

## Tips for tax treaty benefit claims from 2020

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#### In brief

- » China has implemented new measures on claiming tax treaty benefits from 1 January 2020:
  - New procedure is in place: from “record-filing” to “post-filing inspection”;
  - Withholding agents’ responsibility is adjusted;
  - Follow-up administration is enhanced.

Feedback

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## 2020 (No. 4 issue)

March 2020

### In detail

With the new practice in place effective from 2020, we offer some tips below how non-resident taxpayers should apply for tax treaty benefits from January:

#### » **New mechanism: from “record-filing” to “post-filing inspection”**

Non-resident taxpayers can now perform a self-assessment on their eligibility to tax treat benefits. If they consider themselves qualified, they can now simply file the "Reporting Form for Non-resident Taxpayers Claiming Treaty Benefits" (hereinafter as "the reporting form") and apply the benefits in their tax filing. An official approval will no longer be necessary. However, they are required to keep the supporting documents in case an inspection is imposed.

#### » **Withholding agents' responsibility adjusted**

Withholding agents are required to check the completeness of the reporting form rather than to assess its eligibility. If a non-resident taxpayer fails to provide the reporting form or sufficient data, the withholding agent is held liable to withhold the tax.

#### » **Follow-up administration enhanced**

- a) Chinese tax authorities are empowered to collect supporting documents from non-resident taxpayers for inspection. If the information is insufficient to verify the eligibility, or tax evasion is suspected, the tax authorities can request the non-resident taxpayer or its withholding agent to provide supplementary materials by a deadline.
- b) If a non-resident taxpayer has incorrectly enjoyed the tax treaty benefits, resulting in tax underpayment, the Chinese tax authority will pursue the non-resident taxpayer for payments. If it fails to pay the tax, the tax authority can recover it from any of its Chinese income.
- c) If a withholding agent fails to withhold the taxes or submit supplementary materials required by the Chinese tax authority in a post-filing inspection, which leads to tax underpayment, the Chinese tax authority can hold the withholding agent accountable.

### WTS observation

The new measure has signalled that tax treaty benefit claiming process has entered the era of "self-assessment". On the one hand, it has brought convenience to the application and has reduced withholding agent's responsibility. On the other hand, it has implied a higher requirement on self-assessment and risk management.

Withholding agents, though a little relieved from the assessment risk, are required to support Chinese tax authorities' post-filing inspection. Therefore, both the non-resident taxpayers and withholding tax agents are advised to intensify their documentation effort.

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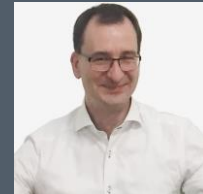
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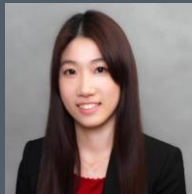
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