

Broadening horizons

China Newsflash

Latest News on law, tax and business in China

Issue: November 2017 · www.roedl.de/www.roedl.com

国家税务总局发布非居民企业所得税源泉扣缴新规

Vivian Yao, Rödl & Partner 中国上海

10月27日，中国国家税务总局发布了《关于非居民企业所得税源泉扣缴有关问题的公告》（国税[2017]37号，以下简称“公告”），以减少纳税人负担，简化办税流程为宗旨，对于有关非居民企业所得税源泉扣缴方面的许多问题予以了明确和修订。《公告》将于2017年12月1日正式施行。

总体而言，中国居民企业向非居民企业付汇所涉及的所得类型包括主动收入和被动收入两种。其中，对外支付主动收入属于服务贸易等项目对外支付；而被动收入属于源泉扣缴项目主要包括股息红利所得，利息所得，特许权使用费所得，财产转让所得等。此次发布的《公告》所针对的是源泉扣缴类的项目，不涉及服务贸易等项目。

《公告》主要内容涉及以下方面：

取消合同备案义务

在非居民企业源泉扣缴的操作流程中，合同备案一向是必不可少的一个步骤。以往的规定是，签订有关源泉扣缴的合同时，扣缴义务人应当自签订合同之日起30日内，在主管税务机关完成合同备案。而《公告》则将合同备案的义务取消，也取消了多次付款的合同项目应于最后一次付款前15日内办理税款清算手续的

New Regulations on Withholding Tax of Non-Resident Taxpayer

Vivian Yao, Rödl & Partner Shanghai, China

On October 27, 2017, the China State Administration of Taxation ("SAT") published the Announcement on Matters Concerning Withholding at Source of Income Tax of Non-resident Enterprises (Guoshui [2017] No. 37, hereafter referred to as the Announcement). With the aim of lessening the burden of taxpayers and streamlining taxation procedures, the Announcement has made clear and adjusted a number of problems regarding source-based income tax withholding of non-resident enterprises. The Announcement will take effect from December 1, 2017.

In general, the outbound remittance from Chinese resident enterprises to non-resident enterprises derives from two types of incomes, namely active income and passive income. The outbound remittance of active income is defined as the remittance under the category of "service trade"; meanwhile, the outbound remittance of passive income under the category of "withholding at source" mainly includes the incomes derived from dividends, interests, royalties, asset transfer income etc. It is to note that the Announcement only covers the policies regarding "withholding at source" items, while the category of "service trade" is not impacted.

The highlights of the Announcement:

Cancellation of contract filing obligation

The contract filing has always been a required step during the procedure of source-based income tax withholding of non-resident enterprises. Previously, it was regulated that the withholding agent should complete contract filing at the competent tax authority within 30 days of the signing of contract, if the contract is related to source-based withholding. In the Announcement, this obligation is cancelled, along with the regulation that tax withholding settlements for contracts

规定。此举无疑将简化办税流程，并减轻纳税人遵从义务负担。

如前所述，《公告》并不涉及服务贸易等项目的对外支付。所有在办理此类事项时，如服务贸易项目对外支付事项以及享受税收协定待遇备案事项，合同备案义务依然存在。

更改纳税义务发生时间

《公告》重新定义了取得股息、红利所得时的纳税义务发生时间。根据以往的规定，中国境内企业向非居民企业分配股息、红利等权益性投资的，应按作出利润分配决定的日期作为扣缴义务发生之日。《公告》中则规定，扣缴义务发生不再以作出利润分配决定日为纳税义务日，而改为股息、红利等权益性投资实际支付之日，大大优化了纳税人的现金流。

与此同时，《公告》保留了对于自扣缴义务之日起7日内向主管税务机关申报和解缴代扣税款的规定。这就意味着，扣缴义务人扣缴税款的时点由作出分配决定之日的7日内推迟到了实际支付股息红利之日的7日内。在以往的纳税实践中，由于作出分配决定的日期往往与实际支付的日期相差甚远，原先的纳税义务发生时点在实际操作中较难执行。而在《公告》实施后，扣缴义务人可以于实际分配股利后再缴纳税款，更符合实际商业场景，也更便于纳税人履行纳税义务。

明确财产转让所得相关规定

针对股权转让所得，《公告》明确适用差额征税的方法，同时，多次收购的同项股权被部分出售的，应计算出出售部分对应的成本，并予以扣除。

针对非居民企业采取分期收款方式取得的财产所得，其分期收取的款项可先被视为收回投资成本，仅就超出成本部分的所得纳税，减轻了纳税人现金流的压力。

修改扣缴义务人未履行义务时的处理办法

根据以往的规定，如果扣缴义务人未履行扣缴义务，非居民纳税人必须于扣缴义务人支付或到期应支付之日起

involving multiple payments should be completed within 15 days prior to making the last payment. This measure will undoubtedly simplify the taxation process and at the same time ease the compliance burden on taxpayers.

