

Advice on Paying the China Business Tax for U.S. Multinational Law Firms with Clients in the People's Republic of China

In July, PwC issued a Law Firm Services memo discussing requirements issued by the PRC for paying Business Tax ("BT") and Corporate Income Tax ("CIT") in China. It has since come to our attention that many firms with an office in China have encountered double taxation with respect to these taxes. For example, the BT has been paid by the Firm's China office, while their clients in China have also withheld BT from payments on invoices made to U.S. or other non-China offices.

In light of this problem, PwC China has provided further advice for complying with the new BT and CIT requirements whilst, hopefully, avoiding double taxation.

The BT contains an exemption. Revenue related to services provided outside China in 2009 under a multi-year engagement letter is exempt from the BT in 2009 if the engagement letter was signed in 2008 or earlier, and was still in effect after December 31, 2008. However, for engagement letters signed in 2009 or later, this BT exemption does not apply.

If the client in China has withheld BT and made a payment to the Chinese tax authorities after the U.S. head office has made a BT payment on the same contract, it is possible for the firm to obtain a tax refund for any BT overpayment amounts. The China tax authorities should refund any overpayment once it has been disclosed. The taxpayer has three years from the date of tax payment to request a refund. The China tax authorities have indicated they would prefer to offset the overpayments against future taxes payable. In this case, U.S. firms should discuss with their Chinese clients, as well as the relevant tax authorities, the possibility of crediting these tax overpayments against future taxes payable. It should also be noted that this method can potentially extend an engagement into future tax years. Since the Chinese tax authorities have not yet stated what the carry forward period will be for offsetting future taxes with past tax overpayments, firms should retain all relevant documents for potential future inspections.

The best way to decrease the possibility of double taxation under the BT going forward is to have separate engagement letters and invoices issued by the firm's U.S. or non-China office, and its China office to their Chinese clients. By keeping the engagements and invoices separate, the chance that double taxation will occur is reduced.

PricewaterhouseCoopers's worldwide team of professionals has extensive experience assisting our U.S. law firm clients with foreign tax issues. If we can assist your firm, please contact Stanley Kolodziejczak at 646-471-3160, Gregg Sincoff at 646-471-1335, Paul Bullock at (646) 471-4690, or Nancy Regan at 646-471-6104.

Solicitation

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