CMS Law . Tax

China Tax Regulation Update

October 2013

Circular Number	Issuance Date	Effective Date	Topic	What is new?
SAT Announcement [2013] No. 53	2013-9-13	2013-11-1	Hong Kong tax resident status	For the purpose of the *Mainland-Hong Kong Double Taxation Arrangement*, if an applicant claiming treaty protection is a company, the Announcement says, the relevant commercial registration certificate is sufficient as evidence of the Hong Kong tax resident status. However, if the Chinese tax authority has doubts regarding the tax resident status, they can still request a tax residence certificate issued by the Hong Kong tax authority. Under certain circumstances, e.g. for royalties, interest and dividends as well as capital gains, the tax residence certificate is still requested.
SAT Announcement [2013] No. 52	2013-9-13	2013-8-1	VAT exemption for certain cross-border services provided by Chinese tax payers	According to the previous tax circular *Caishui [2013] No. 37*, the following cross-border services shall be exempted from VAT: (1) Reconnaissance and prospecting services for projects and mineral resources located abroad; (2) Conference and exhibition services for conferences and exhibitions taking

				place abroad; (3) Warehousing services for storage abroad; (4) Leasing of tangible movable assets used abroad; (5) Distribution and broadcasting of media programs abroad; (6) International water, road and air transportation services provided by companies without the relevant international transportation licenses; (7) Water, road and air transportation services between mainland China and Macau, Taiwan and Hong Kong provided by companies without the relevant licenses or certificates; (8) Design services provided to overseas entities (with the exception of design for real estates in China); (9) Various services provided to overseas entities including R&D services, IT services, cultural and creative services (excluding design/ advertisement/conference and exhibition services), logistics services (excluding warehousing), verification and consulting services, fabrication of media programs, time charter , voyage charter, air-craft lease (manned), on-site auxiliary logistics services provided to foreign international transportation companies, advertisement services where the relevant ads are displayed off-shore. Due to lack of detailed guidance from the SAT regarding the VAT exemption procedures, many Chinese tax authorities do not grant VAT exemption for the above services. The SAT therefore issued *Announcement [2013] No. 52* to provide practical guidance in this respect. According to the *Announcement*, for all of the above services, in order to enjoy the VAT exemption, the payment must be made from abroad. In addition, the following documentation must be submitted to the tax authority for recordal: (1) the standard VAT exemption recordal form for cross-border services, (2) a written contract regarding the services, (3) the relevant certificate evidencing that the service recipient is a foreign entity, and (4) the relevant evidence proving the off-shore nature of the services (if the off-shore nature of the services is a pre-condition for VAT exemption). Further, if VAT is exempted, the corresponding input VAT becomes non-creditable. The tax payer is then required to properly calculate the relevant non-creditable input VAT. The Circular took effect on 1 August 2013. Before that, if tax payers have already declared the relevant income as VAT exempted, they are required to make up the recordal procedure. Otherwise, if the relevant income was declared as VAT taxable, such VAT over-paid can be refunded or used for further credit, if the tax payers can now make up the recordal procedure.

				practice, and, if so, change their billing policies accordingly for qualified cross-border services. Communication with foreign customers is essential in order to comply with the recordal requirements.
Caishui [2013] No. 66	2013-9-23	2013-10-1 till 2015-12-31	VAT refund for photovoltaic power generation products	In order to encourage photovoltaic power generation, the SAT issued this Circular to provide preferential VAT treatment for sale of self-produced photovoltaic power generation products. I.e. 50% of the VAT paid can be refunded for the period from 1 October 2013 to 31 December 2015.
Sino-Switzerland DTT (amended)	2013-9-25	n.a	New DTT between China and Switzerland	The SAT issued the new DTT with Switzerland which was signed by both countries on 25 September 2013. Significant changes have been made in particular to stipulations regarding construction permanent establishments, service permanent establishments, capital gains and withholding tax rates for dividends (reduced from 10% to 5% if equity participation is above 25%) and royalties (reduced from 10% to 9%). The new DTT will become effective after both countries have gone through their respective domestic ratification procedures, which may still take some time.
Caishui [2013] No. 70	2013-9-29	2013-1-1	Super-deduction of qualified R&D expenses	Under the PRC Corporate Income Tax ("CIT") Law, for qualified R&D expenses, an enterprise is allowed to claim, on top of the actual deduction, an additional deduction of 50% of the actual R&D expenses before CIT. Such policy is normally referred to as "super-deduction of R&D expenses". To provide further guidance, on 10 December 2008, the SAT had issued the Tax Circular *Guoshuifa [2008] No. 116 ("Circular 116")* on super-deduction of R&D expenses. In order to be eligible to super-deduction, the R&D project must fall into the *Catalogue for High/New Tech Sectors Specifically Supported the State* or the *Guidelines for Current Priorities for Development in Key Sectors of Hi-Tech Industry (2007).* On 29 September 2013, the SAT issued the tax circular Caishui [2013] No. 70 on super-deduction of R&D expenses. This new circular extended the scope of R&D expenses that are eligible for super-deduction. E.g. social insurance of R&D staff, maintenance costs of R&D equipments, etc. are also specified as expenses eligible for super-deduction. The new Circular also stipulates that an enterprise may engage a qualified accounting or tax firm to issue an audit/verification report regarding qualified R&D expenses in a year. This may reduce the risks that the genuineness of declared R&D expenses is challenged by the tax authorities. The Circular failed to address the issue of R&D activities outsourced to a foreign party. I.e. such external R&D expenses may therefore not be eligible for super-deduction.

For further information, please contact:

Charlie Sun
Head of Tax Practice Area Group

CMS, China
2801 Plaza 66, Tower 2
1266 Nanjing Road West
Shanghai 200040, PRC

T +86 21 6289 6363
F +86 21 6289 0731
E charlie.sun@cmslegal.cn

For previous editions of China Insight or to sign up for other topics, please visit us atwww.cmslegal.cn/newsmedia/newsletter.