

New Requirement for 2009 Annual Corporate Income Tax Reconciliation

[19th March, 2010 Issue 4]

The State Administration of Taxation (SAT) issued a notice on 27th January 2010 (Notice), clarifying the requirements on submission of annual Corporate Income Tax (CIT) reconciliation reports issued by certified tax agents (CTA) (CTA Report) for 2009 annual CIT filing purpose.

Background

In China, all Foreign Invested Enterprises (FIEs) are required to conduct annual CIT reconciliation before 31st May of the following year. In addition, all FIEs should conduct an annual examination of all certificates with the relevant authorities before 30th June of the following year. In the past, in most cities an annual financial audit report issued by a Certified Public Accountants (CPA) Firm (CPA Report) would be acceptable for both CIT reconciliation and annual examination purpose. In some cities, the tax authorities would require a CTA report instead of a CPA report for CIT reconciliation purpose. In recent years however, more and more cities are switching to require a CTA report, which means FIEs are required to prepare both CPA and CTA reports.

Highlights of the Notice

- Tax resident enterprises

If tax resident enterprises located in Beijing meet one of the below conditions, a CTA report will be required for CIT reconciliation purpose:

1. Loss of the current year is no less than RMB 100,000
2. Revenue of the current year is no less than RMB 30 million
3. If the profit of the current year would be used to offset the loss of previous tax years, a CTA report for the loss-making year will be required.

In practice, some districts of Beijing such as Tongzhou and development zones have not been strictly implementing this requirement as FIEs have complained about the extra burden this causes. In these districts, CTA and CPA report are both acceptable to local tax authorities.

- Non-tax resident enterprises

According to the notice, non-tax resident enterprises (including representative offices and foreign financial institutions which are not legal persons) located in Beijing are also required to submit a CTA report for 2009 annual CIT filing purpose. The CTA report submitted should follow the guidelines provided by Circular Guoshuifa [2009] No.6 Notice on the Administrative Measures for annual CIT Reconciliation Filing for Non-tax resident Enterprises.

A more detailed introduction to CTA report is provided in our appendix below.

Legal liabilities for failing to complete CIT reconciliation

(I) If an enterprise fails to complete its CIT filing within the prescribed time limit, and does not have prior approval from the tax authority for delayed declaration, or if the materials submitted are incomplete or not satisfactory, the enterprise shall complete the declaration within the time limit prescribed in the *Notice on Correction within Prescribed Term* issued by the competent tax authority. Additionally, the enterprise may be subject to a fine of no more than RMB 2000 in accordance with the provisions of the Law of Administration of Tax Collection.

In cases of failure to declare beyond the correction time limit, a fine of between RMB 2000 and RMB 10 000 may be imposed. The annual taxable income would be calculated by the tax authority and the tax required to be settled within the prescribed time limit.

(II) A late payment surcharge would also be levied by local tax authorities in accordance with Law of Administration of Tax Collection if the enterprise fails to complete CIT filing correctly.

Appendix: What is a CTA Report?

A CTA report, which is required for annual CIT reconciliation filing focuses on the accuracy of the calculation of CIT. It aims to verify that income, cost, expenses, assets and liabilities, and tax adjustment are calculated correctly by the enterprise according to the relevant tax laws, regulations and circulars issued by SAT.

Generally, a CTA report includes four parts:

1. Reporting text

The content of the report includes title of the assurance report, name of the recipient, introductory paragraph, the process of the audit, assurance opinion, signature and seal of the CTA, name, address, seal of the firm and date of the report.

The opinions of the report include: unqualified opinions, qualified opinions, disclaimer opinion and adverse opinions. Only reports with unqualified opinion or qualified opinion can be acceptable by tax officials in annual CIT filling.

2. Annual CIT filing forms

Annual CIT filing forms include the main table and 13 pieces of annexed tables.

3. Audit process and interpretation

- 1) Basic information about the company;
- 2) Detailed audit method, audit process and interpretation about income, cost, assets and liabilities, and tax adjustment.

4. Appendix

- 1) Financial reports.
- 2) A copy of the business licenses of the tax firm.
- 3) A copy of the certificate of certified tax agent.