

Simplification of outbound payments

Contacts

Shanghai

Hongxiang Ma
Partner
hongxiang.ma@worldtaxservice.cn
+86 21 5047 8665

Hong Kong

Claus Schuermann
Partner
claus.schuermann@wts.com.hk
+852 2528 1229

Germany

Karsten Gnuschke
Partner
karsten.gnuschke@wts.de
+49 89 28646 139

Key points

- » No tax certificate for outbound payment under so-called “service trade” and other regular items shall be necessary anymore.
- » A new tax record system shall be implemented starting in September 2013.
- » The threshold regarding the necessity of taxation related documents for external payment has been increased to more than 50,000 USD.
- » Restrictions of the State Administration of Foreign Exchange on purchasing and payment of foreign exchange under service trade shall be released.

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1) Background

On July 9th 2013, the State Administration of Taxation (“SAT”) and the State Administration of Foreign Exchange (“SAFE”) jointly issued Circular 40¹. Only a few days later, on July 18th, 2013 the SAFE issued Circular 30². Both Circulars shall come into force on September 1st, 2013.

Circular 40 and Circular 30 streamline a series of previous rules regarding outbound payments. Furthermore, the Circulars cancel the requirement of obtaining a “Tax Certificate” and the approval system for purchase and payment of foreign exchange, and further simplify the related formalities.

2) Salient Points of Circular 40

» Requirement of tax record filing instead of obtaining a tax certificate

Up to now the requirements are as follows:

According to Hui Fa [2008] No.64, where a domestic entity or an individual intends to pay more than the equivalent of 30,000 USD to overseas recipients under the following trade in services, incomes, current transfers and capital account items, it shall apply to the competent tax authorities for Tax Certificates for External Payment (“Tax Certificates”):

- The income from trade in services obtained in China by overseas entities or individuals;
- Remuneration obtained from China by foreign individuals, earnings obtained from China by foreign institutions or individuals in dividends, bonuses, profits, direct debt interest, guarantee and donation, compensation, tax, accidental income etc. as well as current transfer income;
- Financial lease rental, transfer of real estate income, equity transfer income and other income obtained from China by foreign institutions or individuals.

According to the Circular 40, in case domestic entities or individuals are going to pay more than the equivalent of 50,000 USD to overseas recipients (from September 1st, 2013), entities or individuals shall register for tax record with the local in-charge State Tax Bureau when the following income is obtained from China:

- Service income, which is obtained from China by foreign entities and individuals from services including transport, travel, communication, construction installation and labor service, insurance service, computer and information service, exclusive right use and franchise, sports, culture and entertainment services, other commercial service, government service etc.;
- Remuneration obtained from China by foreign individuals, earnings obtained from China by foreign institutions or individuals in dividends, bonuses, profits, direct debt interest, guarantee and donation, compensation, tax, accidental income etc. as well as current transfer income;
- Financial lease rental, transfer of real estate income, equity transfer income and other income obtained from China by foreign institutions or individuals.

¹ Announcement on Relevant Issues concerning Tax Records Filing for Outbound Payment under Service Trade Items and Others 2013 No. 40

² Circular of the State Administration of Foreign Exchange on Printing and Distributing Laws and Regulations for Foreign Exchange 2013 No. 30

In case of reinvestments by a foreign investor, using its income from direct investment in China for a reinvestment with one amount exceeding 50,000 USD in China, the investor shall proceed with the tax registration for record procedures.

» **Simplified tax record procedure**

Under Circular 40, tax records may only be filed with the in-charge State Tax Bureau. In case the in-charge tax authority shall only be the Local Tax Bureau, tax records shall only be filed with the same level local State Tax Bureau.

Meanwhile the required documents for the tax record are simplified. The following documentation is necessary in general:

- Copies of relevant contracts or transaction documents with stamp;
- Tax record filing form for outbound payment under service trade items and others.

