

CHINA TAX NEWSLETTER

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NOTICE ON THE REVISION AND PROMULGATION OF HIGH-TECH ENTERPRISES ACCREDITATION AND ADMINISTRATION GUIDELINES

Pursuant to article 21 of the Administrative Measures on Accreditation of High-tech Enterprises (Guo Ke Fa Huo [2016] No. 32), the Ministry of Science and Technology, Ministry of Finance, State Administration of Taxation jointly released the High-tech Enterprises Accreditation and Administration Guidelines, and officially announced the effectiveness of the circular via the announcement Guo Ke Fa Huo [2016] No. 195. Main contents of the announcement are as follows:

- (1) The qualification of high-tech enterprises, which is accredited before 1 January 2016 pursuant to the circular Administrative Measures on Accreditation of High-tech Enterprises released in 2008 (Guo Ke Fa Huo [2008] No. 172, hereinafter referred to as "2008 Accreditation Measures"), is still valid if the qualification is still within the period of validity.
- (2) Where a high-tech enterprise, accredited according to the 2008 Accreditation Measures, conducted actions stipulated in article 15 of the 2008 Accreditation Measures before 31 December 2015 and related punishment had been imposed before 31 December 2015 by authorities, the enterprise shall still be subject to the punishment stipulated in the 2008 Accreditation Measures. The punishment that the accreditation institution will not accept such enterprise's accreditation application within 5 years will be executed until 31 December 31 2015.

The High-tech Enterprises Accreditation and Administration Guidelines attached to the announcement contains contents on seven aspects, namely organisation and implementation, accreditation procedures, accreditation criteria, preferential tax treatments, supervision and administration, functions and operation abstracts of the official website for accreditation and administration of the high-tech enterprises, and the attachments to the Guidelines.

The Guidelines shall come into force on 1 January 2016.

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ANNOUNCEMENT ON SEVERAL ISSUES CONCERNING THE ADMINISTRATION OF INDIVIDUAL INCOME TAX COLLECTION

Shenzhen Local Taxation Announcement [2016] No.12 mainly specifies the following three aspects relating to the assessment and collection of individual income tax:

- (1) Assessment and collection of individual income tax on income derived from production and business operation

Concrete norms are released with regard to the applicable scope, standards corresponding to various assessed collection rates, and standards corresponding to various assessed taxable income ratios regarding the assessment and collection of individual income tax on income derived from production and business operation.
- (2) Assessment and collection of individual income tax on occasional issuance of tax invoices by tax authorities on behalf of individuals

The Shenzhen Local Tax Bureau entrusts the Shenzhen State Tax Bureau to levy and collect the individual income tax at the rate of 1.5% on scattered taxpayers (individuals) who temporarily engage in production or business operation without tax registration but apply to the Shenzhen State Tax Bureau to issue tax invoice on their behalf.
- (3) Assessment and collection of individual income tax on construction and installation projects in Shenzhen

Under certain circumstances, construction enterprises engaged in construction and installation projects in Shenzhen will be subject to the individual income tax on project operating revenue at the rate of 1%, and the Shenzhen Local Tax Bureau located in the same area of the projects is responsible for levying and collecting such tax.

The announcement shall come into force on 1 July 2016 and remain effective for a period of 5 years.



ANNOUNCEMENT ON MATTERS RELATING TO ISSUANCE OF THE CERTIFICATE OF CHINESE FISCAL RESIDENT

For the purposes of providing services to enterprises and individuals that engage in outbound investments, business operations and provision of labour services, and facilitating issuance of the Certificate of Chinese Fiscal Resident (hereinafter referred to as the "Fiscal Resident Certificate"), the State Administration of Taxation has issued the circular Announcement [2016] No. 40, with main contents listed as below:

- (1) Enterprises or individuals (hereinafter referred to collectively as the "applicants") may apply to the tax authorities for issuance of a Fiscal Resident Certificate for the purpose of enjoying entitlements under the tax treaties entered into between the Chinese Government and foreign governments.
- (2) Applicants shall apply to the state tax bureau and local tax bureau of county level that govern their income tax for issuance of a Fiscal Resident Certificate.
- (3) An applicant applying for a Fiscal Resident Certificate shall submit the required application form and materials.

