



## China Announces New Measure for Foreign Company's Representative Office's Taxation

Considering the comparatively simple and convenient setting up process and relatively low operating costs, registering a Representative Office ("RO") is generally the initial step for foreign companies wishing to invest in and experience the local market. On 20 February 2010, the State Administration of Taxation ("SAT") issued a circular "*Tentative Measures for the Administration Offices of Foreign Enterprises*" (Guoshuifa [2010] No.18 (Circular 18)), to regulate and unify previous rules covering taxation matters of ROs established in the PRC. Circular 18 is effective from 1 January 2010 retroactively.

### ABOUT TAXAND

Taxand is a global network of leading tax advisors from independent member firms in approaching 50 countries. Our tax professionals-more than 300 tax partners and 2,000 tax advisors-grasp both the find points of tax and the broader strategic implications, helping our clients mitigate risk, manage their tax burden and drive the performance of their business.

We're passionate about tax. We collaborate and share knowledge, capitalising on our collective expertise to provide our clients with high quality, tailored advice that helps relieve the pressures associated with making complex tax decisions.

We're also independent-ensuring that our clients adhere both to best practice and to tax law and that we remain free from time-consuming audit-based conflict checks. This, coupled with the compact structure of our member firms, enables us to deliver practical advice, responsively.

Taxand has achieved worldwide market recognition in 2008. We have won the International Tax Reviews (ITR) best newcomer awards for delivering best-in-class cross border advice throughout Europe, across the Americas and over Asia Pacific. Our member firms have also been shortlisted for 33 national ITR awards this year. Moreover 85% of Taxand firms are ranked in the top tiers of World Tax 2009, the ITR's global guide to the world's leading tax firms.

Further information is available at [www.taxand.com](http://www.taxand.com).



A signifying difference from previous tax treatments of ROs is that ROs can not apply for Enterprise Income Tax ("EIT") exemption and all exemptions previously approved should be cleared. ROs are required to adopt "actual amount method" or "deemed amount method" to determine taxable turnover and profits based on their actual conditions. However, ROs which are eligible for an exemption from EIT pursuant to a relevant tax treaty (or tax arrangement) may still apply for the exemption in accordance with the *Administration Measures on the Application for Preferential Treatment under a Tax Treaty by Nonresidents* (Guoshuifa [2009] No. 124).

Another significant difference lies that the deemed profit rate is increased from 10% to no less than 15% where the deemed amount methods are applicable.

The purpose of Circular 18 is to strengthen the collection and administration of taxes on ROs. The Circular abolishes the old approval procedures for a tax exemption application, requires a revisit of ROs that were tax exempt and increases the deemed profit rate. To some extent, these new measures may discourage foreign companies from setting up ROs in China. Foreign investors shall examine whether their ROs qualify for a tax exemption under the new rules. If the answer is negative, converting the RO to a wholly foreign owned company may be an alternative.

## **New Measures for Assessing EIT on Non-residents on Deemed Basis**

On 20 February 2010, the SAT issued the Administrative Measures for the Collection of Enterprise Income Tax ("EIT") on Deemed Basis for Non-Resident Companies (Guoshuifa [2010] No.19 (Circular 19)) to lay out the fundamentals of how a non-resident having a permanent establishment ("PE") within China is liable to EIT.

Nonresident entities with PEs or ROs in China typically have applied a deemed taxation method and Circular 19 adopts the similar methods that have been used in the past. However, the difference lies that the deemed profit rates have substantially increased as compared to previous rates used by the tax authorities. The detailed rates are summarized as follows:

- Contracted construction, design and consulting contracts: change from "at least 10% (15% for design services)" to "15%-30%";
- Management services: change from "20%-40%" to "30%-50%";
- Other services and operations: change from "no specific rule" to "at least 15%".

Obviously, from the literal interpretation of Circular 19, the set of deemed profit rates will apply to different activities undertaken by non-resident companies on or after 20 February 2010. Though there are still certain uncertainties remains, Circular 19 does provide clarifications on certain aspects that help non-resident service providers to get better prepared before execution a service contract or the related services.

*The information contained in the newsletter is of general nature only. It is not meant to be comprehensive and does not constitute accounting, tax, legal, investment, consulting or other professional advice or services. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.*

## About Hendersen Taxand

Hendersen Taxand is a China member firm of Taxand which still “fills a niche market” in corporate tax, M&A, investment advisory, human capital, customs and outsourcing technology-based solutions. We are a group of experienced professionals who used to work for the top fortune 100 companies and the big 4 accounting firms. We are committed to add value - tremendous value - to our clients. Hendersen Taxand is one of the top ten tax practitioners in China.

For more information visit [www.hendersen.com](http://www.hendersen.com) or [www.taxand.com](http://www.taxand.com).

## Contact Us

### International Tax

Dennis Xu  
dennis.xu@hendersen.com

### Transaction Service

Thomas Ge  
thomas.ge@hendersen.com

### Corporate Tax

Eddie Wang  
eddie.wang@hendersen.com

### Transfer Pricing

Joyce Zhang  
joyce.zhang@hendersen.com

### Human Capital Service

Kevin Wang  
kevin.wang@hendersen.com

### Outsourcing

Grace Chen  
grace.chen@hendersen.com



**Hendersen**  
T a x a n d  
[www.hendersen.com](http://www.hendersen.com)

### Hendersen Taxand

Unit 1003-1004, the Exchange  
No. 299 TongRen Road  
Shanghai 200040, PRC  
Tel: +86 (21) 6447 7878  
Fax: +86 (21) 3360 7100



[www.taxand.com](http://www.taxand.com)