

# CHINA LEGAL BRIEFING\* 212

MAY 31 – JUNE 06, 2010



\* CHINA LEGAL BRIEFING is a weekly collection of Chinese law related news gathered from various media and news services, edited by WENFEI ATTORNEYS-AT-LAW LTD. distributed to its clients and CHINA LEGAL BRIEFING subscribers. WENFEI ATTORNEYS-AT-LAW LTD. does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide advice.

## 1 Regulations for the Implementation of the Audit Law (as Amended 2010)

审计法实施条例（2010年修订）

## 2 Interim Measures for Tax Administration of Representative Offices of Foreign Enterprises

外国企业常驻代表机构税收管理暂行办法

## 3 Circular on Further Strengthening the Implementation of Restrictions on Qualifications of Enterprise Legal Person's Legal Representatives

关于进一步做好企业法人法定代表人任职限制规定执行工作的通知

## **Regulations for the Implementation of the Audit Law (as Amended 2010)**

审计法实施条例（2010年修订）

**【Issued by】 State Council**

**【Subject】 Audit**

**【Promulgated on】 February 11th, 2010**

**【Effective from】 May 1st, 2010**

**【Source】 <http://www.gov.cn>**

On February 11, 2010, China's State Council issued the amended Regulations for the Implementation of the Audit Law (hereinafter referred to as "the Amendment"). The Amendment took effect on May 1, 2010 and shall help to improve China's auditing system.

The Amendment requires close audit of government-funded projects in order to make sure that financial funds were properly used. Under the Amendment, audit authorities are entitled to launch special investigation into government departments or organizations on budget management or the management and utilization of state assets.

According to the Amendment, apart from state-owned companies and projects, auditors will be entitled to track and supervise fiscal funds used by other companies and projects that use public money. The Amendment also makes it clear that construction projects whose government investment exceeds 50 percent, or those with less than 50 percent government investment but with construction and operation government controlled, must accept being audited.

The limitations on publishing audit results to the public are removed. According to the Amendment the range of publicly published audits is expanding. However, listed companies must be notified of the audit results five days before the public announcement.

In addition, the Amendment also specifies the extent of auditors' power and strengthens internal supervision among audit organs of various levels. Its implementation is expected to have a great impact on the auditing authorities, the entities under audit, and other relevant parties.

## **Interim Measures for Tax Administration of Representative Offices of Foreign Enterprises**

外国企业常驻代表机构税收管理暂行办法

**【 Issued by 】 State Administration of Taxation**

**【 Subject 】 Representative Offices of Foreign Enterprises**

**【 Promulgated on 】 February 20th, 2010**

**【 Effective from 】 January 01st, 2010**

**【 Source 】 <http://www.chinatax.gov.cn>**

On February 20, 2010, China's State Administration of Taxation issued a Notice on Interim Measures for Tax Administration of Representative Offices of Foreign Enterprises (hereinafter referred to as "the Measures"). The Measures states measures governing enterprise income tax, business tax, and value added tax on representative offices of foreign enterprises. It took effect retroactively as of January 1, 2010.

According to the Measures, a representative office shall, within 30 days after obtaining the registration certificate (or the approval of the competent authority), apply for tax registration to the competent taxation authority at the place where it is located.

Article 6 of the Measures clarifies that a representative office shall truthfully declare and pay enterprise income taxes and business taxes to the competent taxation authority within 15 days upon the end of each quarter; It shall truthfully declare and pay value added tax to the competent taxation authority within the tax payment time limits prescribed in the Interim Regulation of the People's Republic of China on Value Added Tax and the Detailed Rules for the Implementation thereof.

The Measures provide that a legally registered representative office of a foreign enterprise must set up accounting books pursuant to relevant laws, regulations and rules. Furthermore, it must maintain the books based on legitimate vouchers, calculate the amount of its taxable income and tax liabilities according to the principle that function should match the risks taken, and declare enterprise income tax and business tax within 15 days upon the end of each quarter.

