

Broadening horizons

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中德新税收双边协定下的股利分配

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中德新税收双边协定于 2017 年 1 月 1 日起生效。其中，纳税人最为关注的问题是，当子公司向其持有超过 25% 股份的母公司（KG 形式不适用）进行利润分配，预提税税率从 10% 降为 5%。

在税务实践中，关于“5% 股息税率是否同样适用于 2017 年以前产生但在 2017 年以后宣告分配的股利”的长期争论也得到明确，即，只要关于利润分配的股东决议于 2017 年 1 月 1 日之后做出，2017 年以前产生的利润也可以享受税收优惠。实际操作中如果有多交的税金，也可以和当地税务机关及时取得联系申请退税。

常规股利分配程序

- 登录网上办税服务厅进行网上对外支付合同（股东决议）备案，并收取“合同备案登记表”；
- 携要求的文件，向税务机关申请享受税收协定待遇（委托书、非居民纳税人税收居民身份信息报告表、非居民纳税人享受税收协定待遇情况报告表<企业所得税 A 表>、利润分配股东决议、合同备案表、境外股东税收居民身份证明表和中文翻译件，以及其他要求的证明文件）；
- 纳税申报并缴纳税款；

Dividend Distribution under the New Sino-German DTA

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The new Double Taxation Agreement (“DTA”) between Germany and China becomes effective from January 1, 2017. One of the most concerned issues is that for profit distribution from a subsidiary in which a company holds more than 25% of its shares, the withholding tax is reduced from 10% to 5% (not applicable to companies whose legal form is KG).

In tax practice, the long-debated issue, whether the reduced withholding tax rate for the distribution of dividends will also apply for profits generated before 2017 but distributed after January 1, 2017, has been settled. Those profits generated before 2017 are entitled to the preferential tax treatment, as long as the shareholders’ resolution regarding the dividend distribution is issued after January 1, 2017. In practice, if overpaid taxes exist, taxpayers should communicate with local tax authorities timely and apply for tax refunds.

Normal procedures for profit distribution

- Login to the online tax service website to file outbound payment contract (shareholder resolution) for the profit distribution and download the “Contract Record Filing Form”;
- Apply tax treaty benefits to tax authorities with required documents (Power of Attorney, Information Reporting Form of Tax Residence Status of Non-resident Taxpayer, Reporting Form for Non-resident Taxpayer Claiming Tax Treaty Benefits, Shareholder Resolution regarding Profit Distribution, Contract Record Filing Form, Certificate of Tax Residence Status of Foreign Shareholder and the corresponding Chinese translation as well as other supporting documents as required.);
- Tax declaration and tax payment;

- 网上填写对外支付税务备案表，换取由税务机关开具的“对外支付税务备案表”；
- 携相关材料（对外支付税务备案表、利润分配股东决议、完税证明、审计报告、验资报告等）在银行将股息汇出。
- Online filing for outbound payment and receipt of filing form for outbound payment issued by tax authorities;
- Remit dividend in bank with provision of required documents (tax record filing for outbound payment, shareholder resolution, tax payment certificate, audit report, capital verification report, etc.).

值得注意的细节

- 在申请税收协定优惠时，各个地方税务局要求的资料都不尽相同。以江苏省为例，部分税务局可能要求提供非居民纳税人（股东）的详细资料以证明其符合“受益所有人”身份，包括：集团组织架构、公司章程、财务报表/审计报告、公司部门构成、雇员构成、办公场所所有权证明或租赁协议、非居民在投资管理方面的职能和风险承担情况说明、最近一次董事会会议记录等。
- 股东决议中股利分配通常约定为人民币金额，以人民币或等值人民币的外币汇出，因此，扣缴义务人在履行合同备案时，通常会以人民币作为备案币种。然而，在实践中，如果备案币种为人民币，则银行要求子公司必须以人民币形式将股利汇出至境外股东的人民币账户。若币种不一致，银行可能会驳回子公司的股利支付申请。境外股东通常不具备人民币账户来接收以人民币形式支付的股息。由于备案形式改为了网上备案，这个问题现在越发常见，因此，在准备股东决议时，应事先与银行进行沟通，以确认是否存在以上情况，并在约定人民币金额的同时也注明相应外币金额，在备案时使用外币金额。
- 另外，在实践中，也有扣缴义务人被税务机关要求，在合同备案 7 日内履行纳税义务。如果合同备案和税收优惠备案不能同时完成，而扣缴义务人必须在合同备案 7 日内履行纳税义务，则扣缴义务人先按 10% 缴纳预提所得税，待税收优惠备案完成后申请退税。由于此项要求并不常见但实践中曾经发生，建议扣缴义务人与主管税务机关事先进行明确，以避免产生由于未及时履行纳税义务导致的滞纳金。

Details to be noticed

- For the application of tax treaty benefits, the required documents by tax authorities vary from provinces. Taking Jiangsu Province for instance, some tax authorities may require detailed documents from a non-resident taxpayer (shareholder) to prove its status as “beneficiary”, including group organization structure, articles of association, financial statements/audited reports, company structure of departments and personnel, proof of ownership of premises or rental agreement, statement regarding function performed and risks borne in investment and management by shareholder, record of latest board meeting, etc.
- It is usual that the dividends to be distributed are agreed in RMB in the shareholders’ resolution and the remittance will be proceeded in RMB or in foreign currency equivalent to the agreed amount of RMB. As a result, the amount in contract record filing is generally settled in RMB. But in practice, if the record filing documents are settled in RMB, banks will require subsidiaries to remit dividends to the RMB bank accounts of their shareholders. If the currency is inconsistent, banks may reject the payment. In most case, overseas shareholders do not have a RMB account to receive the dividends in RMB. This problem has been more frequent lately due to the change to use the online registration system. Therefore, it is suggested to communicate with banks in advance to confirm whether the above issue exists while preparing shareholders’ resolution. Moreover, the amount of the profit distribution should be stated in the shareholders’ resolution in both RMB and foreign currency, whereby the foreign currency should be used in the filing.
- Furthermore, withholding taxpayers could also be requested in practice by tax authorities to declare the withholding tax within 7 days after completing the contract record filing procedures. If contract record filing and treaty benefit application cannot be completed at the same time and the withholding taxpayer must declare the withholding tax within 7 days, tax rate of 10% will be applied firstly. After the treaty benefit is approved, overpaid tax of 5% will be refunded by tax authorities. Since this requirement is not common but did actually happen in practice, it is suggested that taxpayers should communicate with competent tax authorities in advance to avoid tax penalties resulted from the delayed tax declaration.

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„We must be continuously on alert for new developments to be able to master challenges in the best possible way. With curiosity and an innovative approach, we are creating forward-looking solutions.“

Rödl & Partner

„The building of human towers requires each team member to again and again attempt something new. In this way, we are able to rise above the challenge together.“

Castellers de Barcelona



„Each and every person counts“ – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today. „Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

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