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Tax circular

Notice regarding the reinforcement of work related to Individual Income Tax (IIT) self-declaration and “all individuals, all income” IIT withholding declaration (Shuizongsuobianhan [2017] No. 6)

Synopsis

On 23 January 2017, the State Administration of Taxation (SAT) released an internal notice to local tax bureaus via Shuizongsuobianhan [2017] No. 6 (“Circular 6”) to set out the arrangements related to IIT self-declaration to be completed by taxpayers for year 2016 and “all individuals, all income” IIT withholding declaration (全员全额扣缴明细申报) to be performed by withholding agents for year 2017.

Circular 6 highlights the importance of IIT self-declaration and “all individuals, all income” IIT withholding declaration, as the data gathered from the declarations shall not only serve for the purposes of tax authorities’ interim and ex post supervision, but also the preparation of the upcoming IIT reform which would tax people based on different income categories and on an integrated basis (综合与分类相结合税制).
In addition, according to Circular 6, the SAT urges the local tax bureaus to verify the data submitted by taxpayers during IIT self-declaration and the detailed information submitted in monthly IIT withholding filing. Taxpayers who are obligated to file IIT self-declaration for 2016 should stay alert to further notices to be released in this regard by the local tax bureaus and duly complete the self-declaration by the prescribed deadline, i.e., 31 March 2017.

1 Pursuant to Article 37 of the Implementation Regulations of IIT Law, IIT withholding on an “all individual, all income” declaration basis refers to the declaration of basic information, items and amount of IIT taxable income paid, amount of IIT withheld and other IIT related information conducted by withholding agents within the month following the IIT withholding.

You can click this link to access the full content of Circular 6: http://www.guzhen.gov.cn/DocHtml/1847/2017/2/16/89097115179591.html

Business circulars

► Notice issued by the Shanghai Municipal People's Government regarding the revised “Regulations on Encouraging the Establishment of Regional Headquarters by Multinational Corporations in Shanghai” (Hufufa [2017] No. 9)

Synopsis

Further to Guofa [2017] No. 5 (“Circular 5”, i.e., Notice regarding certain measures on further opening-up of market access and utilization of foreign capital), the Shanghai municipal government released the revised Regulations on Encouraging the Establishment of Regional Headquarters by Multinational Corporations (MNCs) in Shanghai (hereinafter referred to as the “new SH Regulations”) via Hufufa [2017] No. 9 on 27 January 2017. The purpose of this is to attract MNCs to establish regional headquarters in Shanghai. The new SH Regulations became effective on 1 February 2017 to extend and improve the previous version of SH Regulations released via Hufufa [2011] No. 98 (hereinafter referred to as the “2011 SH Regulations”) that had been implemented during the period from 19 December 2011 to 18 December 2016. (Please refer to CTIE2017004 for details of Circular 5.)

Key features of the new SH Regulations are as follows:

Regional headquarters (地区总部) or entities with headquarter functions (总部型机构)

The new SH Regulations set out the definitions for a regional headquarter and an entity with headquarter functions as follows:

► A regional headquarter refers to an investment company or management company of sole ownership established in Shanghai as an independent legal entity either in the form of investment or with authorization by its parent company registered overseas. A regional headquarter performs the functions of management and service to enterprises in the region of more than one country.

► An entity with headquarter functions refers to a wholly foreign owned enterprise (WFOE) or a branch office of a WFOE and actually undertakes several supporting functions listed below for enterprises in the region of more than one country, (even if it fails to meet the standards to be recognized as a regional headquarter):
  ► Strategic management
  ► Capital management
  ► Purchasing and sale
  ► Logistics
  ► Account settlement
  ► Research and development
  ► Training
Criteria for the recognition of a regional headquarter

- The enterprise must be a WFOE with independent entity status.
- The total assets of its parent company shall not be less than US$0.4 billion. If its parent company is engaging in the service industry, the total assets of the parent company shall not be less than US$0.3 billion.
- The total cumulative registered capital for investments of the parent company in China shall not be less than US$10 million, while the number of enterprises that are managed by the regional headquarter in and outside China as authorized by the parent should be no less than three. Alternatively, the number of enterprises managed by the regional headquarter should be no less than six. For an enterprise that basically meets the preceding conditions and makes outstanding contributions to the local economic development, it could be considered for the recognition of regional headquarter.
- The registered capital of the WFOE should be no less than US$2 million.

Criteria for the recognition of an entity with headquarter functions

- The entity must be a WFOE with independent entity status or its branch.
- The total assets of the parent company shall be no less than US$0.2 billion and the parent company should have set up no less than two WFOEs in China and at least one of them should be registered in Shanghai.
- If the entity with headquarter functions is a WFOE, its registered capital should be no less than US$2 million. For a branch, its operation capital should be no less than US$2 million.

