

**Circular by State Administration of Taxation on Relevant Issues Concerning the
Strengthening of the Collection and Management of Taxes on Permanent Representative
Office of Foreign Enterprises**
GuoShuiFa [1996] No. 165

The following issues are hereby notified in order to further strengthen the taxation administration on the permanent representative offices of foreign enterprises (referred to as "representative offices" hereinafter), and distinguish the scope of tax and tax break, based on "Provisional Regulations of the People's Republic of China on Business Tax"(referred to as "provisional regulations on business tax" hereinafter) and its implementing procedures, "Law of the People's Republic of China on the Income Tax of Foreign-funded Enterprises and Foreign Enterprises (referred to as "enterprise income tax law" hereinafter)and its implementing procedures, and "The Provisional Stipulations of the Ministry of Finance of the People' Republic of China on the Levying of Unified Industrial and Commercial Tax and Income Tax on the Permanent Representative Office of Foreign Enterprise"(referred to as "provisional stipulation" hereinafter):

I. On the scope of tax and tax break on the representative office

1. According to the second article of the provisional stipulations, the business activities of representative office that are subject to tax include:

- (1) Commodity agent and other trade related activities undertaken by representative offices set up by various trading companies;
- (2) All kinds of service provided by representative offices set up by various consultancy service enterprises, such as trade, law, tax and accounting;
- (3) All kinds of service provided by representative office set up by groups or holding companies to companies within the group;
- (4) The undertaking or agent advertising business taken by representative offices set up by advertising companies;
- (5) Service provided to tourists by representative offices set up by tourism companies (such as visa processing, fee payment, air ticket booking, touring guide, food and accommodation);
- (6) Investment consultancy or other consultancy service undertaken by representative offices set up by banking institutions;
- (7) Transportation service provided by representative offices set up by transportation enterprises;
- (8) Other business activities provided by representative offices that are subject to tax;

2. According to the stipulation of the first article of the provisional regulations, the business activities undertaken by representative offices that are not subject to tax refer to:

- (1) Representative offices only undertake the preparatory and supplementary activities, such as gathering information on Chinese market, providing business information and contacts, on the production and sales business for their headquarters;
- (2) Representative offices set up by foreign governments, non-profit organizations and

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non-governmental organizations undertake business other than those stipulated in the second article of the provisional stipulations and under the first article of (I) heading of this circular. If tax-free treatment is necessary to be given to the representative offices set up by above-mentioned organizations, they (or their headquarters and superior departments) should extend an application, and provide a certificate approved by taxation authorities in their home countries to certify their status as representative office. After the examination and verification by the local taxation departments, the application should be submitted to the State Taxation Administration for approval.

II. On the way of levying tax on representative offices

The profit resulted from the business activities undertaken by the representative offices should be subject to business tax and enterprise income tax according to the provisional regulations on business tax and the enterprise income tax law. As to the calculating methods of tax-levying, actual practice can follow the three methods stipulated in the "Circular by the Taxation Administration of the Ministry of Finance on the certification of methods of tax-levying on the permanent representative offices." As to the representative offices which undertake activities under the first article of (I) heading of this circular, if falling into certain categories, the local taxation departments, according to the stipulations from the 15th article of the implementing procedures of provisional regulations on business tax and the 16th article of the implementing procedures of enterprise income tax law, could suggest the application of converting expenditures into profits and levying tax based on the conversion; besides, the local taxation departments should following the procedure stipulated in the third article of "Circular by the State Taxation Administration on the strengthening of coordination of levying tax on foreign enterprises" to submit the suggestion to the state Taxation Administration for approval on a regular basis. The certain categories are the following:

1. The representative offices are not able to provide effective proof-showing materials, such as contracts and agreements, to effectively distinguish those business activities that are subject to tax from those not subject to tax;
2. The representative offices often join their headquarters to provide various services to the clients, but are not able to provide proof-showing materials to effectively distinguish the income enjoyed by the offices from that enjoyed by the headquarters;
3. There have been other conditions where the representative offices fail to effectively report their income.

The above-mentioned application submitted to the State Taxation Administration suggesting levying tax on the basis of the conversion from the expenditure should include the operating conditions of representative offices set up by the foreign enterprise concerned in other areas. Before the regular submission, the local taxation departments can pre-levy all the relevant taxes based on the conversion.

III. On the tax investigation and adjustment on representative offices

All the local taxation departments should conduct an all-round check-up and investigation on

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representative offices before the end of June 30, 1997, on the basis of "Circular by the State Taxation Administration on the investigation of tax conditions of representative offices." Adjustments should be made to the following conditions based on this circular:

1. To those representative offices which previously judged to be tax-free, check-up should be made to ensure the judgement is correct and the offices are not doing new business activities that are subject to tax according to the stipulations in this circular. If the previous judgments are overturned, tax should be levied from October 1, 1996, according to the new verdict.
2. Verdicts should be made on the basis of this circular to representative offices which have yet made the tax registration, or have not provided information to let the taxation departments to pass a verdict, or there are disputes in the process of judgments and the office has not accepted the verdict and correspondingly has not paid the tax. If the verdict is to pay the tax, the unpaid tax during the previous years should go back for 3 years under general conditions, or more than 3 years under special circumstances, on the basis of the stipulations of Article 31 of the "Tax Levying Management Law of the People's Republic of China" and Article 55 of its implementing procedures.
3. For those representative offices judged to pay the tax, investigation should be made to ensure their reports are correct, and based on the stipulations in this circular, decisions should be made whether or not to change the tax calculating methods. If judged to adjust the calculating methods, from the year of 1996, tax is levied according to the new method.

IV. On the tax administration and investigation on representative offices

All the state tax bureaus and local tax bureaus can formulate its own tax investigation and management measures on representative offices according to the different conditions in different areas. Firstly, requirements should be applied to representative offices to make reports within the time limit stipulated in the tax law, and form this basis do a good job of sending the taxes into the state coffer; secondly, effective forces must be mobilized to conduct investigations. The form of investigations can take a unified one, or an individual one, or on a one-by-one basis after consultation. No matter what kind of investigations, if one party finds some problems, it should notify the other party of the problems found and suggestions for solutions. The other party should make appropriate adjustment after notification if it does not have the legitimate reasons.

V. Relevant documents that cease to be implemented

1. "Circular on seriously implementing the submission and approval procedure in the application of conversing expenditures to income for tax payment on the representative offices set up by foreign enterprises" issued by the former National Taxation Bureau in 1990.
2. The fourth article of "Circular on levying unified industrial and business tax and enterprise income tax on the commissions and fees resulting from the advertising business conducted by the representative offices" issued by the former National Taxation Bureau in 1988.

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