



CHINA RE

华泰保险经纪有限公司

HUATAI INSURANCE AGENCY & CONSULTANT SERVICE LTD.

Circular Ref No.: PNI 1403

Date: 23 Sep 2014

Dear Sir or Madam,

**Subject: New Regulation Issued by Chinese Tax Authorities on
Collection of Tax on Non-resident Taxpayers Engaged in
International Transportation Business**

Since the issuance of “Provisional Measures on the Collection of Tax on Non-resident Taxpayers Engaged in International Transportation Business” by the State Administration of Taxation in China which has come into effect as of 01 Aug 2014, this new regulation has attracted increasing attention and concern from international shipping community.

To help our clients to learn more details about this new regulation, we enclose herewith our free translation for your ready reference. In the meantime, we further summarize the main points of the regulation and the changes it brings about as follows:

Applicable Tax Category

The new regulation applies to Enterprise Income Tax (“EIT”), which shall be levied on income of non-resident enterprises gained from international transportation business in China.

EIT has haunted foreign ship owners having business with Chinese charterers who were held as withholding agent of EIT by tax authorities in the past few years, although such tax requirements were not always strictly enforced.

Range of Application

This new regulation expanded the range of income that is subject to tax in China. Previously EIT was only to be levied on income gained from transportation business originating from Chinese ports. With the introduction of the new regulation, this is extended to include income gained from all kinds of commercial activities related to transportation both to and from Chinese ports, together with loading, discharging, and warehousing services.

Furthermore, this regulation put an end to the confusion over whether charter hire falls into the income of EIT or property lease by making specific clarification that non-resident enterprises chartering out vessels or aircrafts in the manner of voyage charter, time charter or wet charter belongs to international transportation business and the income gained thereby are subject to EIT instead of the tax regime for property lease.

Calculation of Tax

Tax amount = Taxable income X Tax rate.

- Taxable Income

Taxable income = Total income — Deductible Expenses.

Total income represents the sum of passenger transportation income or cargo carriage income obtained from carrying passengers, cargo or post to and from Chinese ports. Passenger transportation income includes passenger ticket revenues, excess baggage charge, meals, insurance fee, service fee and entertainment fees, etc.; and cargo carriage income includes freight and surcharges, etc.

The expenses to be deducted from total income shall be related to obtaining such income and be reasonable. The tax authorities would usually require supporting documents for these deductible expenses.

In case the non-resident enterprises cannot accurately calculate and declare taxable income, Taxable income = Total income X Assessed Profit Rate. For service businesses, the profit rate shall not be less than 15%.

- Tax Rate

Under current Chinese tax regulations, the standard tax rate for EIT is 25% (such rate can be reduced to 20% for small slight-profit companies, or 15% for high-tech companies which enjoy state support).

Tax Payment and Withholding Agent

Non-resident taxpayers can go through the tax registration formalities with local tax authorities within 30 days after obtaining operation qualification or entering into transportation agreements and thereafter declare and pay EIT by themselves or through agent according to relevant procedures.

If non-resident taxpayers have business at more than one Chinese port, they can choose any port for tax registration at their own discretion.

Apart from the above, the local tax authority where the payer of the income is located can appoint the payer as withholding agent who will be obliged to withhold the tax amount from their payment to the non-resident taxpayers and pay the same to local tax authority.

Tax Treaties

Non-resident taxpayers can apply for tax exemption by taking advantage of tax treaties between their country and China on avoidance of double taxation or on maritime transportation, if such treaties are in place.

It should be noted that such tax treaty treatment are not enjoyed automatically. Taxpayers need to go through application procedures with local tax authorities in order to apply such treaties; otherwise they are still obligated to pay tax.

Taxpayers, who have paid the tax but are actually entitled to tax treaty treatment, can apply for refund of the overpaid tax within three years after payment.

Comments and Recommendations

Obviously this regulation is intended to tighten the collection of tax on non-resident taxpayers engaged in international transportation business in China, who are expected to face higher tax burden from Chinese tax authorities, unless they are protected by applicable tax treaties.

However, there are many detailed issues that are yet to be clarified by the authority on implementation of this regulation. Among many other things, it remains to be answered if owners' time charter hire is subject to EIT in case the vessel is chartered to non-Chinese companies but occasionally calls Chinese ports and if so, how taxable income of such time charter hire shall be calculated. We shall closely follow up with any development and issue further circulars as necessary.

In the meantime, foreign companies that may be influenced by this regulation are recommended to check if their registered country has any tax treaty with China by which they can be protected from new tax burdens. Furthermore, they are also suggested to carefully examine the terms concerning tax payment obligation when entering into transportation agreements to seek best protection of their interests.

We hope the above is of assistance. Should you have any query, please do not hesitate to contact us.

Sincerely yours,

A handwritten signature in cursive script that reads "Shan Hong". The signature is written in black ink and has a long, sweeping underline that extends to the right.

