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保税区政策

为稳步推进加工贸易转型，允许出口加工区拓展保税物流功能和开展研发、检测、维修业务，国家税务总局于 2009 年 3 月 18 日发布国税函[2009]145 号《关于保税物流中心及出口加工区功能拓展有关税收问题的通知》，内容如下：

- 境内货物进入保税物流中心的，视同出口，实行出口退（免）税政策；保税物流中心内货物进入境内，视同进口，办理进口报关手续，并按照进口的有关规定征收进口增值税、消费税。
- 国内货物进入出口加工区用于物流配送的，按照国税发〔2004〕150 号的规定执行。
- 对出口加工区开展研发、检测、维修业务的税收管理办法，将另行制定。
- 本通知从 2009 年 1 月 1 日起执行。

企业所得税

根据中华人民共和国政府对外签署的避免双重征税协定，及与香港、澳门特别行政区签署的税收安排（以下统称税收协定），国家税务总局于 2009 年 2 月 22 日发布国税函[2009]第 81 号文《关于执行税收协定股息条款有关问题的通知》，主要内容为：

- 按照税收协定股息条款规定，中国居民公司向税收协定缔约对方税收居民支付股息，且该对方税收居民（或股息收取人）是该股息的受益所有人，则该对方税收居民取得的该项股息可享受税收协定待遇，即按税收协定规定的税率计算其在中国应缴纳的所得税。如果税收协定规定的税率高于中国国内税收法律规定的税率，则纳税人仍可按中国国内税收法律规定纳税。
- 纳税人需要享受上款规定的税收协定待遇的，应同时符合以下条件：
  - ✓ 纳税人应是税收协定缔约对方税收居民；
  - ✓ 纳税人应是相关股息的受益所有人；
  - ✓ 可享受税收协定待遇的股息应是按照中国国内税收法律规定确定的股息、红利等权益性投资收益；
  - ✓ 国家税务总局规定的其他条件。

☞ 编者按：自 2008 年 1 月 1 日新的企业所得税法实施以来，中国大陆的税收征管理念发生了显著的变化。税务机关对税收事项的判断从只重形式逐渐向关注和考察经济实质转变。81 号文沿袭了 2009 年 1 月颁布的《特别纳税调整实施办法（试行）》中有关反避税的政策。在反避税方面，税务机关对带有避税动机的税务安排的审查愈趋严格。如果交易被认定为缺乏经济实质和真实、合理的商业目的，拟享受税收协定待遇的申请将不会获得税务机关的批准。

为规范企业所得税法关于居民企业的判定标准，加强企业所得税管理，国家税务总局于 2009 年 4 月 22 日发布国税发[2009]第 82 号文《关于境外注册中资控股企业依据实际管理机构标准认定为居民企业有关问题的通知》，内容如下：

- 境外中资企业是指由中国境内的企业或企业集团作为主要控股投资者，在境外依据外国（地区）法律注册成立的企业。
- 境外中资企业同时符合以下条件的，根据企业所得税法第二条的规定，应判定其为实际管理机构在中国境内的居民企业（以下称非境内注册居民企业），并实施相应的税收管理，就其来源于中国境内、境外的所得征收企业所得税。
  - ✓ 企业负责实施日常生产经营管理运作的高层管理人员及其高层管理部门履行职责的场所主要位于中国境内；
  - ✓ 企业的财务决策（如借款、放款、融资、财务风险管理等）和人事决策（如任命、解聘和薪酬等）由位于中国境内的机构或人员决定，或需要得到位于中国境内的机构或人员批准；
  - ✓ 企业的主要财产、会计账簿、公司印章、董事会和股东会议纪要档案等位于或存放于中国境内；
  - ✓ 企业 1/2（含 1/2）以上有投票权的董事或高层管理人员经常居住于中国境内。
- 对于实际管理机构的判断，应当遵循实质重于形式的原则。
- 非境内注册居民企业在中国境内投资设立的企业，其外商投资企业的税收法律地位不变。
- 境外中资企业被判定为非境内注册居民企业的，按照企业所得税法第四十五条，不视为受控外国企业，但其所控制的其他受控外国企业仍应按照有关规定进行税务处理。
- 境外中资企业被认定为中国居民企业后成为双重居民身份的，按照中国与相关国家（或地区）签署的税收协定（或安排）的规定执行。
- 本通知自 2008 年 1 月 1 日起执行。

