

## 企业所得税

财政部、国家税务总局于2009年4月16日发布财税[2009]57号文《关于企业资产损失税前扣除政策的通知》，内容包括：

- 本通知所称资产损失，是指企业在生产经营活动中实际发生的、与取得应税收入有关的资产损失，包括现金损失，存款损失，坏账损失，贷款损失，股权投资损失，固定资产和存货的盘亏、毁损、报废、自然灾害等不可抗力因素造成的损失以及其他损失。
- 对企业盘亏的固定资产或存货，以该固定资产的账面净值或存货的成本减除责任人赔偿后的余额，作为固定资产或存货盘亏损失在计算应纳税所得额时扣除。
- 对企业毁损、报废的固定资产或存货，以该固定资产的账面净值或存货的成本减除残值、保险赔款和责任人赔偿后的余额，作为固定资产或存货毁损、报废损失在计算应纳税所得额时扣除。
- 企业在计算应纳税所得额时已经扣除的资产损失，在以后纳税年度全部或者部分收回时，其收回部分应当作为收入计入收回当期的应纳税所得额。
- 企业境内、境外营业机构发生的资产损失应分开核算，对境外营业机构由于发生资产损失而产生的亏损，不得在计算境内应纳税所得额时扣除。
- 企业对其扣除的各项资产损失，应当提供能够证明资产损失确属已实际发生的合法证据，包括具有法律效力的外部证据、具有法定资质的中介机构的经济鉴证证明、具有法定资质的专业机构的技术鉴定证明等。
- 本通知自2008年1月1日起执行。

为了进一步规范特别纳税调整管理，防止跨国企业在金融危机背景下将境外企业的经营亏损转移至境内关联企业，国家税务总局于2009年7月27日发布国税函[2009]363号文《关于强化跨境关联交易监控和调查的通知》，就有关问题明确如下：

- 跨国企业在中国境内设立的承担单一生产（来料加工或来件装配）、分销或合约研发等有限功能和风险的企业，不应承担金融危机的市场和决策等风险，按照功能风险与利润相配比的转让定价原则，应保持合理的利润水平。
- 上述承担有限功能和风险的企业如出现亏损，无论是否达到准备同期资料的标准，均应在亏损发生年度准备同期资料及其他相关资料，并于次年6月20日之前报送主管税务机关。

- 各地税务机关要加强对跨境关联交易的监控，重点调查通过各种途径将境外经营亏损（包括潜在亏损）转移到境内以及将境内利润转移至避税港的跨国企业，强化功能风险分析和可比性分析，选择合理的转让定价方法，确定企业的利润水平。

为保证新《企业所得税法》及其实施条例的平稳运行，2009年上半年，国家财政、税务主管部门陆续出台了40多个有关企业所得税的政策。以下对主要的企业所得税相关政策进行梳理，以便于企业在进行税务管理时根据自身情况来查寻、研究适用政策。

- 税收优惠政策方面
  - ✓ 企业所得税优惠政策进一步规范。企业所得税优惠类型包括：免税收入、定期减免税、优惠税率、抵扣应纳税所得额、加速折旧、税额抵免和其他专项优惠政策。
  - ✓ 新、老优惠政策的过渡衔接的规定得到明确。
  - ✓ 单项优惠政策的具体适用规定进一步细化。
  - ✓ 明确了核定征收企业不得享受小型微利企业税收优惠。
- 税前扣除政策方面
  - ✓ “合理工资薪金”的概念和原则得到明确。
  - ✓ 首次从税收的角度明确了“职工福利费”范围。
  - ✓ 出台了资产损失税前扣除相关制度和办法。
  - ✓ 确定了可以税前扣除的准备金及其条件。
  - ✓ 手续费及佣金支出扣除政策得到明确。
- 特殊税务处理方面
  - ✓ 明确企业重组按照不同情况适用一般性税务处理规定和特殊性税务处理规定。
  - ✓ 明确了企业清算业务所得税处理办法。
  - ✓ 进一步调整了房地产开发经营业务所得税处理规定。
  - ✓ 企业取得专项用途财政性资金的企业所得税处理问题得到明确。
  - ✓ 文化企业所得税优惠政策期限被延长。

