



Tax Benefits to Overseas Investors Reinvesting Distributed Profits Expanded

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Background

For the purposes of further encouraging overseas investors to invest in China, the Ministry of Finance, the State Administration of Taxation, the National Development and Reform Commission and the Ministry of Commerce recently issued the Circular about Expanding the Scope of Application of temporary waiver for Withholding Income Tax on Direct Investments with Distributed Profits by Overseas Investors (Cai Shui [2018] No. 102). Compared with the previous policy of Cai Shui [2017] No. 88, the scope of application of withholding income tax for foreign investors has been expanded with other provisions remain the same.

Main point:

According to the circular, the favorable tax policy will be expanded to all non-restricted foreign investment projects and sectors from encouraged foreign investment projects.

1. An overseas investor not subject to withholding of income tax in the interim shall satisfy all the following criteria

1.1. Direct investments, this specifically refers to:

- Increase or conversion of paid-up capital or capital reserve of a domestic resident enterprise in China;
- Investment and establishment of a new domestic resident enterprise in China;
- Acquisition of the equity of a domestic resident enterprise in China from a non-related party;
- Any other method stipulated by the Ministry of Finance and the State Administration of Taxation. Enterprises invested by overseas investors via the aforesaid methods shall be referred collectively as investee enterprises.

It is worth noting that the notice excludes two cases of direct investment from the scope of this policy: one is new subscription, transfer or acquisition of shares in listed companies (except for eligible strategic investments). The second is to acquire equity from related parties.

1.2. The profits received by foreign investors belong to the real distribution of the realized equity investment income.

1.3. The profits used for direct investments shall not be circulated among other domestic or overseas accounts prior to making direct investments

2. Tax filing requirements

Where an overseas investor satisfies the criteria stipulated in Article 2 of this Notice, it shall make a declaration in accordance with the requirements for administration of tax collection, and provide materials to the profit-distributing enterprise to show that the overseas investor has satisfied the policy criteria. Where the profit-distributing enterprise concludes, upon examination and verification, that the overseas investor has complied with the provisions of this Notice, the profit-distributing enterprise does not need to withhold income tax pursuant to the provisions of Article 37 of the Enterprise Income Tax Law, and shall perform filing formalities with the tax authorities in charge.

Where an overseas investor has enjoyed the temporary waiver for withholding income tax as stipulated in this Notice, if the tax authorities find in the follow-up administration that an overseas investor does not satisfy the stipulated criteria, except where the profit-distributing enterprise is held liable, the overseas investor shall be deemed to have failed to declare and pay enterprise income tax pursuant to the provisions, the overseas investor's liability for late tax payment shall be pursued in accordance with the law, and the period of tax arrears shall be computed with effect from the date of payment of the relevant profits.

3. Special cases

3.1. Qualified overseas investors but have not enjoyed any policy benefits

If overseas investors have not enjoyed any policy benefits, they can apply to receive tax benefits within three years and get tax refund for tax payments they have already made.

3.2. Withdrawal of direct investments which it has enjoyed the policy benefits

If an overseas investor recovers, through equity transfer, buyback, liquidation etc, direct investments for which it has claimed temporary waiver for withholding of income tax, it shall declare and make retrospective tax payment to the tax authorities pursuant to the stipulated procedures, within seven days from actual collection of the relevant monies.

4. Commencement date

This Notice is being implemented with effect from 1st January 2018. This Notice may apply to equity investment gains such as dividends, bonuses etc derived by overseas investors after 1st January 2018 (including 1st January 2018), and tax paid shall be refund pursuant to the provisions of qualified overseas investors but have not enjoyed any policy benefits.

The aim of the new policy is to encourage foreign companies to reinvest their profits into China, in order to benefit the economy, jobs creation and to stem outflow of foreign exchange.

Any enquiries, please contact LehmanBrown by enquiries@lehmanbrown.com

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综合多年的国际经验和对中国市场的深刻理解和实践体验, 我们向广大国内外的客户提供高质量的专业服务和意见帮助。在雷博国际会计的服务过程中, 我们作为市场中的佼佼者, 您将得到来自中国本土以及其它国家的高级资深专家热忱的咨询帮助。

我们深刻认识到每一位客户都是独一无二的, 并都有其独特的业务需求。雷博国际会计承诺将根据客户的不同业务需求, 为客户提供个性化的财务解决方案。我们的专业人员将密切与您合作, 以充分了解您独特的业务需求, 从而提供满足您所需要的高时效、高质量的专业服务。

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Company Ownership Transferring/Corporate

Restructuring Background/Credit Checking

Company Deregistration & Bankruptcy

HR Support Services

China Visa Services for Expatriates

Social Welfare Structures

Outsourcing Services

Accounting & Bookkeeping

Budgeting & Forecasting Financial Statement

Preparation Head Office Reporting

Financial Management

Interim Financial Management Finance

Manager Function

CFO Function

Treasury Management

Set-up of Bank Account

Payroll Services

Payroll Processing Setup

Expatriate Employees

Local Employees

Secondment & Temping Service

Taxation Services

Individual Tax Planning (IIT)

Tax Immigration & Investment Review

US & Overseas Personal Income Tax Planning

& Filing IIT Tax Payment Facilitation

Application for Individual Income Tax Refund

Expatriate Staff Individual Income Tax Staff

Filing Local Staff Individual Income Tax

Company Taxation (CIT)

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Business Restructuring

Value Chain Review

Onshore / Offshore Investment

Transfer Pricing

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Tax Due Diligence

Tax Deregistration

Negotiation of Tax Penalties

Tax Refund Application

Tax Representatives for Tax Audit

VAT & Customs Duty Clearance

PRC Tax Receipt Verification

VAT Application

VAT & Sales Tax Filing

Corporate Income Tax Reporting

Specialist Accounting & Risk Management

Internal Controls

Systems

Risk Management

Sarbanes - Oxley (SOX 404)

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GAAP Conversion

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