



## China Tax Newsletter

October 2017

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# 1. Announcement on Relevant Issues Relating to Source-based Withholding of Enterprise Income Tax of Non-resident Enterprises

According to the Announcement on Relevant Issues Relating to Source-based Withholding of Enterprise Income Tax of Non-resident Enterprises (Announcement of the State Administration of Taxation [2017] No.37, hereinafter referred to as “**Announcement No.37**”), promulgated by the State Administration of Taxation on October 17, 2017, contract filing for source-based withholding of enterprise income tax of non-resident enterprises is canceled. The Announcement also further specifies the recognition of the taxable income of various economic activities with regard to the enterprise income tax, the time at which the enterprise income tax payment obligation arises, the adoption of exchange rate on non-Renminbi-denominated items, and other related tax matters.

Announcement No.37 shall be implemented as of December 1, 2017.

## (1) Cancellation of Submitting a Contract Filing Registration Form for Withholding Enterprise Income Tax

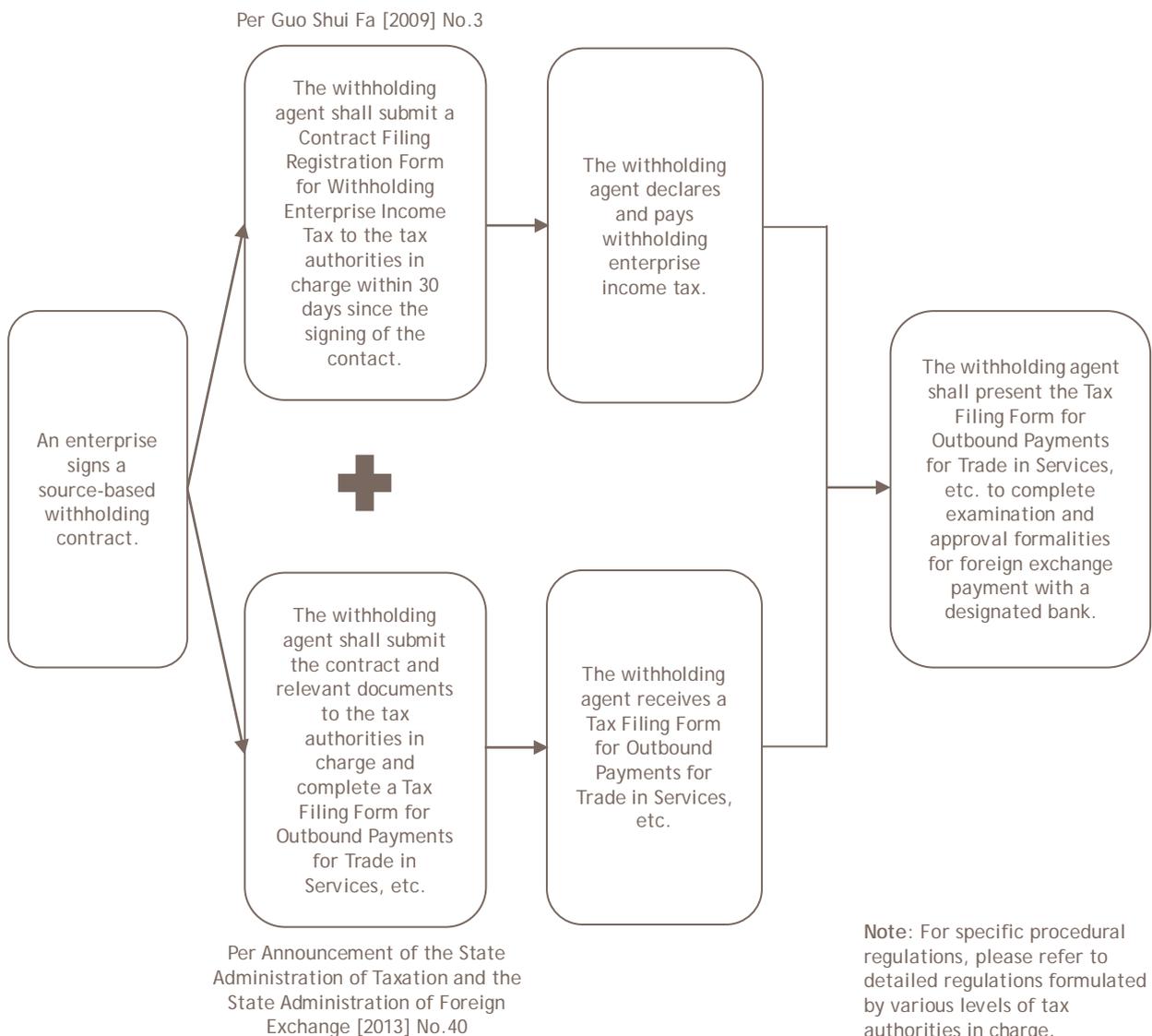


Figure 1: Graphic Instruction of Source-based Withholding of Enterprise Income Tax per Guo Shui Fa [2009] No.3 (before December 1, 2017)

