

涉外税收实务

FOREIGN TAXATION GUIDE

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编者的话

随着中国加入 WTO 和中央提出的“引进来,走出去”发展战略的实施,中国正在实行多领域、全方位的开放。这为中国利用外资、引进技术提供了新的发展空间,外商将在更广泛的领域参与我国的经济活动,同时,国内企业也将更多地走出国门,融入到全球经济发展之中。以维护国家权益、服务于对外开放,配合“引进来,走出去”的战略和尊重国际税收惯例为宗旨的中国涉外税收制度在不断充实、完善,涉及的领域也日益扩展。全面、准确和系统地了解中国现行涉外税收法律、法规和规章制度,无论对税务机关和税务人员贯彻执行涉外税收政策、规范和加强涉外税收管理,还是对投资者实施投资决策和依法履行纳税义务、维护企业自身权益,都是非常重要的。为了满足税务机关工作人员、投资者及其办税人员、税务代理工作者以及其他社会各界人士学习、掌握涉外税收知识的需要,我们编写了这本《涉外税收实务》。本书编写分为四个阶段。第一阶段,主编洪治社同志提出编写要求后,安徽省国家税务局涉外税收管理处拟出初步提纲,经编委会反复讨论并广泛征求意见,确定详细的编写提纲;第二阶段,精选编写人员,统一编写体例,并根据编写人员业务特长,进行分工,认真编写;第三阶段,组织编委和编写人员集中交叉审读,组织有关专家学者讨论,提出修改意见,编写人员进一步修改完善;第四阶段,由戴海先同志统稿,洪治社、韩杰同志对全书进行了修改并定稿,胡道新同志对全书进行指导,并为本书作序。全书共十章,涉外税收概论由戴

海先同志编写;外商投资企业和外国企业所得税由邵东驰同志编写;增值税由罗成同志编写;消费税由孙向阳同志编写;出口货物退(免)税由朱格同志编写;涉外企业税收征收管理由张晓燕同志编写;涉外税务审计和国际税收协定第三节至第十一节由张耀贵同志编写;反避税由戴海先、孔巍同志编写;国际税收协定第一、二节和税收情报交换由洪健同志编写;英文部分由徐晓峰同志翻译。

本书在编写过程中,得到了马鞍山市国家税务局、合肥市国家税务局、蚌埠市国家税务局、芜湖市国家税务局、铜陵市国家税务局、安徽省移动通信公司、中国联通通信有限公司安徽分公司及安徽省国家税务局有关处室的大力支持和协助,在此一并表示真诚的感谢。

为达到本书“实用性和权威性”的编写要求和“全、实、准”的编写目的,我们在编写过程中,搜集了全国人大、国务院、财政部、国家税务总局、安徽省人民政府及安徽省国家税务局等方面发布的截至2005年3月底所有现行有效的涉外税收法律、法规、规章和规范性文件,并将其内容进行归类,力求全面、准确地表述。随着涉外税收制度的完善,部分政策法规将会修改和补充,在实际工作中,凡今后有变动的按新的规定执行。

尽管我们作了最大的努力,书中肯定还有不少不妥之处,敬请读者批评指正。

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编 者

2005年5月

Compiler's Notes

With China's entry into WTO and the policy "absorbing foreign capital and investing abroad" put forward by the Central Government of China, China is conducting panoramic opening to the outside world in all domains. Therefore, we have now space for development to make fully use of foreign capital and import technology. In the meantime, more and more domestic enterprises will go abroad to invest and integrate into the global economic development. To safeguard national interests and serve the opening to the outside world, to cooperate with the strategy "absorbing foreign capital and investing abroad" and to respect the international tax common practice, China's foreign tax system keeps enriched and improved, the fields it touches upon keep extended progressively. To get a comprehensive, systematic and accurate understanding of current China's foreign tax laws, regulations and rules, this edition offered here is not only vital important for tax authorities and tax officials to carry out foreign tax policies as well as to standardize and enhance foreign tax administration, but also important for investors to defend their own interests when they make a decision to invest and fulfill their tax matters concerned lawfully. We have compiled this book on purpose to satisfy tax officials, investors and their accountants in charge

of taxpaying and tax agents as well as public figures at all levels to have a perfect command of foreign tax laws. This compilation has witnessed four stages as follows: In the first stage, after the editor-in-chief Mr. Hong Zhishe put forward requirements of writing, the tax experts of International Taxation Division of SAT Anhui Branch began to block out a primary outline. Accordingly, we finally confirmed the outline after discussion time after time and soliciting criticisms from some tax experts. In the second stage, we hand-picked compilers and worked out unified stylistic rules and layout. We assigned the compilation to every expert for his or her specialty and began to edit in earnest. In the third stage, we organized the members of Editorial Board and compilers to get together for cross-check. We also invited relevant experts to discuss and put forward opinions for revision, afterwards, compilers made farther modification and perfected it. In the fourth stage, Mr. Dai Haixian made an overall arrangement about edition format. Mr. Hong Zhishe and Mr. Hanjie finalized the manuscript after having had proofread and polished the whole draft. Mr. Hu Daoxin supervised the edition and wrote a preface for this book. This book is divided into ten chapters as follows: Overview of Foreign Tax was written by Mr. Dai Haixian, Income Tax of the Enterprises with Foreign Investment and Foreign Enterprises was compiled by Mr. Shao Dongchi, Value-added Tax (VAT) by Mr. Luo Chen, Consumption Tax by Mr. Sun Xiangyang, Tax Refund and Exemption for Exported Goods by Mr.

