

## Highlights in the 2008 PRC Enterprise Income Tax Law 2008 年企業所得稅法一些亮點

Q: When will the PRC Enterprise Income Tax Law (the EIT Law) come into force?

A: The EIT Law will come into force on 1<sup>st</sup> January 2008.

問：“中華人民共和國企業所得稅法”在何時生效？

答：新稅法將在 2008 年 1 月 1 日生效。

Q: Is there any change in the scope of income tax?

A: The old PRC Tax Law for Foreign Investment Enterprise and Foreign Enterprise (the FIE tax law) set out two conditions for the determination of tax residence: (i) place of incorporation and (ii) place of management and control. Tax residents are subject to tax on worldwide income. Tax residents shall pay tax on worldwide income. The EIT Law retains the two conditions in the FIE tax law, but the place of incorporation and place of management and control is changed from “and” to “or”. Article 2 and Article 3 of the EIT Law provide that the resident enterprise shall be the one that is incorporated in China OR if it is incorporated outside China, of which the effective place of management is located within China. All resident enterprises shall be taxed on worldwide income.

問：新稅法在徵收範圍方面有什麼變化？

答：現行的外商投資企業和外國企業所得稅法，在確定居民企業身份的時候，採用兩個標準：一是註冊地標準，二是管理機構所在地標準。舊稅法規定居民企業應當按境內外所得繳納所得稅。新稅法也採用上述兩個標準，但是新稅法的第 2 條和第 3 條規定，在確定居民企業身份的時候，只要符合兩個標準之中的其中一個就成為居民企業，居民企業應該就其境內境外所得繳納所得稅。

Q: What is the implication of the change in tax rules?

A: The scope of tax net will be larger than before. The impact of the change in the EIT Law will affect foreign enterprises either that have registered a fixed place of business in China, or that have not officially registered but effectively maintained a place of business in China. Previously these types of taxpayer are only subject to tax on PRC-source income. Under the new EIT Law if the management and control is located in China, the foreign enterprise will be liable to tax on worldwide income. One example of this is the representative office that carries out management and control over business activities across border. Most of these representative offices are set up by Hong Kong companies to take advantage of lower labor and land costs in the Mainland of China.

問：上述稅法的改動有什麼影響？

答：新稅法擴大了原來的徵收管轄範圍。稅法改動對在中國境內已註冊及設立了固定經營場所的外國公司，或者在中國境內未有正式註冊但設立了固定經營場所的外國公司，都有直接影響。在之前，該類外國公司只需要就來源於境內收入交納所得稅。新稅法規定倘若外國公司或企業的管理控制中心設在中國境內，就要按其境內外收入徵收所得稅。外國公司的辦事處在境內管理或控制其總機構的生產經營業務就是例子之一。很多香港公司為了減省人力和土地成本，在大陸境內設立了代表處跨境管理其總機構的生產經營業務。

Previously non-PRC companies will not be exposed to PRC income tax on worldwide income since it is not incorporated in China. The EIT Law will change the status quo as from 2008. It not only takes into consideration the place of incorporation, but also takes into consideration the location of the management control in China. A non-PRC company may be subject to tax on worldwide income under the EIT Law.

在之前，境外註冊的公司因為註冊地不在中國，不發生交納所得稅的義務。新稅法實施後將會改變以往的情況。它不限於看公司註冊地，也同時看該公司的管理和控制中心的所在地是在境內還是境外。根據新稅法，中國政府可以對境外註冊的公司按境內外收入徵收所得稅。

Tax rules 稅法規定	Old tax law 舊稅法	EIT Law 新稅法
1. Country of incorporation 1. 註冊地（國） 2. Management control 2. 管理與控制	Both rule 1 and 2 第一項及第二項	Either rule 1 or rule 2 第一項或第二項

Q: Are there any change in the income tax rate?

A: The EIT Law will impose tax on FIE at a rate of 25%. Non-resident taxpayers that earn PRC-source income will be taxed at 20%, subject to the reduction under PRC tax treaties in force.

