

Notice of the State Administration of Taxation on Strengthening the Administration of Enterprise Income Tax on Non-resident Enterprises' Equity Transfer Income

国家税务总局关于加强非居民企业股权转让所得企业所得税管理的通知
(国税函[2009]698号)

(No. 698 [2009] of the State Administration of Taxation)

各省、自治区、直辖市和计划单列市国家税务局、地方税务局:

The state taxation bureaus and local taxation bureaus in all provinces, autonomous regions, municipalities directly under the Central Government and cities under separate state planning:

为规范和加强非居民企业股权转让所得企业所得税管理,依据《[中华人民共和国企业所得税法](#)》及其实施条例、《[中华人民共和国税收征收管理法](#)》及其实施细则、《国家税务总局关于印发〈非居民企业所得税源泉扣缴管理暂行办法〉的通知》(国税发[2009]3号)和《财政部 国家税务总局关于企业重组业务企业所得税处理若干问题的通知》(财税〔2009〕59号),现就有关问题通知如下:

In order to regulate and strengthen the administration of enterprise income tax on non-resident enterprises' equity transfer income, we hereby notify you of the relevant issues as follows in accordance with the Enterprise Income Tax Law of the People's Republic of China and the regulation on the implementation thereof, the Law of the People's Republic of China on the Administration of Tax Collection and the detailed rules for the implementation thereof, the Notice of the State Administration of Taxation on Issuing the Interim Measures for the Administration of Source-based Withholding of Enterprise Income Tax on Non-resident Enterprises (No. 3 [2009] of the State Administration of Taxation), and the Notice of the Ministry of Finance and the State Administration of Taxation on Several Issues concerning the Enterprise Income Tax Treatment on Enterprise Reorganization (No. 59 [2009] of the Ministry of Finance):

I. The term "equity transfer income" as mentioned in this Notice refers to the income obtained from the transfer of equity (excluding the shares of Chinese resident enterprises bought and sold in the public securities market)

一、本通知所称股权转让所得是指非居民企业转让中国居民企业的股权(不包括在公开的证券市场上买入并卖出中国居民

of a Chinese resident enterprise by a non-resident enterprise.

II. Where a withholding agent fails to withhold in accordance with law or is unable to perform withholding obligations, a non-resident enterprise shall, within seven days from the date of equity transfer as stipulated in the contract or agreement (if the transferor obtains the equity transfer income in advance, the date should be the actual date when the equity transfer income is obtained), declare and pay enterprise income tax at the competent taxation authority (the taxation authority which takes charge of the collection and management of enterprise income tax on the resident enterprise) of the place where the Chinese resident enterprise whose equity is transferred is located. If a non-resident enterprise fails to make a declaration truthfully and timely, it shall be dealt with according to the relevant provisions on tax collection and management.

III. The equity transfer income refers to the difference between the equity transfer price and the equity cost price.

The equity transfer price refers to the income obtained by an equity transferor from equity transfer, which may be in forms of cash, non-monetary assets, rights and interests, etc. If an invested enterprise has undistributed profits, various funds drawn after tax, etc., the amount from the stockholder's retained earnings right that is transferred along with the equity by the transferor shall not be deducted from the equity transfer price.

The equity cost price refers to the actual amount of contributions made by an equity transferor to a Chinese resident enterprise when it invests in

企业的股票)所取得的所得。

二、扣缴义务人未依法扣缴或者无法履行扣缴义务的,非居民企业应自合同、协议约定的股权转让之日(如果转让方提前取得股权转让收入的,应自实际取得股权转让收入之日起7日内,到被转让股权的中国居民企业所在地主管税务机关(负责该居民企业所得税征管的税务机关)申报缴纳企业所得税。非居民企业未按期如实申报的,依照税收征管法有关规定处理。

三、股权转让所得是指股权转让价减除股权成本价后的差额。

股权转让价是指股权转让人就转让的股权所收取的包括现金、非货币资产或者权益等形式的金额。如被持股企业有未分配利润或税后提存的各项基金等,股权转让人随股权一并转让该股东留存收益权的金额,不得从股权转让价中扣除。

股权成本价是指股权转让人投资入股时向中国居民企业实际交付的出资额,或购买该项股权时向该股权的原转让人实际

the shares, or the actual equity transfer price paid to the original equity transferor when it bought such equity.

IV. When calculating the equity transfer income, the equity transfer price and the equity cost price shall be calculated in the currency which is used when a non-resident enterprise invests in the Chinese resident enterprise whose equity is transferred or purchases the equity from the original investor. If the same non-resident enterprise makes multiple investments, the equity transfer price and the equity cost price shall be calculated in the currency which is used in the initial investment, and the equity cost price shall be calculated by the weighted average method; if the currencies used in multiple investments are not the same, the amount shall be calculated in the currency used in the initial investment under the exchange rate on the day on which each investment is made.

