



**Notice of the State Administration of Taxation
on Strengthening the Management of Enterprise Income Tax Collection of
Proceeds from Equity Transfers by Non-resident Enterprises**

国家税务总局关于加强非居民企业股权转让所得征收企业所得税管理的通知

Guoshuihan [2009] No. 698
国税函[2009]698

The administrations of state taxes and administrations of local taxes of all provinces, autonomous regions, municipalities directly under the Central Government, and cities under separate State planning:

各省、自治区、直辖市和计划单列市国家税务局、地方税务局:

To standardize and strengthen the enterprise income tax collection and management of proceeds from equity transfers by non-resident enterprises, in accordance with the *Enterprise Income Tax Law of the People's Republic of China* and its Implementing Rules, the *Tax Collection and Management Law of the People's Republic of China* and its Implementing Rules, the *Notice of the State Administration of Taxation on Printing and Distribution of Provisional Administrative Measures on Enterprise Income Tax Withholding at Source for Non-resident Enterprises* (Guoshuifa [2009] No. 3), as well as *Circular of the Ministry of Finance and the State Administration of Taxation on Several Issues on Corporate Income Tax Treatment of Corporate Restructuring Transactions* (Caishui [2009] No. 59) relevant issues are hereby clarified as follows:

为规范和加强非居民企业股权转让所得征收企业所得税管理,依据《中华人民共和国企业所得税法》及其实施条例,《中华人民共和国税收征收管理法》及其实施细则、《国家税务总局关于印发<非居民企业所得税源泉扣缴管理暂行办法>的通知》(国税发[2009]3号)和《财政部 国家税务总局关于企业重组业务企业所得税处理若干问题的通知》(财税[2009]59号),现就有关问题通知如下:

I. Proceeds from an equity transfer as referred to in this circular represents proceeds from the alienation of the equity interests in Chinese resident enterprises (excluding the purchase and sale of the stock of Chinese resident enterprises on public securities markets) by non-resident enterprises;

一、本通知所称股权转让所得是指非居民企业转让中国居民企业的股权(不包括在公开的证券市场中买入并卖出中国居民企业的股票)所取得的所得。



II. Where the withholding agent fails or is unable to fulfill its withholding obligations, non-resident enterprises shall file and pay the enterprise income tax to the competent tax authority supervising the Chinese resident enterprises whose equity interests are transferred (i.e., the tax authority in charge of collecting enterprise income tax of such resident enterprise) within seven days after the equity transfer date as agreed in the contracts or agreements (or after the date when the proceeds are actually obtained, if the transferors receive the proceeds of equity transfers in advance). If non-resident enterprises fail to file timely and accurately, the relevant provisions in the *Tax Collection and Management Law of the People's Republic of China* shall apply.

二、扣缴义务人未依法扣缴或者无法履行扣缴义务的，非居民企业应自合同、协议约定的股权转让之日（如果转让方提前取得股权转让收入的，应自实际取得股权转让收入之日）起7日内，到被转让股权的中国境内居民企业所在地主管税务机关（负责该居民企业所得税征管的税务机关）申报缴纳企业所得税。非居民企业未按期如实申报的，依照税收征管法有关规定处理。

III. Proceeds from equity transfer refers to the difference between the consideration of the equity transfer minus the cost of the equity interest;

Consideration of the equity transfer represents the total amount received by the transferor in the form of cash, non-monetary assets or interests with respect to the equity transfer; if the investee enterprises have retained earnings or after-tax reserves and such retained earnings and after-tax reserves are transferred to the transferee along with the equity interests being alienated, such amount of retained earnings and after-tax reserves shall not be deducted from the consideration of the equity transfer;

Cost of the equity interest represents the capital contribution actually paid to the Chinese resident enterprises when the transferor made such investment, or the consideration actually paid to the prior transferor when the equity interests were purchased;

三、股权转让所得是指股权转让价减除股权成本价后的差额。

股权转让价是指股权转让人就转让的股权所收取的包括现金、非货币资产或者权益等形式的金额；如被持股企业有未分配利润或税后提存的各项基金等，股权转让人随股权一并转让该股东留存收益权的金额，不得从股权转让价中扣除。

股权成本价是指股权转让人投资入股时向中国境内居民企业实际缴付的出资金额，或购买该股权时向该股权的原转让人实际支付的股权转让金额。



IV. In calculating the proceeds from equity transfers, the currency used by non-resident enterprises to make investments into Chinese resident enterprises whose equity interests are transferred, or the currency used to purchase such equity interests from the former investors shall be used to calculate the consideration of the equity transfer and cost of the equity interest. If a non-resident enterprise made investments for more than one time, the currency it used for the first investment shall be used to calculate the consideration of the equity transfer and cost of the equity interest, and a weighted average method shall be adopted to calculate the cost of the equity interest. Where different currencies were used in making the investments, the then-prevailing exchange rate on the date when the capital was injected shall be used to convert the currency into the one used for the first investment;