For representative offices of foreign enterprises which could not accurately account for incomes or costs due to poorly kept account books, tax authorities ought to verify taxable incomes in the following two ways:

### **Expenditure-Based Method**

This method applies to representative offices that can correctly calculate its expenditure on operation but not its gross income or costs and expenses.

Gross income = expenditures for current period / (1 - verified profit rate - business tax rate);

Taxable enterprise income = gross income x verified profit rate x enterprise income tax rate.

## Gross Income-based Method

This method should be applied when a representative office correctly calculates its gross income but cannot accurately compute its costs and expenses.

Taxable enterprises income = gross income x verified profit rate x enterprise income tax rates.

According to the Measures, the new deemed profit rate shall be no less than 15%.

The actual profit-based method will replace the expenditure-based method (1. above) and the gross income-based method (2. above), if a representative office can accurately keep the books and compute its taxable income and gross income correctly.

The Notice of the State Administration of Taxation on Strengthening the Administration of Tax Collection Against the Permanent Representative Offices of Foreign Enterprises (Guoshuifa [1996] No. 165), Circular of the State Taxation Administration on the Relevant Tax Administration Issues concerning Permanent Representative Offices of Foreign Enterprises (Guoshuifa [2003] No. 28) and the Notice of the State Administration of Taxation on Issues Concerning the Examination and Approval Procedures for Tax Exemption on the Establishment of Representative Offices in China by Foreign Governments (Guoshuifan [2008] No. 945) are abolished upon the Measures effective date of January 1, 2010.

Local tax authorities no longer accept applications for Enterprise Income Tax exemption by representative offices. Those offices which currently are exempted from paying corporate income tax will be reclassified.

## Circular on Further Strengthening the Implementation of Restrictions on Qualifications of Enterprise Legal Person's Legal Representatives

关于进一步做好企业法人法定代表人任职限制规定执行工作的通知

**【Issued by】** The State Administration for Industry and Commerce and Ministry of Public Security

**【Subject】** Restrictions on Qualifications of Legal Representatives

**【Promulgated on】** April 15th , 2010

**【Effective from】** April 15th , 2010

**【Source】** <http://www.saic.gov.cn>

On 15 April 2010, the State Administration for Industry and Commerce (SAIC) released “the Circular on Further Strengthening the Implementation of Restrictions on Qualifications of Enterprise Legal Person's Legal Representatives” (hereinafter referred to as “the Circular”).

The Circular provides that all industrial and commercial authorities should strictly implement the rules concerning the qualifications of legal representatives which are stipulated in “the Company Law”, “Administrative Provisions for Corporate Registration”,

“Administrative Rules for the Registration of Legal Representatives of Enterprise Legal Persons”, in order to effectively safeguard the legitimate rights and interests of the parties involved and maintain order for enterprise entry and withdrawal.

According to the circular, anyone who is under any circumstance, which does not allow him to assume the position of the legal representative according to relevant laws, can not continue to act as legal representative in the current company. Furthermore, he can not assume the position of a legal representative of any other company during the limited period. However, he could serve as the company's shareholder.

If the limited period expires, AIC shall lift the qualification restrictions in time by setting an automatic discharge procedure. If a legal representative suffers qualification restrictions because the business license of his company was revoked and the company was ordered to close, the AIC department which make the decision or help execute the decision shall lift the restrictions in time when the decision is revoked.

The Circular also urges industrial and commercial authorities at all levels to strengthen the collection and management of information related to qualification restrictions and step up the management of qualification restrictions.

In accordance with the circular, all industrial and commercial authorities should actively communicate with the relevant government departments and courts, gradually establish and perfect the information sharing mechanism, in order to collect information on criminal penalty and relatively large amount of debt.

© Wenfei, Beijing, May 2010

Check the China Legal Briefing archives on: <http://www.wenfei.com/publications.html>

Obtain your personal subscription from: [china@wenfei.com](mailto:china@wenfei.com)