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Corporate Tax - China

No more tax exemption for restricted listed shares

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With effect from January 1 2010 Circular 167 provides that income from transfers of listed restricted shares is no longer exempt from individual income tax in China. Income from the sale of such shares is now taxed at 20% in accordance with China's individual income tax law. Following on from the circular, the State Administration for Taxation has issued a further notice outlining the collection procedures in respect of the tax from such income. Circular 8 states that such tax may be collected on a withholding basis by the securities institution or by self-declaration. The applicable method is determined by the local taxation bureau. If the former method applies, but the securities institution does not withhold sufficient tax, the taxpayer must remit the remainder at its own initiative.

The original exemption never applied to income from employee stock options (either through the accretion in value derived or through transfer of the shares), as such income is characterized as employment income.⁽¹⁾ This is particularly significant, as this is when restricted shares are often used. Thus, in many cases restricted shares have not been exempt from tax in China. The changes will not affect employee share plans that use restricted stocks.

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Endnotes

(1) For example, see *Guoshuihan* [2009] 461.

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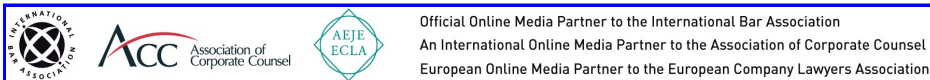
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