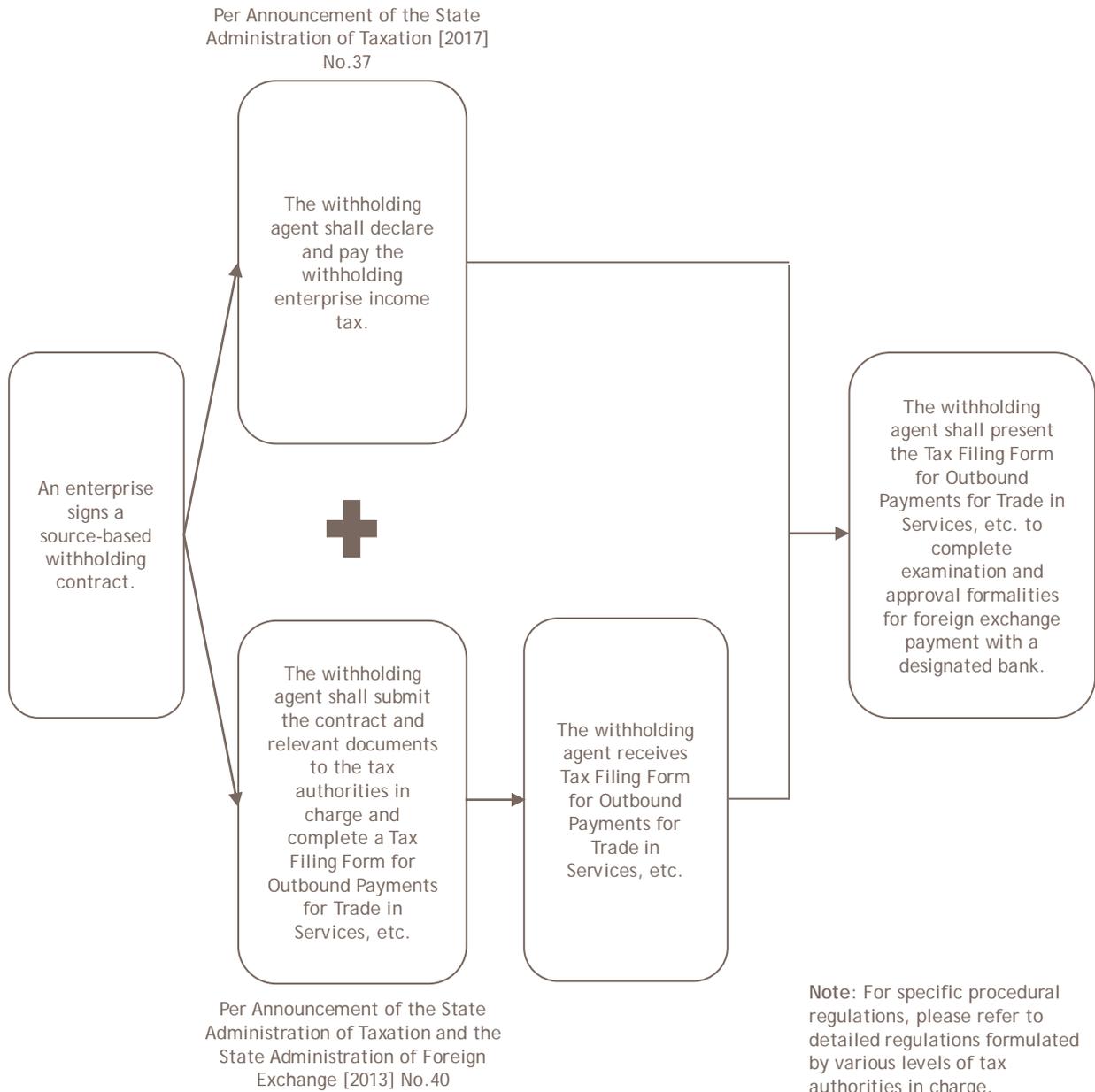


Figure 2: Graphic Instruction of Source-based Withholding of Enterprise Income Tax per Announcement of the State Administration of Taxation [2017] No.37 (from December 1, 2017)

**(2) Specification on the Confirmation of Foreign Exchange Convention Rate for Source-based Withholding of Enterprise Income Tax on Non-resident Enterprises**

Before December 1, 2017, where the sum or sum that is due to be paid by a withholding agent to a foreign party is in the currency other than the Chinese Yuan, the withholding agent shall use the Yuan's central parity rate of the withholding day to convert the taxable income into the amount in Yuan when declaring to withhold the enterprise income tax, according to Notice of the State Administration of Taxation on Promulgation of the Interim Administrative Measures for Source-based Withholding of Enterprise Income Tax on Non-resident Enterprises (Guo Shui Fa [2009] No.3).

