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Circular of the State Administration of Taxation on How to Deal with Related Issues after Cancellation of Several Previous Tax Preferential Policies on Foreign-invested Enterprises and Foreign Enterprises (Guo Shui Fa [2008] No. 23)

国家税务总局关于外商投资企业和外国企业原有若干税收优惠政策取消后有关事项处理的通知(国税发[2008]23号)

Issued By	State Administration of Taxation
Subject	Tax Preferential Policies on Foreign Enterprises
Promulgated on	March 28th 2008
Effective from	not available
Source	www.circ.gov.cn

According to the Enterprise Income Tax Law of the People's Republic of China, the Regulations on Implementing the Enterprise Income Tax Law of the People's Republic of China, the Law on the Administration of Tax Collection of the People's Republic of China, the Detailed Rules on Implementing the Law of the People's Republic of China on the Administration of Tax Collection as well as the Notice of the State Council on the Implementation of the Transitional Preferential Policies Concerning Enterprise Income Tax (Guo Fa [2007] No. 39), the issues that may be encountered by the FIEs and Foreign Enterprises after cancellation of Several Previous Tax Preferential Policies have been notified as follows,

1. Tax refund for foreign investors of FIEs having accomplished the re-investment before the end of 2007.

Before the Enterprise Income Tax Law of the People's Republic of China (hereinafter "the new tax law") has been promulgated, if a foreign investor directly re-invests the post-tax profit, namely the income obtained from profits of the FIE after taxation, into the said FIE to increase its registered capital, or invests the post-tax profit as capital to set up another FIE, 50% or more tax would be reduced or exempted. After cancellation of these tax preferential treatments in accordance with new tax law, if the foreign investor has finished the re-investment before the end of 2007 and accomplished the modification or registration in the industry and commerce administrative departments of the State, it may handle the re-investment tax refund formalities under related law and provisions. No tax refund will be made for any re-investment, which was made with the to-be-distributed profit of the year 2007 before the end of 2007.

2. Tax refund for foreign enterprises' enterprise-income-tax-exempt income from China such as interests and Loyalties with the related contract signed before the end of 2007.

As regards the income that a foreign enterprise obtains from transfer of know-how or allowance of credit to China, if the related contract was signed before the end of 2007 and met the tax exemption conditions as provided for in the Income Tax Law of the People's Republic of China on FIEs and Foreign Enterprises, the foreign enterprise may be allowed to be exempted from the income tax upon approval of the taxation organ excluding the extension or supplementary contract or expansion clauses during the valid period of the contract.

3. Back tax obligations for FIEs that enjoy a certain period of tax reduction or exemption preferential treatment with the conditions changed after 2008

As regards a FIE that enjoys such preferential treatment as tax reductions or exemptions for a specified period pursuant to the Income Tax Law of the People's Republic of China on FIEs and Foreign Enterprises, if its production and business operation nature or business period changes after 2008 and if, as a result, it no longer meets the conditions as provided for in the Income Tax Law of the People's Republic of China on FIEs and Foreign Enterprises, it should, subject to the Income Tax Law of the People's Republic of China on FIEs and Foreign Enterprises, still make up the tax reduced or exempted as of the change, which it has enjoyed during the specified period (including the transition preferential period). When a competent taxation organ settles the tax on such enterprise each year, it should check the changes of its business scope and business period, etc.

Circular of the State Administration of Foreign Exchange and the State Administration of Taxation on Relevant Issues Concerning the Pilot Implementation of Archival Filing of Taxation on External Payments for Trade in Services (No. 8 [2008] of the State Administration of Foreign Exchange)

国家外汇管理局、国家税务总局关于试行服务贸易对外支付税务备案有关问题的通知（汇发[2008]8号）

Issued By **State Administration of Taxation, State Administration of Foreign Exchange**
Subject **Foreign Exchange**
Promulgated on **February 26th 2008**
Effective from **February 26th 2008**
Source www.lawinfochina.com

China loosens restriction on external payment for service trading on a trial basis. Recently, the State Administration of Foreign Exchange and the State Administration of Taxation have promulgated the Circular on Relevant Issues Concerning the Pilot Implementation of Archival Filing of Taxation on External Payments for Trade in Services. The Circular points out, that the pilot implementation will be practiced in such six regions as Tianjin, Shanghai, Jiangsu, Sichuan, Fujian and Hunan from April 1st, 2008, namely, to implement the administrative measures of archival filing of taxation prior to the external payment for trade in services.

This pilot implementation is in order to advance the reform of foreign exchange administration on service trade, improve the state mechanism of international tax collection and further promote the development of service trade.

