



China's taxman strikes again with a USD1.5million tax bill to Nottingham University

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China's taxman strikes again with a USD1.5million tax bill - if you think permanent establishment (PE) is not a real risk, think again...

The attached translation of an article that appeared in the China Taxation News (the journal that often publishes key decisions from the State Administration of Taxation) explains the recent settlement of an investigation into Nottingham University's tax obligations as a result of being determined to have a PE in China and having received income that was deemed to have been royalty or franchise fees. The tax liability was RMB10 million (roughly USD1.5 million).

The Ningbo tax authorities spent four years to investigate into Nottingham University's tax obligations in China and the key take away points are:

- The Chinese tax authorities are getting more sophisticated with their understanding of the PE concept and are actively seeking to uncover potential PE situations by foreign enterprises/institutions' in China;
- Secondment is an effective tool to use to minimize a foreign enterprise/institution PE risk in China but it must be structured properly to minimize the PE risk;
- Once a foreign enterprise/institution is deemed to have a PE in China, even where the taxpayer is a non-profit in its home country and on an accounting basis, is not making a profit, the application of the "deemed profit method" means tax will be paid in China regardless of whether the foreign enterprise/institution is making profit from China or not;
- While China does not publish many tax decisions, in instances like this, in which a key tax decision has been published in newspapers or journals like the China Taxation News, even though the article

did not specifically name Nottingham, the facts made it clear that it could be no other than Nottingham. Obviously, such risk of reputation damage can be even greater than the financial risk.

Given the magnitude of the settlement, it is likely that the Chinese tax authorities will be looking at other arrangements with foreign universities and examining whether there is a PE issue or attempting to re-characterize income so that it is subject to increased withholding.

We will be following up with a more detailed analysis of this decision in the coming week. In the meantime, if you are interested to learn more about this case, our in-house translation of the decision can be found [here](#). Please let us know whether you have any questions or would like to discuss further.

Best regards,

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