From December 1, 2017, where the monies paid or payable by the withholding agent when due are paid or computed in a currency other than Chinese Yuan, the foreign exchange conversion rate shall be determined as follows according to Announcement No.37:

Scenario	Confirmation of Foreign Exchange Convention Rate
1. The withholding agent withholds enterprise income tax	Based on the Yuan's central parity rate of the date when the withholding obligation occurs
2. The non-resident enterprise deriving income declares and pays tax when the withholding agent does not withhold the tax	Based on the Yuan's central parity rate of the date preceding the completion of tax payment letter
3. The tax authorities in charge order the non-resident enterprise deriving income to pay tax within a stipulated period when the non-resident enterprise fails to proactively declare and pay tax as required	Based on the Yuan's central parity rate of the date preceding the decision issued by the tax authorities in charge to chase for the tax payment

Where the income from asset transfer or the asset net value is computed in a currency other than Chinese Yuan, the amounts computed in a currency other than Chinese Yuan shall be converted to the amounts in Chinese Yuan with reference to the above provisions, and the taxable income from asset transfer of a non-resident enterprise shall be computed pursuant to the relevant tax provisions.

### (3) Specification on the Date of Occurrence of Withholding Obligation

The withholding agent shall, within seven days from occurrence of the withholding obligation, declare and turn over the withheld tax to the tax authorities in charge at the withholding agent's locality.

Scenario	Date of Occurrence of Withholding Obligation
1. The withholding agent declares and turns over the withheld enterprise income tax to the tax authorities in charge	The date of actual payment or payment due date of the relevant tax amount
2. Income subject to withholding at source derived by a non-resident enterprise is equity investment income such as dividends, bonuses etc. while the withholding agent fails to fulfill the withholding obligation	The date of actual payment of equity investment income such as dividends, bonuses, etc.
3. The asset transfer income of a transaction subject to withholding at source is derived by a non-resident enterprise by way of installments	The installments may firstly be treated as recovery of costs of previous asset investments; upon recovery of all costs, the tax amount to be withheld shall then be computed and withheld

### (4) Newly Increased Standards of "Tax Withheld But Not Turned Over" for the Withholding Agent Withholding Tax at Source

Pursuant to the provisions of Announcement No.37, where the amount subject to sourced-based withholding of enterprise income tax has been actually paid by the withholding agent but the tax amount is yet to be turned over to tax authorities within the stipulated period, if it falls under

any of the following circumstances, the case shall be deemed as tax withheld but not turned over, and dealt with pursuant to the provisions of the relevant laws and administrative regulations:

- 1) the withholding agent has specifically notified the payee that tax has been withheld;
- 2) the amount is listed singly in financial accounting as tax to be withheld;
- 3) the amount has been singly deducted in tax declaration, or the enterprise has begun separate amortization and deduction of the tax to be withheld; or
- 4) there is other evidence to prove that tax has been withheld.

### **Tips from BDO China**

(1) Per Announcement of the State Administration of Taxation and the State Administration of Foreign Exchange on Issues Relating to Tax Filing for Outbound Payments of Trade in Services, etc. (Announcement of the State Administration of Taxation and the State Administration of Foreign Exchange [2013] No.40), except for specific circumstances, organizations and individuals in China making a single overseas payment for an amount equivalent to more than US\$50,000 (excluding the amount equivalent to US\$50,000) using foreign currency funds shall complete tax filing formalities with the State tax authorities in charge at the locality.

After the implementation of Announcement No.37, a single overseas payment for an amount equivalent to less than US\$50,000 is not required to complete the contract filing formalities nor the outbound payment filing formalities. However, an enterprise is still required to declare and pay the tax for such tax matter. Enterprises shall strengthen management of outbound payment for an amount equivalent to less than US\$50,000, and declare and pay enterprise income tax in time accordingly to avoid tax risks.

(2) Per Article 69 of the Law of the People's Republic of China on the Administration of Tax Collection, where a withholding agent fails to withhold or collect the amount of tax which should be withheld or collected, the taxation authorities shall recover the payment of the said amount from the taxpayer, and give the withholding agent a fine of not less than 50 percent but not more than three times the amount of tax that should have been withheld or collected. Therefore, the withholding agent shall perform the withholding obligation within the stipulated period according to the tax law and relevant regulations, so as to avoid unnecessary losses due to the act of "failing to withhold tax due".

