

Tax Harmonization of Treaty Benefits for Teachers and Researchers in China

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As of September 2024, China had signed more than 100 double tax treaties with countries and regions all over the world. This paper focuses on the tax exemption provision for teachers and researchers contained in dozens of double tax treaties signed by China as well as on the Chinese domestic legislation that serves to interpret the tax exemption provision for teachers and researchers. The tax exemption provision for teachers and researchers enhances market competitiveness of treaty partners' teachers and researchers on the Chinese higher as well as non-higher education markets. On the other hand, the treaty partners who do not include the tax exemption provision for teachers and researchers in their double tax treaties with China suffer from weakened market competitiveness on the Chinese higher and non-higher education markets. These circumstances give rise to a very interesting phenomenon: mutual rationality in concluding a double tax treaty might cause an irrational outcome in the context of a country's treaty network consisting of more than one hundred treaties. This lesson implies that mutual negotiation of a double tax treaty might no longer be the best choice for striving towards cross-border tax harmonization. In the context of globalization, it might be more prudent for a country to negotiate a tax treaty by taking into account the convergence of stances adopted by the majority of other treaty partners of this country. Otherwise, this country might lose its competitiveness on the market of its treaty party, compared with most of this party's other treaty partners that have adopted a different tax stance in their treaties. This paper also discusses the importance of enhancing tax harmonization by both contracting states in terms of their domestic detailed rules formulated to implement the teacher's provision contained in their double tax treaty, since the disparities in the strictness and complexity of implementing the teacher's provision and ratifying tax exemption will impair the reciprocity rule of the tax treaty.

Keywords: teachers' provision, double tax treaty, tax harmonization

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Introduction

As of 16 September 2024, China had signed more than 100 double tax treaties with countries and regions all over the world. The tax exemption provi-

sion for teachers and researchers enhances market competitiveness of treaty partners' teachers and researchers on the Chinese higher and non-higher education markets. On the other hand, the treaty partners that do not include the tax exemp-

tion provision for teachers and researchers in their treaties suffer from impaired market competitiveness on the Chinese higher and non-higher education markets. On the same Chinese market, teachers and researchers from different countries are subject to a different tax treatment (i.e. they are either exempted from tax or not), but it is not justified for the teachers and researchers shouldering a heavier tax burden to complain about tax discrimination because the difference in treatment in terms of personal income tax on the Chinese market is caused by the discrepancies in the double tax treaties rather than by the Chinese domestic tax legislation.

These circumstances give rise to a very interesting phenomenon: mutual rationality in concluding a double tax treaty might cause an irrational outcome in the context of a treaty network consisting of more than one hundred treaties. This lesson implies that mutual negotiation of double tax treaties might no longer be the best choice for striving towards cross-border tax harmonization.

In the context of globalization, it might be more prudent for a country to negotiate a tax treaty by taking into account the convergence of treaty stances adopted by a majority of treaty partners of this country's treaty party. Otherwise, this country might lose its competitiveness on the market of its treaty party, compared with most of this party's other treaty partners.

This paper also discusses the importance of enhancing tax harmonization by both contracting states in terms of their domestic detailed rules formulated to implement the teacher's provision contained in their double tax treaty, since the disparities in the strictness and complexity of implementing the teacher's provision and ratifying tax exemption will impair the reciprocity rule of the tax treaty.

Zhu (2015, p. 24) has studied the background of the teacher's provision in double tax treaties from its very beginning and raised an opinion that this teacher's provision evolved from student's provision. Zhu (2015, pp. 25–26) also analyzes the conditions stipulated in China's domestic legislations for the implementation of tax treaty exemption

granted to foreign teachers in five aspects: firstly, the subject of enjoying the tax exemption should be non-resident teachers and researchers; secondly, the subject of enjoying the tax exemption should be a tax resident of the other contracting state before or immediately before this person arrives in the contracting state; thirdly, the income applied for personal income tax exemption should be remuneration of teaching, giving lectures or doing research in the contracting state; fourthly, the teaching, giving lectures, doing research activities should be carried out in recognized universities, colleges, schools, educational institutions, or research institutions; and finally, the stay in the contracting state should be temporary. Şek (2023, p. 87) analyzes the similarities and differences of the Poland-Brazil double tax treaty as compared with Poland's other double tax treaties and also discusses the criteria to fulfil in order to enjoy the personal income tax exemption granted by the teacher's provision contained in the Poland-Brazil double tax treaty and Poland's other double tax treaties. Şek (2023, pp. 92–96) found out that the teacher's provision in Poland's tens of double tax treaties is very divergent: firstly, some treaties contain the tax exemption provision for teachers but other treaties do not contain it; secondly, the tax exemption years are not the same, including two years or three years; thirdly, the method of calculating the tax exemption period is divergent: some treaties calculate the tax exemption period from the earlier beginning of the teacher or researcher's arrival in the contracting state as long as his or her stay does not exceed the designated exemption period, however, in some tax treaties if his or her stay exceeds the designated exemption duration, the previously enjoyed exemption period will be cancelled and the tax exemption previously granted will be obliged to pay back to the tax authority since the first day of his or her arrival in the state; fourthly, the scope of the educational institutions is divergent, for instance, some treaties require recognized or accredited educational institutions but some treaties do not require that the educational institutions should be recognized or accredited. Şek (2023, pp. 89–92) also discuss-

