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HR Support to Ensure Proper Tax Position on Cross Border Remittance

New and “relaxed” cross border remittance administration rules have taken effect from September 1 in China this year, under the implementation of the <<Notice on Issues Regarding the Tax Filings for Record on Out-bound Payments for Service Trade Items etc>> (Notice [2013] No 40, hereinafter called the “Notice”). The Notice was jointly gazetted by the China State Administration of Taxation (SAT) and State Administration of Foreign Exchange (SAFE).

Introduction

Under the previous practice, for remittance of payments over a certain amount out of China to companies or individuals for service contracts and certain other items (including earnings, income from some capital items and transfers), tax clearance or exemption certificates were required to be submitted to the bank together with other essential supporting documents at the time of the remittance. The requirement applied to both companies and individuals in China.

Nevertheless, remittance for many legitimate transactions and arrangements, including those intra-group arrangements among global multi-national corporations, had very often experienced difficulties in getting the tax clearance certificates promptly, therefore causing delays in effecting the remittance. Many of the delays were perceived to be caused by inefficiencies in the tax assessment and administration system.

The primary purposes of the Notice are said to be for facilitating such outbound remittance as well as strengthening of cross-border tax source management.

Implication

The main essence of the Notice is the abolishment of the tax clearance submission

requirement to the bank when remittance is made at the bank. Under the Notice, the tax clearance certificate requirement at the bank is now replaced by submission of a specific form evidencing that the transaction information has been filed with the appropriate State Taxation Bureau in charge. This form is to be submitted to the tax authority together with the relevant contract copy first, and a stamped duplicate copy of the form will be made available for submission to the bank. No tax information needs to be included in the new form. For subsequent remittance under the same contract, only the form needs to be submitted to the tax authorities.

In addition to the simplified process, the threshold for transactions covered is increased from USD30,000 to USD50,000. The rules and notices in relation to the previous practices have also been repealed.

The tax bureau will review the information on the form and transaction filed with them within 15 working days, and may request additional information. The review is to ensure that proper taxes have been withheld and paid, and also that the filed information agrees with the actual remittance. Potential Chinese taxes payable may include turnover taxes, income tax (including withholding tax) as well as individual income tax. Violations of withholding liabilities or underpayment of taxes may face penalties.

The new approach is not only purported to accelerate the remittance process, which is welcomed by taxpayers, but is also aimed at stepping up the tax assessment and administration of such transactions.

Monitoring of such cross border transactions as well as cooperation between the SAT and SAFE is also called to be stepped up. It is also said that sharing of tax and foreign exchange information between the SAT and the SAFE will be enhanced to batter potential foreign exchange arbitrage and tax evasion.

HR Action

As discussed in our previous issues of the HR Communique, it had been a challenging task for the HR function to help the management to ensure proper personnel tax compliance as well as discharge of payor and employer withholding obligation on cross border remittance. These payments may relate to various external and intra-group service and service related contracts, including shared services centre and secondment arrangements.

It should be noted that the Notice has not relieved the tax liabilities nor withholding obligations. Instead, administration is being reinforced to ensure tax collection on overseas tax sources. HR department should work closely with management and proactively assist in ensuring that appropriate tax positions are adopted and maintained for the covered transactions.

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