

# CHINA TAX NEWSLETTER

**DEFERRED DECLARATION ALLOWED FOR OVERDUE EXPORT VAT REFUND (EXEMPTION)** *PAGE 2*

**CLARIFICATION ON ADMIN. OF LEVYING AND COLLECTION OF ENTERPRISE INCOME TAX** *PAGE 3*

**ADJ. OF TAX INCENTIVES OF UTILIZATION OF RESOURCES PRODUCTS & LABOR SERVICES** *PAGE 4*



## PROMULGATION OF ADMINISTRATIVE MEASURES ON TAX REFUND FOR OVERSEAS VISITORS PURCHASING GOODS AND DEPARTING FROM CHINA (TRIAL IMPLEMENTATION)

In January 2015, the Notice of the Ministry of Finance on Implementing Tax Refund Policy to Overseas Visitors Purchasing Goods and Departing from China states that, when overseas visitors leave the country from the departure port, they will obtain 11% of value-added tax (VAT) refund for those tax-refund goods purchased from tax-refund shops. According to the requirement of arrangement of the State Council, the State Administration of Taxation has promulgated the Administrative Measures on Tax Refund for Overseas Visitors Purchasing Goods and Departing from China (Trial Implementation) (hereinafter referred to as the “**Measure**”), clarifying the tax refund policy upon departure in detail.

- (1) The Measure states that the tax-refund shops adopt filing administration.
- (2) The Measure states that the handling procedure of tax-refund upon departure depends on the tax-refund information management system, and the Refund Application Form for Overseas Visitors is used as a crucial supporting document to link each procedure.
- (3) The Measure also states the condition and method of choosing tax-refund agent, and designates banks to be the tax-refund agent to handle tax-refund upon departure.

### CONTENTS

Promulgation of Administrative Measures on Tax Refund for Overseas Visitors Purchasing Goods and Departing from China (Trial Implementation)

Deferred Declaration Allowed for Overdue Export VAT Refund (Exemption)

Reinforced Follow-up Administration of Cost Apportionment Agreement

Clarification on Several Issues Relating to Administration of Levying and Collection of Enterprise Income Tax on Restructuring of Enterprises

Simplification of Application Procedure of Business Tax Exemption on Individual Donating Immovable Property and Land Use Right

Adjustment of Value-Added Tax Incentives of Integrated Utilization of Resources Products and Labor Services

## DEFERRED DECLARATION ALLOWED FOR OVERDUE EXPORT VAT REFUND (EXEMPTION)

**F**or export enterprises or any other entities that cannot declare on time the export VAT refund (exemption) because they have not collected the export tax refund (exemption) documents due to particular reasons, and they have not submitted the deferral application to the competent state tax authority, they can provide proof documents before 31 July 2015 and submit the deferral application to the competent state tax authority. After examination and approval from the competent state tax authority, the declaration of refund (exemption) can be deferred.

The particular reasons are:

- (1) Natural disaster, social emergency and other occurrence of a force majeure event.
- (2) The declaration vouchers of export VAT refund (exemption) have been stolen, robbed, or lost by post, or mistakenly posted.
- (3) The declaration vouchers of export VAT refund (exemption) have been detained in the operation or inspection of judicial or administrative bureaus.
- (4) The declaration vouchers of export VAT refund (exemption) have not been obtained on time because of the economic dispute between buyers and sellers.
- (5) The declaration vouchers of export VAT refund (exemption) cannot be timely provided because tax officer of the enterprise is injured or dead, unexpectedly critically ill or leaving without permission, which results in failure of jobs handover.
- (6) The Customs Declaration Forms cannot be timely provided because the enterprise had applied to modify the Customs Declaration Forms, but the Customs failed to complete the modification before the deadline of export tax refund (exemption).
- (7) The vouchers needed for declaration of export VAT refund (exemption) are issued after the deadline of export VAT refund (exemption) by relevant government departments.

The above Announcement comes into force on 11 June 2015. The deferral application submitted on and after this date by export enterprise or other enterprises to competent tax authorities is applicable to this Announcement.

## REINFORCED FOLLOW-UP ADMINISTRATION OF COST APPORTIONMENT AGREEMENT

**A**n enterprise shall, within 30 days from the date when a cost apportionment agreement between it and its affiliated party is entered into or changed, submit the duplicate of such agreement to the taxation authorities in charge, and attach the Annual Report Form of the Related Party Transaction of Enterprise of People's Republic of China to its filing of annual tax returns.

Taxation authorities shall reinforce the follow-up administration of cost apportionment agreements and may, with regard to the cost apportionment agreements that are in compliance with the arm's length principle and the principle of matching the cost with earnings, carry out special tax adjustments upon investigation.

During the period when an enterprise implements a cost apportionment agreement, the earnings actually shared by a party thereto does not match the cost apportioned thereby, the party shall make compensation adjustments in light of facts, failing which the taxation authorities shall conduct special tax adjustments upon investigation.

The above Announcement comes into force on 16 July 2015.