es the absence of tax exemption provision in the template treaty of both the OECD and UN model convention and the commentaries. Ostrovsky (2019, pp. 35–37) discussed the teacher’s exemption provision contained in the US double tax treaties with China, France, and India and found out that these three tax treaties grant personal income tax exemption to visiting teachers and researchers, but on the contrary, Ostrovsky also points out the US double treaties with Russia, Canada, and UK do not contain the teacher’s exemption provision. Larkins (1987, p. 48) discussed the tax planning for American professors teaching outside of the United States and found out that if an American professor fulfills the requirement in Section 911 of the US domestic tax legislation, it is possible for the American professor to avoid US income tax on his remuneration of the teaching outside of the US and also he is likely to enjoy tax exemption benefits if the country wherein he delivers teaching has signed a double tax treaty with the US and also contains the teacher’s provision in the double tax treaty whereby the professor is applicable to the income tax exemption on his teaching remuneration in this contracting state.

This study provides the first discussion on the tax harmonization in terms of the position that a contracting state should take when considering whether including the teacher’s exemption provision in its double tax treaty, especially taking into account its tax competitiveness in the teaching services export market. Mutual rationality in concluding a double tax treaty might cause an irrational outcome in the context of a country’s treaty network consisting of more than one hundred treaties. This lesson implies that mutual negotiation of a double tax treaty might no longer be the best choice for striving towards cross-border tax harmonization. In the context of globalization, it might be more prudent for a country to negotiate a tax treaty by taking into account the convergence of stances adopted by a majority of other treaty partners of this country. Otherwise, this country might lose its competitiveness on the market of its treaty party, compared with most of this party’s other treaty partners that have adopted a different tax stance in their treaties.

This paper also shifts the focus from studying the divergence in the wording of the teacher’s provision contained in various double tax treaties (i.e. exemption period, recognized educational institutions, and other exemption conditions) to the discussion of the importance of tax harmonization between both contracting states in terms of their domestic detailed implementation rules taken by both contracting states when they are implementing the teacher’s exemption provision, since the disparities in the strictness and complexity of implementing the teacher’s provision and ratifying tax exemption will impair the reciprocity rule of the tax treaty.

The divergence in the tax exemption provision for teachers and researchers contained in China’s double tax treaties

Section 2 focuses on the divergent characteristics of tax exemption provision for teachers and researchers contained in most double tax treaties signed by China as well as on the Chinese domestic legislation that serves to interpret the tax exemption provision for teachers and researchers. The divergence characteristics is for example the length of the exemption period contained in China’s double tax treaties ranging from 2 and 3 years to 5 years.¹ The divergence offers a rationale for China to harmonize its tax treaties concerning teachers’ provision.

Most of China’s double tax treaties signed prior to the year 2005 contain an article stipulating exemption of teachers and researchers’ remuneration from tax. For example, the double tax treaty between China and Poland grants a five-year tax exemption on income arising from teaching and conducting research, if it meets the conditions set out in Article 20 of the said double tax treaty: “An individual who is – or immediately before visiting a

¹ See the details in the following paragraphs of Section 2.

*Contracting State was – a resident of the other Contracting State and is staying in the first-mentioned Contracting State for the primary purpose of teaching, giving lectures, or conducting research at a university, college, school, or at an educational institution or a scientific research institution recognized by the Government of the first-mentioned State shall have remuneration for such teaching, lectures, or research exempt from tax in the first-mentioned Contracting State for a period of five years from the date of their first arrival in the first-mentioned Contracting State”.*²

The tax exemption periods allowed by the tax treaties vary depending on the contracting state that has concluded a treaty with China, with the length of the exemption period ranging from 2 and 3 years to 5 years.