For several outbound payments based on the same contract, the filing party shall go through tax record filing before each outbound payment. However, the above-mentioned copies of relevant contracts or transaction documents are only required for the first tax record filing.

In addition, according to Circular 40, the in-charge tax authority shall stamp and return the tax record form to the enterprise without instantly reviewing the tax payment status. After the tax formalities, the relevant party could apply to the bank for the payment overseas.

» **Post examination**

Under Circular 40, the in-charge State Tax Bureau shall review the submitted documents within 15 working days after receiving the above-mentioned tax record documents. The State Tax Bureau shall inter alia review the following points:

- Whether the project recorded is consistent with the project with relation to the outbound payment;
- Whether all related taxes for the outbound payment have been duly paid according to the relevant laws and regulations;
- Whether the tax preferential treatment enjoyed by the recorded project meets the provisions of relevant tax laws and regulations as well as relevant tax treaties.

Provided the related taxes have not been duly paid during the tax authority's reviewing procedure, the taxpayer/withholding agent shall be chased for the unpaid/underpaid taxes as well as for related penalties.

3) **Salient Points of Circular 30**

» **Release on examination and approval of SAFE**

According to Circular 30, the approval system for the purchase of and payment in foreign exchange under service trade shall be loosened, so that relevant domestic entities or individuals may directly go through the formalities of all purchase and payment of foreign exchange, without necessity of additional approval by the SAFE.

» **Simplified bank review**

For external payments of a maximum amount of 50,000 USD, the bank may not review the relevant transaction documents in principle, unless for foreign exchange receipts and payments for which the payment nature is not clear. For external payments exceeding the equivalent of 50,000 USD, the review requirements are simplified. We have selected certain payments, for which new document requirements are applicable as follows:

- Proprietary right fees or royalty fees:
 - ✓ Contracts (agreements); and
 - ✓ Invoices (payment notices).

- Profits, dividends and bonuses:
 - ✓ Audit report on profits, dividends and bonuses of the year issued by an accounting firm; and
 - ✓ Resolution of the board on distribution of profits, dividends and bonuses; and
 - ✓ Capital verification report.

- Technology import:
 - ✓ Contracts (agreements); and
 - ✓ Invoices (payment notices).

In case the imported technology falls under the scope of restricted technology, domestic entities or individuals shall additionally provide the technology import license issued by the related commerce authority.

4) Conclusion

Generally, both Circular 40 and Circular 30 release the control on outbound payments and bring more convenience to relevant enterprises and individuals making such payments. According to the new rules, from September 2013 onward, the tax certificate is not required for foreign exchange payments anymore, but enterprises can apply to the bank for the relevant payment transfer by submitting a tax record form and other necessary documents. Meanwhile, the threshold regarding the necessity of taxation related documents for external payment has been increased from 30,000 USD to 50,000.

However, we would like to draw attention to the fact that the new requirement of foreign exchange payment does not waive the tax liability of the respective taxpayers/withholding agents. Pursuant to Circular 40, the competent tax bureau shall review the tax payment status within 15 days after receiving the tax record for foreign exchange payment. Provided the related taxes have not been duly paid during the tax authority's reviewing procedure, the taxpayer/withholding agent shall still be liable for the unpaid/underpaid taxes and, if late payment applies, related penalties.

Author

WTS Consulting (Shanghai) Ltd.

Unit 031, 29F, Hang Seng Bank Tower
1000 Lujiazui Ring Road
Pudong New Area,
Shanghai 200120 PRC
Tel: +86 21 5047 8665
Fax: +86 21 3882 1211
www.wtscn.cn
info@worldtaxservice.cn

Contact

Shanghai

Hongxiang Ma
Partner
hongxiang.ma@worldtaxservice.cn
+86 21 5047 8665

Hong Kong

Claus Schuermann
Partner
claus.schuermann@wts.com.hk
+ 852 2528 1229

Germany

Karsten Gnuschke
Partner
karsten.gnuschke@wts.de
+ 49 89 28646 139

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