As mentioned above, the Announcement does not impact the category of "service trade". Therefore, the contract filing obligation still applies for such procedures as outbound remittance for service trade and application for double tax treaty benefit.

Change of tax obligation occurrence point

The Announcement has redefined the tax obligation occurrence point for dividends income. According to previous regulations, when Chinese resident enterprises pay returns on equity investment to non-resident enterprises such as dividends, the tax obligation occurrence point should be the date when the distributions of profits are decided. In the Announcement, it is stipulated that tax obligation occurrence point is changed to when the dividends are actually paid, improving the cash flow status of the taxpayers to a significant extent.

Meanwhile, the Announcement has reserved the regulation that the declaration and payment of tax amount should be completed within 7 days from the occurrence of tax obligation. This means that the tax payment obligation has been delayed from "within 7 days of the decision to distribute profits" to "within 7 days of the actual payment of the dividends". In practice, the previous tax obligation occurrence point is difficult to implement, as the date of the decision to distribute profits is usually not close to the date of actual payment. After the implementation of the Announcement, withholding agent is allowed to pay taxes after the actual payment of the dividends, which is more commercially acceptable and in favor of the performance of tax obligation.

Clarification on regulations concerning asset transfer

The Announcement has reiterated that balance-based method is applicable for the taxation of income from asset transfer. Meanwhile, in the context of selling part of the shares that were purchased through several separate transactions, the costs that correspond to the sold part of the shares should be calculated and deducted from the transfer income.

In terms of the income from asset transfer obtained by non-resident enterprise by installment, the installed income can at first be regarded as the recovery of investment costs. Only the part that exceeds investment costs is subject to income tax, which helps to relieve the taxpayers' burden on cash flow.

Adjustment on measures against withholding agents' failure to perform tax obligation

According to previous regulations, if a withholding agent fails to perform its withholding obligation, the non-resident taxpayer must pay income tax by itself within 7 days from the

7日内自行申报缴纳所得税，否则将承担滞纳金。而《公告》则取消了相关时限的规定，修改为税务机关可以责令非居民纳税人限期缴纳税款或者非居民纳税人可自行缴纳税款。如果非居民企业在税务机关责令前自行缴纳的，视为已按期缴纳税款，不会被加收滞纳金。显然，此修改考虑到了非居民企业的实际情况和困难，为其预留了更多申报税款的时间。

确定外汇折算规则

在实务中，以外币签署的合同如何在境内缴纳税款一直存在争议，各地税务局的口径也不尽一致。此次的《公告》对此问题予以了明确，即扣缴义务人扣缴企业所得税的，应当按照扣缴义务发生之日的人民币汇率中间价折合成人民币，计算非居民企业应纳税所得额。对于非居民企业自行申报缴纳税款以及被税务机关责令限期缴纳税款的情形，也规定了相适用的汇率。

我们的观察

《公告》中的规定基本符合中国税务机关近来简政放权，简化办税流程，减轻纳税人负担的政策倾向，较大程度降低了扣缴义务人以及非居民企业在涉及所得税源泉扣缴时的税务遵从负担，也对实务中有争议的多个问题进行了明确。除此以外，《公告》中还有以下几点值得注意的地方：

- 《公告》只适用于非居民企业所得税源泉扣缴的情形，对于其他对外支付的情形，如服务贸易项下的对外支付则不适用；
- 由于目前所得税源泉扣缴的流程基本通过金税系统完成，所以此次政策的变化必定也会对以往的网上操作方法造成影响，而系统具体会如何变化还有待观察；
- 并非《公告》中的所有条款都适用于在施行前已经发生但未处理的相关所得，其中适用的条款主要包括：股息分配的纳税义务发生时点、扣缴义务人未履行扣缴义务的情形、分期收款方式取得财产转让所得；
- 《公告》并未涉及所得税源泉扣缴符合税收协定待遇的情况，所以当需要申请税收协定待遇时，仍应按照现行的规定执行。

withholding agent's payment date or the due date for the payment, otherwise an overdue payment will be applicable. The Announcement has cancelled the time limit and state that tax authorities may order non-resident taxpayers to pay taxes within a deadline, or it can actively pay taxes by itself. Provided that a non-resident taxpayer has already paid taxes prior to the tax authority's intervention, the tax obligation will be deemed to have been fulfilled and no overdue payment liability will emerge. Apparently, this policy change has taken into account the non-resident taxpayers' obstacles and leaves more room for them to pay taxes.