Treaties with China that grant a 3-year tax exemption on remuneration of teachers and researchers include the treaties signed with Japan (1983), the US (1984), France (the first version signed in 1984 granting a 3-year tax exemption and the second version renewed in 2013 granting a 36-month tax exemption), the UK (the first version signed in 1984), Belgium (the first version signed in 1985), Germany (the first version signed in 1985), Malaysia (1985), Norway (1986), Denmark (the first version signed in 1986), Singapore (the first version signed in 1986), Finland (the first version signed in 1986), Sweden (1986), Thailand (1986), Italy (the first version signed in 1986), the Netherlands (the first version signed in 1987), Spain (the first version signed in 1990), Austria (1991), Mongolia (1991), Hungary (1992), Luxembourg (1994), Korea (1994), Russia (the first version signed in 1994), India (1994), Ukraine (1995), Armenia (1996), Jamaica (1996), Iceland (1996), Bangladesh (1996), Sudan (1997), Egypt (1997), Portugal

² Article 20 (regarding teachers and researchers) of the Agreement between the Government of the People’s Republic of China and the Government of the Polish People’s Republic for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income. The treaty was signed on 7 June 1988 and has been effective since 7 January 1989 and applicable since 1 January 1990.

(1998), Laos (1999), the Seychelles (1999), Qatar (2001), Kazakhstan (2001), Bahrain (2002), Greece (2002), Kyrgyzstan (2002), Sri Lanka (2003), Mexico (2005), Saudi Arabia (2006), Tajikistan (2008), Ethiopia (2009), and Turkmenistan (2009).³

Treaties with China that grant a 5-year tax exemption on remuneration of teachers and researchers include the treaties signed with Poland (1988), Bulgaria (1989), Kuwait (1989), and the United Arab Emirates (1993).⁴

Treaties with China that grant a 2-year tax exemption on remuneration of teachers and researchers include the treaties signed with Germany (renewed in 2014), New Zealand (the first version signed in 1986), Australia (1988), Pakistan (1989), Switzerland (1990), Cyprus (1990), Romania (1991), Brazil (1991), Malta (2010), Mauritius (1994), Croatia (1995), Belarus (1995), Slovenia (1995), Israel (1995), Vietnam (1995), Turkey (1995), Lithuania (1996), Latvia (1996), Macedonia (1997), Estonia (1998), the Philippines (1999), Ireland (2000), South Africa (2000), Barbados (2000), Moldova (2000), Cuba (2001), Venezuela (2001), Nepal (2001), Indonesia (2001), Oman (2002), Nigeria (2002), Tunisia (2002), Iran (2002), Morocco (2002), Trinidad and Tobago (2003), Albania (2004), Brunei (2004), Georgia (2005), Uganda (2012), and Kenya (2017).⁵

Concluding from the statistics analyzed by the author, which are concerned with China’s 107 double tax treaties signed before 25 November 2020, including new ones that have not yet come into ef-

³ All the double tax treaties signed by the People’s Republic of China are available on the official website of State Administration of Taxation of the PRC (https://www.chinatax.gov.cn/chinatax/n810341/n810770/common_list_ssty.html).

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fect, it is interesting that China has been gradually phasing out the previous tax exemption article from the renewed versions of some tax treaties (i.e. the treaties with the UK, Belgium, Denmark, Singapore, Finland, New Zealand, the Netherlands, Switzerland, and Russia).

Even though China keeps the tax exemption article in some of its new treaties, it has narrowed down the scope of the tax exemption to income from teaching paid out by non-Chinese entities and also one that is subject to tax in non-Chinese jurisdictions, like in the treaty with Kenya signed in 2017.⁶

Some of China's new treaties signed in recent years do not contain the tax exemption article in question, that is tax treaties with Azerbaijan (2005), Algeria (2006), the Czech Republic (2009), Zambia (2010), Botswana (2012), Ecuador (2013), Chile (2015), Cambodia (2016), Gabon (2018), Congo (2018), and Argentina (2018).⁷

Interestingly, in the year 2016, China issued a domestic tax circular⁸ that expanded the definition of an education institution employed for the purposes of the article exempting teachers and researchers from tax by including non-higher-education institutions (i.e. preschool education institutions, primary schools, middle schools, and international schools servicing expatriates' children). Previously, domestic law only recognized higher education institutions to be qualified education institutions entitled to invite foreign teach-

ers and apply for a tax exemption on behalf of them. It is worth noting that China expanded the definition of an education institution in the context of phasing out the tax exemption article from its many updated tax treaties or newly signed tax treaties. It means that the group of beneficial jurisdictions and beneficial taxpayers would shrink significantly. The provisions that are being phased out have almost been deleted from the previous tax treaties signed with the developed countries, except for Japan, the US, France, and Germany. In the author's personal opinion, this might be seen as an objective sign that China still recognizes implicitly its technological level to be lower than that of these exceptional countries (namely, Japan, the US, France, and Germany) at least in some fields, and this is why China continues to allow the tax exemption for the teachers from these most developed countries. Another reason is that the treaties with Japan and the US have not been updated yet since 1983 and 1984, respectively, when both of them signed treaties with China.

