



## Eyes on China Newsletter June 2010

We are happy to present you this June 2010 edition of Eyes on China Newsletter. For any further and specific information about the content of this newsletter, do not hesitate to contact us. We are glad to give you the necessary, prompt and professional assistance to all your taxation issues so as to prevent any non-compliance risk, and avoid any barrier for the development of your business activities in China.

### Simplification of Formalities for Tax Certificates for Foreign Exchange Payment of Service Trading Companies

The State Administration of Foreign Exchange (SAFE) has issued on May 12, 2010 an important notice that will be good news for you: many administrative activities for Foreign Exchange Payment of Service Trading Companies will be simplified. After a series of relevant circulars last years, the Beijing local tax authority has announced that the notice will take effect on July 1, 2010.

#### Enhanced Supervision System of the Tax Bureau

First, the internal check and review procedure at the Tax Bureau has been separated from the other departments to avoid tax evasion and personal fraud. A special chop and countermark will be adopted only for tax certificate. Second, the Tax Bureau will improve its information sharing with other government authorities such as SAFE, Finance Bureau and banks. Third, the Tax Bureau will improve its information exchange with taxation authorities of other countries. This will improve the consistency and accuracy of the submitted documents to various Chinese authorities.

#### Urgent Payments

When companies cannot provide the proper documents for issuing the tax certificate in time within the bank's filling period, the tax bureau will be able to levy the relevant tax firstly to the service trading



company, then to refund after documents have been completely collected.

### Maximum Exchange Payment

The limit for not providing the tax certificates for bank exchange payment is US\$3,000 (Gross taxable income). This amount includes tax liabilities. The tax also should be declared and levied accordingly.

### Tax Certificates Submittal

Domestic business entities will be able to submit their tax certificates while conducting the service trading payment of foreign exchange.

The following certificates can be submitted:

- (1) The duty-paid proof of Business Tax or Individual Income Tax, provided by an offshore company (individual);
- (2) The duty-paid proof of enterprise income tax, provided by the offshore company;
- (3) The duty-paid proof of Individual Income Tax on the wage and salary;
- (4) The form for controlling the amount of remittance of the disclosure fee and income resulting from tax-free interest;
- (5) The certifying document indicating the payment status of enterprise income tax of the FDI enterprises and foreign enterprises;
- (6) The certificate of no tax payment for overseas labor service fee;
- (7) The tax receipt or tax-free certificates of Business Tax, enterprise income tax (levied by the local taxation authority), and Individual Income Tax;
- (8) The tax receipt or tax-free certificates of the enterprise income tax levied by the national taxation authority.

What is important to note is the following: the certificates issued by the *local* taxation authority are: (1), (3), (4), (6) and (7). While the certificates issued by the *national* taxation authority include: (2), (4), (5) and (8).

### **Business Tax and Individual Income Tax**

In accordance with the tax law of China, a business who pays within China should submit the duty-free proof issued by the local taxation authority to the foreign exchange bank while conducting the service trading payment of foreign exchange.

The following incomes are subject to Business Tax and Individual Income Tax:

- (1) Foreign enterprises or individuals that generate income gained directly from the activities in China in the fields of building, installation, supervision, construction, transportation, decoration, maintenance, designing, debugging, consultation, auditing, training, agent, management, and contracting projects.
- (2) The interest, guarantee fee, rental, disclosure fee (including patent right, non-patent technology, trademark right, copyright, good will of trade, etc.), property transfer income, income from the transfer of equity, and income from the transfer of land use, etc. gained by foreign enterprises or individuals without any standing bodies or agents in China.
- (3) The wage and salary (including the payment to the related enterprises) gained by foreigners, overseas Chinese and staffs from Hong Kong, Macao and Taiwan who are leaders or employed in domestic entities in China. If the tax receipt to the remuneration can be provided accurately, it is unnecessary to provide the duty-paid proof.

