

Asian Tax Review: Out With the Old Decade in South Korea, Taiwan, and The P.R.C.

Laurence E. Lipsher

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FEATURED PERSPECTIVES

Asian Tax Review

Out With the Old Decade in South Korea, Taiwan, And the P.R.C.

by Laurence E. Lipsher

Laurence E. Lipsher is an American CPA who has lived in China since 1990 and who specializes in tax matters of China and eight neighboring jurisdictions. He blogs at <http://www.lifeilao.com>.

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South Korea

The National Tax Service (NTS) offered to help South Korea's expatriate community complete its tax settlements by the filing deadline of January 31, 2010, *The Korea Herald* reported in late December.

The NTS also provided an English-language tax hotline: 02-397-1440. I came up with a couple of questions and called the hotline to see how accessible it is and how questions were answered. My opinion of the service? In my finest Brooklyn, N.Y., accent (yes, I am proudly a Brooklyn-born Dodgers fan): "Fogedda-boudit!"

There's even a "Simplified Year-End Tax Settlement" Web site: <http://www.yesone.go.kr/eng/>. When I went to the site, there were two pop-up windows. The first one read:

Visit us for an English-language tour of the National Tax Museum.

The National Tax Service of Korea offers an English interpretation service for our guided tour of the National Tax Museum, located in the heart of Seoul, just five minutes' walk from the Gyungbok Palace. Interpretation of a 30 minute tour will be offered from the beginning of November [2009] to provide foreign taxpayers and visitor(s) an opportunity to get a glimpse of the history and development of Korean taxes. Visitors are asked to

make a reservation at least two weeks prior to the desired date of the tour. Interpretation service is subject to availability. For more information, call us at (02) 397-1428-9.

Five years ago I visited a government museum dedicated to South Korean money. Frankly, I don't recall a tax museum, but this one is now a "must see" for me this summer when I go to Seoul to take in some baseball, the one thing I truly miss, not being in the U.S. (I also miss a good corned beef or pastrami sandwich — meat that no matter how much they try to duplicate, simply cannot be found on this side of the Pacific.) If anyone is interested in visiting the National Tax Museum, I'd really be interested in your review of the place.

The second pop-up window on the Web site informed me that, in conjunction with the Total Information Center for Foreigners of the Ministry of Justice, there is a tax interpretation service available in 17 languages: English, Chinese, Japanese, French, Russian, German, Spanish, Vietnamese, Mongolian, Indonesian, Thai, Bengalese, Urdu, Nepalese, Khmer, Myanmarese, and Arabic.

Before calling the NTS and trying out its interpretation service, I had to think carefully about the question I was going to ask. I called the NTS once before, for one of my first articles for *Tax Analysts*. (See *Tax Notes Int'l*, Aug. 15, 2005, p. 609, *Doc 2005-16489*, or 2005

WTD 158-10.) I remember the interpreter asking me why I was asking a question when it appeared that I knew the Korean tax system better than he did.

This time, I decided to say, “I’m an American CPA living in China. I have clients in Korea and have to come to Seoul to work with my clients for a month. How will I be taxed and how should I proceed?”

How times have changed! Five years ago I made a similar call, and the man I spoke with was not as fluent as the woman I just spoke to this afternoon. Back then, I stayed on the line for over a half-hour.

Today, I spent only about five minutes on the telephone. The woman I spoke with was cheerful, receptive, and a far better public relations officer than her male counterpart half a decade ago. The woman sought advice from her in-charge officer and then told me that if I made over US \$3,000, aggregate, during any period of time I remained in South Korea, from tax residents of South Korea, regardless of whether they were corporations or individuals, then those individuals and corporations had the responsibility of withholding 20 percent of my fees and were likewise responsible for paying the tax to the South Korean NTS.

I was satisfied with the answer — and with the telephone service hotline.

Taiwan

No jurisdiction is immune from the world’s economic malaise. Taiwan is obviously no exception. As per the *South China Morning Post* on December 30, 2009, Vice Premier Eric Liluan Chu has called for broadening the Taiwan tax base to meet the shortfall of tax revenues this past year.

Taiwan’s net tax revenue through the first 11 months of 2009 was NT \$1.43 trillion, a 14.6 percent decline, the largest single-year decline since 1949. Corporate and personal income taxes, normally half of the tax revenues, fell 24 percent during the first 11 months — also the largest one-year decline ever recorded.