The importance of enhancing tax harmonization between both contracting states to eliminate disparities in their domestic detailed implementation rules to enforcing the teacher's provision contained in double tax treaties

In order to facilitate interpretation of the tax exemption article contained in double tax treaties, China has issued a series of circulars to clarify the following issues: 1) Calculation of the tax exemption period; 2) Employment contract signed with a teacher or researcher; 3) Scope of qualified education institutions applying for treaty benefits; and 4) Documentation requirements for claiming treaty benefits.

These circulars enhanced the complexity of applying for the tax exemption treaty benefits for for-

⁶ See Article 21 of the double tax treaty between China and Kenya signed in 2017 (<https://www.chinatax.gov.cn/chinatax/n810341/n810770/c2889829/5027086/files/28898293.pdf>).

⁷ The tax treaty with Angola is not available on the official website of the State Administration of Taxation of the People's Republic of China and, thus, tax treatment under this treaty is not mentioned in this paper. Except for this one treaty, tax regimes applicable to teachers and researchers under China's 106 tax treaties are all analyzed in this paper.

⁸ *Announcement of the State Administration of Taxation on Further Improvement in Implementation of the Provisions on Teachers and Researchers in Tax Treaties*, Announcement of the State Administration of Taxation [2016] No. 91, hereinafter referred to as "Circular 91".

eign teachers and researchers and also increased the uncertainty in fulfilling all the requirements to apply for the tax exemption treaty benefits.

The OECD and UN Model convention do not contain the teacher's clause and neither the commentaries contain any detailed implementation rules for applying for the tax exemption treaty benefits. It is up to each party of the contracting states to determine the detailed implementation rules for the teacher's provision contained in the double tax treaty. In practice, it is rare for both contracting parties to negotiate an agreement on how to implement the teacher's provision, for instance, there is no agreement by both contracting parties on the following questions: whether teachers and researchers should be covered by an employment contract with the educational institutions or just covered by an invitation letter in case their visit to the other contracting state lasts merely no more than 3 months; whether the educational institutions should be recognized or accredited; what the standards/criteria for this recognition or accreditation are; and what kinds of documents should be ready to support the teacher's tax benefits. Since negotiations or agreements is rarely initiated by both contracting states to implement the teacher's provision, it is not difficult to infer that there might be some disparities in the strictness of implementing the teacher's provision by both contracting parties. The disparities in the strictness of implementing the teacher's provision and ratifying tax exemption between both contracting states will impair the reciprocity rule of the tax treaty.

For example, Poland includes the teacher's provision in the double tax treaty with China. A Polish professor in international tax law is invited to deliver teaching for one month at a university located in Shanghai. This Polish professor is very confident that he is eligible to the personal income tax exemption in China on his teaching remuneration earned in China, since, on the surface, the teacher's clause in the Poland-China treaty it is written very clearly that "*An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is present in the first-mentioned Contracting State for the pri-*

mary purpose of teaching, giving lectures, or conducting research at a university, college, school, or educational institution or scientific research institution recognized by the Government of the first-mentioned State shall be exempt from tax in the first-mentioned Contracting State, for a period of five years from the date of his first arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching, lectures, or research". However, finally he cannot enjoy the tax exemption because in practice a Chinese university usually does not sign an employment contract with a foreign professor if his stay in China is too short (in this example, his stay is only one month), and instead, this university prefers to issue an invitation letter to him. Under this situation, this Polish professor is not qualified to enjoy the treaty benefits since he cannot present an employment contract required by China's tax authority. This misunderstanding and disparity in compliance of the teacher's provision contained in the tax treaty occur frequently in the context of lacking harmonization in the detailed implementation rules by both contracting states. It is unfair for a Polish professor to evaluate the tax uncertainty before he decides whether to accept the teaching invitation offered by a Chinese university, in the context of so many existing disparities in the implementation of the teacher's provision contained in the Polish treaty with China. In this example, the Polish tax professor is imposed personal income tax by China's tax authority and he may claim tax credit for the tax paid in China when he files income tax to the Polish tax authority. It is not very certain that the Polish tax authority will ratify this tax credit on his teaching remuneration that is imposed by China's income tax already, since the Polish tax authority cannot understand why this professor cannot enjoy the treaty exemption benefit granted to the teacher on his teaching activity as Poland's treaty with China does not include any condition of having an employment contract in the teacher's provision.

The following paragraphs will discuss China's implementation rules aimed to enforce the teacher's provision contained in double tax treaties signed by China.

