

CHINA TAX NEWSLETTER

ANNOUNCEMENT ON EXECUTION OF THE THIRD PROTOCOL TO THE ARRANGEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION PAGE 3

ANNOUNCEMENT ON EXECUTION OF THE AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION PAGE 7



ANNOUNCEMENT OF REVISING TWO NORMATIVE DOCUMENTS CONCERNING ENTERPRISE INCOME TAX

Announcement of the State Administration of Taxation [2016] No.88 clarifies the inconsistency between the old and the new normative documents on enterprise income tax and the main contents are announced as follows:

(1) Issues concerning the Administration of the List of Branches of Enterprises Whose Total Revenues Go to the Central Authority

Since Announcement of the State Administration of Taxation [2015] No.6 announces the new regulation about the administration of the list of branches of enterprises whose total revenue go to the central authority,

Article 3 of Guo Shui Han [2010] No.184 concerning the administration of the list of branches of enterprises whose total revenues go to the central authority shall be abolished accordingly.

Since Announcement of the State Administration of Taxation [2011] No.25 announces that asset losses incurred by an enterprise shall be filed with the tax authority instead of examination and approval by the tax authority, Article 2 of Guo Shui Han [2010] No.184 concerning the requirement of examination and approval of asset losses of the branches of enterprises whose total revenues go to the central authority shall be abolished accordingly.

CONTENTS

Announcement of Revising Two Normative Documents concerning Enterprise Income Tax

Supplementary Circular on Issues concerning Value-added Tax Policies for Asset Management Products

Announcement on Execution of THE THIRD PROTOCOL TO THE ARRANGEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE MACAO SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Announcement on Execution of the AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

CONTINUED FROM PAGE 1

REVISING TWO NORMATIVE DOCUMENTS

(2) Issues concerning the Entitlement of Preferential Incentives of Small Low-profit Enterprises subject to the Assessment and Levy Method of Enterprise Income Tax

Announcement of the State Administration of Taxation [2015] No.17 regulates that small low-profit enterprises meeting the required conditions, including those subject to the manner of audit collection and those subject to the assessment and levy method, may enjoy the preferential incentives of enterprises income tax starting from year 2014 while Article 1 of Guo Shui Han [2009] No.377 specifies that enterprises who enjoy preferential incentives (including small low-profit enterprises) shall not adopt the assessment and levy method. Therefore, item 1 of Article 1 of Guo Shui Han [2009] No.377 is revised to read: "enterprises enjoying one or several enterprise income tax preferential incentives prescribed in the Law of the People's Republic of China on Enterprise Income Tax and its implementation regulations and by the State Council (excluding the enterprises only enjoy the preferential incentives of tax-exempted income specified in Article 26 and qualified small low-profit enterprises specified in Article 28 of the Law of the People's Republic of China on Enterprise Income Tax).

Article 1 of this Announcement shall take effect as of the effective date of Announcement of the State Administration of Taxation [2011] No.25 or of Announcement of the State Administration of Taxation [2015] No.6 respectively in light of the matters involved; and Article 2 hereof shall apply to the final settlement of enterprise income tax of 2016 and thereafter.

SUPPLEMENTARY CIRCULAR ON ISSUES CONCERNING VALUE-ADDED TAX POLICIES FOR ASSET MANAGEMENT PRODUCTS

Cai Shui [2017] No.2 supplements Article 4 of Cai Shui [2016] No.140 with the following contents:

Managers of asset management products shall pay value-added tax (VAT) for their taxable activities that take place from 1 July 2017 and thereafter during the operation of asset management products pursuant to current provisions.

Where taxable activities occurred before 1 July 2017 during the operation of asset management products and VAT has not been paid on such activities yet, the VAT no longer needs to be paid. Where VAT has been paid, the amount paid may be offset again that to be payable by the managers of asset management products in the upcoming months.

Specific administration measures governing collection of VAT on taxable activities that take place during the operation of the asset management products will be otherwise formulated by the State Administration of Taxation.



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The third protocol to THE ARRANGEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE MACAO SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME ("the Arrangement") was officially signed in Beijing on 19 July 2016, and the amendments made to the Arrangement are as follows:

(1) Repeal paragraph 1 of Article 8 (on shipping, air and land transport) of the Arrangement and replace it with stipulation that income and profits derived by an enterprise of One Side from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport in the Other Side shall be exempt from tax (including VAT and other similar taxes in the Mainland of China) in that Other Side.

This revision is proposed in light of the Full Launch of the Pilot Scheme on Levying VAT in Place of Business Tax, both Sides agree that tax exemption in relation to paragraph 1 of Article 8

of the Arrangement shall cover VAT enforced and imposed in the Mainland of China:

(2) In relation to paragraph 2 of Article 12 (on royalties) of the Arrangement, a new regulation has been added which stipulates that for royalties paid for aircraft and ship leasing, the tax so charged shall not exceed five per cent of the gross amount of the royalties. The tax rates remain unchanged for royalties paid under other circumstances.

(3) In relation to Article 10 (on dividends), Article 11 (on interest), Article 12 (on royalties) and Article 13 (on capital gains) of the Arrangement, the provisions of these articles shall not apply if it was the main purpose of any person concerned with the creation or assignment of the income rights and interests to take advantage of these articles by means of that creation or assignment.

The protocol shall become effective on 12 December 2016.

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The Agreement has already come into force on 29 September 2016, and the main articles are stipulated as follows:

(1) Article 5 Permanent Establishment

a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith may constitute a permanent establishment only if such site, project or activities last more than twelve months;

b) Furnishing of services with no fixed place of business may constitute a permanent establishment only if such activities continue within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.

(2) Article 10 Dividends

There are two applicable withholding income tax rates on dividends, i.e. the tax so charged shall not exceed:

(a) two point five per cent (2.5%) of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 25 per cent of the company paying the dividends;

(b) seven point five per cent (7.5%) of the gross amount of the dividends in all other cases.

(3) Article 11 Interest

Withholding income tax charged on interest shall not exceed seven point five per cent (7.5%) of the gross amount of the interest. However, interest arising in a Contracting State and derived by the Government of the other Contracting State, a local authority and the Central Bank thereof or any financial institution wholly owned by the Government of that other State, or by any other resident of that other State with respect to debt-claims indirectly financed by the Government of that other State, a local authority, and the Central Bank thereof or any financial institution wholly owned by the Government of that other State, shall be exempt from tax in the first-mentioned State.

(4) Article 12 Royalties

Withholding income tax charged on royalties shall not exceed seven point five per cent (7.5%) of the gross amount of the royalties. However, royalties arising in a Contracting State and derived by the Government of the other Contracting State or a local authority thereof shall be exempt from tax in the first-mentioned State.

(5) Article 13 Capital Gains

Pursuant to Article 13, gains derived by a resident of a Contracting State from the alienation of shares in the other Contracting State may be taxed in that State where: more than 50 per cent of the share value directly or indirectly derives from immovable property situated in the other Contracting State; or the alienated shares represent a participation of at least 50 per cent in a company which is a resident of the other Contracting State.

The provisions of this Agreement shall become effective on 1 January 2017.



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LARRY MIAO

Managing Director, China Services Desk, Tax
Tel: 212-885-7450
E-mail: smiao@bdo.com

ROBERT PEDERSEN

Partner, International Tax Services
Tel: 212-885-8398
E-mail: rpedersen@bdo.com

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