### **Exemptions from Business Tax and Individual Income Tax**

In accordance with the Tax Treaty and the Chinese Tax Law, not everyone has the obligation to pay the Business Tax and Individual Income Tax. Domestic payers who fall under the exemption should submit the

tax-free certificates issued by the local taxation authority to the foreign exchange bank while conducting the sale and payment of foreign exchange.

The following incomes have an exemption either from paying the Business Tax or the Individual Income Tax:

- (1) Foreigners who earn income directly from the activities in China in the fields of building, installation, supervision, construction, transportation, decoration, maintenance, designing, debugging, consultation, auditing, training, agent, management, and contracting projects, are exempt from the Individual Income Tax in accordance with the tax treaty signed by China and the related country or region.
- (2) The dividend and bonus which are gained by foreign individuals working at domestic entities issuing B-shares or overseas shares are exempt from Individual Income Tax.
- (3) Foreign individuals' transfer of copyright is exempt from Business Tax.

This is not an exhaustive list. There are other incomes that are exempt from Business Tax or Individual Income Tax. Contact us for further information.

### **Fees Exempted from Tax Payment**

According to the existing tax law of China, all kinds of labor charge, service fee, commission fee, handling fee occurred outside China will not be levied. Costs such as advertising fee, cost of maintenance, design fee, advisory expense, agency fee, training expense, and other similar fees are subjected to tax payment. Certificates of no-tax payment issued by the local taxation authority must be submitted while the sale and payment of foreign exchange is conducted.

### **Non-Trade Business Exempted from Foreign Exchange Payment**

The following six kind of non-trade business are exempted from tax certificates while conducting the payment of foreign exchange:

- (1) The transportation charge for purchase and sales of a domestic entity (e.g. the import and export corporations of merchandise, international transportation agency companies, etc.);
- (2) The expenses incurred abroad when the transportation enterprises of China are engaging in transportation business abroad;
- (3) The commission, insurance premium and compensation occurred abroad under the import and export account of China;
- (4) The expenses incurred abroad by the domestic entity itself, such as trip charge, meeting fee, cost of trade fair, the expenses of overseas branches and the cost advanced for the contracting projects abroad;
- (5) The foreign exchange paid by residents in China for private purposes, such as the educational cost of children studying abroad, individual traveling expenses and home leave fare, etc;
- (6) The income foreign enterprises or individuals gain from the transfer of technology to China,

### **Exemption of Individual Income Tax**

Foreign individuals directly engaging in activities in the fields of building, installation, designing, auditing, training, or agent, will be exempted to pay Individual Income Tax on the gains and remuneration made in China, according to the tax treaty signed by China and the related country. In order to get this exemption, you can apply at the local municipal taxation bureau for the double tax treaty treatment and for the tax exemption certificate.

### **Imported Equipment which is Subjected to Business Tax and Enterprise Income Tax**

Payment for imported equipment is considered as payment for trade items. However, foreign enterprises that provide services such as equipment installment, mounting, technology training, instructing and supervision need to pay the service fee when selling equipment to China. According to the tax law of China, they are subject to the Business Tax and Enterprise Income Tax. Therefore, when a domestic entity pays for imported equipment, it should get the related tax certificates from the local taxation authority and the national taxation authority while the sale and payment of foreign exchange is conducted. If the total

amount of the service fee is not clearly listed in the sales contract, or it is unreasonably priced, the tax authority can, based on facts, fix the professional service fee and calculate and collect the Business Tax and Enterprise Income Tax.

### Transactions and Taxation Authority

The domestic entity or individual should file an application for the relevant tax certificate with the taxation authority upon the presentation of tax receipt, contract and the related documents **before** the sale and payment of foreign exchange is conducted under non-trade accounts.

- The transactions involving the Business Tax and Individual Income Tax are subject to the local taxation authority.
- The transactions involving the enterprise income tax of FDI enterprises and foreign enterprises are subject to the national taxation authority.
- The transactions involving external expenses and others are subject to the local taxation authority and the national taxation authority respectively.

### Freight Charges Payment in the International Shipping Business

One of the following certificates is to be submitted when the payment of the freight charges abroad in the international ocean shipping business is conducted.

