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Tax treaty beneficiary held liable for self-assessment

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In brief

- » Chinese State Administration of Taxation (“SAT”) promulgated the Announcement of the State Administrative Measures on Entitlement of Non-resident Taxpayers to Treatment under Tax Treaties (“Measures”) on 11 September 2015, effective from 1 November 2015.
- » The Measures introduces a new mechanism of self-assessment on the eligibility for tax treaty benefits (tax reduction or exemption).
- » The Measures has removed the pre-approval process or record-filing acknowledgement from Chinese tax authorities.

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In detail

1. Self-assessment mechanism

- Non-resident taxpayers are required to perform self-assessment on their eligibility for tax treaty benefits when filing their tax returns.
- In the case of tax withholding, the withholding agents in China are required to check whether tax treaty benefits can apply.
- Non-resident taxpayers and their withholding agents (if applicable) are required to submit a considerable amount of information in the prescribed forms and supporting documents to the Chinese tax authorities to substantiate the tax residency, types of income, and qualification for the tax treaty benefits.

2. Follow-up administration

- Chinese tax authorities are empowered to request non-resident taxpayers or their withholding agents to provide supplementary materials in the follow-up administration if documentation submitted is viewed as insufficient to support the entitlement to tax treaty benefits, or tax evasion or tax avoidance is suspected.
- General anti-avoidance investigation procedures may be invoked in accordance with tax treaty provisions or domestic regulations during the follow-up administration.

WTS observation

- » The Measures provides more than convenience and efficiency to enjoy tax treaty benefits. Non-resident taxpayers and their tax withholding agents are now held officially liable for their own assessment result.

To mitigate the relevant tax risks of being challenged on treaty shopping or treaty abuse, non-resident taxpayers or their withholding agents should ensure more intensive compliance review, proper documentation and preferably early communication with tax authorities in charge, where possible.

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