Shan Hong
Vice President

Encl.: *"Provisional Measures on the Collection of Tax on Non-resident Taxpayers Engaged in International Transportation Business" (Free Translation)*

Provisional Measures on the Collection of Tax on Non-Resident Taxpayers Engaged In International Transportation Business

State Administration of Taxation No. (2014)37

Chapter One General Rules

Article 1

In order to standardize the taxation management for non-resident enterprises engaged in international transportation business, this regulation was legislated according to Enterprise Income Tax Law and Implementation Rules of the People's Republic of China (hereinafter referred to as “Enterprise Income Tax Law”), Tax administration and Implementation Rules of the People’s Republic of China (hereinafter referred to as “Tax Administrative Law”) and the agreement, other relevant laws and regulations on avoidance of double taxation signed by Chinese government with foreign parties (including the treaty signed with Hong Kong and Macao Special Administrative Region regarding the taxation arrangement, reciprocal exemption of income tax on international shipping and air freight, shipping and air transportation treaty and other relevant agreement or exchange of notes, hereinafter all referred to as “Tax Treaties”).

Article 2

The international transportation business referred to in this regulation means the business operation that the non-resident enterprises carry passengers or cargos or post by their owned or chartered vessel, flight, shipping space entering into or leaving Chinese ports and relevant loading/discharging and warehousing affiliated business etc.

The business operation where the non-resident enterprises earn income by leasing vessel and flight in the way of voyage charter, time charter and wet leasing shall be regarded as international transportation business.

The rental income of non-resident enterprises earn by leasing vessel and flight in the manner of bareboat charter or dry lease, or leasing containers and other loading tools to domestic organizations or individuals shall not be regarded as international transportation business in this regulation, which shall be subject to clause 3 Article 3 of the Enterprise Income Tax Law and the “Notice issued by State Administration of Taxation Regarding the Interim Measures of Income Tax Withholding and Management”(Guoshuifa (2009) No.3) (the special provisions of tax treaty excluded)

Article 3

The non-resident enterprises that earn income by engaging in international transportation business are taxpayers under this regulation.

Article 4

This regulation only applies to enterprise income tax, apart from other categories of tax that are mentioned in tax treaties.

The tax authority mentioned in this regulation refers to state tax authority

Chapter Two Management of Taxation

Article 5

The non-resident enterprise shall register or appoint an agent to register with local tax authority in the port of business within 30 days after non-resident enterprises' business qualification has been approved by relevant departments or transportation contract / agreement has been signed, and meantime shall provide certificate of operation qualification, operational route information, relevant agreements and details of domestic contacts.

Non-resident enterprises should submit copy of tax registration certificate, transportation contract and other relative documents to local tax authority when doing business in ports other than the port where the tax registration are conducted.

Article 6

Once non-resident enterprises have finished tax registration in line with article 5 of this regulation, they should establish account books in accordance with taxation management law and other relative laws. Meanwhile, they should keep accounts, calculate and count out the exact taxable income in line with legal and valid certificate and then declare and pay enterprise income tax to local registered tax authority by themselves or through their agent.

Article 7

The non-resident enterprise shall count/ work out the taxable income by deleting actual incurred, related and reasonable expenses from the total income earned by doing international transportation business.

The total income means the summation of passenger transport income and freight transport income for non-resident enterprises carrying passengers' cargos or post entering into or leaving Chinese. The passenger transport income includes ticket, overweight luggage fees, meal fees, premium, service fee and entertainment fee; freight transport income includes basic freight and other additional charges.

Article 8

If non-resident enterprises could not accurately calculate their taxable income and declare it truthfully, tax authority shall check and evaluate their taxable income in line with "Notice of the Management of evaluation and collection of corporate income tax for non-resident enterprise of State Administration of Taxation" (Guoshuifa(2010) No.19).

Article 9

If international transportation business engaged by non-resident enterprises falls into the category where tax withholding mechanism is applicable, the local tax authority where the payer is located shall appoint the payer to be the withholding agent in line with article 14 of the “Interim Taxation Management For Non-Resident Enterprise’s Contracting Project And Rendering Service” (SAT No.19).

The payer includes:

- 1) The organizations or individuals that pay to domestic subsidiary, branch or representative office, overseas/domestic agent that are authorized to receive payment on behalf of non-resident enterprises.
- 2) The organizations or individuals that pay to non-resident enterprises via their overseas related party or third party that have special interest relations with them.
- 3) Other organization or individuals that meet the specifications of enterprise income tax law.

Article 10

Whilst the payer withhold and remit tax, they should file “Application form for withholding enterprise income tax of PRC ” and relative documents to competent tax authority, and meanwhile remit the tax to national treasury within 7 days counting from the date of withholding.

Chapter Three Management of Enjoying Tax Treaty Treatment

Article 11

The range of income of international transportation business or earnings and the categories of taxes that are subject to tax exemption arrangements shall be in accordance with relative provisions of the tax treaty.