- (1) The duty-paid proof of enterprise income tax and Business Tax issued by the local taxation authority.
- (2) If the duty-free treatment of the international transportation income can be enjoyed according to the "Tax Treaty or Tax Agreement", Form of Income Tax Exemption and Form of Business Tax Exemption are to be submitted while applying for conducting the payment of freight charges in the city where the competent taxation authority is located.
- (3) If the duty-free treatment of the international transportation income can be enjoyed according to the "Tax Treaty or Tax Agreement", the dated copy of Form of Income Tax Exemption with the official seal of the national taxation authority or the dated copy of Form of Business Tax Exemption with the official seal

of the national taxation authority is to be submitted when applying for conducting the payment of freight charges in other places. The official seals and the dates on the above copies should be the original.

### **Simplification of Procedures**

In order to simplify the procedure and improve the efficiency of handling affairs, the Local Tax Bureau has prescribed that all cities directly under the provincial government designate a department specially administrating the submission of tax documents in conducting the sale and payment of foreign exchange. It is explicitly required that the local taxation authority of the city verify the relevant proving documents presented by a domestic payer (or agent or taxpayer) and issue the relevant duty-paid proof within two working days and the relevant duty-free certificate, certificate of no tax payment or other proofs within five working days. Reasons of the postponement must be stated in case of special conditions.

**Table of Tax Documents to Be Submitted by Domestic entities or Individuals While Conducting the Sale  
 and Payment of Foreign Exchange**

Income Beneficiary	Income Items	Tax documents to be offered	Certificate-issuing organ	Remarks
Foreign enterprise	The income foreign enterprises gained directly from the activities in China in the fields of building, installation, designing, consulting, agent, etc	1. The duty-paid proof of Business Tax and the tax receipt	The competent local taxation bureau	_____
		2. The duty-paid proof of enterprise income tax and the tax receipt or the duty-free certificate	The competent national taxation bureau	The enterprise from a country signing tax treaty with China should provide the duty-free document, if the income is exempt from enterprise income tax.
	The interest, rental, disclosure fee, property transfer income, income from the transfer of equity, and the international ocean shipping income, etc. gained by foreign enterprises without any standing bodies or agents in China	1. The duty-paid proof of Business Tax and the tax receipt or the duty-free certificate	The competent local taxation bureau	1. According to relevant regulations, the income from disclosure fee, property transfer, property rental, and international ocean shipping business, etc is subject to the levy of Business Tax. The income from other items is exempt from Business Tax, and hence free from the offering of the tax document of Business Tax. 2. Income from the use of technical know-how is exempt from Business Tax according to the relevant regulations upon the presentation of the duty-free file. 3. If the duty-free treatment of the international transportation income can be enjoyed according to the "Tax Treaty or Tax Agreement", Form of Business Tax Exemption is to be submitted.
		2. The duty-paid proof of enterprise income tax and the tax receipt	The competent national taxation bureau	1. The duty-free document is to be provided, if the income is exempt from enterprise income tax.

		receipt or the duty-free certificate		2. If the duty-free treatment of the international transportation income can be enjoyed according to the "Tax Treaty or Tax Agreement", Form of Income Tax Exemption is to be submitted.
Foreign individual	The income foreign individual gain directly from the activities in China in the fields of designing, consulting, training, etc	1. The duty-paid proof of Business Tax and the tax receipt 2. the duty-paid proof of Individual Income Tax and the tax receipt or the duty-free certificate	The competent local taxation bureau	The foreign individual from a country signing tax treaty with China should provide the duty-free file, if the requirements are met according to the relevant regulations about the tax exemption of enterprise income tax.
	Wage and salary	The duty-paid proof of Individual Income Tax and the tax receipt or the duty-free certificate	The competent local taxation bureau	The duty-free document is to be provided if the income is exempt from income tax.
Foreign investor	After-tax profit or dividend	The duty-paid proof of the FDI enterprise	Tax authority administrating enterprise income tax	_____
Foreign enterprise and individual	The income obtained by offering services out of China	The certificate of no tax payment	Tax authority administrating enterprise income tax	_____