

Notice of State Administration of Taxation on Promulgation of the Provisional Measures on Administration of Tax Collection for Resident Representative Offices of Foreign Enterprises

Promulgation Authorities: State Administration of Taxation

Promulgation Date: 2010.02.20

Effective Date: 2010.01.01

Document Number: Guo Shui Fa (2010) No. 18

Notice of State Administration of Taxation on Promulgation of the Provisional Measures on Administration of Tax Collection for Resident Representative Offices of Foreign Enterprises

[Miscellaneous information]

Guo Shui Fa (2010) No. 18

20 February 2010

To: State tax bureaux and local tax bureaux of all provinces, autonomous regions, centrally-administered municipalities and municipalities with unilateral planning

For the purpose of standardising administration of tax collection for resident representative offices of foreign enterprises, the State Administration of Taxation has formulated the Provisional Measures on Administration of Tax Collection for Resident Representative Offices of Foreign Enterprises which is hereby promulgated for your implementation. Please promptly provide feedback on issues discovered in the course of implementation to the State Administration of Taxation (International Taxation Division).

Provisional Measures on Administration of Tax Collection for Resident Representative Offices of Foreign Enterprises

Article 1 These Measures are formulated pursuant to the Administrative Law of the People's Republic of China on the Levying and Collection of Taxes (hereinafter referred to as the "Tax Collection Law") and its Implementation Regulations, the Enterprise Income Tax Law of the People's Republic of China and its Implementation Regulations, the Provisional Regulations of the People's Republic of China on Business Tax and its Implementation Regulations, the Provisional Regulations of the People's Republic of China on Value-added Tax and its Implementation Regulations and the relevant laws and regulations on tax collection for the purpose of standardising administration of tax collection for resident representative offices of foreign enterprises.

Article 2 Resident representative offices of foreign enterprises referred to in these Measures shall mean resident representative offices of foreign enterprises (including enterprises from Hong Kong, Macao and Taiwan) and other organisations established in China which are registered with the administration for industry and commerce or approved by the relevant authorities pursuant to the relevant provisions of the State Council (hereinafter referred to as the "representative offices").

Article 3 Representative offices shall declare and pay enterprise income tax pursuant to the law for their attributed income, and declare and pay business tax and value-added tax pursuant to the law for their taxable income.

Article 4 A representative office shall present the following materials to make declaration and complete tax registration formalities with the tax authorities in charge at its location within 30 days from the date of obtaining its industrial and commercial registration document (or approval by the relevant authorities):

(1) The original copy and photocopy of the duplicate copy of industrial and commercial business licence or approval document of the authorities in charge;

(2) The original copy and photocopy of the duplicate copy of the organisation code certificate;

(3) The original copy and photocopy of the proof of registered address and business address (title deed, lease agreement); in the case of self-owned property, the original copy and photocopy of legitimate proof of title such as title deed or sale and purchase agreement, etc shall be provided; in the case of leased premises, the original copy and photocopy of the lease agreement shall be provided; where the lessor is a natural person, the original copy and photocopy of the proof of title shall be provided;

(4) The original copy and photocopy of the passport or other legitimate identity document of the chief representative (person-in-charge);

(5) The relevant resolution on establishment of representative office by the foreign enterprise and a list of other representative offices established in China (including name, address, contact method, name of chief representative, etc); and

(6) Any other materials to be provided as required by the tax authorities.

Article 5 Where there is a change in the tax registration contents of a representative office or expiry of the representative office term or premature termination of business activities, change registration or deregistration formalities shall be completed with the tax authorities in charge pursuant to the Tax Collection Law and the relevant provisions; the representative office shall declare liquidation income to the tax authorities in charge and pay enterprise income tax pursuant to the law before completing deregistration formalities.

Article 6 Representative offices shall keep accounts books pursuant to the relevant laws, administrative regulations and the provisions of the finance and tax authorities of the State Council, keep accounts in accordance with legitimate and valid vouchers, carry out accounting, and compute their taxable income and taxable income amount accurately pursuant to the principle of matching actual performance of functions and bearing of risks, declare truthfully and pay enterprise income tax and business tax to the tax authorities in charge within 15 days from the date of the end of each quarter, and truthfully declare truthfully and pay value-added tax to the tax authorities in charge pursuant to the tax payment period stipulated by the Provisional Regulations of the People's Republic of China on Value-added Tax and its Implementation Regulations.

