

State Administration of Taxation

On the issuance of the Circular of "Provisional Measures for Tax Collection and Administration of Representative Offices of Foreign Enterprises"

State Tax Rule [2010] No. 18

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The state tax authorities and regional tax authorities of all provinces, autonomous regions, municipalities and cities under separate state programs:

In order to regulate the tax collection and administration of representative offices of foreign enterprises, please follow and implement the "Provisional Measures for Tax Collection and Administration of Representative Offices of Foreign Enterprises" issued to you by the State Administration of Taxation. Please reflect to the State Administration of Taxation (International Tax Division) for any problems encountered during implementation.

State Administration of Taxation

20 February 2010

Provisional Measures for Tax Collection and Administration of Representative Offices of Foreign Enterprises

- (1) In order to regulate the tax collection and administration of representative offices of foreign enterprises, these provisional measures formulated are based on "Tax Collection and Administration Law of The People's Republic of China" (hereinafter referred to as the Tax Administration Law) and the implementation regulations, "Corporate Income Tax Law of The People's Republic of China" and the implementation details, "Provisional Regulations of Business Tax of The People's Republic of China" and the implementation details, "Provisional Regulations of Value Added Tax of The People's Republic of China" and the implementation details and the relevant tax laws and regulations.
- (2) The representative offices of foreign enterprise referred hereto are those representative offices of foreign enterprises (including Hong Kong, Macao and Taiwan enterprises) and other organizations (hereinafter referred to as representative offices) established in China which are registered in the Industrial and Commercial Administrative Department or approved by the relevant departments in accordance with the relevant provisions of the State Council.
- (3) Representative offices shall report their income attribution and pay corporate income tax, and they shall according to law pay business tax and value added tax based on their taxable income.
- (4) Within 30 days after obtaining the business registration certificate (or approval from relevant departments), a representative office shall apply for and tax registration process from its local in-charge tax authority with the following information:
 - (i) A copy of the business registration licence or the original and copy of the approval document from the in-charge department;
 - (ii) The original and copy of the copy of the organization code certificate;

- (iii) The original and copy of the proof of the registered address and business address (certificates of title, lease agreement); if the property is self-owned, the original and copy of the legal proof such as property right certificate or the sale and purchase agreement should be provided; if the property is leased, the original and copy of the lease agreement should be provided, if the lessor is a natural person, the original and copy of the proof of the property title should also be provided;
 - (iv) The original and copy of the chief representative's (responsible person) passport or other legal identification documents;
 - (v) The relevant resolutions of the foreign enterprise with respect to the establishment of the representative office or a list of other representative organizations established in China (including names, addresses, contact methods and names of chief representatives, etc);
 - (vi) The relevant information as required by the tax authorities.
- (5) When there are changes in the tax registration contents or early termination of the business activities in the period, a representative office shall apply to the in-charge tax authority for change of registration or cancellation of registration in accordance with the Tax Administration Law and relevant regulations; before applying for the cancellation of registration, a representative office shall report its liquidation proceeds to the in-charge tax authority and pay corporate income tax according to law.
- (6) In accordance with the relevant laws, administrative regulations and the State Council Finance and regulations of the in-charge tax authority, a representative office shall set up proper accounting books and records according to the legal and valid vouchers, and within 15 days after the end of each quarter shall accurately calculate its taxable income and the amount of the tax according to the actual functions performed and the matching principle of the risks assumed truly report to the in-charge tax authority and pay corporate income tax, business tax, and in accordance with "Provisional Regulations of Value Added Tax of The People's Republic of China " and the tax payment due dates stated in its implementation rules, truly declare and settle the value added tax to the in-charge tax authority.
- (7) If a representative office does not have proper accounting books and records and cannot calculate the accurate amounts of income, costs or expenses and is unable to report taxes on actual basis as mentioned in Article (6) of this Circular, the tax authority is empowered to use the following two methods to assess the amount of its tax payable:
- (i) Conversion of income from the expenditure: it applies to a representative office which is able to accurately reflect the expenditure but unable to accurately reflect the revenue or costs.
 - 1. Formula:

Gross income = total expenditure for current period / (1 - deemed profit rate - business tax rate);

Corporate income tax payable = Gross income x deemed profit rate x corporate income tax rate.
 - 2. The amount of the expenditure of a representative office includes: in and outside China, the salaries and wages, bonuses, allowances, fringe benefits paid to employees, materials procurement costs (including the fixed assets of motor vehicle, office equipment etc), communication costs, trip expenses, accommodation, equipment rental, travelling, entertainment and other expenses.
 - (a) The total amount of the expenditure incurred in the acquisition of fixed assets, as well as renovation and decoration expenses in relation to the establishment or moving of the representative office, should be treated as one-off expenditure of the representative office at the time it is incurred and converted as income to calculate tax.

- (b) The amount of interest income cannot be offset against the expenditure of the representative office: the actual entertainment expenses incurred is included in the total expenditure.
 - (c) Cash donations made for our country's public welfare, charity donation, late payment surcharges, penalties, and any expenses paid on behalf of its head office and are not related to its business activities should not be treated as the expenditure of the representative office;
 - (d) Other costs include: amounts paid to purchase samples for its head office and relevant transportation expenses; warehousing fees and customs declaration expenses incurred for delivering overseas samples to China; translation fees incurred for the head office personnel visiting China; amounts paid for bidding tender of a project in China by the representative office on behalf of the head office, and so on.
- (ii) Tax payable according to total income: it applies to a representative office which is able to accurately reflect the income but unable to accurately reflect the costs and expenditure.

Formula:

Corporate income tax payable = total income x deemed profit rate x corporate income tax rate

- (8) The deemed profit rate of a representative office shall not be less than 15%. If a representative office adopts the approved collection method and can set up proper accounting books and records to accurately calculate its taxable income and tax payable, it can apply to the in-charge tax authority to change the reporting method on actual basis.
- (9) A representative office carrying out taxable activities of value added tax and business tax shall calculate and pay the value added tax and business tax in accordance with the relevant laws and regulations.
- (10) If a representative office wants to enjoy the protection of tax treaties, it should comply with the relevant regulations stipulated in the tax treaties and the (Notice by State Administration of Taxation on Non-Resident Tax Treatment under Management [Tentative]) (State Tax Rule [2009] No. 124) and the time limits for tax reporting matters as stipulated in Article (6) of this Circular.
- (11) This Circular shall come into force on 1 January 2010. This Circular shall prevail if there are any conflicts with the original regulations. "Notice by State Administration of Taxation on the Enforcement of the related matters of Tax Collection and Administration of Representative Offices of Foreign Enterprises" (State Tax Rule [1996] No. 165), "Notice by State Administration of Taxation on the related matters of Tax Collection and Administration of Representative Offices of Foreign Enterprises" (State Tax Rule [2003] No. 28) and the "Notice by State Administration of Taxation on the related matters of tax exemption approval procedures of Representative Offices established in China by Foreign Governments" (State Tax Letter [2008] No. 945) are abolished and applications by Representative Offices for corporate income tax exemption are no longer accepted by tax authorities, and those Representative Offices already accorded with tax exemption status will be cleaned up and dealt with in accordance with the regulations of this Circular.
- (12) The state tax authorities and regional tax authorities of all provinces, autonomous regions, municipalities and cities under separate state programs shall develop and set up specific rules and procedures according to this Circular and report to the State Administration of Taxation (International Tax Division) for record.