Representative Officeâ€™s Taxation Issues in China

Description

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The most direct way to indulge into the China market is to set up local presence. Various forms of foreign investment vehicles are available for different business objectives and operations, including, among other things, equity joint ventures, cooperative joint ventures , or wholly foreign owned entities, representative offices (â€œR.O.â€•), technical assistance, technology transfer arrangements, and contracted production (e.g., production under a licensing agreement or by way of a processing and assembly), and foreign-invested shareholding company. Initially many foreign companies often would like to set tp a representative office in China due to R.O.â€™s obvious advantages such as no limitation on registered capital, short-term to set up, and simplicity of establishment.

After foreign investor choose R.O. as ultimately appropriate vehicle to establish a presence in China, the primary concern is the taxation issue. Except to the individual Income Tax, there are two kinds of tax which shall be paid by R.O., i.e. Business Tax (â€œ**BT**â€•) and Income Tax (â€œ**IT**â€•). The following discussion outlines the base of BT and I T.

There are four tax bases in China for R.O. : tax exemption, cost-plus, actual income, and deemed income.

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Main Laws and Regulations

The Main PRC laws and regulations with respect to R.O.â€™s tax issues are as follows:

â€¢ Notice with respect to the Determination of Collection Method on Representative Office. (Promulgated by the Ministry of Finance and effective on 3 March 1986.)

â€¢ Detailed Rules for the Implementation of the Interim Regulations of the P.R.C on Business Tax. (Promulgated by the Ministry of Finance and effective on 25 December, 1993.)

â€¢ Provisional Regulations of the P.R.C on Business Tax. (Promulgated by the State Council and effective on 1 January 1994.)

â€¢ Notice with respect to Reinforcement on Tax Collection issues on Representative Office. (Promulgated by the State Administration of Taxation and effective on 13 September 1996.)

â€¢ Notice with respect to Reinforcement on Tax Collection Cooperation on Representative Office. (Promulgated by the State Administration of Taxation and effective on 19 April 1996.)

â€¢ Notice with respect to Tax Inspection on Representative Office. (Promulgated by the State Administration of Taxation and effective on 12 June 1996.)

â€¢ Notice with respect to Relevantly Detailed Tax Issues on Representative Office. (Promulgated by the State Administration of Taxation and effective on 2 January 1997.)

â€¢ Circular of the State Taxation Administration on the Relevant Tax Administration Issues concerning Permanent Representative Offices of Foreign Enterprises. (Promulgated by the State Administration of Taxation and effective on 1 July 2003.)

In addition, although Interim Provision of the Ministry of Finance of the P.R.C. for collection of Consolidated Industrial and Commercial Tax and Income Tax From Resident Representative Office of Foreign Enterprises (Promulgated by the Ministry of Finance and effective on 15 May 1985) had been repealed and replaced by Provisional Regulations of the P.R.C on Business Tax, but the method of calculation of the base of IT remains effective.

Tax Exemption

Most of R.O.s are required to pay tax in China, do tax filing with local tax bureau on a monthly or quarterly basis, and submit annual audit report. Some R.O.s, however, are still can benefit the tax exemption.

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In accordance with Circular of the State Taxation Administration on the Relevant Tax Administration Issues concerning Permanent Representative Offices of Foreign Enterprises, R.O.s of foreign governmental agencies, non-profit organizations, and agencies of certain international non-governmental organizations are still not taxable. The foregoing R.O.s (or R.Oâ€™s headquarters or superior authority)shall apply for such tax exemption with the local tax authority, and provide a certificate approved and authenticated by tax authorities in their home countries. After the examination and approval by the local tax authority, R.O.â€™s tax exemption application will be submitted to the State Administration of Taxation for final approval.

R.O.s that only engage in the preparatory and supplementary activities, such as gathering information about Chinese market, providing business information and liaison solely for the purpose of R.O.â€™s headquartersâ€™ manufacture and self-made product sales are also tax-exempt, which is provided by Notice with respect to Reinforcement on Tax Collection issues on Representative Office.

However, all the above mentioned R.O.s have obligation to report to the tax bureau about their annual operation within one month at the end of every year.

cost-plus

The following R.O.s and activities they engage in are applicable to cost-plus tax method.

1. R.O.s whose headquarters are trading companies, where these kind of R.O.s engage in commodity agent and other trade related activities, are based on cost-plus tax method;

2. R.O.s whose headquarters are advertising companies, where these kind of R.O.s engage in undertaking or agent advertising business, are based on cost-plus tax method;

3. R.O.s whose headquarters are tourism companies, where these kind of R.O.s engage in providing tourism service (such as apply for Visa, reservation of flight ticket, fee payment, tourism guild, arrangement of food and accommodation), are based on cost-plus tax method.

Practically speaking, all the above activities are carried out upon the requirements of R.O.â€™s headquarters instead of directly concluding contracts or agreements with the served ones. Actually the income from the above activities is usually collected by R.O.â€™s headquarters. Therefore, there is no income in these R.O.s. As a result, cost-plus tax method is applicable.

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