



## China Tax Newsletter

December 2017

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## **1. Policy concerning Temporarily Not Levying the Withholding Tax on Distributed Profits Used by Overseas Investors for Direct Investment**

To enforce and implement the decisions and arrangements made by the CPC Party Central Committee and the State Council, and act in line with the requirements in the Circular of the State Council on Several Measures to Boost the Growth of Foreign Investment (Guo Fa [2017] No.39) to further make active use of foreign capital, boost the growth of foreign capital, improve the quality of foreign capital and encourage overseas investors to make investments on an increasingly larger scale in China, Ministry of Finance, State Administration of Taxation, National Development and Reform Commission and Ministry of Commerce jointly issues the circular on Temporarily Not Levying the Withholding Tax on Distributed Profits Used by Overseas Investors for Direct Investment (Cai Shui [2017] No.88). Main contents of the circular are notified as follows:

(1) Where an overseas investor makes an investment directly with the profits it obtains from a Chinese resident enterprise in an investment project under the encouraged category, the tax deferral policy shall apply provided that the specified requirements are fulfilled, which means that the withholding tax is not levied temporarily.

(2) If an overseas investor is eligible for the preferential policy of being temporarily exempted from withholding tax according to the provisions herein, but does not enjoy such preferential policy in fact, it may file an application to enjoy the policy within three years from the date the relevant tax payment is made in practice, and the amount of tax paid will be refunded.

(3) If an overseas investor recovers money by means of equity transfer, buyback, liquidation or otherwise from a direct investment that has enjoyed benefits under the policy of being temporarily exempted from paying withholding tax, it shall declare and pay the deferred tax amount to the tax authority pursuant to applicable procedures within seven days upon actual receipt of the relevant payments.

(4) Where the invested enterprise is restructured and conditions for special restructuring are fulfilled, after an overseas investor has enjoyed benefits under the policy of being temporarily exempted from paying withholding tax as stated herein for the investment in the invested enterprise, and tax treatments for special restructuring have been applied by the invested enterprise, the investor may continue to enjoy benefits under such policy and need not to pay the deferred tax amount as stipulated in Article (3) herein.

According to the Announcement on Issues Concerning the Implementation of the Policy of Temporarily Not Levying the Withholding Tax on Distributed Profits Used by Overseas Investors for Direct Investment (State Administration of Taxation Announcement [2018] No.3), the enterprise that distributes profits shall, in accordance with regulation, review materials and information provided by the overseas investor, and may carry out the policy of temporary tax exemption after the following items have been confirmed:

(1) Information provided by the overseas investor is complete, without anything omitted;

(2) The profits concerned are actually paid in consistency with the information provided by the overseas investor;

(3) Information about the enterprise that distributes profits, as provided by the overseas investor in its submissions, is truthful and accurate.

The enterprise that distributes profits shall provide its competent tax authority with the

following materials within seven days from the day when the profits concerned are actually paid, when it has implemented the policy of temporary tax exemption according to regulation:

(1) The Statement of the People's Republic of China on the Withholding of Enterprise Income Tax completed by the enterprise that distributes profits;

(2) The Information Statement on Non-resident Enterprises' Deferred Payment of Withholding Tax submitted by the overseas investor, with part of its information provided by the enterprise that distributes profits.

The overseas investor and the profit distribution enterprise can entrust an agent to handle the relevant matters stipulated in this Announcement, but a written commission certification shall be provided to the tax authority for this purpose.

#### ▲ Supporting Policy on Tax Levy and Administration

Announcement on Issues Concerning the Implementation of the Policy of Temporarily Not Levying the Withholding Tax on Distributed Profits Used by Overseas Investors for Direct Investment (State Administration of Taxation Announcement [2018] No.3)

#### Tips from BDO China

Overseas investors can enjoy the tax treaty benefits in accordance with the relevant regulations when they repay the deferred tax after enjoying the temporary tax exemption policy, but usually only the relevant tax convention regulations effective at the time of payment of relevant profits are applicable, i.e. foreign investors shall not apply the tax treaty benefits effective at the time of paying the deferred tax unless otherwise stipulated by the relevant tax convention.

