

## Tax Analysis

# STA Issues New Measures for Claiming Treaty Benefits – From "Filing Documents for Record" to "Retaining Documents for Follow-up Administration"

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On 14 October 2019, China's State Taxation Administration (STA) issued Bulletin 35, which revises the rules for nonresidents to claim benefits under China's treaties. The new rules will apply as from 1 January 2020, replacing the current administrative measures in Bulletin 60 dating from 2015. Bulletin 35 aims to standardize the administration of the entitlement to treaty benefits for nonresident taxpayers and further simplify the declaration procedures. In this Analysis, we will share with you the background of Bulletin 35, the major changes, and our observations.

### 1. Background

On 25 June 2019, Premier Li Keqiang delivered a speech on planned reforms to "streamline administration, delegate power, strengthen regulation and improve services" to optimize the business environment in China. On 1 August 2019, the General Office of the State Council issued a work plan to implement the reform, which was followed by the STA's issuance of Bulletin 35. The issuance of Bulletin 35 is an important step in furtherance of this reform.

### 2. Major Changes

One of the most significant change made by Bulletin 35 is the simplification of the procedure to claim treaty benefits, which is from "filing documents for record" to "retaining documents for follow-up administration" ("self-assessment of eligibility, declaration for

entitlement, and retention of relevant documents for follow-up administration"). Meanwhile, Bulletin 35 defines the responsibilities of nonresident taxpayers and withholding agents respectively, and stipulates that tax authorities should strengthen the follow-up administration.

## 2.1 Simplification of treaty claim procedures

The simplification of the procedures is reflected in the declaration approach as well as the documentation requirement. Please refer to the following table for details:

Bulletin 60 – "Filing Documents for Record"	Bulletin 35 – "Retaining Documents for Follow-up Administration"
<b>Documents for declaration: (①+②)</b>	<b>Documents for declaration: (① only)</b>
① Reporting Forms	① Reporting Form
<ul style="list-style-type: none"> <li>Information Reporting Form on Tax Residence Identity of Nonresident Taxpayers</li> <li>Information Reporting Form on Treaty Benefits to be Enjoyed by Nonresident Taxpayers</li> </ul>	<ul style="list-style-type: none"> <li>Information Reporting Form for Entitlement to Treaty Benefits for Nonresident Taxpayers ("Information Reporting Form")</li> </ul>
② Documents for filing	
<ul style="list-style-type: none"> <li>Tax residence certificate</li> <li>Copies of passports of individuals and certificates of enterprises in the case of international transportation income</li> <li>Documents evidencing ownership of the income received, such as contracts, board resolutions, shareholder meeting minutes or payment slips</li> <li>Other documents specifically required by other tax regulations</li> </ul>	
	<b>Documents for retaining</b>
	<ul style="list-style-type: none"> <li>In addition to the "Documents for filing" specified in Bulletin 60, relevant information showing "beneficial ownership" must be retained in the case of dividends, interest and royalty payments.</li> </ul>

Under the current rules in Bulletin 60, a nonresident recipient of China-source income must submit two forms containing detailed information and specified documents to the appropriate tax authorities before treaty benefits are granted. This procedure can be burdensome and effectively allows the Chinese tax authorities to assess a nonresident's eligibility for treaty benefits, which in practice, can become an examination and approval procedure.

Bulletin 35 will require the submission of a single form (Information

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Reporting Form), which may be submitted by the nonresident or the withholding agent. The new form will require considerably less information, such as the taxpayer's name and contact information, along with a statement by the taxpayer confirming that:

- The taxpayer is a resident of the other contracting state based on the laws and regulations of that state and under the relevant tax treaty;
- The principal purpose of the arrangement or transaction at issue is not to obtain treaty benefits;
- The taxpayer believes that it meets the requirements upon self-assessment and takes legal responsibility for claiming treaty benefits; and
- The taxpayer will retain relevant documentation for review by the Chinese tax authorities and will cooperate with the authorities.

