

税务风险管理

国家税务总局于2009年5月5日发布国税发[2009]90号文《关于印发〈大企业税务风险管理指引（试行）〉的通知》。《大企业税务风险管理指引（试行）》旨在引导大企业合理控制税务风险，防范税务违法行为，避免因没有遵循税法可能遭受的法律制裁及财务损失，对企业的要求主要包括：

- 构建税务风险管理组织架构。企业可结合生产经营特点和内部税务风险管理的要求设立税务管理机构和岗位，明确岗位的职责和权限。
- 制定税务风险管理制度。企业应制订和完善税务风险管理制度和其他涉税规章制度。
- 识别、评估税务风险。企业应系统地收集内部和外部相关信息，通过风险识别、风险分析、风险评价等步骤，查找企业经营活动及其业务流程中的税务风险，从而确定风险管理的优先顺序和策略。
- 建立税务信息与沟通的机制。企业应建立税务风险管理的信息与沟通制度，明确税务相关信息的收集、处理和传递程序，确保与管理层和相关业务部门保持良好的沟通和反馈，发现问题应及时报告并采取应对措施。
- 对税务风险管理实施情况进行监督和改进，主要包括：企业内部的自我评估，中介机构的鉴证，税务机关的纳税评估。

企业所得税

国家税务总局、财政部与2009年4月24日发布财税[2009]第69号文《关于执行企业所得税优惠政策若干问题的通知》，内容包括：

- 执行《国务院关于实施企业所得税过渡优惠政策的通知》（国发[2007]39号）的企业，在定期减免税的减半期内，可以按照企业适用税率计算的应纳税额减半征税。其他各类情形的定期减免税，均应按照企业所得税25%的法定税率计算的应纳税额减半征税。
- 企业在享受过渡税收优惠过程中发生合并、分立、重组等情形的，按照《财政部、国家税务总局关于企业重组业务企业所得税处理若干问题的通知》（财税[2009]59号）的统一规定执行。

财政部、国家税务总局就企业重组所涉及的企业所得税具体处理问题，于2009年4月30日发布财税[2009]59号文《关于企业重组业务企业所得税处理若干问题的通知》，内容包括：

- 本通知所称企业重组，是指企业在日常经营活动以外发生的法律结构或经济结构重大改变的交易，包括企业法律形式改变、债务重组、股权收购、资产收购、合并、分立等。
- 企业重组的税务处理区分不同条件，分别适用一般性税务处理规定和特殊性税务处理规定。
- 企业重组同时符合下列条件的，适用特殊性税务处理规定：
 - ✓ 具有合理的商业目的，且不以减少、免除或者推迟缴纳税款为主要目的；
 - ✓ 被收购、合并或分立部分的资产或股权比例符合本通知规定的比例；
 - ✓ 企业重组后的连续12个月内不改变重组资产原来的实质性经营活动；
 - ✓ 企业重组中取得股权支付的原主要股东，在重组后连续12个月内，不得转让所取得的股权。
- 本通知自2008年1月1日起执行。

财政部、国家税务总局于2009年4月30日发布财税[2009]60号文《关于企业清算业务企业所得税处理若干问题的通知》，内容包括：

- 企业清算的所得税处理，是指企业在不再持续经营，发生结束自身业务、处置资产、偿还债务以及向所有者分配剩余财产等经济行为时，对清算所得、清算所得税、股息分配等事项的处理。
- 下列企业应进行清算的所得税处理：
 - ✓ 按《公司法》、《企业破产法》等规定需要进行清算的企业；
 - ✓ 企业重组中需要按清算处理的企业。
- 企业清算的所得税处理包括以下内容：
 - ✓ 全部资产均应按可变现价值或交易价格，确认资产转让所得或损失；
 - ✓ 确认债权清理、债务清偿的所得或损失；
 - ✓ 改变持续经营核算原则，对预提或待摊性质的费用进行处理；
 - ✓ 依法弥补亏损，确定清算所得；
 - ✓ 计算并缴纳清算所得税；
 - ✓ 确定可向股东分配的剩余财产、应付股息等。
- 企业的全部资产可变现价值或交易价格，减除资产的计税基础、清算费用、相关税费，加上债务清偿损益等后的余额，为清算所得。
- 本通知自2008年1月1日起执行。

土地增值税

为了加强房地产开发企业的土地增值税征收管理，规范土地增值税清算工作，国家税务总局于2009年5月12日发布国税发[2009]91号文《关于印发〈土地增值税清算管理规程〉的通知》（以下简称《规程》），内容主要包括：

- 《规程》适用于房地产开发项目土地增值税清算工作。

- Formulate tax risk management policies. The enterprises should set up tax risk management policies and other tax related rules and regulations.
- Identify and assess tax-related risks. The enterprises should systematically collect relevant internal and external information; detect tax risks in their business activities through measures like risk identification, risk analysis and risk assessment, so as to prioritize tax risk management and related strategy.
- Establish a mechanism for collecting and communicating tax information. The enterprise should develop policies on a tax information collection and communication system; clearly define the steps and procedures for information collection, processing and delivery; and ensure that the relevant business units maintain good communication and feedback channels with senior management; and timely report and respond to issues.
- Monitor and improve the tax risk management system, including: internal self-assessment, attestation by third-party professionals, and assessment by the tax authorities.

