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China Tax Newsletter

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Our tax newsletter for this month covers:

1. Goods Meeting Certain Requirements that Are Exported by E-commerce Export Enterprises Are Eligible for Tax Refund (Exemption)

E-commerce export enterprises were previously not able to declare for export tax refund (exemption) due to impediments in customs, inspection and quarantine, foreign exchange settlement, etc. With the release of the Notice on Taxation Policies for Cross-border E-commerce Retail Exports which further completes administrative measures for customs, inspection and quarantine, foreign exchange settlement, etc., e-commerce enterprises are now able to declare for tax refund (exemption) for their exported goods that meeting certain requirements.

Tips from BDO China

(1) E-commerce export enterprises to which the tax refund (exemption) policies are applicable refer to those that develop E-commerce exportation through a cross-border E-commerce sales platform set up by themselves or by using a third-party cross-border E-commerce platform.

(2) The tax refund (exemption) policies are not applicable to a third-party cross-border E-commerce platform that provides E-commerce export enterprises with transaction services.

(3) For manufacturing enterprises eligible for tax refund (exemption), they are applicable to the method of value-added tax ("VAT") exemption, credit, and refund, ie for goods exported by manufacturing enterprises, VAT shall be exempted, the corresponding input VAT shall be offset against the VAT payable amount, the balance after offset shall be refunded. For foreign trade enterprises eligible for tax refund (exemption), they are applicable to the method of VAT exemption and refund, ie for goods exported by foreign trade enterprises, VAT shall be exempted, and the corresponding input VAT shall be refunded.

2. Business Tax Policies on Developing Relocation Housing

For enterprises that develop relocation housing without bearing the land grant fee, their voluntary transfer of relocation housing gratis to the original residents is deemed sale of real estate and is subject to business tax. The taxable turnover of the enterprises shall be calculated using the composite assessable price and not include land use fees.

Tips from BDO China

The transfer of real estate is still subject to business tax as it has not been included in the VAT pilot programs.

3. SAT Announcement on the Administration of Pre-tax Deduction of Inventory Loss by Commercial Retailers

In view of characteristics of commercial retailers, the Announcement clearly specifies that losses caused by normal factors such as petty theft, scraping, expiring, decay, etc. are normal losses of inventory, for which the commercial retailer is allowed to file enterprise income tax return in respect of the information summed up in the form of list; losses caused by abnormal factors such as natural disasters, accidents in storage or transport or serious case are abnormal losses of inventory, for which the commercial retailer shall file enterprise income tax return in the form of special filing.

Tips from BDO China

(1) Where a single loss exceeds RMB5 million, enterprise income tax return shall be filed in

the form of special filing regardless of the cause.

(2) This Announcement applies to the filing of enterprise income tax return for the year 2013 and thereafter.

(3) Pursuant to the Announcement of the State Administration of Taxation [2011] No. 25, both the actual and statutory asset losses of an enterprise shall be declared and deducted in the year when the asset losses have been treated as accounting losses.

(4) For the asset losses declared using the form of list, the enterprise may classify and summarize such losses under accounting items, and then submit the consolidated list to the tax authority, while retaining the relevant accounting materials and tax materials for future reference.

4. Provisional Measures for Administration of Consolidated Collection of VAT from Railway Transportation Enterprises and Postal Enterprises

Starting from 1 January 2014, railway transportation enterprises and postal enterprises are subject to the VAT. The State Administration of Taxation ("SAT") recently released the Announcement of the State Administration of Taxation [2014] No. 5 and No. 6, which specify provisional measures for the administration of consolidated collection of VAT from postal enterprises and railway transportation enterprises respectively.

5. SAT Announcement on Matters Related to the Filing of Tax Returns after Switching from Business Tax to VAT in Railway Transportation and Postal Services Sectors

The Announcement of the State Administration of Taxation [2014] No. 7 clearly clarifies matters related to the filing of tax returns after switching from business tax to VAT in railway transportation and postal services sectors. To be specific, taxpayers from railway transportation and postal services sectors who are included in the VAT pilot program shall still file VAT returns in accordance with the Announcement of the State Administration of Taxation on Matters Related to Changes in Filing VAT Return (Announcement of the State Administration of Taxation [2013] No. 32).