### **2. Administrative Measures for the Outbound Investment by Enterprises**

To implement the CPC Party Central Committee and the State Council's overall arrangement on construction of the new open economic system and on deepening the reform of the investment and financing system, and to fully fulfill the responsibilities of the competent authorities for outbound investment, the National Development and Reform Commission (NDRC) publishes the Administrative Measures for the Outbound Investment by Enterprises (NDRC Order [2017] No.11, hereinafter referred to as "New Measures"), focusing on the Belt and Road initiative, further promoting the reform of streamlining government functions and administration and delegating powers while improving regulation in the field of outbound investment, optimizing comprehensive services reform for outbound investment, and supporting the creation of new modes of outbound investment by enterprises.

The New Measures promulgates reformed regulations on facilitating, regulating and serving outbound investment activities of enterprises by the government.

The New Measures shall come into effect as of 1 March 2018, simultaneously repealing the Measures for the Approval and Filing of Outbound Investment Projects (NDRC Order [2014] No.9).

### **3. Tax Laws Promulgated to Replace the Provisional Regulations on Tobacco Tax and Vessel Tonnage Tax**

The Tobacco Tax Law of the People's Republic of China and the Vessel Tonnage Tax Law of the People's Republic of China, adopted at the 31st session of the Standing Committee of the

12th National People's Congress of the People's Republic of China on 27 December 2017, will become effective as of 1 July 2018. The Provisional Regulations of the People's Republic of China on Tobacco Tax and the Provisional Regulations of the People's Republic of China on Vessel Tonnage Tax shall be repealed simultaneously.

#### **4. Administrative Measures of the Guangdong Local Taxation Bureau on the Assessment-based Collection of Stamp Duty**

With a view to regulate the administration of assessment-based collection of stamp duty, and according to the Promulgation of the Administrative Procedures for Stamp Duty (Trial Implementation) (State Administration of Taxation Announcement [2016] No.77), etc., the Guangdong Local Taxation Bureau issues the Administrative Measures of the Guangdong Local Taxation Bureau on the Assessment-based Collection of Stamp Duty (hereinafter referred to as "Measures"). These Measures shall take effect on 1 October 2017 and remain effective for five years. The main contents of the Measures are as follows:

(1) Where taxpayers have engaged in any of the following acts, the competent local taxation authorities may collect stamp duty based on the assessed tax base:

- A. Fail to set up the taxable document register for stamp duty as prescribed, or fail to truthfully register or completely retain taxable documents;
- B. Refuse to provide taxable documents or provide untruthful taxable documents which obviously lower the tax base;
- C. For taxpayers paying stamp duty on a regular and consolidated basis but fail to submit the report of consolidated payment of stamp duty within the time limit prescribed by the local taxation authorities, fail to make a report within the time limit after the local taxation authorities order the taxpayers to report within a time limit, or fail to make consolidated payment of stamp duty according to relevant provisions during the inspection by the local taxation authorities.

(2) The formulas for assessment-based collection of stamp duty on purchase and sales contracts and other taxable documents are as follows:

- A. The formula for assessment-based collection of stamp duty on purchase and sales contracts is as follows: stamp duty payable on purchase and sales contracts = sales revenue × assessed ratio × applicable tax rate;
- B. The formula for assessment-based collection of stamp duty on other taxable documents is as follows: assessed tax base by competent tax authority × applicable tax rate

(3) The valid period for each ruling of assessment-based collection of stamp duty is measured in year and shall not exceed three years for each ruling.

#### **Tips from BDO China**

The Shenzhen Local Taxation Bureau issued the Administrative Measures of the Shenzhen Local Taxation Bureau on the Assessment-based Collection of Stamp Duty in 2012 which takes effect on 1 April 2012 and remains effective for five years, i.e. the circular becomes invalid as of 1 April 2017. After consultation with Shenzhen 12366 Tax Service Hotline, the Shenzhen Local Taxation Bureau temporarily implements the Administrative Measures of the Guangdong Local Taxation Bureau on the Assessment-based Collection of Stamp Duty.

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