Corporate Income Tax (CIT)

SAT and the Ministry of Finance released Circular on Some Issues Regarding Carrying out Preferential CIT Policies (CaiShui [2009] No.69) on April 24, 2009, stipulating that:

- Within the tax half-reduction phase of periodical tax reduction/exemption, enterprises subject to *Circular on Implementing Policies of Transitional Preferential CIT* (GuoFa[2007]No.39) issued by the state council shall enjoy tax half-reduction policy on the basis of their applicable CIT rate. Enterprises under the other forms of periodical tax reduction/exemption shall enjoy tax half-reduction policy on the basis of 25% CIT rate.
- If enterprises incur merger, split or restructuring during the period of enjoying transitional preferential CIT policies, they shall become subject to *Circular on Some Issues Regarding CIT Treatment of Enterprises Restructuring* (CaiShui [2009]No.59) released by SAT and the Ministry of Finance.

In respect of CIT treatment related to enterprises restructuring, the Ministry of Finance and SAT released Circular on Some Issues Regarding CIT Treatment of Enterprises Restructuring (CaiShui [2009]No.59) on April 30, 2009, including the following points:

- Under this Circular, restructuring is defined as transactions resulting from significant changes in legal structure and economic structure instead of routine operational activities, including change in legal form of enterprise, debt restructuring, equity acquisition, assets acquisition, merger, split and others.
- CIT treatment for restructuring comprises of ordinary tax treatment rules and special tax treatment rules, aiming at different conditions of enterprises.
- Special tax treatment rules shall be applicable for enterprises restructuring that meets the following requirements:
 - ✓ Transaction shall be done for reasonable business purpose, and without aiming to reduce or exempt tax or defer tax payment;
 - ✓ Proportion of assets or equity acquired, merged or split should be in conformity with the proportion prescribed by this Circular;
 - ✓ The original substantial business activities shall keep unchanged within 12 continuous months after the restructuring;

- ✓ The former major shareholders who acquire shares from restructuring shall not be allowed to transfer the acquired shares within 12 continuous months after the restructuring.
- This Circular came into effect as of Jan. 1, 2008.

The Ministry of Finance and SAT issued Circular on CIT Treatment of Enterprise Liquidation (CaiShui [2009]No.60) on April 30, 2009, stipulating that:

- If an enterprise terminates its operation and has such economic activities as closing business, disposing assets, repaying debt, and distributing residual equity to enterprise owners, it would carry out treatment of liquidation income, liquidation income tax, distribution of dividend and other issues. Such treatment is defined as CIT treatment of enterprise liquidation.
- The following enterprises should carry out CIT treatment of liquidation:
 - ✓ Enterprises required to carry out liquidation under the Company Law and Enterprise Bankruptcy Law;
 - ✓ Enterprises that need to be liquidated amid enterprise restructuring.
- CIT treatment of enterprise liquidation includes:
 - ✓ Gains and losses from assets transfer shall be recognized according to the realizable value of total assets or transaction price;
 - ✓ Recognize gains and losses from settlements of credit and debt;
 - ✓ Treat with accrued or prepaid expenses by changing accounting principle of going concern;
 - ✓ Recover losses legally and work out income from liquidation;
 - ✓ Calculate and pay liquidation income tax;
 - ✓ Define residual assets and payable dividend and others that can be distributed to shareholders.
- Liquidation income refers to the balance of the realizable value of the total assets after deducting the tax base of the assets, liquidation expenses, relevant taxes and expenses, plus gains and losses from the settlement of debt.
- This Circular came into effect as of Jan. 1, 2008.

Land Appreciation Tax (LAT)

In order to strengthen management of LAT on real estate developers and standardize LAT liquidation, SAT released Circular on Issuing Regulations of LAT Liquidation Management (GuoShuiFa [2009] No.91) (“the Regulations”) on May 12, 2009, mainly including the following points:

- The Regulations is applicable for LAT liquidation of real estate development projects.
- According to the definition of LAT liquidation in the Regulations, when tax payers meet conditions of LAT liquidation, they should calculate LAT payable in connection with relevant real estate development projects, fill in *Application Form for LAT Liquidation*, submit required documents to tax authorities, and finally make a settlement of the LAT payable, in accordance with laws and regulations related to LAT.
- Taxpayers should start to conduct LAT liquidation when they:
 - ✓ Complete the development and sales of real estate projects totally; or
 - ✓ Transfer their unfinished projects; or
 - ✓ Directly transfer land use right.

Tax Collection Management

SAT issued Circular on Strengthening Follow-up Supervision over Transfer Pricing (GuoShuiHan [2009] No.188) on April 16, 2009, stipulating that:

- As for the case of transfer pricing adjustment that is concluded after Jan. 1, 2008, tax authorities shall implement a follow-up supervision over the enterprise for a period of 5 years from the year when the adjustment is ended.
- Within the period of follow-up supervision, enterprises shall provide tax authorities with contemporaneous documentations related to year-2008 transfer pricing adjustment before December 31, 2009. As for the transfer pricing adjustment of year 2009 and later, enterprises shall provide contemporaneous documentations to tax authorities before June 20 of the next year.

The newsletter is merely provided to our clients and those who have interest in our business for reference. We'll do our best to ensure the accuracy of the information in the newsletter. We have to remind you that the content in the newsletter is abstracted from relevant documents, and therefore in practice the original documents should be used for reference. Meanwhile, we welcome all of you to consult professionals in our firm regarding the information in the newsletter, and also welcome all of you visit our website www.deancca.com.cn. We will render affordable and value-added services to our clients. If there is a discrepancy between Chinese and English versions, Chinese version will prevail.

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