6. New Tax Treaties that Have Come into Force

6.1 New Tax Treaty Between China and the UK Has Come into Force

The new tax treaty between China and the UK came into force on 13 December 2013 and would be executed in China from 1 January 2014.

The new treaty is similar to treaties that China has recently negotiated and that are in effect with Singapore and Hong Kong. Therefore, presumably Circular 75 which was issued as a "technical explanation" to the Singapore treaty would also apply to the UK treaty and will provide guidance on how China will apply the new treaty.

The new treaty will apply to profit, income and gain from Chinese sources on or after January 1, 2014 and with respect to payments of income and capital gains tax in the United Kingdom on or after April 6, 2014 and in respect of the UK corporation tax, any financial year beginning on or after April 1, 2014. Notably, the Chinese tax authorities will likely prescribe an ordering rule that will limit the use of the treaty favorable dividend rate to earnings generated after the effective date of the new treaty (January 1, 2014). In addition, in order for a UK resident to take advantage of the reduced tax rates in this treaty, the UK resident must make an application to the Chinese tax authorities to apply the treaty to the Chinese source income and if certain types of income, such as dividends, interest and royalties, are being paid, the UK resident must qualify as the beneficial owner of the income. These applications must be approved by the Chinese tax authorities prior to the banks releasing the payments with the treaty reduced withholding tax applied to the China sourced payments.

Tips from BDO China

Compared to the previous tax treaty, the new treaty features the following tax reliefs:

(1) Dividends: The most preferential withholding tax rate for dividends is 5%;

(2) Royalties: The withholding tax rate for rents paid for industrial, commercial, or scientific equipment is reduced to 6%.

You can refer to the following table for details:

Treaty Income	Old Treaty	New Treaty
Dividends >25% direct shareholding	10%	5% with LOB
Dividends <25% direct shareholding	10%	10% with LOB
Interest	10%	10% with LOB
Royalties-equipment rents	7%	6% with LOB
Royalties-other	10%	10% with LOB
Other income	No provision	Taxed in state of residence only contains an LOB provision
Capital gains	Taxed based upon the domestic law of the source country	Property gains-source country Land rich shares-source country Shares >25% ownership -source country Shares <25% ownership-residence country Other gains-residence country

6.2 New Tax Treaty Between China and Belgium Has Come into Force

The new tax treaty signed in October 2009 between China and Belgium came into force on 29 December 2013, which shall apply to gains obtained on or after 1 January 2014 by both states.

Similar to the previously mentioned UK China treaty, the new treaty with Belgium follows the same general course as the Singapore and Hong Kong treaties.

As with all income tax treaties that provide for withholding rates lower than the 10% prescribed under Chinese domestic law, in order to take advantage of the treaty reduced tax rates, a resident of Belgium must make an application to the Chinese tax authorities to apply the treaty to the Chinese source income and if certain types of income, such as dividends, interest and royalties, are being paid, the Belgium resident must qualify as the beneficial owner of the income. These applications must be approved by the Chinese tax authorities prior to the banks releasing the payments with the treaty reduced withholding tax applied to the China sourced payments.

Tips from BDO China

Compared to the previous tax treaty, the new treaty features the following tax reliefs:

(1) Dividends: The most preferential withholding tax rate for dividends is 5%;

(2) Royalties: The withholding tax rate for royalties is reduced to 7%.

You can refer to the following table for details:

Treaty Income	**Old Treaty**	**New Treaty**
Dividends >25% direct shareholding	10%	5% with LOB
Dividends <25% direct shareholding	10%	10% with LOB
Interest	10%	10% with LOB
Royalties	10%	7% with LOB
Capital gains-shares	Shares > 25% ownership-source country Shares < 25% ownership-residence country Land rich shares-source country	Shares >25% ownership-source country Shares <25% ownership-residence country Land rich shares-source country Adds 12 month look back rule to determine percentage ownership Exemption from tax for regularly traded shares if 5% or less is sold in a 12-month period.