外商投资管理

为继续深化外资审批管理体制改革，进一步扩大地方商务主管部门的外资审批管理权限，中华人民共和国商务部于 2009 年 3 月 5 日发布商资函[2009]第 7 号文《关于进一步改进外商投资审批工作的通知》，内容包括：

- 原由商务部审核的鼓励类的外商投资企业设立、增资、合同/章程及其变更事项，均由省级商务主管部门审核。外商投资企业设立境外分支机构的，由企业注册地省级商务主管部门或省人民政府授权的市级商务主管部门审核。
- 外国投资者和外商投资企业并购境内企业的，由地方商务主管部门会同工商、税务、外汇等相关部门根据相关法律法规规定审核。
- 外商投资有专项规定的行业、特定产业政策、宏观调控行业继续按现行规定办理。外国投资者对上市公司进行战略投资仍按有关规定报商务部审批。

出口退税

为了应对国际金融危机造成的影响，鼓励部分产业的发展，增强出口企业竞争力，**2009** 年 **3** 月 **27** 日，财政部、国家税务总局发布了《关于提高轻纺电子信息等商品出口退税率的通知》(财税**[2009]43** 号)。《通知》自 **2009** 年 **4** 月 **1** 日起执行，以“出口货物报关单（出口退税专用）”海关注明的出口日期为准。

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Policies for the Bonded Area

In order to further boost transformation of processing trade, and allow export processing zones to develop businesses of bonded logistics, R&D, survey and maintenance, State Administration of Taxation released Circular on Tax Issues Regarding Expanding Functions of Bonded Logistics Center and Export Processing Zones (Guo Shui Han [2009] No.145) on March 18, 2009, stipulating that:

- Entry of domestic goods into bonded logistic center shall be regarded as export and eligible for export tax refund/exemption policy. Carrying goods from bonded logistic center to domestic area shall be regarded as importation and subject to procedures for import declaration as well as value-added tax and consumption tax on import according to relevant regulations.
- Domestic goods entering export processing zone for purpose of logistics delivery shall be compliant to the regulations of SAT’s Ordinance (GuoShuiFa [2004]No.150).
- There shall be additional measures for tax administration to be made for researching and developing, survey and maintenance in export processing zones.
- This Circular shall take effect as of Jan. 1, 2009.

Corporate Income Tax (CIT)

Based on the Agreements on Double Taxation Avoidance signed by China's government with other countries and Tax Arrangements with Hong Kong and Macao (hereinafter jointly referred to as "Tax Treaties"), SAT issued Circular on Carrying out Dividend Rules Prescribed by Tax Treaties (Guo Shui Han [2009] No.81) on Feb. 22, 2009, mainly stipulating that:

- According to the dividend rules of Tax Treaties, when China's resident companies pay dividend to residents of tax treaty partners, and the residents (dividend recipients) are beneficiary of such dividend, then the dividend recipients could claim tax treaty benefits related to such dividend, i.e. their PRC tax payable shall be calculated at the tax rate prescribed by Tax Treaties. If the Treaties tax rate is higher than PRC local tax rate, tax payers could follow the lower one.
- Tax payers claiming the above-said tax treaty benefits should meet the following requirements:
  - ✓ The taxpayer should be a tax resident of the tax treaty partners;
  - ✓ The taxpayer should be the beneficiary of the dividend;
  - ✓ Dividend income should be regarded as a dividend or other equity income under PRC tax law;
  - ✓ Any other conditions stipulated by the SAT.