Calculation of the tax exemption period

In 1986, China clarified the details concerning calculation of the date of levy of tax and the period of tax exemption by means of the following Circular: *Notice of the State Administration of Taxation at the Ministry of Finance on Levying and Exempting Individual Income Tax Imposed on Teachers and Researchers from Countries that Have Signed Tax Treaties with China* ([86] Cai Shui Xie Zi No. 30, hereinafter referred to as “Circular 30”).

According to Article 1 of Circular 30, for foreign teachers and researchers who come from countries that have signed tax treaties with China and had been present in China prior to implementation of the tax treaties applicable to them, if their stay in China does not exceed 3 years (and for some countries their stay cannot exceed 2 years as specified in the applicable tax treaties), the starting date for calculating their period of stay in China should be the date when the tax treaty is implemented; for foreign teachers and researchers coming to China following implementation of the tax treaties applicable to them, if their stay in China does not exceed 3 years, the starting date for calculating their period of stay in China should be the date of their first arrival in China.

In accordance with Article 2 of Circular 30, for foreign teachers and researchers who come from the contracting countries, if their stay in China since the date of their first arrival does not exceed 3 consecutive years or 3 years on aggregate, their remuneration derived from teaching, lectures, or research should be exempted of tax, but the exemption is only applicable, if their presence in China for the purpose of teaching, lectures, and research does not exceed 3 years; if their stay in China for the purpose of teaching, lectures, and research exceeds 3 years, they should not be entitled to the exemption stipulated in the tax treaties. The stay in China not exceeding 3 years on aggregate refers to teachers or researchers who come to China under multiple employment contracts or for separate periods of time under one employment contract; the periods of being outside China be-

tween the periods of stay should not be included within the total period of stay in China.

Pursuant to Article 3 of Circular 30, if the tax treaties that have been signed and commenced to be applicable specify that for the teachers and researchers who come from the contracting countries the remuneration derived from teaching, lectures, or research is exempt from tax within 3 years since the date of their first arrival in China or within the first 3 years, if the above-mentioned activities last more than 3 years, the remuneration derived from them within the fourth year should be taxable.

According to Article 4 of Circular 30, where the signed and implemented tax treaties stipulate that foreign teachers and researchers who stay in China for more than 3 (or more than 2 as stipulated in some tax treaties) consecutive years or 3 (or 2) years on aggregate cannot enjoy the tax exemption stipulated in the tax treaties and their employment agreement or contract can in advance determine that their stay in China might exceed 3 years, the foreign teachers and researchers should pay tax starting from the month of their first arrival in China; if their stay in China for teaching, lectures or research does not ultimately exceed 3 years, they are allowed to claim a refund of the tax paid in; if they cannot in advance determine whether their stay will exceed 3 years, they may pay tax when they predict that their stay will exceed 3 years or when it has actually exceeded 3 years.

Employment contracts signed with teachers or researchers

In the year 2011, China issued a circular to clarify that applicability of the tax exemption stipulated in a tax treaty is dependent on the type of contract that a teacher or researcher has concluded.

This circular is named *Announcement of the State Administration of Taxation on Implementation of the Provisions on Teachers and Researchers Contained in Tax Treaties* (Announcement of the State Administration of Taxation No. 42 of 2011, hereinafter referred to as “Circular 42”).

According to Paragraph 1 of Article 1 of Circular 42, unless otherwise stipulated in a tax treaty, the tax exemption provision contained in a tax treaty only applies to the teachers and researchers who have an employment relationship with schools or research institutions on the territory of China (which are abbreviated as “domestic institutions”). The employment relationship means that a teacher or researcher has signed an employment agreement(s) with domestic institutions or – in case there is no such explicit employment agreement – the teacher or researcher has taken positions in the domestic institutions and the actual contents, approaches, or schedules of their teaching, lectures, or research activities are arranged or controlled by the domestic institutions.⁹

According to Paragraph 2 of Article 1 of Circular 42, the provision regarding teachers and researchers contained in a tax treaty should apply neither to persons who entered no employment relationship with domestic institutions yet perform teaching, lecturing, or research activities on the territory of China independently or as an employee of a non-domestic institution nor to persons who are appointed by foreign education institutions to carry out relevant teaching activities within the framework of cooperation programmes initiated by both foreign education institutions and domestic ones. Such cooperation programmes refer to relevant teaching activities cooperated and carried out by foreign teaching institutions and domestic institutions in their respective names, excluding independent education institutions jointly established by both foreign and domestic education institutions on the territory of China¹⁰.

⁹ Paragraph 1 of Article 1 of the *Announcement of the State Administration of Taxation on Implementation of the Provisions on Teachers and Researchers Contained in Tax Treaties* (Announcement of the State Administration of Taxation No. 42 of 2011).

