

CHINA

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Strengthening tax administration of non-residents

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Tax authorities in the PRC are strengthening their oversight of non-resident enterprises (NREs) which will be targeted for tax audits starting this year. Administrative measures – the *Provisional Measures for Tax Administration of Contracted Engineering Operations and the Provision of Labour Services by Non-residents* (the Measures) – have also been issued by the State Administration of Taxation and came into effect on 1 March 2009.

The Measures target NREs that provide contracted engineering operations (contracted construction, installation, assembly, refurbishment, decoration, exploration and other engineering operations) and labour services (engaging in processing, repair and fitting, transportation, warehouse leasing, consultation agency, design, culture and sports, technology services, education and training, tourism, entertaining and other services) in the PRC. We refer to these below as Covered Operations and/or Services, as appropriate.

The Measures require a NRE engaged in Covered Operations or Services to carry out tax registration and tax filing in the PRC, as follows:

Tax Registration

A NRE must register with tax authorities in the location of the project within 30 days after the agreement is concluded and, within 15 days of completing the project, submit photocopies of completion and verification certificates and undertake de-registration procedures.

PRC enterprises and individuals obliged to withhold taxes for a NRE shall register with tax authorities within 30 days after their obligation commences. Those which outsource projects or services to NREs shall submit relevant documents to authorities within 30 days after concluding the relevant agreement, and report the payment status to the authority within 30 days after obtaining relevant invoices. Where the contracting domestic enterprise or individual is not responsi-

ble for paying the NRE, they must report information concerning project progress, payer's name, and payment amount and date to the authority where the project is located.

Tax Filing

The Measures also govern tax filing of NREs concerning enterprise income tax (EIT), business tax (BT) and value-added tax (VAT).

EIT: A NRE providing Covered Operations or Services in the PRC must pay EIT in advance on a quarterly basis, with such tax being calculated and settled at year end. The final tax settlement shall be made upon completion of the engineering project or fulfillment of the labour service agreement. Failure to submit tax returns and relevant documents may lead to an inability to enjoy preferential treatment under relevant tax treaties. An exemption from the annual EIT filing obligation is applicable to NREs for projects lasting under one year, which are completed before the year end and for which the NRE has already settled the tax payment (Article 1, Circular Guoshuifa [2009] No.6).

BT and VAT: A NRE that has established an operating organisation in the PRC must declare and pay BT or VAT by itself. If it has no operating organisation, its agent shall be the withholding agent or, if it has no agent in the PRC, the contractor, recipient of the services or purchaser must withhold the tax.

NREs engaged in Covered Operations and Services should understand the Measures as well as local practices to ensure full compliance. This is especially important for those listed as key targets for supervision by authorities i.e. NREs participating in key construction projects at state, provincial and prefectural levels, and other NREs that participate in a contract whose value exceeds RMB50 million.

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