The simplification of the procedure to claim treaty benefits should alleviate the burden on nonresidents and withholding agents, at the same time it also will mean that the tax authorities will not be able to assess eligibility for treaty benefits at the stage of filing.

## **2.2 Responsibilities of nonresidents and withholding agents**

Another significant change made by Bulletin 35 is the determination of the responsibilities of nonresidents and withholding agents (normally who are payers).

The responsibilities of nonresidents are as follows:

- The nonresident must complete the Information Reporting Form accurately and submit the form directly to the withholding agent.
- Where a nonresident's self-assessment is not correct (i.e. the taxpayer actually is not eligible for treaty benefits), the taxpayer must report the underpaid tax to the tax authorities.
- Where a nonresident has underpaid tax due because it claimed treaty benefits to which it was not entitled (unless the underpaid tax is the fault of the withholding agent), the nonresident will be deemed to have failed to declare and pay taxes in accordance with the relevant tax rules, and may be subject to penalties and interest for failure to pay tax on time.
- Nonresidents must collect and retain documentation supporting a claim for treaty benefits to enable the Chinese tax authorities to conduct a follow-up review, and timely submit the documents to the authorities upon their request. This documentation must be kept for a prescribed time period as determined by law.

The responsibilities of withholding agents are as follows:

- The withholding agent must verify the completeness of the Information Reporting Form and conduct the tax filing accordingly.
- Where a nonresident does not submit an Information Reporting Form to the withholding agent, or if the form is not complete, the withholding agent must withhold tax according to domestic laws without regard to any claimed treaty provisions; failure to do so will subject the withholding agent to penalties.
- If underpaid tax is due to the withholding agent's failure to file the form properly, withhold tax, or submit documents to the tax authorities, the withholding agent will be subject to penalties.
- During the follow-up administration, the tax authorities may require the withholding agent to cooperate in the investigation and provide relevant documents within a timeline specified by the tax authorities.

Bulletin 35 clearly makes nonresidents responsible for making correct assessments relating to entitlement to treaty benefits, which should provide certainty as to the allocation of responsibilities between the parties in cross-border transactions and potentially avoid disputes.

## 2.3 Strengthening follow-up administration

Bulletin 35 empowers the tax authorities to require nonresidents to produce documents supporting a claim for treaty benefits within a specified time period. In addition to the documents stipulated in Bulletin 35, the authorities may request other relevant documents. As such, Bulletin 35 defers the submission of relevant documents from the time treaty benefits are claimed to the follow-up administration stage.

It is likely that the tax authorities will intensify the follow-up administration on nonresidents claiming treaty benefits as a result of the simplification of the filing procedure. To manage potential risks, nonresidents that have claimed treaty benefits under China's tax treaties should retain relevant documents in a timely and complete manner.

## 3. Our observations

Although Bulletin 35 makes the process for claiming treaty benefits more convenient and efficient, it does not lower the substance requirements for nonresidents.

Under Bulletin 35, nonresidents only have to complete the Information Reporting Form that includes basic information, which should reduce the declaration burden. However, nonresidents still may be subject to potential exposure relating to eligibility for treaty benefits, because if the self-assessment is not supported by adequate documentation, a challenge by the tax authorities will be possible, with the possible imposition of interests and penalties. Furthermore, self-assessment could pose a challenge to nonresident taxpayers who do not have a full understanding of the relevant tax rules.

Bulletin 35 leaves some open issues, including but not limited to the following:

- It does not specify a clear timeline for nonresidents to submit retained documents at the request of the tax authorities;
- If a nonresident does not have an office, personnel, related parties or agents in China, the local tax authorities may have difficulty communicating with the nonresident during the follow-up period; and
- If a nonresident has underpaid tax, it may be difficult for the tax authorities to collect the tax if the nonresident taxpayer does not have any income or property in China.

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