

China clarified taxation of stock appreciation rights and restricted stock units

On 7 January 2009, China issued a notice (Caishui [2009] No.5) to clarify that the preferential tax treatment is applicable for income derived from stock appreciation rights and restricted stock units, which were previously only applicable to income derived from stock options. This will reduce the individual taxpayers' individual income tax burden whilst also serving as an incentive policy for listed companies to reward their employees.

China released final rules for Transfer Pricing issues

The State Administration of Taxation ("SAT") issued the Implementation Measure of Special Tax Adjustments (Trial Version) ("the Measures") on 8 January 2009, which take retrospective effect from 1 January 2008. The Measures are elaboration of "Chapter 6 - Special Tax Adjustments" of the new Enterprise Income Tax Law and its Detailed Implementation Regulations. The Measures also consolidate and update the provisions of the previous Chinese transfer pricing regulations. The Measures cover various aspects of special tax adjustments regarding Transfer Pricing, Thin Capitalization, Controlled Foreign Corporations and General Anti-avoidance Rules, etc.

China specified administrative measures for withholding Enterprise Income Tax ("WHT")

The SAT has prescribed specific procedures for WHT (Guoshuifa [2009] No.3). Enterprise with withholding obligation is required to submit copy of the contract given rise to the passive income (a non-resident enterprise's China-sourced dividend, interest, rental and royalty income, and gains from the alienation of properties), along with a registration form and other relevant documents within 30 days of the sign of the contract. This procedure also applies to each subsequent revision supplementation or extension of the contract.

Withholding enterprise should also submit the WHT Return and the amount withheld should be remitted to the central treasury within 7 days. Qualified foreign institutional investors (QFII) also subject to WHT of 10% on PRC-sourced dividend and interest income (Guoshuifa [2009] No.47).

Foreign invested enterprises, foreign enterprises and individuals are subject to Real Estate Tax in China

According to Order No. 546 of the State Council, foreign investment enterprises, foreign enterprises and individuals are subject to Real Estate Tax in China, effective 1 January 2009. Previously, Real Estate Tax were only levied on domestic enterprises and individuals, which are calculated based on the original value of the real estate owned and self-used by the taxpayer or the rental income of the one owned by the taxpayer while rented to others.

China uplifts Value-Added Tax ("VAT") refund rate for export textile and clothing

products

According to Caishui [2009] No.14, export VAT refund rates for certain textile and clothing products were uplifted to 15%. The circular is effective from 1 February 2009, using the export date listed on the “Customs Declaration Form (Export Rebate Only)”, as the date of reference.