Obviously, no government wants to raise taxes — it is not the politically prudent thing to do if that government wants to be reelected — but Chu has suggested revoking tax-exempt treatment for members of the military and for teachers, increasing tax rates for expensive properties and luxury goods, and imposing a carbon tax.

We come into 2010 with offshore corporate income now being subject to Taiwan’s alternative minimum tax. My personal experience with Taiwanese CPAs is that they are all inundated with work related to their clients’ offshore businesses right now. One of my U.S.-based clients is moving to Taiwan, and I’ve had trouble finding someone to work with the client because of this unanticipated work overload.

Chen Yunlin, chair of China’s Association for Relations Across the Taiwan Strait, left Taiwan on Christmas Day, after signing three trade pacts with Taiwan. The fourth pact, an expected tax information exchange agreement, was dropped at the last minute and, according to a December 30, 2009, article on channelnewsasia.com, has stirred up a political storm in Taiwan. Taiwan wants the revenue that it perceives is being hidden in Chinese businesses in Taiwan and believes that it will not get all the information (or revenue) without some sort of TIEA.

It remains to be seen whether this will affect the proposed fourth round of talks, the Economic Cooperation Framework Agreement, that will be held sometime in early 2010.

The People’s Republic of China

Toward the end of November, the *People’s Daily* and the *China Daily* printed a November 6, 2009, notice issued by the State Administration of Taxation (SAT), defining both the rights and responsibilities of the Chinese taxpayer. For lack of a better phrase, let’s call this the P.R.C. taxpayer bill of rights.

This is a wonderful step forward. Alas, implementation will take quite a while because it is likely that the central government will not fund implementation, and the already overburdened, underfunded provincial and local offices of the SAT are not likely to put this high on their agendas.

Regardless, here are the primary highlights of this notice:

- The taxpayer has the right to question, to be informed about, and to understand current tax laws, regulations, and administrative procedures. If there is a conflict between the taxpayer and the tax bureau, the taxpayer can request legal, tax, or accounting assistance. Obviously, the better-off taxpayer can privately hire legal representation — yes, there are lawyers and accountants out there who are now willing to represent taxpayers against the government.
- Taxpayers have the right to prevent tax authorities from bringing taxpayer/tax authority matters public.
- Taxpayers can file lawsuits against tax authorities for wrongful conduct (such as bribery or charging excessive tax).
- Taxpayers can apply for tax benefits in accordance with relevant laws and regulations.
- Given the above rights, the taxpayer also has full and complete responsibility to follow tax laws and regulations, and reporting and supplying information, including but not limited to business activities, related-party transactions, pricing, costing, pledging, and mortgaging information and relevant supporting documents.

This is a major step forward. I remember Guoshuifa 57 of 2002, which set up administrative procedures for challenging decisions of local SAT offices. I was a beneficiary of this circular because I had no qualms about representing clients in SAT matters. There are more professionals doing this now. Frankly, I've grown far more comfortable in working with matters involving the SAT than I am working with the IRS (yes, I've been outside of the U.S. that long).

Capital Gains Tax

I've been predicting this for a long time, and it is finally happening. In the late afternoon of December 31, 2009, as the country was closing for a three-day holiday, Xinhua News Agency reported China's first-ever official capital gains tax.

In its last official act of 2009, the State Council imposed a 20 percent tax on gains made by individuals from the sale of formerly nontradable shares, effective New Year's Day. Shares in the secondary market place are still exempt from tax, though.

China's State Council imposed a 20 percent tax on gains made by individuals from the sale of formerly nontradable shares.

On January 2 the *South China Morning Post* reported that this new tax comes into being as a combined 383 billion shares, worth CNY 5.84 trillion, are expected to become free floating later this year. The size of this addition to the marketplace has made fund managers uncertain about what would happen because of marketplace dilution. This not only should pacify the fund managers but also would mean a sizable increase to government funds because of newfound tax revenue.

Before this, nearly 60 percent of P.R.C.-listed firms had nontradable stocks that were to become free floating in 2010. This tax applies only to individual holders of nontradable shares, including founding shareholders of privately owned firms and those buying into the firms before initial public offerings and mezzanine financing deals. Owners of the nontradable shares have made some really nice, nontaxable profits by dumping shares on the market when the lockup period ended. Well, that tax-free situation is over, and unless one of those founding entrepreneurs found out about this immediately after the State Council announcement and before midnight, they were suddenly out of luck in remaining tax free.