V. When a foreign investor (actual controlling party) indirectly transfers the equity of a Chinese resident enterprise, if the actual tax burden in the country (region) where the overseas holding company being transferred is located is less than 12.5%, or the aforesaid country (region) does not levy income tax on its residents' overseas income, it shall, within 30 days from the date when the equity transfer contract is concluded, provide the following materials to the competent taxation authority where the Chinese resident enterprise whose equity is transferred is located:

- (1) The equity transfer contract or agreement;
- (2) The relationships between the foreign investor and the overseas holding company being

支付的股权转让金额。

四、在计算股权转让所得时，以非居民企业向被转让股权的中国居民企业投资时或向原投资方购买该股权时的币种计算股权转让价和股权成本价。如果同一非居民企业存在多次投资的，以首次投入资本时的币种计算股权转让价和股权成本价，以加权平均法计算股权成本价；多次投资时币种不一致的，则应按照每次投入资本当日的汇率换算成首次投资时的币种。

五、境外投资方（实际控制方）间接转让中国居民企业股权，如果被转让的境外控股公司所在国（地区）实际税负低于12.5%或者对其居民境外所得不征所得税的，应自股权转让合同签订之日起30日内，向被转让股权的中国居民企业所在地主管税务机关提供以下资料：

（一）股权转让合同或协议；

（二）境外投资方与其所转让的境外控股公司在资金、经营、购销等方面的关系；

（三）境外投资方所

transferred on funds, business operation, purchase and sale, etc.

(3) The conditions of the overseas holding company transferred by the foreign investor on production, business operation, personnel, finance, property, etc.

(4) The relationships between the overseas holding company transferred by the foreign investor and the Chinese resident enterprise on funds, business operation, purchase and sale, etc.

(5) The explanation on a reasonable business purpose for the foreign investor to establish the overseas holding company being transferred; and

(6) Other relevant materials required by the taxation authority.

VI. Where a foreign investor (actual controlling party) indirectly transfers the equity of a Chinese resident enterprise by abusing the organizational forms and other arrangements without any reasonable business purpose so as to avoid enterprise income tax duty, the competent taxation authority may, after reporting level by level to the State Administration of Taxation for examination, redefine the transaction of equity transfer according to the economic substance and deny the existence of the overseas holding company used for tax arrangement.

VII. Where a non-resident enterprise transfers the equity of a Chinese resident enterprise to its affiliated party and the taxable income decreases because the transfer price does not conform to the arm's length principle, the taxation authority shall be entitled to make

转让的境外控股公司的生产经营、人员、账务、财产等情况；

(四) 境外投资方所转让的境外控股公司与中国居民企业在资金、经营、购销等方面的关系；

(五) 境外投资方设立被转让的境外控股公司具有合理商业目的的说明；

(六) 税务机关要求的其他相关资料。

六、境外投资方（实际控制方）通过滥用组织形式等安排间接转让中国居民企业股权，且不具有合理的商业目的，规避企业所得税纳税义务的，主管税务机关层报税务总局审核后可以按照经济实质对该股权转让交易重新定性，否定被用作税收安排的境外控股公司的存在。

七、非居民企业向其关联方转让中国居民企业股权，其转让价格不符合独立交易原则而减少应纳税所得额的，税务机关有权按照合理方法进行调

adjustment according to reasonable methods.

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VIII. Where a foreign investor (actual controlling party) transfers the equity of several Chinese or overseas holding companies at the same time, the Chinese resident enterprise whose equity is transferred shall provide the overall transfer contract and the sub-contract involving itself to the competent taxation authority. If there is no sub-contract, the Chinese resident enterprise whose equity is transferred shall provide detailed information on all holding companies which are transferred as a whole to the competent taxation authority, and accurately divide the transfer price for domestic enterprises transferred. If the price cannot be accurately divided, the competent taxation authority shall be entitled to choose a reasonable approach to make adjustment to the transfer price.

八、境外投资方（实际控制方）同时转让境内或境外多个控股公司股权的，被转让股权的中国居民企业应将整体转让合同和涉及本企业的分部合同提供给主管税务机关。如果没有分部合同的，被转让股权的中国居民企业应向主管税务机关提供被整体转让的各个控股公司的详细资料，准确划分境内被转让企业的转让价格。如果不能准确划分的，主管税务机关有权选择合理的方法对转让价格进行调整。

IX. Where a non-resident enterprise which has obtained equity transfer income meets the conditions for special reorganization as prescribed in Document No. 59 [2009] of the Ministry of Finance and selects special taxation treatment, it shall submit archival-filing materials in writing to the competent taxation authority to prove that it meets the prescribed conditions for special reorganization and has obtained approval from a provincial taxation authority.

九、非居民企业取得股权转让所得，符合财税〔2009〕59号文件规定的特殊性重组条件并选择特殊性税务处理的，应向主管税务机关提交书面备案资料，证明其符合特殊性重组规定的条件，并经省级税务机关核准。

X. This Notice shall come into force on January 1, 2008. Please timely report any problem encountered in the implementation thereof to the State Administration of Taxation (International Taxation Department).

十、本通知自2008年1月1日起执行。执行中遇到的问题请及时报告国家税务总局（国际税务司）。

State Administration of Taxation
December 10, 2009

国家税务总局
二〇〇九年十二月十日
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