☞ Editorial Comments: Since the new CIT law came into effect on Jan. 1, 2008, a significant change has happened with China's thoughts of tax levy and administration. PRC tax authorities are transforming themselves from a formalist to a substance-based tax jurisdiction upon judging tax issues. The above-said Circular No.81 follows the Implementation Regulations for Special Tax Adjustments (Provisional) promulgated in Jan. 2009 that detail the rules on anti-avoidance policies. In tax anti-avoidance arena, PRC tax authorities are becoming more aggressive in cracking down on arrangement driven by tax avoidance motives. A transaction without economic substance and meaningful business purpose shall not be allowed by tax authorities to enjoy tax treaty benefits.

In order to standardize CIT criteria for determining resident enterprises identification and strengthen CIT administration, SAT issued Circular on Identifying Chinese-Controlled Offshore Enterprises as Chinese Resident Enterprises in Accordance with Criteria for Determining Place of Effective Management (Guo Shui Fa [2009]No.82) on April 22, 2009, stipulating that:

- Chinese-controlled offshore enterprise is defined as an enterprise that is incorporated under the laws of a foreign country or area and has a domestic (i.e. a Chinese) enterprise or enterprise group as its primary controlling shareholder.
- The article 2 of CIT law prescribes that Chinese-controlled offshore enterprises that satisfy the following conditions shall be regarded as Chinese resident enterprises that have a place of effective management in China (hereinafter referred to as "offshore Chinese resident enterprises"), and shall be subject to CIT on their worldwide income:

- ✓ Senior management in charge of day-to-day production or operation and the place where management exercises their duties are mainly located in China;
- ✓ Decisions on enterprise's financial and human resource affairs are made or approved by personnel or institutions in China;
- ✓ Enterprise's primary assets, accounting books, company seals, records and files of the board of directors and shareholder meeting are maintained in China;
- ✓ 50% or more of voting board members or senior executives of enterprise habitually reside in China.

- Substance-over-form principle will be applied in determining the place of effective management and control.
- A subsidiary invested by an offshore Chinese resident enterprise in China shall retain its status as a foreign-invested enterprise.
- An offshore Chinese-invested enterprise which is identified as an offshore Chinese resident enterprise shall not be regarded as a controlled foreign enterprise under the article 45 of CIT law; but other foreign enterprises under its control shall be treated separately.
- Offshore Chinese-invested enterprises identified as offshore Chinese resident enterprises shall be eligible for the policies prescribed in tax treaties signed by China with related countries or areas.
- This Circular came into effect as of Jan. 1, 2008.

Foreign Investment Administration

In order to further boost reform of foreign investment administration system and expand jurisdiction of local commerce administration, the Commerce Ministry of PRC issued Circular on Further Improving the Job of Foreign Investment Verification and Approval (Shang Zi Han [2009] No.7) on March 5, 2009, including the following points:

- Verification and approval of establishment, capital increase and changes in contracts or Articles of Association related to foreign-invested enterprises of state-encouraged sectors shall be handled by provincial commerce authorities, instead of the Commerce Ministry of PRC originally. Setting up offshore branches by FIEs shall be verified and approved by provincial competent commerce authorities or municipal commerce authorities authorized by provincial governments.
- Merge and acquisition of domestic enterprises by foreign investors or FIEs shall be verified and approved together by local competent commerce authorities and other relevant governments like tax bureau, state administration of foreign exchange, etc. according to relevant laws and regulations.
- Foreign investment in specially prescribed sectors, or sectors limited by particular policies or macro policies shall be still subject to existing regulations. Foreign strategic investment in listed companies shall be reported to the Commerce Ministry for verification and approval according to relevant regulations.

Export Tax Refund

To struggle against global financial crisis, support business development of certain industries and strengthen competitiveness of export enterprises, the Ministry of Finance and SAT issued Circular on Increasing Export Tax Refund Rate of Products like Textiles, Electronics (Cai Shui [2009] No.43) on March 27, 2009. This Circular came into effect as of April 1, 2009, with the export date labeled on "Export Declaration (only for export tax refund)" as reference.

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