四、在计算股权转让所得时，以非居民企业向被转让股权的中国居民企业投资时或向原投资方购买该股权时的币种计算股权转让价和股权成本价。如果同一非居民企业存在多次投资的，以首次投入资本时的币种计算股权转让价和股权成本价，以加权平均法计算股权成本价；多次投资时币种不一致的，则应按照每次投入资本当日的汇率换算成首次投资时的币种。

V. When the offshore investor (actual controlling party) indirectly transfers the equity interests in a Chinese resident enterprise, if the actual tax burden in the jurisdiction of the offshore holding company being transferred is less than 12.5%, or if such jurisdiction exempts income tax on foreign-sourced income for its tax residents, the following documents should be provided to the tax authority supervising the Chinese resident enterprise whose equity interests are transferred, within 30 days after signing the equity transfer agreement:

- i. Equity transfer agreement/contract;
- ii. The relationship between the offshore investor and the offshore holding company being transferred in terms of capital, operation, sales and purchase etc.;
- iii. Introduction of operation, employees, bookkeeping, and assets of the offshore holding company being transferred by the offshore investor;
- iv. The relationship between the offshore holding company being transferred by the offshore investor and the Chinese resident enterprise, in terms of capital, operation, sales and purchases;
- v. Explanation of the reasonable business purpose with respect to the offshore holding enterprise being transferred by the offshore investor; and



vi. Other materials requested by the tax authority.

五、 境外投资方（实际控制方）间接转让中国居民企业股权，如果被转让的境外控股公司所在国（地区）实际税负低于 12.5% 或者对其居民境外所得不征所得税的，应自股权转让合同签订之日起 30 日内，向被转让股权的中国居民企业所在地主管税务机关提供以下资料：

（一）股权转让的合同或协议；

（二）境外投资方与其所转让的境外控股公司在资金、经营、购销等方面的关系；

（三）境外投资方所转让的境外控股公司的生产经营、人员、账务、财产等情况；

（四）境外投资方所转让的境外控股公司与中国居民企业在资金、经营、购销等方面的关系；

（五）境外投资方设立被转让的境外控股公司具有合理商业目的的说明；

（六）税务机关要求的其他相关资料。

VI. If the offshore investor (actual controlling party) indirectly transfers the equity interests in a Chinese resident enterprise via abuse of organization forms and certain enterprise income tax obligations are avoided without a reasonable business purpose, after being reported to higher authorities and reviewed by the State Administration of Taxation, the supervising tax authority can decide the nature of the transaction of such equity transfer according to its business substance and deny the existence of the offshore holding company which is used for tax planning purposes.

六、 境外投资方（实际控制方）通过滥用组织形式等安排间接转让中国居民企业股权，且不具有合理的商业目的，规避企业所得税纳税义务的，主管税务机关层报税务总局审核后可以按照经济实质对该股权转让交易重新定性，否定被用作税收安排的境外控股公司的存在。

VII. The tax authority can adjust the taxable income using reasonable methods, provided that the income is reduced as a result of an equity transfer of Chinese resident enterprise by a non-resident enterprise to its related parties not applying the arm's length principle.



- 七、 非居民企业向其关联方转让中国居民企业股权，其转让价格不符合独立交易原则而减少应纳税所得额的，税务机关有权按照合理方法进行调整。
- VIII. If the offshore investor (actual controlling party) transfers its equity interests in several onshore and offshore holding companies simultaneously, the Chinese resident enterprises being transferred should provide the supervising tax authority with the agreements regarding the whole transaction and the agreement with respect to itself. If there is no separate agreement for the Chinese resident enterprise, it should provide to the supervising tax authority detailed information with respect to each of the holding companies being transferred, for the purpose of allocation of transfer amounts with respect to the domestic entity. The tax authority has the discretion to adjust the transfer amount if it cannot be allocated precisely.
- 八、 境外投资方（实际控制方）同时转让境内或境外多个控股公司股权的，被转让股权的中国居民企业应将整体转让合同和涉及本企业的分部合同提供给主管税务机关。如果没有分部合同的，被转让股权的中国居民企业应向主管税务机关提供被整体转让的各个控股公司的详细资料，准确划分境内被转让企业的转让价格。如果不能准确划分的，主管税务机关有权选择合理的方法对转让价格进行调整。
- IX. If the capital gain derived from an equity transfer by a non-resident enterprise is qualified for special tax treatment provided by Caishui [2009] No. 59 and such non-resident enterprise chooses the special restructuring method, written documentations should be submitted to the supervising tax authority to prove such qualification, subject to approval from the provincial tax authority.
- 九、 非居民企业取得股权转让所得，符合财税[2009]59号文件规定的特殊性重组条件并选择特殊性税务处理的，应向主管税务机关提交书面备案资料，证明其符合特殊性重组规定的条件，并经省级税务机关核准。
- X. This Notice is effective from January 1, 2008. Issues in implementation of the Notice should be reported to the International Taxation Department of the State Administration of Taxation in a timely manner.
- 十、 本通知自 2008 年 1 月 1 日起执行，执行中遇到的问题请及时报告国家税务总局（国际税务司）。

December 10, 2009
二〇〇九年十二月十日