Measures for the Administration of Tax Treaty Treatment for Non-Resident Taxpayers 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 further optimizing the business environment, improving the administration of tax treaty treatment, and implementing a procedural reform where non-resident taxpayers self-assess their eligibility for treaty benefits and file with the tax authority. This Announcement applies to non-resident taxpayers who are residents of a jurisdiction that has concluded a tax treaty or arrangement with China and who seek to enjoy the reduced tax rates or exemptions provided under the applicable tax treaty with respect to income sourced from China.

Article 2 — A non-resident taxpayer seeking to enjoy tax treaty treatment may complete the prescribed form, self-assess its eligibility, and submit the form together with the tax return to the tax authority. The taxpayer shall retain relevant supporting documentation for inspection by the tax authority.

The non-resident taxpayer may either file the form and return directly with the competent tax authority, or provide the form to the withholding agent who shall file it together with the withholding return. The self-assessment form shall include:

(a) Identification information of the non-resident taxpayer;

(b) The specific treaty article under which treaty treatment is claimed;

(c) The type and amount of the income for which treaty treatment is claimed;

(d) A declaration that the taxpayer meets the conditions for the treaty treatment claimed;

(e) A commitment to retain and provide supporting documentation upon request.

Article 3 — The tax treaty treatment claimed by a non-resident taxpayer shall be valid for the tax year for which it is claimed. Where the same non-resident taxpayer receives the same type of income from the same withholding agent on a recurring basis, the self-assessment filing may cover multiple payments, subject to the same tax year limitation.

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Where there is any material change in the facts and circumstances on which the treaty treatment claim is based, the taxpayer shall promptly file an updated self-assessment form.

Article 4 — A non-resident taxpayer claiming tax treaty treatment shall retain the following supporting documentation for a period of ten years from the end of the tax year in which the treaty treatment is claimed:

(a) A certificate of tax residence issued by the competent tax authority of the taxpayer's jurisdiction of residence, valid for the period during which the treaty treatment is claimed;

(b) Relevant contracts, agreements, resolutions of the board of directors or shareholders' meetings, proof of payment, and other documentation relating to the income for which treaty treatment is claimed;

(c) For claims involving the determination of beneficial ownership of dividends, interest or royalties, documentation demonstrating that the taxpayer is the beneficial owner of the income;

(d) For claims under other treaty articles, documentation relevant to the specific conditions for that article;

(e) Any other documentation that the tax authority may require to verify the eligibility for treaty treatment.

Where the non-resident taxpayer and the withholding agent are related parties, or where the amount of a single payment is substantial (exceeding the threshold prescribed by the tax authority), the withholding agent shall also retain the above documentation for inspection.

Article 5 — The competent tax authority shall strengthen subsequent administration of treaty treatment claims. The tax authority may, through risk-based assessment and post-filing review and investigation, verify the eligibility of treaty treatment claims and the accuracy of the self-assessments made by non-resident taxpayers.

Where the tax authority, in the course of subsequent administration, discovers that:

(a) The non-resident taxpayer does not satisfy the conditions for the treaty treatment claimed;

(b) The information provided in the self-assessment form is found to be false or misleading;

(c) The supporting documentation retained is insufficient to demonstrate eligibility for the treaty treatment claimed; or

(d) There has been a material change in circumstances that affects eligibility for the treaty treatment;

the tax authority shall deny the treaty treatment, recover the underpaid tax and impose late payment surcharges, and may impose penalties in accordance with the Law on the Administration of Tax Collection. Where the withholding agent is liable for the non-compliance, the tax authority shall pursue the matter against the withholding agent in accordance with the law.

Article 6 — Where a non-resident taxpayer improperly claims treaty treatment by providing false information or by failing to report material changes, resulting in underpayment of tax, the tax authority shall, in addition to recovering the underpaid tax, impose a penalty of up to five times the amount of tax underpaid.

Where a withholding agent knowingly assists a non-resident taxpayer in improperly claiming treaty treatment, or fails to report treaty benefit information as required, the withholding agent shall bear joint and several liability for the underpaid tax and may be subject to penalties in accordance with the Tax Collection Law.

Article 7 — Where a non-resident taxpayer claims treaty treatment under the self-assessment procedure and the tax authority subsequently determines that the claim was not properly made, any tax paid in excess of the amount properly due shall be dealt with in accordance with the relevant provisions on tax refunds. The non-resident taxpayer may claim a foreign tax credit in its jurisdiction of residence for the tax properly paid in China in accordance with the applicable tax treaty and domestic laws of that jurisdiction.

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Article 8 — This Announcement shall be effective as of January 1, 2020. The Announcement of the State Administration of Taxation on Issuing the Administrative Measures on Tax Treaty Treatment for Non-Resident Taxpayers (Trial) (SAT Announcement [2015] No. 60) and the Notice of the State Administration of Taxation on Printing and Distributing the Administrative Measures on the Enjoyment of Tax Treaty Treatment by Non-Residents (Trial) (Guo Shui Fa [2009] No. 124) shall be repealed simultaneously.

For treaty treatment claims accepted or approved prior to January 1, 2020 under the prior rules, the original filing and approval status shall remain valid for the period covered.

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