China: Withholding tax applicable on B-share dividends

Further to our Announcement A08237, dated 19 December 2008, we can confirm that B-share dividend payments made to non-resident corporations are subject to 10% Chinese withholding tax.

Background

The Chinese State Administration of Taxation (SAT) has now issued a circular (Guo Shui Han [2009] No. 394) confirming that listed companies (including those listed on the A-share, B-share or foreign markets) shall withhold 10% tax when distributing dividends to non-resident corporations.

Consequently, for all B-share dividends declared for the year 2008 and thereafter, 10% withholding tax applies for shareholders that are non-resident corporations. It is not clear yet whether the taxation will be applied retroactively to those dividends declared for the year 2008 that have already been paid.

Furthermore, according to information received from our local custodian, foreign institutional investors that qualify for the benefit of a reduced rate of withholding tax in accordance with a Double Taxation Treaty (DTT) between their country of residence and China may apply to obtain the DTT rate. However, no guidance has yet been provided concerning the tax procedures to be followed or whether eligibility criteria are linked to the final beneficial owner or to the entity in whose name the account is registered in China.

Impact on customers

All dividend payments made on B-shares will be subject to 10% withholding tax and, currently, no relief at source or standard refund is available (for the reasons mentioned above).

We are monitoring developments closely and will provide you with further updates as soon as they become available.

Further information

For further information, please contact our Tax Help Desk:

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China: Withholding tax applicable on B-share dividends - update

Further to our Announcement A09108, dated 7 August 2009, we herein provide the latest information received from our local custodian concerning the taxation of Chinese B-shares.

Which entity is responsible to apply, declare and pay tax?

The State Administration of Taxation (SAT) in Beijing has recently reconfirmed that issuing companies should withhold the 10% tax due on dividends from B-shares.

If the issuing company has not withheld tax on dividends distributed based on profits of 2008 and subsequent years, it becomes the responsibility of the non-resident enterprises[1] to pay the tax amounts to the respective issuer's local tax office.

This obligation is based on Article 15 of Circular Guoshuifa [2009]3, "Provisional Measures for the Administration of Withholding of Corporate Income Tax for Non-resident Corporates", according to which, if the issuer of the security (that is, the withholding agent) does not opt to apply tax at the time of the income payment or is unable to, the non-resident enterprise should, **within seven days after the payment or commitment of payment by the withholding agent**, declare and pay the tax to the issuer's competent tax authority.

What are the penalties for non-declaration and non-payment of tax?

According to Article 64 of the Tax Collection and Administration Law, if a taxpayer fails to declare tax or fails to pay or underpays tax due, the tax authorities shall seek the payment of the unpaid or underpaid tax, as well as late payment interest, and concurrently impose a fine of an additional 50%, but not exceeding five times the amount of the unpaid or underpaid tax.

Are the issuers going to apply tax?

According to information received by our local custodian, out of 50 B-share listed companies that paid dividends in 2009 but did not withhold tax, nine issuers confirmed that they would be willing to collect the tax and pay it to the relevant local tax office if so requested by the non-resident enterprise.

According to our records, none of Clearstream Banking accounts opened with our Chinese depository has received dividends from these nine issuers in 2009.

For the remaining 41 listed companies that are unwilling to collect tax from non-resident enterprises, the SAT has required the list of those issuers and has confirmed that it will ask those issuers to collect tax from the relevant non-resident enterprises that had received dividend income untaxed.

The SAT has also confirmed that it will give further assistance in standardising the practice among the 50 B-share listed companies.

Impact on customers

If the 41 listed companies continue to refuse to withhold the tax on dividends from B-shares and not to pay it to the relevant local tax office, then the non-resident enterprises are required to fulfil their tax obligation by declaring and paying the tax amount directly to the respective issuer's local tax office.

In these circumstances, we suggest that you liaise with a local tax advisor and seek assistance in order to handle payment of the tax.

We continue to monitor developments closely and will provide you with further updates as soon as they become available.

1. "Non-resident enterprise" is the term used by the SAT in the relevant tax rules to denote the entity in whose name the investor ID was opened with the central depository in China.

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China: Withholding tax applicable on B-share dividends - further update

Further to our Announcement A10051, dated 26 March 2010, we hereby inform you that, from now on, all dividends paid on B-shares through Clearstream Banking will be subject to 10% withholding tax.

Background

Pursuant to Circular Guo Shui Han [2009] No 394, issued on 24 July 2009 by the State Administration of Taxation (SAT) Beijing and regarding the corporate income tax treatment of dividends derived by non-resident companies from B-shares and other similar shares, such listed companies are required to withhold income tax at 10% when paying dividends on B-shares to non-resident shareholders.

Impact on customers

For those B-share listed companies that agree to collect and pay the aforesaid tax on behalf of the relevant shareholders, all dividend payments made will be subject to 10% withholding tax effective from 1 January 2008, retroactively.

If a B-share listed company refuses to collect and/or pay the 10% withholding tax as indicated above and pays dividends gross, the customer grants its consent to Clearstream Banking to debit its relevant account for the required tax amount, in USD (for Shanghai market) or in HKD (for Shenzhen market).

Such debit is strictly limited to the payment of the foregoing withholding tax on dividends on behalf of the customer.

Note: According to the Corporate Income Tax Law and the Implementation Rules of Corporate Income Tax Law, the tax obligation rests between the paying agent (that is, the listed companies) and the tax payer (that is, the final investor).

Neither Clearstream Banking nor its local depository are responsible for or may decide the application of tax. Dividends are paid as per the instructions received from the paying agent.

Tax relief is subject to the review and approval on a case-by-case basis by the local tax authorities of each listed company issuing the securities and is currently not available through Clearstream Banking.

We continue to monitor developments closely and will provide you with further updates as soon as the information becomes available.

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