Zhuge, Tax Collection and Administration of the Enterprises with Foreign Investment and Foreign Enterprises by Mrs. Zhang Xiaoyan, Foreign Tax Audit and International Tax Treaties (from Section 3 to Section 11) by Mr. Zhang Yaogui, Anti-avoidance by Mr. Dai Haixian and Mr. Kongwei, International Tax Treaties (from Section 1 to Section 2) and International Taxation Information Exchange by Mrs. Hongjian. In addition, the Preface, Compiler's Notes and Table of Contents were translated into English by Mr. Xu Xiaofeng.

Regarding the designing and publishing of this book, We are very grateful to State Tax Bureau of Ma Anshang, State Tax Bureau of Hefei, State Tax Bureau of Bengbu, State Tax Bureau of Wuhu, State Tax Bureau of Tongling for their great support. Moreover, We would like to acknowledge the relevant divisions of SAT Anhui Branch, China Mobile Anhui and China United Telecommunications Corporation Anhui Branch for their continued help.

In order to meet the requirements of being practical and authoritative, and to attain the goal to be panoramic, pragmatic and accurate, the book compiled all of the current and efficient foreign tax laws, regulations and rules promulgated by National People's Congress, State Council, Ministry of Finance, State Administration of Taxation, Provincial Government of Anhui and SAT Anhui Branch by the end of March 2005. Nevertheless, this compilation has far exceeded our ability to classify the content to make a compre-

hensive and accurate introduction. In the future, with the development of China's tax system, some tax policies and regulations will be periodically or irregularly revised and amended. Consequently, if there is any change in the newly promulgated tax laws and regulations, please refer to and abide by those updated laws and regulations.

While we have tried to achieve accuracy in data and categorization, we recognize that there may be inadvertent mistakes. We would greatly appreciate readers informing us of such errors so that we could update the book.

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Compipler

May 2005

序

随着中国经济体制改革的逐步深入和对外开放的不断扩大,尤其是中国加入 WTO 后,国际资本不断流入中国,到中国投资的外国企业和人员越来越多。截至 2003 年底,全国累计批准设立外商投资企业 465277 个,合同外资金额 9431.30 亿美元,实际使用外资金额 5014.71 亿美元。^① 国际资本的注入和外资经济的发展,不但对我国经济的发展起到了极其重要的推动作用,也给税收工作,特别是涉外税收工作带来了重大机遇,更提出了艰巨的任务和严峻的挑战。

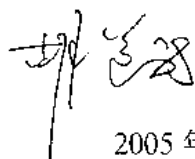
税收来源于经济又服务于经济。上个世纪八十年代,为适应对外开放的需要,我国创建了涉外税收制度,配合和促进了对外开放活动。进入九十年代以后,根据发展社会主义市场经济体制的新目标,中国加入 WTO 的新形势和中央提出的“引进来,走出去”的发展战略,一方面要继续调整和完善涉外税收制度,更好地发挥税收的职能作用;另一方面要将制定出台的一系列新政策贯彻执行到位,以更好地促进全方位开放。为将各项涉外税收政策、国际税收协定、征收管理办法学习好、贯彻好、执行好、落实好,规范征纳双方行为,便于税务机关和税务人员贯彻执行涉外税收政策法规,规范和加强征收管理,便于广大涉外纳税人了解、熟悉、用足用好涉外税收政策和办理有关涉税事宜,保护自身合法权益,安徽省国家税务局组织一些长期从事涉外税收政策和征收管理的业务骨干编写了此书。

本书分为十章,分别介绍了涉外税收概论、外商投资企业和外

^① 《安徽省外商投资企业协会通讯》2004 年第 2 期,第 4 页

国企业所得税、增值税、消费税、出口货物退(免)税、涉外企业税收征收管理、涉外税务审计、反避税、国际税收协定和税收情报交换,内容翔实,归类有序,结构清晰。本书的编写以对读者负责和满足读者需要为出发点和归宿点,突出实用性和权威性,具有“全、实、准”的特点。“全”:包括国税机关征收的全部涉外税种的税收政策、出口退税、征收管理、涉外税务审计、反避税、国际税收协定和税收情报交换等全部涉外税收内容,并囊括了所有的现行有效的涉外税收法律、法规、规章和规范性文件;“实”:全书各章节及其每个章节的内容都按照科学合理的归类,并分类对相关内容逐一进行较为翔实的介绍,学习、查阅和实际操作起来方便实用;“准”:以正式公布并现行有效的法律法规为依据,并对书中内容分别注明出处,标明规定的法律、法规、规范性文件的名称和文号,以便查证和引用。同时,将序、编者的话和目录翻译成英文,以便外国投资者了解中国税法。这些突出的特点在目前国内税收出版物中还是不多见的。本书既可作为各级税务部门和税务人员的实务用书,又可作为广大外资企业办税人员、税务咨询和税务代理工作者办理涉外税收纳税事务的操作指南,还可作为各类涉外税收业务的培训教材和法律工作者以及法律或财经院校师生查阅的工具用书。