¹⁰ See Paragraph 2 of Article 1 of the *Announcement of the State Administration of Taxation on Implementation of the Provisions on Teachers and Researchers Contained in Tax Treaties* (Announcement of the State Administration of Taxation No. 42 of 2011).

In China’s context, teaching, lecturing, or research activity that tax treaty provisions refer to includes various teaching, lecturing, or research activities required by employers on the territory of China or outside it as well as the relevant planning, advisory, and administrative activities besides the teaching, lecturing, or research activities.¹¹ However, planning, advisory, and administrative activities alone are not included in the scope of teaching, lecturing, or research activity. Occasional lectures in the course of performing planning, advisory, and administrative activities should not be deemed as taking up teaching, lecturing, or research activity.¹²

Scope of education institutions that the tax exemption provision applies to

From 1997 to 2016, in the context of China, universities, colleges, schools, or relevant education institutions were defined as full-time higher education schools offering a college degree or higher recognized by the Ministry of Education, also qualified to hire foreign teachers and researchers as approved by the National Foreign Expert Bureau.¹³

Since the year 2016, China has expanded its previously narrow scope of “a university, college, school, or educational institution” as stipulated in

¹¹ See Article 2 of the *Announcement of the State Administration of Taxation on Implementation of the Provisions on Teachers and Researchers Contained in Tax Treaties* (Announcement of the State Administration of Taxation No. 42 of 2011).

¹² See Article 2 of the *Announcement of the State Administration of Taxation on Implementation of the Provisions on Teachers and Researchers Contained in Tax Treaties* (Announcement of the State Administration of Taxation No. 42 of 2011).

¹³ See Article 1 of the *Notice of the State Administration of Taxation on Clarifying the Scope of Application of the Provisions on Teachers and Researchers in Tax Treaties Signed by China* (Guo Shui Han [1997] No. 37, abbreviated as “Circular 37”).

tax treaties to a broader one, that is, “schools that offer preschool, primary, secondary, higher, and special education”.¹⁴.

Documentation requirements for claiming treaty benefits

Requirements as regards documentation that must be submitted to the Chinese tax authorities in order for teachers and researchers to claim treaty benefits have gradually been simplified. However, taxpayers are still obliged to prepare and keep relevant supporting documents.

If a non-resident taxpayer needs to enjoy tax treaty benefits, they shall submit the following forms and documents at the time of filing a tax return or through the agency of the withholding agent:

- Statement of tax residency of non-resident taxpayers (with a designated annex);

¹⁴ According to Article 2 of Circular 37, the research institutions mentioned in the tax treaties and Circular 37 are institutions specialized in scientific research and development, which are subordinated to the ministries, committees, or institutions directly under the State Council as well as the ones subordinated to provinces, autonomous regions, and municipalities directly under the central government and to cities specifically designated in the state plan. It is worth noting that the above-mentioned Article 1 of Circular 37 was abolished on 29 December 2016. The newly implemented Circular is the *Announcement of the State Administration of Taxation on Further Improvement in Implementation of the Provisions on Teachers and Researchers in Tax Treaties* (Announcement of the State Administration of Taxation No. 91 of 2016, hereinafter referred to as “Circular 91”). According to Article 1 of Circular 91, the term “schools that offer preschool, primary, secondary, higher, and special education” encompasses kindergartens, ordinary primary schools, adult primary schools, ordinary junior middle schools, vocational junior high schools, ordinary senior high schools, adult high schools, secondary schools, adult secondary schools, vocational schools, secondary and technical schools, special education schools, schools for children of foreigners, ordinary colleges and universities, higher vocational colleges, and adult colleges. Training institutions are not categorized as schools for treaty purposes.

- Statement of tax treaty treatment enjoyed by non-resident taxpayers (with a designated annex);
- Tax residency certificate issued by the tax authorities of the other contracting party to a tax treaty after the beginning of the calendar year before filing the tax return or withholding tax;
- Relevant contracts, agreements concerning one’s income (note: in the case of teachers and researchers, the type of agreement should be an employment agreement for a foreign teacher or researcher).¹⁵

In practice, besides the above documents, the teacher or research should also provide a copy of their passport, a copy of the tax treaty signed between their country of residence and China as well as a written authorization letter of the foreign teacher or researcher, and proof of identity of the agent that takes care of filing taxes on behalf of this foreign teacher or researcher.¹⁶

In order to optimize the Chinese tax environment further and add to the convenience of non-resident taxpayers as far as enjoying tax treaty treatment is concerned, as of 1 January 2020, China limited the number of documents to be submitted to the tax authority to only one: *Statement of Tax Treaty Treatment Enjoyed by Non-Resident Taxpayers*.¹⁷ Foreign teachers and researchers are

¹⁵ See Article 7 of the Circular titled *Announcement of the State Administration of Taxation on Promulgating the Administrative Measures for Non-Resident Taxpayers to Claim Tax Treaty Benefits* (Announcement of the State Administration of Taxation No. 60, 2015, abbreviated as “Circular 60”) issued in 2015.

