

DRAFT TRANSLATION

Notice on Strengthening the Monitoring and Investigation of Cross-Border Related-Party Transactions

Circular Guoshuihan [2009] No. 363

To the state taxation bureaus and local taxation bureaus of all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan:

Pursuant to the provisions of the "Implementation Measures of Special Tax Adjustment (Provisional)" (Circular Guoshuifa [2009] No. 2), in order to further standardize the administration of special tax adjustments and to prevent multinationals from shifting the operating losses incurred by overseas enterprises to domestic related enterprises in the context of the financial crisis, the issues related to the monitoring and investigations of cross-border related party transactions are now clarified as follows:

1. Enterprises set up within China by multinationals that assume limited functions and risks, such as single-function manufacturing (toll manufacturing or import manufacturing), distribution, or contract R&D, should not assume any market or decision-making risks during financial crisis. They should maintain an appropriate level of profits according to the transfer pricing principle that the functional and risk profile should match the profitability.
2. Where the enterprises that assume limited functions and risks mentioned above incur losses, regardless of whether they reach the threshold of preparing contemporaneous documentation, they should prepare the contemporaneous documentation and other relevant materials for the year that the losses incurred, and submit to the competent tax authority before 20 June of the following year.
3. Tax bureaus in all provinces should reinforce the control of cross-border related party transactions, and focus its investigations on multinationals that shift overseas operating losses (including potential losses) to domestic enterprises and shift domestic profits to tax havens through various means. Tax bureaus should strengthen the functional and risk analysis as well as the comparability analysis, select the appropriate transfer pricing method, and determine the profitability of the enterprises.

State Administration of Taxation
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