Application of the pilot implementation

In accordance with the Circular, when a domestic institution registered in a pilot region (hereinafter referred to as domestic institution) handles an external payment for trade in services which is equivalent to the amount of more than USD 50,000 (not including USD 50,000) at a designated foreign exchange bank in a pilot region (hereinafter referred to as bank), it shall, in advance, file for archival purpose with the competent state taxation authority. If a domestic institution handles an external payment for trade in services which is equivalent to the amount of less than USD 50,000 (including USD 50,000), it doesn't need to file for archival purpose. (

Formalities

1. The domestic institution shall, before an external payment, file for archival purpose with the competent state taxation authority within the jurisdiction with the photocopies of relevant contracts, fill out and submit the Table of Archival

Filing of Taxation on External Payment for Trade in Services for Domestic Institutions. The competent state taxation authority, after verifying the Table of Archival Filing which is filled out as without errors by checking it with the photocopies of relevant contracts, shall fill out extempore the relevant contents in the column of “to be filled out by the competent state taxation authority” in the Table of Archival Filing, draw up a serial number for the Table of Archival Filing and seal on the original and three photocopies of the Table of Archival Filing.

2. The domestic institution submit to the bank the original of the Table of Archival Filing sealed by a competent state taxation authority, in place of the vouchers of taxation as prescribed by the present provisions, and submit other vouchers according to the present provisions. The bank shall, after going through the relevant formalities of payment, seal on the original of the Table of Archival Filing.
3. The domestic institution shall, according to the provisions of laws and regulations of the state, go through formalities of declaring and paying taxes at the competent state taxation authorities and the local taxation authorities or explain on the issues of taxation within the prescribed time limit.

Archival Filing before Each Payment

As to a same contract in need of several times of payment, the domestic institution shall go through formalities of archival filing of taxation prior to each payment in foreign exchange, but only needs to submit the photocopies of contracts to the competent state taxation authority when it files for archival purpose for the first payment in foreign exchange.

In a Non-Pilot Region

As to a domestic institution registered in a non-pilot region handling external payment for trade in services at a designated foreign exchange bank in a pilot region and a domestic institution registered in a pilot region handling external payment for trade in services at a designated foreign exchange bank in a non-pilot region, the present provisions shall be followed.

**Opinions of the General Office of the State Council on
Implementing Some Policies and Measures for Accelerating
the Development of the Service Sector (No.11 [2008] of the
General Office of the State Council)**

国务院办公厅关于加快发展服务业若干政策措施的实施意见（
国办发〔2008〕11号）

Issued By	General Office of the State Council
Subject	Catering Services
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The opening of China's services sector after WTO accession not only generates great business opportunities for foreign investors but provides an impetus for the sector to further develop. Recently, the General Office of the State Council announced the opinions on Implementing Some Policies and Measures for Accelerating the Development of the Service, in order to stably promote the opening-up of service sector to the outside world, improve the quality and the level of the foreign investment, take vigorous action to introduce advanced foreign technology, talent and management experience, encourage foreign investment in service sector.

State Council indicates that The National Development and Reform Commission shall, jointly with other administrative departments, seriously implement the newly revised Catalogue of Industries for the Guidance of Foreign Investment and enlarge the foreign capital utilization scale of service sector on the basis of structural optimization and quality enhancement.

On the other side, the Ministry of Commerce shall, jointly with other administrative departments, step up the formulation of medium and long-term development plans for service trade, promote qualified regions and cities to accelerate the formation of several service outsourcing centers; arrange special funds in the central foreign trade development fund to support the construction of public platforms and the development of enterprises in the cities of service outsourcing bases. Various types of financial institutions shall grant convenience, like the convenience to the trade in goods, to the trade in services which meets the requirements, improve the foreign exchange control over service trade enterprises and guarantee the reasonable use of foreign exchange.

Further, the Ministry of Communications shall, jointly with other administrative departments, try to find the solution of the problem that the flags of convenience are hung

on the ships of Chinese nationality for business operations, and develop and expand international shipping fleets; accelerate the construction of Shanghai, Taijin and Dalian international shipping centers, and encourage them to experimentally open the service sector to the outside world and make innovation therein.

State Council continues to encourage the service enterprise to make more overseas investment. All the relevant administrative departments shall study and adopt concrete measures to create a good environment for service enterprises to “go abroad” and export services; open a “green passage” for the customs clearance of entry and exit to the export of software and outsourced services, provide assistance and simplify the formalities of entry and exit for the enterprises in the fields of Chinese medicine, Chinese food, Chinese language education, culture, sports and foreign contracted projects, etc. as well as the relevant professionals to “go abroad”, and incorporate relevant expenses into the support scope of relevant national special funds.

All the relevant administrative departments shall, on the basis of rigid risk control, actively support qualified domestic financial enterprises to carry out multinational business operations, and provide financial services for Chinese enterprises to participate in international market competition; and simultaneously encourage the enterprises of trade, consulting, legal services, intellectual property services and human resources, etc. to provide services for the service sector to “go abroad”.

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