Announcement on Issues Concerning Non-Resident Enterprise Income Tax Withholding at Source of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Replaces: Guo Shui Fa [2009] No. 3 and relevant provisions

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Article 1 — This Announcement is issued to standardize the administration of enterprise income tax withholding at source on income derived by non-resident enterprises from sources within China, to simplify procedures, and to reduce the compliance burden on taxpayers and withholding agents. This Announcement applies to enterprise income tax payable by a non-resident enterprise on income derived from sources within China as provided in Article 3, Paragraph 3 of the Enterprise Income Tax Law.

Article 2 — The enterprise or individual making a payment to a non-resident enterprise that is liable to enterprise income tax on the income shall act as the withholding agent. The withholding agent shall withhold the enterprise income tax from each payment or from the amount that becomes due and payable in accordance with the accrual basis of accounting.

Article 3 — Income derived by a non-resident enterprise from sources within China that is subject to withholding at source includes, but is not limited to:

(1) Dividends, bonuses, and other returns on equity investments;

(2) Interest on deposits, loans, bonds, and advances;

(3) Royalties from the licensing or transfer of patents, know-how, trademarks, copyrights, and other intangible property;

(4) Rental income from the leasing of property;

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(5) Income from the transfer of property, including equity interests, real estate, and other assets located in China;

(6) Other income derived from sources within China.

Article 4 — The obligation to withhold tax shall arise at the time of actual payment, or at the time when the amount becomes due and payable according to the accrual method, whichever occurs first. For amounts paid in installments, the withholding obligation shall arise with respect to each installment at the time it is paid or becomes due and payable.

Article 5 — The amount of tax to be withheld shall be the gross amount of the income multiplied by the applicable tax rate. The applicable withholding rate under the EIT Law is 20%, reduced to 10% under the Implementation Regulations, unless a lower rate applies under a tax treaty. For income from the transfer of property, the taxable income shall be the transfer consideration less the net value of the property.

Article 6 — The withholding agent shall, within seven days from the date of withholding, file a withholding enterprise income tax return and pay the tax withheld to the State Treasury. The return shall be filed with the competent tax authority at the place where the withholding agent is registered for tax purposes.

Where a non-resident enterprise files and pays tax on its own behalf, it shall file the tax return with the competent tax authority at the place where the income is derived within seven days before the date on which the tax is due and payable.

Article 7 — Where the income is denominated in a currency other than RMB, the amount of income and tax payable shall be converted into RMB. For withholding by the withholding agent, the conversion shall be based on the central parity rate of RMB published by the People's Bank of China on the date of withholding. For self-filing, the conversion shall be based on the central parity rate on the date of filing.

Article 8 — Where a non-resident enterprise is entitled to a reduced rate or exemption under an applicable tax treaty, the non-resident enterprise or the withholding agent may enjoy such treaty treatment by following the self-assessment and filing procedures prescribed by the relevant tax treaty administration rules. The non-resident enterprise or the withholding agent shall retain supporting documentation for the treaty treatment claim.

Article 9 — Where the tax payable by a non-resident enterprise is to be paid in a foreign currency, the non-resident enterprise shall first apply to the competent tax authority for approval. Upon approval, the tax may be paid in the designated foreign currency to a designated account of the State Treasury.

Article 10 — Where a non-resident enterprise derives income that is effectively connected with its permanent establishment or fixed place of business in China, the income shall be reported and taxed as business profits of the permanent establishment. The withholding at source provisions shall not apply to such income. The non-resident enterprise shall file its enterprise income tax return on a self-assessment basis in accordance with the relevant provisions.

Article 11 — Where a non-resident enterprise transfers equity interests in a Chinese resident enterprise, and such transfer is subject to enterprise income tax in China, the withholding agent (typically the transferee or the payer) shall withhold the enterprise income tax on the transfer gain. Where the transfer is made to an unrelated party and the consideration is paid in installments, the tax may be paid in proportion to the installments received, provided that the initial payment and the tax obligation are settled within the prescribed period.

Article 12 — This Announcement shall be effective as of December 1, 2017. The Administrative Measures on Non-Resident Enterprise Tax Withholding at Source (Interim) (Guo Shui Fa [2009] No. 3) and the relevant provisions on withholding of non-resident enterprise income tax in the Notice of the State Administration of Taxation on Strengthening the Administration of Non-Resident Enterprise Income Tax on Equity Transfer Gains (Guo Shui Han [2009] No. 698) shall be repealed simultaneously.

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For withholding obligations arising prior to December 1, 2017, the provisions in effect at that time shall apply. For withholding obligations arising on or after December 1, 2017, this Announcement shall apply.

The State Administration of Taxation shall be responsible for the interpretation of this Announcement.

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