

New Filings for Special Tax Treatment for Restructuring

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In Brief

- » On 24 June, 2015, China issued the “Announcement on several issues on Corporate Income Tax Administrative Measures for Corporate Restructuring Transactions” (“Announcement 48”).
- » Announcement 48 amended the declaration requirement and subsequent procedures for special tax treatments regarding corporate restructuring.
- » Announcement 48 provides a more specific guidance for the preparation of documents when enterprises declare special tax treatments.

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In detail

Further to Circular 59¹ in 2009, Announcement 4² in 2010, and Circular 109³ in 2014, State Administration of Taxation (“SAT”) issued Announcement 48, which addresses the updated administrative measures for special tax treatment (“STT”) for restructuring. A new declaration form and appendix are introduced and a second system will be established by tax authority to trace restructuring transactions.

The key points of Announcement 48 are summarized below:

» Clarification on declaration party and timing on STT

Circular 59 and Announcement 4 used to require STT filing in the annual filing to its tax authorities in charge, which then raise it to the provincial tax authorities for confirmation.

Announcement 48 resets declaration approach of STT. The leading party in the restructuring shall conduct the record procedure first and other parties involved shall declare then based on the approved declaration of the leading party.

» Progress control on progressive transactions

Circular 59 stated that when an enterprise has carried out assets and equity transactions progressively within 12 consecutive months before and after restructuring, the said transactions shall be treated as a whole in accordance with the principle of substance over form. Announcement 48 requires the explanation on whether there exists other assets and equity transactions related to the declared restructuring and if applicable, whether it is actually a progressive restructuring or separately treated as a corporate restructuring.

Furthermore, in previous circulars, SAT focused more on checking whether STT is applicable. Announcement 48 for the first time raises the post-transaction reporting requirement, so as to monitor the whole process of the restructuring. It requires enterprises to explain regarding the earnings or loss realized in case they transfer or dispose of the restructured assets/equity in the years after the restructuring. It can be deduced that in case the transfer or disposal leads to a failure in fulfillment of STT requirement, the tax authority will revoke STT and pursue tax accordingly.

» New declaration form and documents requirement

The new form acquires a full reporting of restructuring plan as summarized below:

- **Separate forms:** If restructuring involves more than one transaction types, STT shall be addressed separately and different documents are required per appendix 2 of Announcement 48.
- **Required documentation:** A detailed explanation on restructuring plan, taxable income and bona fide business purpose, whether progressive transactions in restructuring, timing difference of tax base and book value under taxation and accounting principles respectively, etc.

WTS observation

Enterprises will face more challenges in documentation requirements and uncertainties on STT. Better preparation and an upfront assessment is recommended.

1 Caishui [2009] No.59 issued on 30 April 2009

2 [2010] No. 4 issued on 26 July 2010

3 Caishui [2014] No.109 issued on 25 December 2014

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