

China Tax & Investment News

China provides further guidance on provisional corporate income tax filing by branches

Issues on provisional corporate income tax filing clarified

Executive summary

The Chinese authorities have since the beginning of 2008 issued four different circulars governing the new provisional Corporate Income Tax (CIT) return filing and tax payment for a taxpayer with multiple operations extending beyond one province in China. We have already shared with you the changes brought about by the aforesaid circulars in four different issues of our China Tax & Investment News (the "News") (viz., Issue No. 2008002, 2008004, 2008006 and 2008011).

On 21 August 2008, the State Administration of Taxation (SAT) issued yet another circular, Guoshuihan [2008] No. 747 (hereinafter referred to as "Circular 747") to clarify two additional issues associated with provisional CIT filing. Firstly, Circular 747 confirms the right of the tax authority in a branch location to demand the taxpayer's headquarters and the tax authority at the headquarters' location to make available a Tax Payment Allocation Return (the "TPAR Form"), which is the first step to tax filing and payment at the branch location. Secondly, Circular 747 confirms that the calculation of CIT on a deemed basis does not apply to provisional CIT filing involving branches.

This issue of the *News* describes the changes brought about by Circular 747 and suggests approaches that, we believe, should be taken by companies.

Two issues of provisional CIT filing further clarified

The new Corporate Income Tax Law (CITL) effective on 1 January 2008 not only unified most of the major provisions in the two previously coexistent CIT laws, but also introduced fundamental changes that impact on the taxation and compliance burden of taxpayers. To list just a few : such changes include provisional CIT filing for branches, transfer pricing documentation and its related punitive interest, controlled foreign corporations, thin capitalization interest adjustment, as well as the tax resident rules, etc.

While detailed rules for most of the changes listed above are still pending as of today, as many as four circulars had already been issued by the relevant authorities on the filing of provisional CIT return and local payments by branches. On 21 August 2008, another circular, Circular 747, on the same subject was issued by the SAT. Circular 747 aims at strengthening the administration and collection of provisional CIT payments by companies operating in more than one province, autonomous region or central government administered city (hereinafter collectively referred to as "Province"), and provides guidance on the following two situations which might have happened during the first two quarters in 2008:

► Where branches were unable to file and pay provisional CIT locally as headquarters did not provide the TPAR Form to the branches

Circular 747 clarifies that tax authorities in charge of a branch should first assess and confirm whether the branch has stand-alone manufacturing and/or business capacities. If the assessment turns out to be in the affirmative, a branch should be recognized as requiring a provisional CIT filing and payment locally. The circular empowers the tax bureau in charge of a branch to require the branch to urge its headquarters to provide the TPAR Form. The tax bureau in charge of a branch can also ask the tax bureau in charge of the headquarters for assistance. If the headquarters do not provide the TPAR form, it can be fined by the headquarters' tax bureau in accordance with the Tax Administration and Collection Act. Circular 747 further calls upon higher level tax bureau's intervention in case the tax bureau in charge of the headquarters is not cooperative in making things happen.

(N.B. Circular 747 empowers tax authorities in the branch locations to require payment of provisional CIT locally regardless of the views held by the taxpayer's headquarters and its

in charge tax bureau IF the existence of stand-alone manufacturing and/or business capacities at the branch location can be confirmed. Apparently, this may still hold true even when a branch actually pays no turnover taxes locally. Branches of a taxpayer should therefore expect more queries and more aggressive enforcement efforts by their in charge tax authorities. Taxpayers should re-examine their operations and be better prepared for the forthcoming 2008 third quarter CIT filing.)

► Whether companies can adopt deemed method in filing and payment of provisional CIT locally

Circular 747 confirms that companies operating in more than one Province are expected to maintain sound financial systems so as to accurately compute their operating results. For this reason, the deemed method as described in Guoshuifa [2008] No. 30 does not apply in calculating their provisional CIT payable.

(N.B. The SAT's position is consistent with the prevailing view that the deemed method is only applicable to companies which do not or cannot keep proper accounting records and/or supporting documents; or their taxable profits appear to be unreasonably low.)

Suggested approaches

Given the latest clarifications announced by Circular 747, finance and company executives should immediately review their entire operations to see if any changes to their existing filing basis need to be made when preparing for the 2008 third quarter provisional CIT filing. In case of doubt, it is advisable to consult tax authorities in charge of the headquarters and first tier branches.



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