Benefits applicable to regional headquarters and entities with headquarter functions

Upon recognition, regional headquarters and entities with headquarter functions shall be eligible for the following benefits (please click the circular nos. of the below table to access the full contents of the respective circulars):

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Regional headquarters</th>
<th>Entities with headquarter functions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subsidies and awards - subsidies for newly establishment and tenement</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Facilitation for centralized capital management and centralized foreign exchange fund management as prescribed in Huifa [2015] No. 36, i.e., the “Administrative Regulations on the Centralized Foreign Exchange Fund Management for Multinational Corporations” (Please refer to CTIE2015037 for details.)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Cross-border two-way RMB fund pool businesses (details are prescribed in Yinfa [2015] No. 279, i.e., Notice regarding further facilitating cross-border two-way RMB fund pool businesses for multinational corporation groups. Please refer to CTIE2015042 for details.)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Green channels for services related to record filing for foreign exchange repatriation for non-trade contracts and related tax assessments</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Free trade accounts opening for receipt and payment of cross-border RMB and foreign currencies as well as receipt and payment of domestic RMB (Applicable to regional headquarters located in pilot free trade zone only)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Facilitation for convenience of personnel matters- e.g., Simplified entry and exit procedures for business trips, assistance in education for children and medical services</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Facilitation for import/export matters</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Support from government at the district level</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>
In addition, investment companies may set up finance companies to provide centralized financial management services for their investee companies in China according to the prevailing regulations.

The new SH Regulations also apply to regional headquarters or entities with headquarter functions in Shanghai established by investors from Hong Kong, Macau and Taiwan.

Our observations

The Shanghai municipal government has been encouraging MNCs to establish regional headquarters in Shanghai since 2002 and has been striving to provide supporting measures in various aspects for regional headquarters.

Aiming to promote Shanghai as an international financial and trade center as well as boosting Shanghai’s technological innovation capability, the new SH Regulations have made several upgrades on top of the previous 2011 SH Regulations. Among these, the below changes are worth noting:

► Eligible entities that apply to the benefits of “headquarter economy” under the new SH Regulations not only cover the regional headquarters of MNC, but also include qualifying entities with headquarter functions. As mentioned above, the criteria for recognizing an entity with headquarter functions is much lower than that for a regional headquarter and the entity can be either a branch office or a WFOE. This will allow more MNCs to set up regional headquarters or entities with such functions in Shanghai to enjoy the relevant benefits as prescribed in the New SH Regulations and with a more flexible group structure.

► Also, it is the first time the New SH Regulations include a term of “support from government at the district level”, which encourages government at the district level to improve the business environment for the development of regional economic in light of local conditions. Literally, this would be in line with Circular 5 that allows local governments to stipulate local preferential policies to attract investments within their jurisdictions.

► Criteria for the recognition of regional headquarters has been loosened. The New SH Regulations added a new clause for a more relaxed criteria for enterprises engaging in the service industry, i.e., “If the parent company is engaging in the service industry, the total assets of the parent company shall be no less than US$0.3 billion.” This will be more in line with the asset light nature of the service industry.

Interested investors should study the New SH Regulations to explore the possibility for establishment of regional headquarters/entities with headquarter functions in Shanghai. If in doubt, consultation with professionals is always recommended.

You can click this link to access the full content of the New SH Regulations:
http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw12344/u26aw51294.html

You can click this link to access the full content of the Interpretation of the New SH Regulations from Shanghai Municipal Commission of Commerce:
http://www.shanghai.gov.cn/nw2/nw2314/nw3124/nw18452/nw20020/u21aw1196337.html

You can click this link to access the full content of the 2011 SH Regulations:
http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw11494/nw12331/nw12343/nw25265/u26aw30323.html
Public notice regarding the public opinion consultation on the “Provisional Measures of the Launch of a National Online Platform for the Administration of Approvals and Supervision of Investment Projects (Discussion Draft)”

Synopsis

Further to the Administrative Regulations on Approval and Record Filing of Enterprises’ Investment Projects (hereinafter referred to as the “Administrative Regulations”) released via State Council Order [2016] No. 673, the National Development and Reform Commission released a discussion draft on “Provisional Measures of the Launch of a National Online Platform for the Administration of Approvals and Supervision of Investment Projects” (hereinafter referred to as the “Discussion Draft”) on 14 February 2017, to seek public opinions for the operation of the national online platform for the administration of approvals and supervision of investment projects (hereinafter referred to as the “platform”). The consultation shall be closed on 12 March 2017. (Please refer to CTIE2016049 for details of the Administrative Regulations.) PN 8 became effective on its promulgation date, i.e., 3 February 2017.

The Discussion Draft covers details of the operation of the platform, such as the unified codes for the projects, procedures for the online application and coordination between the relevant government authorities.

According to the earlier released Fagaitouzi [2017] No. 0197 (“Circular 197”, i.e., Notice regarding the launch of a national online platform for the administration of approvals and supervision of investment projects), the platform was officially launched on 1 February 2017 prior to the issuance of the Discussion Draft and would be used to process all matters related to approval, verification and record filing for investment projects, except for those involving state confidences. Enterprises may study the Discussion Draft and express their opinions on or before the closed date. Enterprises should also stay alert to updates from the local government authorities to learn about the relevant guidelines and application procedures in this regard.

You can click this link to access the full content of the Discussion Draft: http://www.ndrc.gov.cn/yjzx/yjzx_add.jsp?SiteId=126

You can click this link to access the full content of the Administrative Regulations: http://www.gov.cn/zhengce/content/2016-12/14/content_5147959.htm

You can click this link to access the full content of Circular 197: http://www.ndrc.gov.cn/gzdt/201701/t20170126_837098.html

Other business and tax related circulars recently announced by central government authorities:


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