¹⁶ Notice on Handling Individual Income Tax Reduction and Exemption for Foreign Personnel, obtained from the official website of the International Office and Hong Kong, Macao, and Taiwan Affairs Office at the Sichuan University: http://global.scu.edu.cn/?channel/49/192/_/1716 accessed: 3..12.2020).

¹⁷ See Article 5 of the “Announcement of the State Administration of Taxation on Promulgating the Administrative Measures for Non-Resident Taxpayers to Enjoy Treaty Benefits” (Announcement of the State Administration of Taxation No. 35 of 2019).

also required to maintain their tax residency certificate issued by their country's tax authority, which proves their tax residency status in the current year or the previous year in which they have obtained income as well as their employment agreement. The Chinese tax authorities reserve the right to check these supporting documents kept by non-resident teachers and researchers in order to ensure tax treaty benefits are not abused.

Economic impact of the lack of harmonization in the provisions on teachers

Countries that have removed the provisions regarding the tax exemption in question from their tax treaties with China suffer from impaired competitiveness of their teachers and researchers on the Chinese education market as the foreign teachers coming from contracting countries enjoying no exemption have to be subject to personal income tax and tend to pass the additional tax burden onto the Chinese higher education institutions. On the other hand, there are still many countries that conclude tax treaties with China, which stipulate that teachers are exempt from tax and thus the foreign teachers from these countries are more attractive or competitive on the Chinese higher education market since their gross remuneration cost (without income tax) is less than in the case of the former group of foreign teachers.

For instance, a US professor is employed by a Chinese university and the employment duration is no more than 3 years. Assuming this US professor meets the requirement of Section 911 of the US domestic tax legislation,¹⁸ his remuneration of teaching in China is exempt of US personal income tax. And also according to Article 19 (the teacher's provision) of China's double tax treaty with the US, this US professor is also exempt from his income tax in China since his stay in China is no

more than 3 years and he a US resident before his arrival in China and also his remuneration is derived from teaching activities and the Chinese university is a recognized university by the Chinese government. Since this US professor enjoys double exemption of tax, he does not need to request the Chinese university to offer a remuneration taking into account his personal income burden. Statistics also show that China's universities prefer to hire US professors rather than British professors.¹⁹

A similar double exemption might be enjoyed by a Polish professor, assuming he is hired by a Chinese university for no more than five years, since he will lose his residence status in Poland²⁰ once he arrives in China and stays in China for the consecutive five years. His teaching remuneration paid by the Chinese university will be exempt from Chinese personal income tax according to Article 20 of Poland's double tax treaty with China.²¹ At the same time, he is not subject to Poland's personal income tax since he has lost this residence status in Poland.

From the legislation spirit of the introduction of the teacher's provision in tax treaty, China's origi-

¹⁹ Shanghai Dianji University released its list of employed overseas distinguished teachers (including short-term and long-term employed ones) for the year 2024 on its official website. The list included 11 US professors and 3 British professors: <https://guojijl.sdju.edu.cn/2024/0403/c2784a130386/page.htm> (accessed: 5.12.2024). Similarly, Shanghai Dianji University released its list of employed overseas distinguished teachers (including short-term and long-term employed ones) for year 2018 in its official website. The list included 21 US professors and 3 British professors: <http://school.freekaoyan.com/sh/shdjxy/2018/05-06/1525593608868405.shtml> (accessed: 5.12.2024). The Hunan province of China released its list of employed overseas distinguished teachers for the academic year of 2019-2020 on its official website and the list included 11 US professors and 3 British professors: http://jyt.hunan.gov.cn/jyt/sjyt/xxgk/tzgg/201909/t20190925_10465833.html (accessed: 5.12.2024).

²⁰ Assuming the Polish professor does not have any permanent home, vital interests, or habitual residence in Poland. See paragraph 2 of Article 4 of Poland's double tax treaty with China.

²¹ Poland signed the double tax treaty with China in 1988.