## CLARIFICATION ON SEVERAL ISSUES RELATING TO ADMINISTRATION OF LEVYING AND COLLECTION OF ENTERPRISE INCOME TAX ON RESTRUCTURING OF ENTERPRISES

**R**ecently, the State Administration of Taxation announces the Announcement on Several Issues Relating to Administration of Levying and Collection of Enterprise Income Tax on Restructuring of Enterprises (hereinafter referred to as the “**Announcement**”). In the Announcement, it is stated that the declaration and filing requirement mentioned in Article 11 of the circular Cai Shui [2009] No.59, and the confirmation from tax authorities mentioned in Article 16 of the Announcement of the State Administration of Taxation [2010] No. 4 will not be adopted. Instead, it has switched to the approach of declaration and submission of relevant documents during annual computation and settlement of Enterprise Income Tax. The Announcement has mainly clarified the following contents:

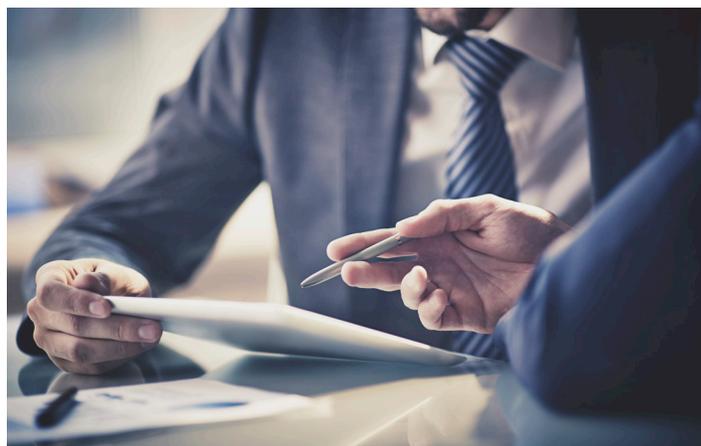
Firstly, it has been clarified that a simple change of other legal form of an enterprise stipulated in item (1) of Article 4 of Cai Shui [2009] No. 59 falls into the scope of special tax treatment on restructuring of enterprise, but no need to declare separately.

Secondly, it has been clarified that the parties in the restructuring shall declare according to regulation, and submit relevant documents.

Thirdly, it has been clarified that where a party in a merger or division is cancelling its registration, declaration shall be made prior to completion of cancellation of tax registration.

Fourthly, since the leading party in the restructuring is the transferor of assets (equities), and it is the main party to realize the restructuring income and the deferred income, the Announcement states that, upon declaration by the leading party in the restructuring, the other party (or parties) shall make tax declaration with their tax authorities in charge and shall, at the time of declaration, submit their declaration documents and the Report, Appendices of the leading party which have been accepted by the tax authorities in charge.

Fifthly, the management requirement of step transactions within the 12-month period preceding the restructuring has been raised. It is required that the parties in the restructuring shall, at the time of declaration, submit a statement on whether there exist any other



equity or asset transactions which relate to the said restructuring within the 12-month period preceding the restructuring to the tax authorities in charge, and explain whether these transactions constitute step transactions of the said restructuring, and whether they are dealt with as a restructuring exercise.

Sixthly, it has been designed the Report on Special Tax Treatment for Income Tax on Restructuring of Enterprise and Appendices, which specifies the conditions that special tax treatment applies to restructuring of enterprise, income or loss incurred from asset transfer with non-equity payment, the tax computation basis of equity and other assets acquired by asset (equity) transferor, the tax computation basis of equity and other assets acquired by asset (equity) acquirer, which serves as a declaration basis of future management.

This Announcement shall apply to computation and settlement of enterprise income tax for year 2015 and subsequent years. Where an enterprise has signed a restructuring agreement at the time of implementation of this Announcement but the restructuring has not been completed, this Announcement shall apply.

## SIMPLIFICATION OF APPLICATION PROCEDURE OF BUSINESS TAX EXEMPTION ON INDIVIDUAL DONATING IMMOVABLE PROPERTY AND LAND USE RIGHT

**S**tarting from 1 July 2015, individual donating immovable property and land use right in ways of division of properties in a divorce, non-compensated gift to specific relatives, non-compensated gift to foster or provider, if in compliance with the Business Tax exemption provisions of Article 2 of the Notice of Ministry of Finance and State Administration of Taxation on Several Tax Exemption Policies for Business Tax on Sale and Purchase of Financial Commodities by Individuals (Cai Shui [2009] No.111) , are not required to provide the Notarial Certificate of Donation of the owner of the property, Notarial Certificate of Acceptance of the Donation of the donee, or Notarial Certificate of Donation Agreement between both parties.

## ADJUSTMENT OF VALUE-ADDED TAX INCENTIVES OF INTEGRATED UTILIZATION OF RESOURCES PRODUCTS AND LABOR SERVICES

**S**tarting from 1 July 2015, a taxpayer who sells self-produced products made with integrated utilized resources or provides labor services for integrated utilization of resources can enjoy the policy of Value-added Tax refund upon collection. The names of the integrated utilized resources, products made through and labor services for integrated utilization of resources, technical standards and relevant conditions, tax refund proportions etc. shall be governed by relevant regulation of Catalogue of Value-added Tax Incentives for Products Made through and Labor Services for Integrated Utilization of Resources.

A taxpayer should respectively conduct accounting of sales and tax payables of products made through and labor services for integrated utilization of resources to which the policy of Value-added Tax refund upon collection is applicable, failing which, it cannot enjoy the policy of Value-added Tax refund upon collection mentioned in Cai Shui [2015] No. 78.



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### **JESSE WANG**

Tel: +86-755-82900993

E-mail: [jesse.wang@bdo.com.cn](mailto:jesse.wang@bdo.com.cn) / [info@bdo.com.cn](mailto:info@bdo.com.cn)

### **JASON HU**

Tel: +86-755-82966512

E-mail: [jason.hu@bdo.com.cn](mailto:jason.hu@bdo.com.cn)

### **ROBERT PEDERSEN**

Partner, International Tax Services

Tel: 212-885-8398

E-mail: [rpetersen@bdo.com](mailto:rpetersen@bdo.com)

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