article 15 Non-resident taxpayers and withholding agents shall cooperate in the follow-up

administration and investigation conducted by the tax authorities on non-resident taxpayers claiming treaty benefits. Where the non-resident taxpayer and the withholding agent both fail to provide the relevant materials as required by the tax authorities, or avoid, refuse or hinder follow-up investigation by the tax authorities, and the tax authorities in charge cannot verify whether the non-resident taxpayer satisfies the criteria for claiming treaty benefits, the non-resident taxpayer shall be deemed as not entitled to treaty benefits.

Article 16 Where a non-resident taxpayer is not eligible for but has claimed the treaty benefits and therefore has not paid or has under-paid tax, except where it is due to the withholding agent's failure to make withholding declaration pursuant to the provisions of Article 6 of these Measures, the non-resident taxpayer shall be deemed to have failed to declare and pay tax pursuant to the provisions, and the tax authorities in charge shall recover the taxes and pursue late tax payment liability of the non-resident taxpayer pursuant to the law. In the case of withholding, the late tax payment period shall commence from the date of withholding declaration for treaty benefits.

Article 17 Where a withholding agent fails to make withholding declaration pursuant to the provisions of Article 6 of these Measures, or fails to provide the relevant materials pursuant to the provisions of Article 13 of these Measures, resulting in claiming of treaty benefits by non-resident taxpayer who is not eligible for the treaty benefits and under-payment or non-payment of tax thereby, the tax authorities in charge shall pursue the liability of the withholding agent pursuant to the relevant provisions, and order the non-resident taxpayer to pay tax within a stipulated period.

Article 18 Pursuant to the provisions of Article 39 of the Enterprise Income Tax Law, where a non-resident taxpayer fails to pay tax pursuant to the law, the tax authorities in charge may recover the tax payable amount of the non-resident taxpayer from the amount payable by the non-resident taxpayer for other incomes sourced from China.

Article 19 During follow-up administration or verification of tax refund by the tax authorities in charge, where it is unable to accurately ascertain whether a non-resident taxpayer is entitled to treaty benefits, the tax authorities in charge shall report to the higher-level tax authorities; where it is necessary to activate mutual consultation or information exchange procedures, the corresponding procedures shall be activated pursuant to the relevant provisions.

Article 20 The verification period mentioned in Article 10 of these Measures shall exclude the timeframe for supplementation of materials by a non-resident taxpayer or a withholding agent, individual case request, mutual consultation, and information exchange. Where the tax authorities need to extend the verification period due to the aforesaid reasons, the applicant for

tax refund shall be notified in writing of the relevant decision and the reason.

Article 21 During follow-up administration, where the tax authorities in charge discover that it is necessary to apply the principal purpose test clause of a treaty or the general anti-avoidance rules in the domestic tax laws, the relevant general anti-avoidance provisions shall apply.

Article 22 The tax authorities in charge shall establish creditworthiness files for improper claims of treaty benefits by non-resident taxpayers, and adopt the corresponding follow-up administrative measures.

Chapter 4 Supplementary Provisions

Article 23 Where there is any discrepancy between the provisions of these Measures and a treaty, the treaty shall prevail.

Article 24 Where non-resident taxpayers need to enjoy benefits under the avoidance of double taxation arrangements entered into by Mainland China and Hong Kong/Macau Special Administrative Regions, it shall be handled in accordance with this Announcement.

Article 25 These Measures shall be implemented with effect from 1 January 2020. The Administrative Measures on Non-resident Taxpayers Enjoying Treaty Benefits (promulgated via State Taxation Administration Announcement [2015] No. 60, revised pursuant to State Taxation Administration Announcement [2018] No. 31) shall be repealed simultaneously.

Appendix: Information Report on Non-resident Taxpayers Claiming Treaty Benefits



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