我相信,这本书的出版,对广泛宣传、学习和全面准确地落实涉外税收政策法规,提高税务机关的涉外税收管理水平,促进广大外资企业依法履行纳税义务,提升大专院校税收专业尤其是国际税收专业的教学质量和水平等,都将会起到积极的作用。



2005年5月

Preface

As China's economic system reform gradually moves into depth, and China's opening to the outside world becomes wider and wider, especially after China's entry into WTO, international capital has begun to flow into China. In the meantime, more and more foreign enterprises and entrepreneurs have invested in China. By the end of 2003, China has all together approved 465277 enterprises with foreign investment with total commitment of USD 9431.30 billion of which USD 5014.71 billion has already been realized. Constantly international capital flowing into China and development of foreign related business have not only accelerated the sustainable, sound and speedy development of China's national economy, but also brought great opportunities as well as austere challenges and arduous tasks to the administration of international taxation in particular.

Tax is not only the most important source of fiscal revenue but also an important lever to conduct macro-economic regulation. In 1980s', to meet the need of China's opening to the outside world, foreign tax system was established in our country, which has cooperated with and promoted China's opening to the outside world. Since 1990s', in accordance with the new aims of socialist market-ing economy system development and new tendency after China's entry into WTO, among other things, abiding by the policy "absorbing foreign capital and investing abroad" put forward by the Central Government of China, on the one hand, foreign tax system in our country has kept being readjusted and improved in order to bring into play tax functions. On the other hand, a series of new

policies, which has been stipulated and promulgated, should be carried out to the letter to promote all round opening to the outside world. Thus, State Administration of Taxation (SAT) Anhui Branch organized some experts of foreign tax policies implementation and foreign tax collection and administration to compile this edition to help those government functionaries in the state administration of taxation and taxpayers concerning foreign tax get a better understanding and mastery and fulfillment of foreign tax policies, international tax treaties, some measures concerning foreign tax collection and administration, in the meantime, to help standardize the relationship and behavior between those government functionaries and taxpayers. Besides, this edition offered here is not only convenient for those relevant tax authorities and government functionaries to carry out foreign tax laws and policies as well as to standardize and enhance foreign tax administration, but also convenient for vast majority of taxpayers to understand, to get acquaintance with, to optimize the enjoyment of foreign tax policies and to fulfill their tax matters concerned.

This edition consists of ten chapters, which is updated and informative, well-ordered and well-set, introducing China's foreign taxation respectively as follows: Overview of Foreign Tax, Income Tax of the Enterprises with Foreign Investment and Foreign Enterprises, Value-added Tax (VAT), Consumption Tax, Tax Refund and Exemption for Exported Goods, Foreign Tax Collection and Administration, Foreign Tax Audit, Anti-avoidance, International Tax Treaties and International Taxation Information Exchange. Objectives of this compilation are to take great responsibility for readers and satisfy readers. Practically and authoritatively, this book is also provided with many attractive characteristics such as

"panoramic, pragmatic and accurate". As for the characteristic "panoramic", this book covers all of the foreign taxes levied in our country, current and efficient foreign tax laws, regulations, policies and official documents as follows: Tax Refund and Exemption for Exported Goods, Foreign Tax Audit, Anti-avoidance, International Tax Treaties and International Taxation Information Exchange, etc. Regarding the characteristic "pragmatic", the content of the chapters in this book was scientifically and logically classified, and sorted out to introduce relevant content in detail, therefore, it is so convenient for readers to study, consult and operate into practice. Concerning the characteristic "accurate", this book is based on officially promulgated, current and efficient tax laws and regulations, as the titles and numbers of the relevant documents concerning tax laws and regulations were footnoted respectively to be consulted and referred to. The Preface, Compiler's Notes and Table of Contents were translated into English for foreign investors to acquaint with China's taxation. These outstanding characteristics are very unique in the current domestic publications. This book not only functions as a handbook for tax authorities and tax officials at all levels, but also serves as a guide for all accountants in charge of taxpaying in joint ventures as well as tax consultants and tax surrogates, a teaching manual for all kinds of foreign tax training and a reference book for lawyers, teachers and students at law schools and colleges of economics.

Undoubtedly, this book will play a positive role in giving great deal of publicity of, studying and carrying out tax laws, regulations and rules, in enhancing the level of foreign tax administration in the tax authorities, in promoting enterprises with foreign investment and foreign enterprises to discharge their obligations of taxpaying, in

advancing the teaching quality and level of taxation majors, in particular, international taxation research at colleges and universities.

Daoxin Hu

May 2005

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