Administrative Measures on Non-Resident Enterprise Tax Withholding at Source (Interim) of the PRC

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Chapter I — General Provisions

Article 1 — These Measures are formulated in accordance with the Enterprise Income Tax Law of the People's Republic of China, the Regulations for the Implementation of the Enterprise Income Tax Law, and the Law on the Administration of Tax Collection of the People's Republic of China, for the purpose of strengthening the administration of enterprise income tax withholding at source for non-resident enterprises and regulating the withholding at source of enterprise income tax.

Article 2 — These Measures shall apply to the administration of withholding at source of enterprise income tax payable by non-resident enterprises that derive income from sources within China as provided in Article 3 and Article 37 of the Enterprise Income Tax Law.

Article 3 — Income derived by a non-resident enterprise from sources within China that is subject to withholding at source includes:

(1) Dividends, bonuses and other equity investment proceeds;

(2) Interest, rent and royalties;

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(3) Income from the transfer of property;

(4) Other income that is subject to withholding at source as prescribed by the tax authority.

Chapter II — Registration and Filing

Article 4 — A withholding agent that has an obligation to withhold enterprise income tax from payments to a non-resident enterprise shall register as a withholding agent with the competent tax authority within 30 days from the date on which the withholding obligation arises.

Article 5 — The withholding agent shall, within 15 days following the end of each month, file a withholding enterprise income tax return and the relevant schedules with the competent tax authority, reporting the amounts paid or payable to non-resident enterprises, the amounts of tax withheld, and other relevant information.

Article 6 — Where no withholding agent exists, or where the withholding agent fails to withhold, the non-resident enterprise shall, within seven days before the due date for payment of the tax, file a tax return and pay the tax to the competent tax authority at the place where the income is derived.

Chapter III — Withholding at Source

Article 7 — The withholding agent shall withhold the full amount of enterprise income tax at the time of each payment, or at the time when the payment becomes due and payable in accordance with the accrual basis of accounting, whichever is earlier.

Article 8 — The amount of tax to be withheld shall be computed by multiplying the gross amount of the income by the applicable withholding tax rate. The applicable withholding tax rate shall be as prescribed by the EIT Law and its Implementation Regulations, or the reduced rate under an applicable tax treaty, provided the treaty benefit conditions are satisfied.

Article 9 — Where the withholding agent withholds tax from a payment denominated in a currency other than RMB, the amount withheld shall be converted into RMB at the central parity rate of RMB published by the People's Bank of China on the date of withholding (or the last preceding business day if that date is not a business day).

Article 10 — The withholding agent shall not include in the deductible costs, expenses or losses for enterprise income tax purposes any tax that it is obligated to withhold but fails to withhold, unless the tax is subsequently paid by the non-resident enterprise or recovered by the tax authority.

Article 11 — Where the tax payable by a non-resident enterprise is settled in a currency other than RMB, the taxpayer may apply to the tax authority for approval to pay the tax in that foreign currency.

Chapter IV — Tax Payment and Administration

Article 12 — The withholding agent shall pay the tax withheld to the State Treasury within seven days from the end of the month in which the withholding occurs. The withholding agent shall submit a withholding tax payment report to the competent tax authority along with the tax payment.

Article 13 — Where a non-resident enterprise is entitled to treaty benefits that reduce or eliminate the withholding tax, the withholding agent or the non-resident enterprise shall apply for such treaty benefits in accordance with the relevant provisions before the reduced rate or exemption may be applied.

Article 14 — The tax authority may conduct inspections and audits of the withholding agent's compliance with these Measures. The withholding agent shall provide truthful reports and relevant information, and shall not refuse or obstruct such inspections.

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Article 15 — Where a withholding agent fails to fulfill its withholding obligations, the tax authority shall recover the tax from the non-resident enterprise taxpayer and may impose penalties on the withholding agent in accordance with the Tax Collection Law.

Article 16 — Where a non-resident enterprise obtains income through a permanent establishment or fixed place of business in China, the provisions on self-assessment filing shall apply, and the withholding at source provisions shall not apply.

Article 17 — Where multiple payments are made to the same non-resident enterprise for the same type of income, the tax authority may consolidate the administration and may require the withholding agent to file returns and pay tax on a periodic basis.

Chapter V — Supplementary Provisions

Article 18 — These Measures shall also apply, mutatis mutandis, to the withholding at source of enterprise income tax by a withholding agent from income derived by a non-resident enterprise that does not have an establishment or place of business in China, or that has such establishment or place of business but the income is not effectively connected therewith.

Article 19 — For the purposes of these Measures, the term "payment" includes cash payments, remittances, transfers, payment in kind, and any other form of settlement of amounts payable that yields an economic benefit to the recipient.

Article 20 — The State Administration of Taxation shall be responsible for the interpretation of these Measures.

Article 21 — These Measures shall be effective as of January 1, 2009. Where any previously issued tax regulations on the withholding at source of non-resident enterprise income tax conflict with these Measures, these Measures shall prevail.

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