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TECH news

## PRC Tax Filing Administration Regulations for Non-resident Enterprises

The State Administration of Taxation ("SAT") of the People's Republic of China ("PRC") issued the *Provisional Administrative Measures Governing Tax Collection on Contracted Projects and Provision of Services by Non-resident Enterprises* ("Decree No. 19") on 20 January 2009, which measures came into effect on 1 March 2009.

Decree No. 19 regulates Corporate Income Tax ("CIT"), Business Tax ("BT") and Value Added Tax ("VAT") filing administration for non-resident enterprises/individuals who undertake contracted projects or provide services in China.

### Background

According to SAT statistical data, over 20,000 non-resident enterprises are currently providing services in China Mainland. In 2008, out of a total of around CNY38.4 billion in taxes paid by non-resident enterprises, only 1.92% came from contracted projects.

The PRC tax authorities have borne huge losses on CIT, BT and VAT of contracted projects and services provided by non-resident enterprises for the following reasons:

- Non-resident taxpayers have not carried out tax registration or completed tax filing.
- The PRC tax authorities do not have any source of information on such contracted projects or services.
- Project principals concerned have not fulfilled withholding obligations.

The SAT issued Decree No. 19 to address the administration of CIT, BT and VAT of contracted projects and services. Projects covered by the regulations include construction, installation assembly, repair, exploitation and other engineering projects. Services covered include processing, repair, transportation, rental, consulting, design, sports and arts, technical, education and training, travelling and entertainment, among others.



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## Registration and Record Filing

Decree No. 19 introduces registration and record filing requirements applicable to non-residents carrying out contracted projects or providing services in China, the PRC contracting parties and withholding agents. The requirements cover the various stages of a project, from the signing of the contract, amendments to the contract, receipt of payment vouchers, to project completion. Detailed requirements for parties concerned are as follows.

- **Non-resident Enterprises**

Non-resident enterprises that enter into contract for projects or services in China should register with the tax bureau where the project is located within 30 days of signing the contract, and de-register within 15 days of completing the project.

- **PRC Enterprises**

PRC enterprises that outsource projects to non-resident enterprises should submit contract/service-related documents, tax registration certificates of the non-resident enterprises, and other relevant documents to the local tax bureau where the project is located within 30 days after contract signing. The PRC enterprises should report to the in-charge tax bureau within 10 days if the contract is revised. These enterprises should also report their payment status to the in-charge tax bureau and submit relevant materials within 30 days of receipt of invoices/billing.

Being the principals or contracting parties of projects, PRC enterprises are required to act as withholding agents to ensure relevant PRC taxes are settled before service fees are remitted outside China.

- **Major Projects**

In addition, projects that are listed as key projects and project agreements with non-residents that exceed RMB50 million are to be closely supervised by the tax authorities.

## Tax Filing

- **Corporate Income Tax**

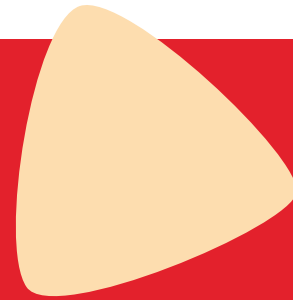
CIT is assessed on an annual basis. An annual return must be filed, and advance payment of provisional income tax made quarterly. The final tax payment must be settled at the time the project is completed.

The tax authorities may designate the payer of the project or service fees to act as the withholding agent where a non-resident falls within any of the following categories:

- The estimated contract period or period of service is under one tax year and evidence exists to show that tax obligations were not fulfilled.
- Tax registration or temporary tax registration has not been carried out and the non-resident has not appointed an agent in China to ensure that tax obligations are fulfilled.
- The enterprise has failed to file CIT returns, including provisional filing in accordance with regulatory deadlines.

- **Business Tax and Value Added Tax**

If non-resident enterprises with BT and VAT taxable liabilities have a physical establishment in China, they should file and pay BT and VAT themselves; if they do not have an establishment in China, their withholding agents should complete filing and payment.



## Liabilities

Where the withholding agent fails to withhold tax in accordance with the law or is unable to fulfil its obligation to withhold tax, the non-resident enterprise is responsible for reporting and paying tax to the tax authorities where the project is located.

Where the legal representative of the non-resident enterprise or non-resident individuals fails to settle the overdue tax and interest surcharges and do not provide tax payment guarantees, the tax bureau in-charge of the project may inform the exit and entry administrative authority to prevent the legal representative and non-resident individuals from leaving the country.

PRC entities that fail to comply with Decree No. 19 will face a penalty of not more than RMB2,000. Where circumstances are serious, the penalty will be not less than RMB2,000 but not more than RMB10,000.

## Conclusion

In the past, there were no standard measures governing tax collection on contracted projects undertaken by foreign enterprises in China. By issuing Decree No. 19, the PRC tax authorities can now require foreign enterprises and PRC outsourcing parties to provide detailed information on relevant projects. In standardizing the governing measures, the PRC tax authorities aim to keep track of all contracted projects undertaken in China and to ensure appropriate tax filing and settlement.

Registration of projects and services has to be completed within a strict timeline. Much information and appropriate documentation are required from foreign contractors and PRC outsourcing parties.

Tricor China is pleased to assist foreign enterprises in initiating the tax registration process with the local tax bureaus, preparing all relevant supporting documentation, and arranging tax filings and settlements.

**For assistance in the PRC, please get in touch with our Director, John Poon, at [john.poon@cn.tricorglobal.com](mailto:john.poon@cn.tricorglobal.com), or our Manager, Melissa Yang, at [melissa.yang@cn.tricorglobal.com](mailto:melissa.yang@cn.tricorglobal.com), or your usual Tricor contact for more information.**

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