LLINKS Law Offices
通力律师事务所

Shanghai
19F, ONE LUJIAZUI
68 Yin Cheng Road Middle
Shanghai 200120 P.R.China
Tel: (86 21) 3135 8666
Fax:(86 21) 3135 8600

Beijing
Units 902-903
Winland International Finance Centre
No.7 Finance Street, Xicheng District
Beijing 100033 P.R.China
Tel: (86 10) 6655 5050
Fax:(86 10) 6655 5060

上海
上海市银城中路68号
时代金融中心19楼
邮政编码: 200120
电话: (86 21) 3135 8666
传真: (86 21) 3135 8600
www.llinkslaw.com

北京
北京市西城区金融大街7号
英蓝国际金融中心9楼02-03单元
邮政编码: 100033
电话: (86 10) 6655 5050
传真: (86 10) 6655 5060
master@llinkslaw.com

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Beijing Strengthens Individual Income Tax Collection on Proceeds from Equity Transfers

By Clare Lu / David Yu

In an effort to implement the *Circular of the State Administration of Taxation on Strengthening the Administration of Individual Income Tax Collection on Proceeds from Equity Transfers* (Guoshuihan No.285/2009) and the *Circular of the State Administration of Taxation and the State Administration for Industry & Commerce on Strengthening the Cooperation between Tax Authorities and Industrial & Commercial Authorities to Share Equity Transfer Information (Guoshuifa No.126/2011)*, and strengthen the administration of individual income tax collection on proceeds from equity transfers, the Beijing Local Taxation Bureau and the Beijing Administration for Industry and Commerce on 31 August 2012 jointly circulated the *Announcement on Issues Relevant to the Strengthening of the Administration of Individual Income Tax Collection on Proceeds from Equity Transfers*, and the Beijing Local Taxation Bureau on 4 September 2012 released the *Announcement on Issues Relevant to the Strengthening of the Administration of Individual Income Tax Collection on Proceeds from Equity Transfers.*

The above two announcements clarify the issues concerning the time, venue, required documentation and assessment of tax basis related to individual income tax collection on proceeds from equity transfers in Beijing. This Article discusses the contents in brief.

Time and Venue for Filing Tax Returns

According to the two announcements, a transferor obligated to pay individual income tax or a transferee obligated to withhold and remit tax (hereinafter referred to collectively as the "filer" or "filers") shall, within 15 days of the month following the month in which the transferor obtains the proceeds from the equity transfer or during the period from the execution of the equity transfer agreement to a date before the enterprise whose equity structure has been changed deals with the registration of the equity structure change at the industrial and commercial bureau, file and pay the individual income tax at the competent tax authority in the locality of the enterprise whose equity structure has been changed with the relevant documentation, and fill out the *Report Letter for Information of Changes of Individual Shareholders*.

如果您需要本出版物的中文本，请与下列人员联系：

郭建良: (86 21) 3135 8756
Publication@llinkslaw.com

If you would like other Llinks publications, please contact:

Roy Guo: (86 21) 3135 8756
Publication@llinkslaw.com

Llinks Law Offices
www.llinkslaw.com

Documentation Required for Filing Tax Returns

To strengthen the assessment and review of the tax basis for the calculation of proceeds from equity transfers, tax authorities require filers to file tax returns with the documentation such as the equity transfer agreement, articles of association, capital verification certification, balance sheet at the end of the month proceeding the month in which the transfer agreement is concluded, etc., and provide the relevant certifying documents where the tax basis is obviously low but a reasonable cause is available.

Assessment of the Tax Basis

The two announcements further address that, where the tax basis is obviously low and no reasonable cause is available, the tax authorities shall, pursuant to the provisions of the *Announcement of the State Administration of Taxation on Issues concerning the Assessment of the Tax Basis for the Calculation of Individual Income Tax on Proceeds from Equity Transfers* (SAT Announcement No.27/2010), assess and determine the tax basis by reference to the net asset per share or the share of the net asset corresponding to the percentage of shares enjoyed by the taxpayer, or the equity transfer price of the same shareholder or other shareholder of the same enterprise under the same or similar conditions, or the equity transfer price of other enterprise in the same industry under the same or similar conditions and, for any enterprise whose intellectual property right, land use right, housing, exploration right, mining right and equity interest have in total accounted for over 50% of its total assets, its net assets shall be assessed and verified by an intermediary.

In addition, the Beijing Local Taxation Bureau has also established a cooperation mechanism with the industrial and commercial bureau. Such cooperation mechanism will facilitate the strengthening of the administration of individual income tax collection on equity transfer proceeds from the source.

Outlook

Beijing Local Taxation Bureau has successively issued two circulars these days to strengthen the administration of individual income tax collection on proceeds from equity transfers clarifying the procedures for filing tax returns and handling business change registrations, and deepening the examination and verification of the documentation required for tax payments. We note that similar operational documents are also introduced in other regions such as Qingdao, Hebei, etc. It is advised that taxpayers pay attention to these regional operational documents in the process of their capital transactions.

Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual Llinks contact.

Shanghai	**Beijing**
David Yu Tel: (86 21) 3135 8686 David.Yu@llinkslaw.com	**David Yu** Tel: (86 10) 6655 5050 David.Yu@llinkslaw.com
Ming Zhang Tel: (86 21) 3135 8777 Ming.Zhang@llinkslaw.com	**James Weng** Tel: (86 10) 6655 5050 - 1028 James.Weng@llinkslaw.com
Clare Lu Tel: (86 21) 3135 8667 Clare.Lu@llinkslaw.com	
Bernie Liu Tel: (86 21) 3135 8678 Bernie.Liu@llinkslaw.com	