



## China tax law commentary

## 中国税务评论



### Upcoming Webcasts

#### [Transfer Pricing in China: Imposing New Rules Kick Off the Year of the Ox](#)

2:00 p.m. EDT, April 8,  
2009, presented by Mark  
Nehoray and Judy Fang

#### [China Tax Law Update](#) 11:00 a.m. EDT, April 9, 2009, hosted by Gregory Stevens

#### [Innovative Collaboration: New Ways of Creating Value in China](#)

11:00 a.m. EDT, May 14,  
2009, hosted by  
Clarence Kwan

#### [China Cross-Border Investment – Quarterly Roundup](#)

11:00 a.m. EDT, June  
11, 2009, hosted by  
Wendy Cai-Lee

### In this update

#### **Beware of new rules for nonresidents engaged in contracted projects or provision of services in China**

The Chinese State Administration of Taxation (SAT) issued Provisional Measures on the Administration of Taxation of Contracted Projects and Provisions of Services by Nonresidents (Circular 19) on January 20, 2009. The new rules set forth detailed tax registration and filing requirements applicable to nonresident enterprises and individuals engaging in contracted projects or the provision of various types of services in China. Circular 19, which became effective on **March 1, 2009**, is expected to strengthen control of nonresidents and increase administrative burdens on nonresidents conducting activities in China.

#### **Summary of requirements and implications**

##### *1. Who will be subject to the rules?*

Unlike previous rules, Circular 19 clarifies that it only applies to nonresidents -- both companies and individuals. Foreign companies, whose effective management is in China, and which are therefore treated as Chinese tax residents under the 2007 enterprise income tax (EIT) law, should not fall within the scope of Circular 19.

##### *2. What activities are affected?*

Circular 19 lists various types of projects and services under its governance. Covered projects include construction, installation, assembly, repair, decoration, exploitation, and other contracted projects. Covered services include processing, repair, transportation, warehousing, leasing, consultation, design, sports and arts, technical assistance, education and training, tourism, entertainment, and other services. The use of the open-ended terms, such as “other contracted projects” and “other services”, means that any activities carried out by nonresidents not specifically enumerated still could potentially be viewed as being subject to Circular 19 based on the interpretation of the tax authorities.

### 3. Key compliance schedules

| Compliance requirement                            | Time frame   | Responsible party          |
|---|--|----------------------------|
| <b>Tax registration</b>                           | Within 30 days of signing the contract   | Nonresident                |
| <b>Final settlement and tax deregistration</b>    | Within 15 days of completing the project   | Nonresident                |
| <b>Application for treaty protection/benefits</b> | N/A  | Nonresident                |
| <b>Withholding registration</b>                   | Within 30 days of tax liability arising  | Domestic contracting party |
| <b>Reporting to tax authorities</b>               | <ol style="list-style-type: none"> <li>1. Within 30 days of signing the contract</li> <li>2. Within 10 days of amending the contract</li> <li>3. Within 30 days of receipt of an invoice or a payment notice</li> <li>4. Before completion of the project if no payment will be made to nonresident</li> <li>5. Within 15 days from the nonresident's filing due date if the local tax authorities of the two contracting parties are different</li> </ol> | Domestic contracting party |

### Impacts on U.S. MNCs

Circular 19 intersects with two other recent circulars issued by the SAT: Circular Guoshuifa [2009] 6 relating to the annual EIT filing obligations of nonresidents and Circular Guoshuifa [2009] 3 that sets forth withholding tax requirements for Chinese withholding agents. Taken together, the three circulars deliver a clear message that the Chinese tax authorities are becoming increasingly aggressive in scrutinizing foreign companies and individuals conducting activities in China. Below are a number of steps MNCs can take to minimize their tax exposure in China:

- U.S. MNCs carrying out contracted projects or providing services in China should be prepared to allocate resources to comply with the new local rules and allow for additional time for compliance.
- The U.S. contracting party may proactively request to have certain language included in the contract to address the tax withholding issues in advance to avoid surprises and mitigate risks.
- Since tax treaty protection/benefits cannot be enjoyed automatically, U.S. companies need to be prepared to provide documentation to the tax