問：新稅法有沒有改變稅率？

答：居民企業的所得稅率是 25%。非居民納稅人就來源於境內所得按 20%納稅，如果雙邊稅收協定有減免規定的，按生效的雙邊稅收協定執行。

Q: Is there any change to the tax rules that impose tax on dividend income?

A: Yes, the dividend distributed by FIE will be subject to tax at 20%. If there is a tax treaty concluded between China and the country of which the investor is a tax resident, the tax rate will be reduced to 10% in most cases (Hong Kong company is only taxed at 5%).

問：新稅法有沒有改變對股息的徵稅規定？

答：有的。從外商投資企業派發的股息或紅利等取得的投資性收益按 20%徵稅。如果雙邊稅收協定有減免規定的而且投資者也是協定國居民的話，按 10%執行（香港公司只需要按 5%徵收所得稅）。

Q: How is the tax computed on dividend, interest and royalty that is distributed by the FIE to the foreign investors situated outside China?

A: The distribution of dividend, interest and royalty is subject to income tax on a gross basis (without deduction for any expenses incurred in connection with the earning of that income). The tax is withheld at source at the time of payment.

問：如何計算從外商投資企業取得的股息、利息、和特許權使用費的所得稅？

答：按取得的總額計算（不扣減因為要取得有關收入而需要發生的費用）。支付單位在支付時候代扣代繳。

Q: What are the tax rates that apply to the payments of dividend, interest and royalty?

A: The withholding income tax rate is at 20%, subject to the unilateral reduction by the Chinese government and the applicable tax treaties. For Hong Kong holding companies that receive payments from PRC WFOE the following tax rate shall apply:

問：股息、利息、和特許權使用費的所得稅率是多少？

答：預提稅稅率是 20%。但是中國政府可單方面將稅率降低。從中國大陸支付股息、利息、和特許權使用費給香港控股公司，適用的稅率如下：

Up to 1<sup>st</sup> Jan 2007 2007 年 1 月 1 日前

	Nature of Payment 支付性質	WIT 預提所得稅	BT 營業稅	Remarks 注
1	Dividend 股息	Exempted 免稅	Not applicable 不適用	
2	Interest 利息	10%	Not applicable 不適用	
3	Royalty 特許權使用費	10%	5%	
4	Service charges 服務費	10%	5%	

The PRC Income Tax Law for Foreign Invested Enterprises and Foreign Enterprises (the PRC IT Law for FIE and FE) exempts the income tax on the distribution of dividends to the holding company situated outside China.

《外商投資企業和外國企業所得稅法》對三資企業派發的股息免徵所得稅。

1<sup>st</sup> Jan 2007 to 31<sup>st</sup> Dec 2007 2007 年 1 月 1 日至 2007 年 12 月 31 日

The DTA between HKSAR government and the Mainland government came into force on 1<sup>st</sup> January 2007. Between 1<sup>st</sup> Jan 2007 and 31<sup>st</sup> Dec 2007, the repatriation of dividend from China to Hong Kong is exempted from WIT. But the repatriation of royalty and interest will be liable to WIT at 7% because of the operation of the DTA between HKSAR and Mainland China.

香港與中國大陸訂立的雙邊稅收安排在 2007 年 1 月 1 日生效。在 2007 年 1 月 1 日至 2007 年 12 月 31 日期間，股息依然免稅。但是，因為有稅收安排的規定，利息和特許權使用費要只需要按 7% 交稅

	Nature of Payment 支付性質	WIT 預提所得稅	BT 營業稅	Remarks 注
1	Dividend 股息	Exempted 免稅	Not applicable 不適用	
2	Interest 利息	7%	Not applicable 不適用	

3	Royalty 特許權使用費	7%	5%	
4	Service charges 服務費	10%	5%	

1<sup>st</sup> Jan 2008 and onwards 在 2008 年 11 日之後

The PRC Enterprise Income Tax Law (the EIT Law) will take effect on 1<sup>st</sup> January 2008. The PRC IT Law for FIE and FE will be repealed on the same date. The EIT Law removes the income tax exemption on the repatriation of dividend. However, the operation of the DTA can reduce the withholding income tax (the WIT) on the repatriation of dividends.