Confirmation on the rules for foreign currency conversion

In practice, the taxation issues regarding contracts signed in foreign currency have always been controversial. Local tax authorities also have different interpretations. The Announcement has made clear that the withholding agents should calculate the taxable income of non-resident enterprises and convert it into CNY on the basis of the central parity rate on the date of tax obligation occurrence. In the case of non-resident taxpayer's self-declaration and tax authority setting deadline for tax payment, applicable exchange rates have also been regulated respectively.

Our Observation

The policies in the Announcement are basically in line with the trend among Chinese tax authorities to streamline administration and delegate authority, simplify taxation process and reduce the burdens on taxpayers. Specifically, it has significantly relieved the withholding agents' and non-resident taxpayers' compliance burdens when they are faced with source-based income tax withholding, while also made explicit some controversial problems in practice. Nevertheless, there are some points that worth noticing in the Announcement:

- The Announcement only applies for source-based income tax withholding of non-resident taxpayers. It does not impact other forms of outbound remittance, such as the one under the category of "service trade";
- As the source-based income tax withholding is mainly conducted online, the policy change will certainly lead to the change of online operation. It is still to be observed how the change will take place;
- Not all the stipulated terms are applicable for the incomes that have been obtained before the implementation of the Announcement. The applicable ones include: tax obligation occurrence point for dividends distribution, measures against the withholding agents' failure to fulfill tax obligations, asset transfer income by installment;
- The Announcement does not cover the situation where the source-based income tax withholding is eligible for tax benefits stipulated in double tax agreement. Therefore, when the application for treaty benefits is required, prevailing regulations should still be abided by.

《公告》的发布给予了企业较大的便利，但也依然存在着一些不确定性。我们建议公司认真评估是否存在需要进行非居民企业所得税源泉扣缴的情形，并考量正式开始实际操作的时点，以更有效地利用政策所带来的优惠。此外，尽管《公告》放宽了非居民纳税人自行缴纳及责令缴纳情形下的处理时间，但这也提醒非居民纳税人应适当了解中国的税收法规，以保证履行合规义务。

The Announcement has offered enterprises conveniences. However, some uncertainties still exist. We suggest that the enterprises carefully assess whether source-based income tax withholding issues would occur as well as the timing of operation in order to take advantage of the new policies more efficiently. Nevertheless, although the Announcement has relaxed the time limit for non-resident enterprises to conduct self-declaration and to pay taxes under tax authorities' instruction, it serves as an indication that non-resident taxpayers should pay more attention to Chinese taxation laws in order to fulfill compliance obligations.

联系人 / Contact



Vivian Yao

合伙人 / Partner

中国税务咨询师 / Tax Advisor (China)

电话 / Tel.: + 86 (21) 61 63 – 52 00

邮箱 / E-Mail: vivian.yao@roedl.pro

Broadening horizons

„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.

Imprint: China Newsflash Issue November 2017

Publisher: **Rödl & Partner China**
31/F LIZ Plaza
1600 Century Avenue
Pudong District, Shanghai

Responsible for the content:
Vivian Yao – vivian.yao@roedl.pro

Layout/Type: Elisa Guo – elisa.guo@roedl.pro

This Newsletter offers non-binding information and is intended for general information purposes only. It is not intended as legal, tax or business administration advice and cannot be relied upon as individual advice. When compiling this Newsletter and the information included herein, Rödl & Partner used every endeavour to observe due diligence as best as possible, nevertheless Rödl & Partner cannot be held liable for the correctness, up-to-date content or completeness of the presented information.

The information included herein does not relate to any specific case of an individual or a legal entity, therefore, it is advised that professional advice on individual cases is always sought. Rödl & Partner assumes no responsibility for decisions made by the reader based on this Newsletter. Should you have further questions please contact Rödl & Partner contact persons.