Article 7 In the case of a representative office whose accounts books are incomplete, and which cannot accurately account income or costs and expenses and is unable to declare truthfully

pursuant to the provisions of Article 6 of these Measures, the tax authorities shall have the right to adopt the following two methods to assess its taxable income amount:

(1) Computation of income based on expenditure: applicable for a representative office whose expenditure can be accurately accounted but whose income or costs and expenses cannot be accurately accounted.

(a) The formulae shall be as follows:

Income amount = expenditure amount of current period / (1 - assessed profit margin - business tax rate);

Enterprise income tax amount payable = income amount × assessed profit margin × enterprise income tax rate.

(b) The expenditure amount of a representative office shall include: wage and salary, bonus, allowance, welfare payments to staff in and outside China, procurement fees of goods (including fixed assets such as vehicles, office equipment, etc), communication expenses, travel expenses, rent, equipment rental fees, transportation expenses, entertainment expenses, other expenses, etc.

(i) Expenditure incurred in procurement of fixed assets, renovation expenditure incurred at the time of establishment of the representative office or due to relocation, etc shall be deemed as a one-off expenditure amount for computation of taxable income at the time of occurrence;

(ii) Interest income shall not be offset against the expenditure amount; entertainment expenses incurred shall be included in the expenditure amount based on the actual incurred amount;

(iii) Donations, late payment penalties and fines in monetary form used for public welfare and relief causes in China, and expenses incurred by the representative office for its parent organisation which are not attributable to its business activities shall not be deemed as the expenditure amount of the representative office;

(iv) Other expenses including: sample fees and transportation expenses paid for the parent organisation for samples purchased in China; storage expenses and Customs declaration expenses incurred in China for shipping samples from overseas to China; expenses for engagement of translator for staff of parent organisation visiting China; expenses for purchase of tender documents paid by the representative office for the parent organisation's participation in the bidding for certain project in China, etc.

(2) Assessment of taxable income amount based on the total income amount: applicable for a representative office whose income can be accurately accounted but whose costs and expenses cannot be accurately accounted. The formula shall be as follows:

Enterprise income tax amount payable = total income amount × assessed profit margin × enterprise income tax rate.

Article 8 The assessed profit margin of representative offices shall not be lower than 15%. Representative offices adopting the assessment and collection method which are able to keep proper accounts books and compute their taxable income and taxable income amount accurately shall file records with the tax authorities in charge and may switch to the truthful declaration method.

Article 9 Activities of a representative office which are subject to value-added tax and business tax shall compute and pay the tax payable amounts pursuant to the relevant regulations on value-added tax and business tax.

Article 10 Representative offices shall complete tax filing formalities pursuant to the relevant provisions of the tax treaty and the Notice of State Administration of Taxation on Promulgation of the "Administrative Measures on Entitlement of Non-residents to Treatment under Double Taxation Agreement (Trial Implementation)" (Guo Shui Fa (2009) No. 124) within the duration stipulated in Article 6 of these Measures to entitle to treatment under double taxation agreement.

Article 11 These Measures shall be effective 1 January 2010. Where there is any inconsistency between prevailing provisions and these Measures, these Measures shall prevail. The Notice of the State Administration of Taxation on Issues concerning Improvement of Taxation Collection Administration for Foreign Enterprise Resident Representative Offices (Guo Shui Fa (1996) No. 165), the Notice of State Administration of Taxation on Issues Relating to Administration of Tax Collection for Resident Representative Offices of Foreign Enterprises (Guo Shui Fa (2003) No. 28) and the Notice of State Administration of Taxation on Issues Relating to Examination and Approval Procedures for Tax Exemption for Representative Offices Established in China by Foreign Government, etc (Guo Shui Han (2008) No. 945) shall be repealed; all localities shall stop accepting and examination and approval of applications for exemption of enterprise income tax of representative offices, and sort representative offices approved for tax exemption pursuant to the provisions of these Measures.

Article 12 State tax bureaux and local tax bureaux of all provinces, autonomous regions, centrally-administered municipalities and municipalities with unilateral planning may formulate specific operational rules pursuant to the provisions of these Measures, and file records of the same with the State Administration of Taxation (International Taxation Division).