企業所得稅法在 2008 年 1 月 1 日取代舊稅法。新稅法取消了股息免稅的規定。但是，雙邊稅收安排可降低股息的預提稅。

	Nature of Payment 支付性質	WIT 預提稅	BT 營業稅	Remarks 注
1	Dividend 股息	5%	Not applicable 不適用	
2	Interest 利息	7%	Not applicable 不適用	
3	Royalty 特許權使用費	7%	5%	
4	Service charges 服務費	10%	5%	

### Computations

計算方法

Suppose that the WFOE in Shanghai is to pay a software licensing fee of 100 to HK Company, the computation of withholding income tax and business tax will be as follows (assuming that the WIT rate is 10%, and business tax rate is 5%.):

假設一上海外資企業支付軟體費 100 給一間香港公司。預提稅、營業稅的計算方式如下（假設預提稅率和營業稅率分別是 10%和 5%）：

Business Tax 營業稅:  $100 \times 5\% = 5$

Withholding Income Tax 預提稅:  $(100 - 5) \times 10\% = 9.5$

Total tax will be 稅款總額 = (BT 營業稅+ IT 預提稅) =  $5 + 9.5 = 14.5$

Note that the amount of business tax is deductible from the gross payment when the WFOE computes the income tax.

營業稅可以從應納稅所得額中扣減。

Q: Our company has used BVI Companies as the investors for the FIE. Will this legal structure be affected?

A: It will be affected adversely under the EIT Law. BVI is not a sovereign state, and it has not entered into any tax treaty with China. Therefore, the investor will be subject to 20% (that may be unilaterally reduced by China to 10%) withholding income tax on dividends to be received from subsidiaries in China.

問：我們用英屬處女島 BVI 公司作為外商獨資企業的投資者。新稅法是否對這公司架構有影響？

答：新稅法對 BVI 公司有不利影響。英屬處女島不是主權國，它不可以和大陸簽訂雙邊稅收協定。中國稅務當局在外商獨資企業派發股息的時候會向英屬處女島公司徵收 20%的預提稅（根據先行做法也可能單方面將稅率降低到 10%）。

Q: What steps should be taken to reduce the withholding income tax rate?

A: Your Company should effect a re-organization by replacing the BVI Company with a HK company (or other company of a PRC treaty country) as the holding company. The re-organization will be exempted from income tax under the tax law before 2007. It is uncertain whether the tax exemption will be available after the EIT comes into force on 1<sup>st</sup> January 2008. One has to wait for the detailed implementation regulations as promulgated by the State Council or the interpretations as issued by the Ministry of Finance or State Administration of Taxation.

Before re-structure: Holding company	→ BVI Co	→ WFOE
After re-structure: Holding company	→ HK Co	→ WFOE

問：請問有什麼措施可以減低預提所得稅？

答：你們的集團可以進行股份重組，用香港公司（或者其他在中國稅收協定國註冊的公司）代替 BVI 公司作為直接控股公司。如果股份重組前後的最終的控制權沒有變化，按照 2007 年 12 月 31 日前的規定，該重組可以免稅，新稅法對 2008 年 1 月 1 日之後的重組是否可以申請免稅沒有明確規定，還要看之後國務院頒佈的實施細則或者財政部稅務總局的解釋。

重組前：最終控股公司→ BVI 公司→ 獨資企業  
重組後：最終控股公司→ 香港公司→ 獨資企業

Q: What about the tax on disposal of landed properties by non-residents?

A: The tax rules for the disposal of assets are different from what we have mentioned above. The EIT Law permits the deduction of the cost of the asset and other tax expenses from the sales proceeds. The amount that represents the excess of sales proceeds over the cost of the asset is subject to income tax. The payer inside China has the legal obligation to withhold the income tax before paying the seller situated outside China.

問：外國投資者在中國境內出讓資產或者房產如何納稅？

答：出讓資產或者房產納稅規定與取得投資收益的納稅規定不一樣。新稅法允許在轉讓收入總額中減去投資成本和稅費，然後按照兩者的差額納稅。境內的買方在支付購買款價前需要依照法律規定，代扣代繳預提所得稅。