KPMG

cutting through complexity™

May 17, 2013
2013-081

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

People's Republic of China – Clarifying When Secondment Creates Chinese Taxable Presence

by Vincent Pang and Michelle Zhou, KPMG Advisory (China) Limited (a KPMG International member firm)

On 19 April 2013, the State Administration of Taxation (SAT) of the People's Republic of China (PRC) issued Announcement 19 to provide guidance on when cross-border secondments of expatriates by foreign enterprises into PRC may create a PRC taxable presence.[1] Announcement 19 is a welcome development for multinational companies (MNCs) doing business in China. It reduces uncertainty as to when a foreign enterprise might create PRC Corporate Income Tax (CIT) exposure through its secondment arrangements. It may also facilitate the process of obtaining tax clearance by a Chinese company when it seeks to make reimbursement remittances overseas pursuant to secondment arrangements.

Various regulatory "gaps" have now been filled by Announcement 19. According to the new circular, the "fundamental criterion" for the home entity to be regarded as providing services through its own staff in the PRC, and thus having a taxable establishment or place of business in the PRC, is whether the home entity bears all or part of the responsibilities and risks in relation to the work products of the secondees, and whether it is the home entity that normally reviews and appraises the job performance of the secondees. In the double taxation agreement (DTA) context, if the establishment or place of business through which the services are provided is of a relatively fixed and permanent nature, it will be regarded as a permanent establishment (PE) for the home entity in the PRC.

Beyond the "fundamental criterion," Announcement 19 also prescribes several factors ("reference factors") in deciding whether the secondees are in substance the employees of the home entity.

For the complete story, see "Clarifications Issued on When Secondment Creates Chinese Taxable Presence for Foreign Enterprises" in *China Tax Alert* (Issue 9, May 2013), published by the KPMG International member firm in the People's Republic of China at: http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/ChinaAlerts/Documents/china-tax-alert-1305-09-Chinese-taxable-foreign-enterprises-v1.pdf

Footnote:

1 Announcement on Issues Concerning Levying Corporate Income Tax on Services Provided by Non-residents through Seconding Personnel to China, SAT Announcement [2013] No. 19 (Announcement).

* * * *

The information contained in this newsletter was submitted by the KPMG International member firm in the People's Republic of China. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash International Executive Alert is an IES publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click **here**. To learn more about our IES practice, please visit us on the Internet: click **here** or go to http://www.kpmg.com .