



Supplementary Notice on the Application of Treaty Treatment on Non-PRC residence

The PRC State Administration of Taxation (“SAT”) released circular Guoshuifa [2010] No. 290 (“Circular 290”) effective June 21, which provides more detailed implementation guidance for the previously issued circular Guishuifa [2009] No. 124 (“Circular 124”) with respect to the application requirement and procedures of treaty treatment on non-PRC tax residence.

As a recent trend over the latest years, SAT has put more emphasis on the administration of non-PRC tax residence (“TRE”) and intention to enforce the tax compliance.

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Highlights

- Two types of tax resident certificate issued by the tax authorities in the home country would be accepted in the application of treaty treatment:
 - o In the standard form provided in Circular 124 and endorsed by the tax authorities in the home country
 - o In the form provided and endorsed by the tax authorities in the home country
- Re-submission of the same information to the same local tax jurisdiction is not required.
- In the implementation of tax treaty benefits, the withholding agent shall register relevant information with the in-charge tax authorities whether or not the application has already been made by the non-PRC TRE as the taxpayer. If the taxpayer refuses to provide relevant materials to withholders, the withholding agent shall not be entitled to tax treaty benefits
- In the case of any conflict between Circular 124 and previously issued Circular Guishuihan [1998] No. 381 (“Circular 381”) and Circular Guishuihan [2007] No. 403 (“Circular 403”) regarding the treaty treatment on HK residence, provisions prescribed in Circular 381 and Circular 403 shall prevail.

Comments

- Circular 124 and Circular 290 together provide detailed implementation measures on the application of treaty benefits and relevant application requirements.
- Circular 290 specifically prescribes the reporting and registration obligations of the withholding agent in the implementation of treaty benefits.
- Circular 290 provides the application timeframe, i.e., 20 working days, for the approval process of the tax authorities at each jurisdictional level.
- Circular 290 clearly states that the tax authorities could approach HK IRD directly for information when assessing the treaty benefit application for HK residence.

Looking Ahead

SAT has released several circulars with respect to the application and implementation of treaty treatments, withholding agent obligations and relevant tax treatment with respect to non-PRC TRE, indicating that SAT has been more aware of the transactions and business operations conducted by non-PRC TRE in China. Circular 290 especially address the reporting and registration requirement for the withholding agent.

It is recommended that corporate finance, HR and relevant department keep close look on the business operation concerning non-PRC TRE, which calls for more emphasis on internal controls and financial arrangement.

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