Is a Carbon Tax Coming to China?

Late in September 2009, before the run-up to the U.N. Climate Change Conference in Copenhagen, a think tank closely affiliated with China's Ministry of Finance proposed inception by 2013 of a moderate carbon emissions tax. Not much was thought of this, because local governments, which have relied on the coal industry (70 percent of P.R.C. energy consumption is attributable to the use of coal), loudly opposed this tax.

Economic Information Daily, a Xinhua News Agency publication, reported on December 8, 2009, that a levy targeting coal-fired power stations, and not the individuals who owned them, would depress economic growth. In light of the results at Copenhagen (or lack thereof), this is being looked at again — this time seriously. Recent reports suggested that the tax burden would not be high: CNY 10 per ton of carbon dioxide emitted.

China is investing in lowering its greenhouse emissions but not in paying for it all by itself. Carbon capture and storage (CCS), where greenhouse gases are channeled underground, appears to be the scientific answer for the future. Alas, the cost of developing this new technology appears to be at stratospheric levels, and China is not interested in developing this technology on its own — it cannot afford to. There will be a carbon tax to augment the already impressive scientific development taking place in China in alternative energy. Yet China and its fellow BRIC members (Brazil, Russia, and India), as well as Argentina and South Africa, are simply not going to curtail economic development until the U.S. takes some steps toward reducing its own carbon footprint. It is going to take a combination of true world participation in economic funding in CCS research. One way for China to fund its share is to implement a carbon tax. I think it likely that we will see that happen in China by 2013.

Will the New Chinese Partnership Float?

I'm reminded of *The Late Show with David Letterman* and the recurring novelty routine, "Will It Float?" In this case, though, I am talking about the December 1, 2009, missive coming from the State Council, regarding new rules that will allow foreign firms to set up partnerships in the P.R.C., offering yet another way to conduct business in China. According to the State Council, this new form of doing business will start on March 1.

There are two types of partnerships that may be formed: Two or more foreign enterprises or individuals can combine in partnership; or a foreign enterprise or individual may join with either a Chinese enterprise or individual in partnership form.

How are the partners going to be taxed? This is a can of worms until the SAT issues something far more tangible. Right now, China does not have any rules or regulations governing partnerships. The rules issued by

the State Council state that partnership applicants need only to apply to the local offices of the State Administration of Industry and Commerce (SAIC), not the higher-level Ministry of Commerce. However, without any written rules or regulations, the SAIC will simply wait to take action until the government provides some sort of guidance.

Let us suppose, though, that there is a willingness of some SAIC local offices to actually set up partnerships with foreign investment, even though, in all likelihood, these local offices have no idea of how to set foreign investment requirements. What happens in a case involving both SAIC and SAT offices in multiple jurisdictions of China, where some may allow a partnership to be formed and others will not? How will taxation be assessed, especially without the uniformity of rules and regulations to go by and differences in treatment for Chinese entities and non-Chinese entities? How about entities in a tax concession zone where one or more of the partners is not located in that zone?

My guess is that this is not so much a new form of business venture than a relabeling of the joint venture

(JV), with two types of JVs: equity JVs and cooperative JVs. Partnerships, I think, will be taxed as the JVs have been taxed — but this being China, I can only speculate.

In the December 21, 2009, issue of the *South China Morning Post*, these new partnership rules were hailed as a lure for foreign funds. The article stated that tax breaks now available to Chinese investment funds that are structured as partnerships offer a breakthrough that could unlock a flood of new capital, according to Deloitte Touche Tohmatsu. Alan Tsoi Shu-yan, Deloitte principal, said, “In the past, foreign firms couldn’t form partnerships in China. Now foreign partnerships will be allowed to invest in China.”

I couldn’t disagree more. In fact, if you believe the Chinese partnership hype, then there’s a bridge in Brooklyn that I would be happy to sell you. There are no rules or regulations or monies to encourage local jurisdictions to allow partnership setup. What, in essence, will be the difference between a partnership and a joint venture? It could be a while before a locally administered and taxed partnership in China becomes a feasible reality. ♦