## **2. Enterprise Income Tax Treatment on Restructuring of Enterprises Owned by the Whole People**

According to the Announcement on the Issues of Enterprise Income Tax Treatment on Restructuring Enterprises Owned by the Whole People (Announcement of the State Administration of Taxation [2017] No.34), issues of enterprise income tax treatment on restructuring enterprise owned by the whole people are hereby announced as follows:

Where enterprises owned by the whole people are restructured to wholly state-owned companies or wholly-owned subsidiaries of state-owned enterprises which falls to the category of "simple changes in other legal forms occurring to an enterprise" as specified by Article 4 of Cai Shui [2009] No.59, the assets appraisal appreciation in restructuring shall not be included in taxable income; tax base for all assets shall be determined based on the original tax base; and the depreciation or amortization of the assets appreciation shall not be pre-tax deductible.

The relevant materials shall be retained for future reference by the reformed enterprises. The tax treatment is applicable to the annual enterprise income tax filing of the year 2017 and thereafter. For the restructuring of enterprises owned by the whole people prior to this announcement of which the enterprise income tax has not been settled, the enterprises may

apply the tax treatment according to this announcement.

### Tips from BDO China

(1) This announcement clearly states that deferred tax policy is applicable to the assets appraisal appreciation identified in restructuring enterprises owned by the whole people, which has never been explicitly stated before.

(2) "Simple changes in other legal forms occurring to an enterprise" emphasizes that the ownership of the assets does not change before and after the reform, nor does the actual transaction occur. This announcement only refers to the form of an enterprise owned by the whole people being changed to a company. For the wholly state-owned companies or the wholly-owned subsidiaries of state-owned enterprises which are restructured from enterprises owned by the whole people, the shareholders and property ownership do not change before and after the change, which are 100% owned by the State. In all, the restructuring meets the abovementioned simple changes in legal forms, thus it is applicable to the announcement.

### 3. Supplementary Circular on the Value-Added Tax Refund Policy for the Purchase of Goods and Services in China by Foreign Embassies (Consulates) in China and Their Employees

Supplementary Circular on the Value-Added Tax Refund Policy for the Purchase of Goods and Services in China by Foreign Embassies (Consulates) in China and Their Employees (Cai Shui [2017] No.74) promulgates the following supplementary value-added tax (VAT) refund policy with regard to the purchase of goods and services in China by foreign embassies (consulates) in China and their employees:

For the personal purchase of goods and services by embassy (consulate) employees, except for vehicles and rent, the total sales amount (tax inclusive) submitted for tax refund application shall not exceed CNY180,000 per person per year. For goods and services purchased by embassies (consulates) and their employees, the amount of VAT refund shall be the amount indicated on the VAT invoice concerned. Where the amount of tax is not indicated on the VAT invoice, it shall be calculated based on the tax-exclusive sales amount and the VAT rate (or VAT levy rate) applicable to the products concerned.

### Tips from BDO China

(1) For VAT refund quota, the upper limit of the sales amount (tax inclusive) submitted for tax refund application is increased from CNY120,000 to CNY180,000 per person per year for personal purchase by embassy (consulate) employees.

(2) For the scope of "goods and services", per Circular on the Value-Added Tax Refund Policy for the Purchase of Goods and Services in China by Foreign Embassies (Consulates) in China and Their Employees (Cai Shui [2016] No.51), the term "goods and services" refers to goods and services in the categories of articles of daily use and office supplies that are within the reasonable range of self-use and to which VAT applies as required. The term "goods and services in the categories of articles of daily use and office supplies" refers to goods and services purchased to meet the demands of daily life and office work.

### 4. Adjustment on Catalogue of Enterprise Income Tax Preferences for Special Devices for Energy and Water Efficiency and Environment Protection

From January 1, 2017, where enterprises purchase and put into use any special devices for energy and water efficiency and environment protection, the applicable catalogues of income tax preferences therefor shall be properly adjusted, and the Catalogue of Enterprise Income Tax Preferences for Special Devices for Energy and Water Efficiency (2017 Edition) and the Catalogue

of Enterprise Income Tax Preferences for Special Devices for Environment Protection (2017 Edition) shall apply.

The Catalogue of Enterprise Income Tax Preferences for Special Devices for Energy and Water Efficiency (2008 Edition) and the Catalogue of Enterprise Income Tax Preferences for Special Devices for Environment Protection (2008 Edition) are repealed as of October 1, 2017. Enterprises purchasing any special device during January 1, 2017 and September 30, 2017 which meets the specification of the aforementioned preference catalogues of 2008 are still entitled to the tax preferences.

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