The announcement shall come into force on 1 October 2016.

NOTICE ON IMPLEMENTATION OF THE POLICIES RELATED TO THE URBAN MAINTENANCE AND CONSTRUCTION TAX AND EDUCATION SURCHARGES ASSOCIATED WITH THE VAT PREPAID TO TAX AUTHORITIES LOCATED IN PLACES OTHER THAN THE AREA WHERE A TAXPAYER IS REGISTERED

With regard to the implementation of policies related to the urban maintenance and construction tax and education surcharges associated with the value-added tax (VAT) prepaid by taxpayers to tax authorities located in places other than the area where the taxpayers are registered, Cai Shui [2016] No. 74 has specified the following provisions:

(1) Taxpayers, engaged in provision of trans-regional construction services or sale and leasing of immovable, shall prepay VAT to the tax authorities in the areas where the construction services take place or where the immovables are located. The taxpayer shall then calculate the urban maintenance and construction tax and education surcharges payable based on the prepaid VAT amount and the levy rates as specified by the aforementioned tax authorities and pay the amounts accordingly at the locality.

(2) For taxpayers involved in the aforementioned prepayment of VAT, they shall calculate the urban maintenance and construction tax and education surcharges payable to the tax authorities in the place where the taxpayers are located based on the VAT amount actually paid to and the levy rates specified by the tax authorities in the place where the taxpayers are located, and pay the amount accordingly.

The notice shall come into force on 1 May 2016.

ANNOUNCEMENT ON PROMULGATION OF THE REVISED ADMINISTRATIVE MEASURES ON CATEGORISATION OF ENTERPRISES FOR EXPORT TAX REFUND (EXEMPTION)

In the Announcement of the State Administration of Taxation [2016] No. 46, revisions had been made to the Administrative Measures on Categorisation of Enterprises for Export Tax Refund (Exemption) which was released in 2015, with details listed as follows:

- (1) Differentiating manufacturing enterprise, foreign trade enterprise, and enterprise providing integrated services to foreign trade enterprises, with criteria specified for each type of the enterprises if they are to be rated as Category 1 enterprises;
- (2) The entry threshold for Category 1 is moderately lowered down to raise the ratio of Category 1 enterprises.
- (3) For enterprises providing integrated services to foreign trade enterprises, the net asset percentage criterion is reduced from over 100% to over 30% for rating under Category 1 enterprise.
- (4) The assessment of enterprises for Category 1 rating involves not only the tax-paying credit, but also the category rating as assessed by the Customs and the foreign exchange administration departments; export enterprises listed on the joint disciplinary list of governmental departments will be directly rated as Category 4 export enterprises.
- (5) The time limits for examining and handling the tax refund declarations filed by Category 2 and Category 3 enterprises are shortened from 20 working days to 10 working days and 15 working days respectively; the time limit for examining and handling the tax refund declarations filed by Category 1 enterprises is extended from 2 working days to 5 working days.

These measures shall be implemented with effect from 1 September 2016, based on the timing of an export enterprise's declaration for tax refund (exemption).

PILOT OF GRANTING THE ISSUANCE OF SPECIAL VAT INVOICE TO VAT SMALL-SCALE TAXPAYERS IN ACCOMMODATION INDUSTRY

Pursuant to the Announcement of the State Administration of Taxation [2016] No. 44, the pilot of granting issuance of special VAT invoice to VAT small-scale taxpayers whose monthly sales is over RMB30,000 (or quarterly sales over CNY90,000) in accommodation industry (hereinafter referred to as "pilot taxpayers") will be launched among 91 cities in China. Details of the pilot project are as follows:

(1) For pilot taxpayers engaged in the provision of accommodation services, sale of goods or other taxable activities which need to issue special VAT invoices via the new special VAT invoice management system, the amount allowed to be invoiced caps at CNY10,000 per special VAT invoice; for sale of immovables, the taxpayers shall still apply to the local tax authorities to issue the special VAT invoices on their behalf.