Article 12

If non-resident enterprise needs to enjoy the tax treaty treatment, they shall file to competent tax authority before tax obligation incurs or when they declare tax liability in accordance with domestic tax law and submit two copies of “Registration form for non-resident enterprise enjoying tax treaty treatment” and the following documents:

- 1) Duplicate or copy of business registration certificate that is issued in the country where the enterprise is registered.
- 2) The identity certificate, original or scanned copy of Certificate of Corporation (in case submit scanned copy, place of the original should be advised) that issued by local tax authority or shipping administrative authority of the tax treaty’s contracting party in the previous year.
- 3) Original or scanned copy of the contract or agreement that is related to obtaining income through international transportation business.

- 4) Written description of the route, carriage of passengers/cargos/post and the calling of Chinese ports.
- 5) Other required documents by tax authority with regard to enjoying the tax treaty treatment.

If the documents submitted by non-resident enterprises meet the requirement of competent tax authority, they should seal on the two registration form on the spot, one of which should filed for further inspection and the other should return to non-resident enterprises. In case the documents submitted by non-resident enterprises are not sufficient, competent tax authority should advise on the spot for additions and corrections. The required documents that have been submitted to tax authority do not need to be re-submitted.

In case non-resident enterprises need to enjoy tax treaty treatment more than one time at one place, they do not need to repeat the registration procedures with 3 years (including the current year) after first registration.

Article 13

Non-resident enterprises shall not enjoy the tax treaty treatment if they have not registered or submitted documents in line with article 12 of this regulation; in case they have applied the tax treaty treatment by themselves without such registration and have not made correction unjustifiably within a time limit required by competent tax authority, non-resident enterprises shall pay tax and accept penalty according to tax administrative law.

Article 14

If non-resident enterprises are engaged in international transportation business at more than one Chinese port, they shall send copy of registration form that have been accepted and approved by handling tax authority to tax authorities at other ports for file and check. In case other port tax authorities have objections, they should coordinate with the handling tax authority and report to their common superior if they cannot reach an agreement.

Article 15

If non-resident enterprises are entitled to tax treaty treatment however failed to enjoy such treatment and thereby overpaid tax, they could apply to competent tax authority for applying the tax treaty treatment within 3 years after paying the overpaid tax, and then complete registration formalities according to this regulation for refund of the overpaid tax. Beyond the aforementioned time limit, such application shall not be entertained.

Chapter Four Tracking Management

Article 16

The competent tax authority should set up standing book and tax records for the non-resident enterprises which are engaged in international transportation business in line with the principal of “setting individual records” and “individual management”, and shall keep a timely and accurate track of their collection of freight and other related funds, tax payment, and tax treaty treatment, etc..

Article 17

Competent port authority should keep a track of the status of non-resident enterprises enjoying the tax treaty treatment. They shall cross check the documents and contents of international transportation business submitted by non-resident enterprises in line with article 12 of this regulation and the documents submitted at the time of registration. In case non-resident enterprises are not entitled to tax treaty treatment but failed to pay tax, they shall be subject to tax administrative laws.

Article 18

The competent tax authority should enhance cooperation with departments of port administration, navigation management, customs, commodity inspection, marine supervision, foreign exchange administration and business affairs in order to obtain relative tax source information and monitor non-resident enterprises' status of entering into departing from Chinese ports, fulfilling taxpaying obligations and freight collection etc.

Article 19

If port authority could not obtain tax information domestically, they could make special intelligence and sent request to counterparties of the contracting state via State Administration of Taxation.

Chapter Five Supplementary Articles

Article 20

If non-resident enterprises, withholding obligor or the agent has any illegal tax-related act, tax authority should handle the situation in line with provisions of tax administrative law.

Article 21

Local provinces, autonomous regions, municipalities and cities specifically designated in the state plan shall work out detailed implementation rules by combining actual situation of the region.

Article 22

This regulation comes into effect as of 1 August 2014. If non-resident enterprises have obtained approval and record of tax treaty treatment or finished tax exemption certification procedures before implementation of this regulation, they shall be deemed as having filed application in line with clause 1 of article 12 of this regulation

and shall be exempted from re-application within the time frame outlined in clause 3 of article 12.

Article 23

The provisions concerning enterprise income tax in the following regulations shall be abolished as from August 1, 2014:

“The state administration of taxation on several issues about the international air transport business” (No.97guoshuifa 1993);

Notice on using Ocean shipping transportation income tax form issued by the state administration of taxation (No.729 Guoshuihanfa 1996);

Notice on using the Application form of foreign companies for exemption of enterprise income tax and certification form of foreign companies for exemption of enterprise income tax issued by the state administration of taxation(No.160 guoshuihan 2002);

Notice on using report forms for foreign companies on shipping tax issued by the state administration of taxation (No.384 guoshuihan 2002);

The notice issued by the state administration of taxation for collecting corporation income tax from non-resident enterprises on Shipping, air transportation (No.952 guoshuihan 2008).