

Living with the law

China wants to regulate offshore companies more closely, but there is a way out, says Mossack Fonseca's Austin Zhang

The purpose of the amended Enterprise Income Tax Law and the recently implemented Special Tax Payment Adjustment is to control tax dodging by enterprises using offshore companies. It will have profound effects on Chinese enterprises going offshore.

In addition to cracking down on tax dodging, the law will make enterprises think more about tax planning and consequently approach it in a reasonable and legal way. The law will regulate such acts as related deals, deals using offshore companies without any proper commercial purposes, foreign controlled companies and price transfers.

The enterprises that have close business deals with related parties in offshore jurisdictions will become a target for China's tax authority. In other words, the Chinese government plans to target enterprises using offshore centers to avoid tax.

But I don't think the law will make courage enterprises to seek help from professionals in order to use offshore structures lawfully and for reasonable commercial purposes. This would remove the possibility of being targeted by the tax authorities. Enterprises that have been using offshore services for improper purposes need to adjust before it is too late.

European jurisdictions such as Luxembourg, Monaco and the Netherlands are not popular among Chinese companies because these countries' laws are complicated, and because the EU has taken a hard line against offshore financial centers. This attitude was plain for all to see at the recent Group of 20 summit in London.

Chinese offshore business is more likely to go to the Cayman Islands and Bermuda – for the purpose of stock market listings – as well as the likes of Seychelles and Mauritius who have tax treaties with China and approval by the Ministry of Commerce.

适应法律

莫萨克冯赛卡律师行的张晓冬说，中国意欲加强对离岸公司的监管，办法还是有的。

修订后的《企业所得税法》以及近期实施的“特别纳税调整”的目的均是为了控制利用离岸公司进行避税。这将对中国公司设立离岸公司的做法产生深远的影响。

除了对避税采取严格控制之外，这部法律还将迫使公司对税务规划多做思考，采取合理合法的做法。法律将监管诸如关联交易、外国控制公司和价格转移等行为。

与注册在离岸司法辖区的相关方有密切业务往来的企业将成为中国税务局的重点监察对象。换句话说，中国政府计划把矛头对准利用离岸中心避税的企业。

但是我认为这部法律不会令中国企业就此不愿意使用离岸服务----否则它会设立一个极为严厉的立法机构来阻止哪些渴望发展和扩张的中国公司的投资和以及国际贸易的告诉发展。

相反，法律将鼓励企业基于合理商业目的合法使用离岸结构寻求专业人士的帮助。这将会帮助各个企业降低成为税务机构监管目标的可能性。换句话说就是哪些缺少使用离岸服务正当理由的企业需要尽快进行调整。

欧洲的司法辖区，诸如卢森堡、摩洛哥和荷兰，并不太受中国企业的欢迎，因为这些国家法律复杂，而且欧盟对于离岸金融中心的态度和立场都是非常强硬的，在最近的二十国集团伦敦峰会上已经清晰表明了这种态度。

中国的离岸业务更喜欢选择开曼群岛，百慕大（为了在股票市场上上市），塞舌尔以及毛里求斯之类，既与中国签有税收协定又获得商务部批准的司法辖区。

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