¹⁸ See the tax planning by Ernest R. Larkins, *Journal of the American Taxation Association* [J], Fall87, Vol. 9 Issue 1, p48.

nal purpose is to enhance inflow of foreign experts to China, and that is why China is willing to grant exemption from personal income tax on teaching remuneration to attract foreign teachers. Obviously, since the very beginning, China has expected to relieve the personal income tax burden of these foreign teachers who inflow to China rather than realizing personal income tax neutrality. On the contrary, if the foreign teacher enjoys Chinese personal income tax exemption but is still obliged to pay personal income tax in its home country immediately after he leaves China, the total tax burden of this foreign teacher will not be relieved since many countries in the world use the credit method to relieve double taxation but unfortunately there is no tax sparing in terms of personal income tax when he claims the tax credit against the tax paid in China (obviously, the tax paid in China is zero since he enjoys the Chinese tax exemption according to the teacher's provision in the tax treaty) to his competent tax authority in his home state. This is quite similar to the situation when a corporate income tax exemption granted to a foreign invested enterprise by a developing country is pointless provided there is no tax sparing clause included in the double tax treaty with the home country of its parent company. In this sense, the teacher's provision since its very beginning of being introduced to a tax treaty, it has not aimed to ensure tax neutrality or avoid double non-taxation, because the country of importing foreign teachers does not have any reason to allow its tax revenue flow to its contracting partners.

On the contrary, if this professor is from the UK and also employed by the same Chinese university, assuming this British professor's employment duration is also 2 years, for example, from 2023 to 2025, the British professor needs to consider his personal income tax burden in China since he earns dependent employment income from a Chinese employer and should be subject to Chinese personal income tax either according to China's personal income tax law²² or according to Para-

graph 1 of Article 15 of the China double tax treaty with the UK signed on 27 June 2011 and effective on 13 December 2013.

According to the above examples, tax exemption treatment under the teacher's provision in a double tax treaty might cause double exemption (see the above US professor's example). Therefore, a country is more tax-competitive when it tries to export its professor's or researcher's teaching and research services to its treaty partner with whom it has already included the tax exemption provision on teachers and researchers in its tax treaty concluded with this treaty partner. On the contrary, a country is not tax-competitive if it does not include any tax exemption provision on teachers and researchers in its double tax treaties, because under this situation, its professors or researchers should be subject to personal income tax either in the host state or in the home state, depending on the his or her stay in the host state and whereby the remuneration is paid.

As China expands the scope of schools qualified to apply for the tax exemption on behalf of their foreign teachers by way of adding primary and secondary schools or even kindergartens and vocational schools, etc. to this range, the countries that enjoy no exemption are faced with a decline in the competitiveness of their surplus educational human resources exported to China. In fact, since their treaty with China contains no tax exemption article, their competitiveness has declined not just on the traditional Chinese higher education market but after the year 2016 also on the non-higher education market.

It is not justifiable for the countries whose competitiveness has weakened on the Chinese market to argue that China exercises tax discrimination with respect to them, even though their teachers and researchers on the Chinese market enjoy unfavourable tax treatment compared with their competitors, because their double tax treaties with China are based on mutual negotiation and agreement.

days becomes a Chinese tax resident and should be subject to personal income tax on his/her salary earned in China.

²² According to the personal income tax legislation of China, a foreigner who stays in China for more than 183

It is worth noting that an interesting phenomenon arises; objectively speaking, some teachers are suffering from tax discrimination in China compared with other teachers who teach in China and come from countries enjoying a tax exemption (for example, a British professor vs. a US professor both hired by a Chinese university for no more than 3 years), but it is not justified for them to complain about this apparent discrimination on the territory of China because these teachers that work in China are subject to the provisions of tax treaties rather than the Chinese domestic legislation. Within the legal framework in China, a tax treaty prevails over domestic tax legislation. Although China has expanded the scope of tax exemption by adding more education institutions to it, countries that enjoy no exemption cannot claim Chinese domestic tax benefits because the tax treaty applicable to them prevents them from enjoying the tax benefits set out in the Chinese domestic legislation. The countries that enjoy no exemption cannot even complain about harmful tax competition – even though in practice other exempt countries are subject to a more favourable tax treatment – because this unfair situation should be attributable to the provisions regarding teachers, which are either contained in the double tax treaties signed by China or not.

If tax regimes applicable to all the OECD countries are compared, the US, Japan, France, Germany, Poland, and some other countries apparently enjoy more favourable tax treatment arising from the treaty provisions regarding teachers.

These circumstances give rise to a very interesting phenomenon: mutual rationality in concluding a double tax treaty might cause an irrational outcome in the context of a treaty network consisting of more than one hundred treaties. This lesson implies that mutual negotiation of a double tax treaty is no longer the best choice when striving towards cross-border tax harmonization. In the context of globalization, it is likely to be more prudent and more rational for a country to negotiate a tax treaty not only on the foundation of considering mutual tax revenue distribution but also taking into account the convergence of treaty stances adopted by most other treaty partners of its contracting country. Otherwise, the country might lose its competitiveness as compared with most other treaty partners of its contracting country.

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