

China Tax & Investment News

Corporate income tax incentive for public infrastructure projects

Catalogue of public infrastructure projects finally released

Executive summary

Encouraging infrastructure development as a springboard for sustainable economic growth has always been at the heart of the Chinese government. With the upsurge in the nation's economic activities since China's economic reform, the demand for highways, railways, wharves, airports, power stations and so on also soared. In order to encourage foreign participation in the infrastructure build-up, the Chinese government put infrastructure projects within its preferential tax policies ranging from tax holidays to reduced income tax rates under the old corporate income tax (CIT) regime for foreign investment enterprises and foreign enterprises.

The new CIT law effective 1 January 2008 continues to encourage the development of infrastructure in Mainland China by offering tax benefits to not only foreigners but also domestic investors engaged in key harbor and wharf, airport, railway, highway, city public transportation, electrical power, water resource management and other projects to be further prescribed in a catalogue.

On 8 September 2008, the Ministry of Finance, the State Administration of Taxation and the National Development and Reform Commission released the catalogue by issuing a circular, Caishui [2008] No. 116 ("Circular 116"). The Catalogue of Public Infrastructure Projects Qualified for Corporate Income Tax Preferential Treatment (2008 edition) (hereinafter referred to as the "2008 PIP Catalogue" or the "Catalogue") appears as an appendix to the circular. You can retrieve a copy of Circular 116 and the 2008 PIP Catalogue (in Chinese) via the following URLs:

Circular 116:

http://szs.mof.gov.cn/shuizhengsi/zhengwuxinxi/zhengcefabu/200809/t20080916_75474.html

2008 PIP Catalogue:

<http://szs.mof.gov.cn/shuizhengsi/zhengwuxinxi/zhengcefabu/200809/PO20080923352994565331.pdf>

The 2008 PIP Catalogue retroactively came into force on 1 January 2008 to be in line with the effective date of the new Corporate Income Tax Law (CITL) and the CITL Implementation Regulations (CITLIR).

This issue of China Tax & Investment News (the "News") introduces the relevant CIT preferential treatment, summarizes the main categories within the 2008 PIP Catalogue, suggests approaches, we believe, should be taken by company executives and pinpoints what demands attention after all the catalogues associated with CIT preferential treatments have been promulgated.

Tax holidays for public infrastructure projects

Pursuant to Item (2) of Article 27 of the CITL, companies deriving income from key public infrastructure projects encouraged by the State are eligible for certain exemption and reduction in CIT.

Article 87 of the CITLIR explains that companies deriving income from specific harbor and wharf, airport, railway, highway, city public transportation, electrical power, water resource management and other projects as prescribed in the 2008 PIP Catalogue are eligible for a tax holiday of a three-year exemption followed by a three-year 50% reduction starting from the first income generating year.

Notwithstanding, companies undertaking the prescribed projects on a contractor basis or for own use cannot enjoy the aforesaid preferential treatment.

2008 PIP Catalogue

The 2008 PIP Catalogue lists out 18 different projects with specific name, scope, conditions and technical requirements and these projects are categorized in the following seven main types:

- ▶ Harbor and wharf
- ▶ Airport
- ▶ Railway
- ▶ Highway
- ▶ City public transportation
- ▶ Electrical power
- ▶ Water resource management

The Catalogue issued is in Chinese. We do not provide an English translation of the Catalogue as it covers a lot of unique terms and definitions of specific infrastructure. Please study the 2008 PIP Catalogue before making any investment decisions.

Recommended approaches

As mentioned earlier, the 2008 PIP Catalogue is full of technical terms which finance or taxation executives may not be acquainted with. In this respect, in-house technicians, specialists or relevant approval authorities should be consulted to confirm the meaning of technical terms in order to assess the eligibility for tax holidays.

For company executives contemplating the expansion of existing Chinese subsidiaries into the public infrastructure construction sector, income and expenses associated with the qualified infrastructure projects should be separately booked from economic results of existing operation; otherwise it would possibly jeopardize any possible tax holiday.

What demands attention

Apart from the CIT preferential treatment of a tax holiday available to qualified public infrastructure projects, companies deriving income from environmental protection, energy and water conservation projects are also eligible for similar tax holidays. However, the requirements and scopes of eligible projects are still pending.

In addition, although all five long-awaited catalogues related to CIT preferential tax treatments were issued by relevant authorities, the detailed administrative procedures for the application of the specific tax concessions are still pending. Company executives should stay tuned for further development on these areas.



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