- authorities to substantiate eligibility for treaty protection and benefits.
- It is unclear whether a back filing of previously signed contracts would allow the taxpayer to enjoy treaty benefits for payments received before submitting the documentation. U.S. MNCs with existing contracts in place should consider having a dialogue with the local tax authorities to confirm and finalize compliance requirements to avoid uncertain tax issues under FIN48.
- Where a U.S. company engages another nonresident company to provide services for its subsidiaries in China (e.g. architectural design for a factory), the Chinese subsidiary still must report to the tax authorities even though the payment is not made or borne by itself.
- U.S. companies with long-term contracts to provide services in China should evaluate potential permanent establishment issues and perhaps plan to avoid these issues by establishing a taxable presence in China. Through proper transfer pricing planning, companies can minimize China tax liability and avoid unnecessary uncertainties in dealing with these issues.

As China is rolling out its stimulus package to address the economic downturn, many business opportunities may arise for U.S. companies to provide services in China. Along with the opportunities, however, are challenges. U.S. MNCs that currently engage in, or intend to engage in the above activities in China should review whether the activities would fall within the scope of Circular 19, and if so, adopt appropriate measures to rectify and mitigate the China tax risk. U.S. MNCs should discuss any issues not clearly addressed in the circular with a local tax advisor to work out a solution. For a more detailed technical analysis, please see the attached tax analysis in English and Chinese.

**[Important regulation update on tax administration of construction contract projects and service provisions for nonresidents](#)**

**[非居民企业境内承包工程作业和提供劳务税收管理新规](#)**

We will continue to monitor developments in China tax law and bring changes to your attention. Please feel free to contact our regional team members, who are listed below, should you have any questions.



Deputy Managing Partner  
 Deloitte Chinese Services Group USA  
**Phone:** 408-704-4788  
**Email:** [Lzheng@deloitte.com](mailto:Lzheng@deloitte.com)

| U.S.   |  |  |
|--|--|--|
| Detroit  | Los Angeles  | New York   |
| <b>Lillian TJ Xiao</b>                                     | <b>Cliff Guan</b>  | <b>Peter Chen</b>  |
| Tel: +313 396 5836   | Tel: +213 688 4712   | Tel: +212 436 6727   |
| <a href="mailto:txiao@deloitte.com">txiao@deloitte.com</a> | <a href="mailto:cguan@deloitte.com">cguan@deloitte.com</a> | <a href="mailto:petchen@deloitte.com">petchen@deloitte.com</a> |

## Oregon

**Greg Stevens**

Tel: +503 727 5368

[grstevens@deloitte.com](mailto:grstevens@deloitte.com)

## San Jose

**Claude Gong**

Tel: +408 704 2184

[clagong@deloitte.com](mailto:clagong@deloitte.com)

## China

### Shanghai

**Aaron Grundman**

Tel: +86 (21) 6141 1490

[agrundman@deloitte.com.cn](mailto:agrundman@deloitte.com.cn)



### About the Chinese Services Group

Deloitte's [Chinese Services Group \(CSG\)](#) co-ordinates with the Deloitte Touche Tohmatsu member firm in China and the appropriate subsidiary of Deloitte LLP to assist U.S. companies investing and operating in China. Whether contemplating market entry, M&A or optimization of existing operations, the CSG, in collaboration with the member firm in China, can help U.S. companies implement cross-border investment strategies and navigate the associated risks. The CSG also co-ordinates with the China Member firm and the appropriate subsidiary of Deloitte LLP to assist Chinese companies seeking to access U.S. markets - expanding operations, raising capital and/or engaging in M&A. Our national network of bilingual professionals works closely with colleagues in China to deliver seamless service to globalizing Chinese companies.

---

[Home](#) | [Security](#) | [Legal](#) | [Privacy](#)

1633 Broadway  
New York, NY 10019-6754  
United States

© 2009 Deloitte Touche Tohmatsu.

Deloitte refers to one or more Deloitte Touche Tohmatsu, a Swiss Verein, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/us/about](http://www.deloitte.com/us/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu and its member firms.

 [Deloitte RSS feeds](#)

[Forward this email](#)

[Change delivery format \(HTML or plain text\) of future Deloitte emails](#)

[Unsubscribe](#)