Announcement on Issues Concerning the “Beneficial Owner” in Tax Treaties of the PRC

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

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Article 1 — This Announcement is issued for the purpose of standardizing and clarifying the criteria for determining a "beneficial owner" under the applicable tax treaties for dividends, interest and royalties, ensuring the correct application of tax treaty provisions, and preventing treaty abuse. It applies to non-resident applicants seeking to enjoy the reduced tax rates or exemptions provided under tax treaties with respect to dividends, interest and royalties sourced from China.

Article 2 — For the purposes of this Announcement, a "beneficial owner" means a person who has the right to own and control the income or the rights or property from which the income is derived, and who bears the corresponding risks. The beneficial owner is the person who enjoys substantive ownership and control over the income, and is not merely a conduit, agent, nominee or trustee acting on behalf of another person.

In determining whether an applicant is the beneficial owner, a comprehensive analysis shall be conducted based on the actual circumstances of the specific case. The determination shall consider factors including, but not limited to, the following elements:

(a) The applicant has the obligation to distribute or pay all or substantially all (60% or more) of the relevant income to a resident of a third jurisdiction within a specified period (12 months or less);

(b) Apart from holding the rights or property from which the relevant income is derived, the applicant carries on no or substantially no other business activities;

(c) Where the applicant is an entity, the scale of the applicant's assets, business operations and personnel is disproportionately small relative to the amount of income it derives;

(d) The applicant has no or substantially no right to control or dispose of the relevant income or the rights or property from which the income is derived, and bears no or substantially no risk;

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(e) Where the income in question is exempt from tax in the applicant's country or jurisdiction of residence, or the income would be taxed at an extremely low effective rate;

(f) In addition to a loan contract or a license agreement under which the interest or royalties are paid, there exists another loan or deposit contract, a license agreement, or a right transfer contract between the applicant and a third party in respect of the relevant income, rights or property;

(g) Where the applicant is established or resident in a Contracting State that does not impose tax on the relevant dividends, interest or royalties, or exempts or exempts with refund such income from tax, or taxes such income at an extremely low effective rate.

Article 3 — An applicant who would otherwise be liable to tax in its Contracting State of residence on the relevant income shall not be denied beneficial owner status solely on the basis of the factor described in Article 2(e) or (g) where the applicant can demonstrate that it carries on active and substantive business operations in its country of residence. When assessing whether the applicant has active and substantive business operations, the determination shall be based on the actual functions performed and risks assumed by the applicant.

Article 4 — The following applicants shall be directly determined to be the beneficial owner without applying the factors listed in Article 2, subject to Article 7 documentation requirements:

(a) An applicant that is a company listed on a recognized stock exchange in the Contracting State or jurisdiction of the applicant's residence, or a company listed on a recognized stock exchange in any jurisdiction, provided such jurisdiction has an effective tax information exchange mechanism with the PRC;

(b) An applicant that is directly or indirectly wholly owned (100% shareholding) by one or more companies described in paragraph (a) above, where the ultimate controlling parent company(ies) are resident in the same jurisdiction as the applicant or in a jurisdiction where the intermediate parent(s) are listed on a recognized stock exchange;

(c) An applicant that is a government or governmental authority, a central bank, or a pension fund or similar entity (including sovereign wealth funds) of the Contracting State of the applicant's residence, or an entity wholly owned (100%) by any of the foregoing;

(d) An applicant that is an individual who is a resident of the other Contracting State.

Article 5 — Where an applicant does not itself qualify as the beneficial owner, but the income in question is ultimately owned by one or more persons who are residents of the same Contracting State as the applicant and who themselves would qualify as the beneficial owner under Article 2, the applicant may be treated as the beneficial owner if the following conditions are satisfied:

(a) Each of the intermediate owners between the applicant and the person(s) ultimately entitled to the income are residents of the same Contracting State or are residents of a Contracting State that has a tax treaty with China containing provisions no less favorable than those applied for;

(b) The applicant would be granted equivalent or more favorable treaty benefits if the income were paid directly to the person(s) ultimately entitled to the income; and

(c) The applicant meets the documentation requirements set forth in Article 7.

Article 6 — Where an applicant acts as an agent, nominee or trustee for another person, the applicant shall not be considered the beneficial owner. In such a case, the principal or the person for whom the applicant acts shall be treated as the beneficial recipient, and the tax treatment shall be determined by reference to the principal's entitlement to treaty benefits.

Article 7 — An applicant claiming to be the beneficial owner and seeking treaty benefits shall, when filing the application with the withholding agent or the competent tax authority, provide the following documentation

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and information:

(a) A completed "Application Form for Tax Treaty Benefits for Non-Resident Taxpayers" together with relevant supporting materials;

(b) Information and documentation relating to the applicant's status as the beneficial owner, including but not limited to: the applicant's corporate structure chart, description of business activities and functions performed, copies of relevant contracts and agreements, financial statements and tax returns, and information on ultimate owners;

(c) Evidence supporting any safe harbor claim under Article 4 of this Announcement;

(d) Evidence supporting any derivative benefits claim under Article 5 of this Announcement;

(e) Other information and documentation requested by the competent tax authority.

The applicant shall warrant and represent that the information and documentation provided are true, accurate and complete.

Article 8 — The competent tax authority shall strengthen subsequent administration and monitoring of beneficial owner claims. Where the tax authority, in the course of subsequent administration, discovers that an applicant does not meet the conditions for beneficial ownership, or that the relevant circumstances have changed such that the applicant no longer qualifies as the beneficial owner, the tax authority shall, in accordance with the law, deny the treaty benefits claimed and recover the underpaid tax, together with late payment surcharges or penalties as applicable.

Tax authorities may exchange information on beneficial ownership determinations with the competent authorities of the other Contracting State through the existing tax treaty information exchange mechanisms where necessary to verify the facts and circumstances of a case.

Article 9 — This Announcement shall be effective as of April 1, 2018. The Circular of the State Administration of Taxation on How to Interpret and Determine the "Beneficial Owner" in Tax Treaties (Guo Shui Han [2009] No. 601) issued on October 27, 2009 and the Announcement of the State Administration of Taxation on Issues Relating to the Determination of "Beneficial Owner" in Tax Treaties (SAT Announcement [2012] No. 30) issued on June 29, 2012 shall be repealed simultaneously.

For tax treaty benefit applications accepted or approved prior to the effective date of this Announcement, the provisions of this Announcement shall not apply.

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