(2) Pilot taxpayers shall differentiate the sales from goods that is applicable to the 3% VAT rate from sales from services that is applicable to the 5% VAT rate for which special VAT invoices had been issued, and fill the amounts respectively in the column "Amount in the current period" in lines 2 and 5 "VAT-exclusive sales per special VAT invoices issued by the tax authorities" of the VAT Returns (for VAT Small-scale Taxpayers).

The announcement shall come into force on 1 August 2016.

NOTICE ON REVISION OF THE TAX RETURNS OF LAND APPRECIATION TAX

To reinforce the standardised administration of land appreciation tax, circular Shui Zong Han [2016] No. 309 has revised the Tax Returns of Land Appreciation Tax.

Details are as follows:


- (1) Adding Project Registration Form for Land Appreciation Tax.
- (2) The column "Collected fees on behalf of other entities" is added in the Tax Returns of Land Appreciation Tax (2) and the Tax Returns of Land Appreciation Tax (5).
- (3) Items related to income are adjusted. The column "Deemed sales" is added in the Tax Returns of Land Appreciation Tax (1); the line "Deemed sales" is added to the real estate transfer revenue column of the Tax Returns of Land Appreciation Tax (2), Tax Returns of Land Appreciation Tax (4), Tax Returns of Land Appreciation Tax (5) and Tax Returns of Land Appreciation Tax (6).

EXECUTION OF THE TAX TREATY BETWEEN CHINA AND RUSSIA

The agreement on avoidance of double taxation, signed on 13 October 2014, and the associated protocol, signed on 8 May 2015, between China and Russia come into force on 9 April 2016 and will be applicable to income derived on and after 1 January 2017. Compared to the previous tax treaty, the new tax treaty features the following changes:

- (1) Permanent establishment: With regard to the length of time for constitution of a permanent establishment by an enterprise via furnishing of services through employees or other personnel, the criterion has changed from "a period or periods aggregating more than 18 months" to "period or periods aggregating 183 days in any twelve month period";
- (2) Dividend: In the previous tax treaty, the applicable withholding tax rate is 10%. In the new tax treaty, the withholding tax rate will be 5% if the beneficial owner of the dividends is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends and this holding amounts to at least 80,000 Euros or its equivalent in any other currency. The withholding tax rate will be 10% in all other cases;
- (3) Interest: In the previous tax treaty, the applicable withholding tax rate is 10%. In the new tax treaty, the contracting state where the resident comes from is entitled to the exclusive rights to levy taxes on the interest, and the contracting state where the interest is from will not levy withholding tax on the interest;
- (4) Royalties: In the previous tax treaty, the applicable withholding tax rate is 10%. In the new tax treaty, the withholding tax rate is reduced to 6%;
- (5) Capital gains: With regard to the levy of taxes on gains from the alienation of shares, the previous tax treaty stipulates that a contracting state is entitled to levy taxes on the capital gains only if: a) the property of the transferred company consists directly or indirectly principally of immovable property situated in the contracting state; b) the seller holds at least 25% of the shares of the company before the alienation of shares. The new tax treaty specifies that the contracting state where the capital gains are from is entitled to levy taxes on the capital gains only if the gains derive more than 50% (exclusive) of their value directly or indirectly from immovable property situated in that contracting state.
- (6) Method used to eliminate double taxation: Both the previous and the new tax treaties contain provisions related to direct tax credit and indirect tax credit. However, the new tax treaty raises the proportion of shareholding from at least 10% to 20% in the case of indirect tax credit.





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