7. Further Adjustments and Specifications by the SAT on Accreditation of Resident Enterprises Based on the Body of Actual Management

Earlier, the SAT released the Guo Shui Fa [2009] No. 82 and the Announcement of the State Administration of Taxation [2011] No. 45, which contain specific administrative measures on the accreditation of resident enterprises based on the body of actual management. Recently, the SAT issued another circular – Announcement of the State Administration of Taxation [2014] No. 9, further regulating and clarifying the following matters:

(1) Accreditation authority: The accreditation authority changes from the SAT to the competent provincial tax authorities that should be responsible for the accreditation of resident enterprises for Chinese-controlled enterprises registered overseas.

(2) Application department: For a Chinese-controlled enterprise registered overseas whose body of actual management is located in a place other than the registered place of major domestic investors, it shall apply to the competent tax authorities located in the registered place of major domestic investors for the accreditation of resident enterprises, instead of the competent tax authorities of either places by the previous circulars.

(3) Tax treatments on equity investment gains such as dividends and bonuses: Equity investment gains such as dividends and bonuses obtained by non-domestically registered resident enterprises from other resident enterprises located in China for previous years (only after 1 January 2008) shall be eligible for tax exemption.

Tips from BDO China

For a Chinese-controlled enterprise registered overseas to be eligible for tax exemption on dividends and bonuses, it shall comply with the following requirements:

(1) The enterprise is certified as the resident enterprise before the dividends and bonuses are obtained;

(2) The obtained dividends and bonuses are distributed after 1 January 2008.

In other words, dividends and bonuses meeting the preceding requirements are qualified for tax exemption, regardless of the time when the Chinese-controlled enterprise starts to hold the shares of other domestic resident enterprises.

8. Clarification by the Shenzhen Local Taxation Bureau on Matters Related to the Annual IIT Filing of Individuals Whose Annual Income Exceeds RMB120,000

The Shenzhen Local Taxation Bureau clearly states that individuals whose annual income exceeds RMB120,000 shall file the individual income tax ("IIT") return with competent tax authorities within the period from 1 January 2014 to 31 March 2014.

9. Reform Scheme for the Registration of Registered Capital Published by the State Council

Recently, the State Council officially issued the reform scheme for the registration of registered capital. There are five important changes included in the scheme:

(1) Capital is registered based on the committed contribution. Shareholders (sponsors) decide for themselves the committed capital contribution amount, capital contribution method, the subscription period, etc., and shall be responsible for authentication and legitimacy of the capital contribution;

(2) Registration thresholds are lowered down. Except those stipulated in related laws and regulations, no minimum registered capital amount is required; requirements on the initial ratio of contribution and the subscription period of shareholders (sponsors) are repealed. In addition, the capital verification report is not required for company registration any more;

(3) The enterprise annual inspection is repealed. Enterprises now are subject to the disclosure of the annual report which should be available to any entities and individuals;

(4) Registration procedures for domiciles (business operation sites) are simplified. The procedure design authority now resides in local governments;

(5) The State Council promotes the use of e-business license and electronic methods in registration and administration.

10. Coming Launch of the Preferred Shares Pilot Program

On 30 November 2013, the State Council released the Guidelines of the State Council on Launch of the Preferred Shares Pilot Program, which clarifies issues related to the launch of the preferred shares pilot program. Main contents of the circular include:

(1) Rights and obligations of holders of preferred shares: The circular defines the concept, contents and forms of preferred shares, restriction of voting rights, and resumption of voting rights;

(2) Issuance and trading of preferred shares: The circular defines the scope of issuers, terms of issuance, matters that must be fixed for issuance, and methods of trading or transferring preferred shares.

Tips from BDO China

(1) The decision of the State Council on launching the preferred shares pilot program accelerates the process of launching the preferred shares pilot program nationwide.

(2) Under the pilot program, different classes of preferred shares can be issued but during the pilot program, the issuance of preferred shares with different dividend and residual asset priorities is not allowed.

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