## 外商投资管理

商务部于2009年5月4日发布商资函[2009]6号文《关于省级商务主管部门和国家级经济技术开发区审核管理部分服务业外商投资企业有关事项的通知》，规定：

- 《外商投资产业指导目录》中总投资1亿美元以下鼓励类、允许类，总投资5000万美元以下限制类的下述行业外商投资企业设立及变更由各省级商务主管部门、国家级经济技术开发区依法负责审核、管理：
  - ✓ 中外合资、合作医疗机构；
  - ✓ 拍卖企业；



- Enterprises should deal with asset losses occurring in their offshore and domestic operational entities separately. Asset loss occurring in enterprises' offshore branches cannot be deducted when calculating taxable income of domestic branches.
- Enterprises should provide valid proof to certify the truth of occurrence of asset loss and justify the pre-tax deduction of asset loss. The supporting material includes legal external proof, economic authentication issued by licensed agents, technical authentication issued by licensed professional institutions and others.
- This Circular came into effect as of Jan. 1, 2008.

**In order to further standardize management of special tax adjustment, and prevent transnational enterprises from transferring the losses of their offshore subsidiaries to their related parties in China under the circumstance of financial crisis, SAT issued Circular on Further Supervising and Inspecting Trans-border Related Transactions (GuoShuiHan [2009]No.363) on July 27, 2009, stipulating that:**

- Entities established by transnational enterprises in China and oriented to limited functions and risk such as simple production (contract processing or contract assembly), distribution or contract research & development, should not take on market and strategy risk brought about by the financial crisis. Following the transfer pricing principle that profit should be matched with functional risk, those entities should have reasonable profitability.
- If the above-said entities with limited assumption of functions and risk incur loss, they should prepare contemporary documents and other relevant paperwork in the year when loss occurs, and present those documentations to competent tax authorities before June 20 of the following year, regardless of whether to meet the standards for preparing contemporary documents.
- Tax authorities shall strengthen the supervision and control over trans-border related transactions, and focus on those transnational enterprises that transfer offshore business losses (including potential losses) to domestic enterprises, or transfer domestic enterprises profits to tax havens through various channels. Tax authorities shall enhance functional risk analysis and comparative analysis, and use reasonable measures for transfer pricing to determine enterprises' profitability.

**In order to carry out the new CIT Law and its Implementation Regulations smoothly, in the first half of 2009, the national finance departments and tax authorities have promulgated more than 40 CIT-related policies. We hereby make a summary of category of CIT policies for enterprises' reference.**

- On preferential tax policies
  - ✓ Preferential CIT policies are further standardized. Preferential CIT policies include tax-exempt income, periodical tax reduction and exemption, incentive tax rate, offset of taxable income, accelerated depreciation, offset of tax payable and other special preferential policies.
  - ✓ Transition from the old preferential policies to the new becomes clearer.
  - ✓ Regulations for application of single preferential policy are more detailed.
  - ✓ It is clearly confirmed that enterprises paying CIT on a deem basis cannot be entitled to preferential tax policies applicable for small-scale and slight-profit enterprise.
- On pre-tax deduction policies
  - ✓ The concept and principle of "reasonable salary and compensation" are determined.
  - ✓ For the first time, the scope of "staff welfare expense" is defined from the tax point of view.
  - ✓ System and methods regarding pre-tax deduction of asset losses are released.
  - ✓ Pre-tax deduction of provision fund and relevant requirements are confirmed.

- ✓ Policies for deduction of handling charge and commission are clarified.
- On special tax treatment
  - ✓ It is prescribed that enterprise restructure is subject to common tax treatment or special tax treatment according to different condition.
  - ✓ CIT treatment measures for enterprise liquidation are definitely stipulated.
  - ✓ CIT treatment rules for real estate development business are further improved.
  - ✓ CIT treatment related to obtaining government funds for special use is provided.
  - ✓ Expiration of preferential tax policies for culture industry enterprises is prolonged.

## **Foreign Investment Administration**

**The Ministry of Commerce released Circular on the Provision That Provincial Commerce Authorities and National-level Economic & Technological Development District Shall Have Jurisdiction over Part of Foreign-Invested Enterprises (FIEs) of Service Industry (ShangZiHan [2009] No.6) on May 4, 2009, stipulating that:**

- Among the Guiding Category of Foreign-invested Industries, FIEs of encouraged and permitted industries with total investment below USD 100 million, and FIEs of restricted industries (listed as follows) with total investment below USD 50 million shall be legally under the jurisdiction of provincial commerce authorities or national-level economic & technological development district administration in respect of registration and changes of FIEs:
  - ✓ Medical institutions of FIEs of equity joint venture and corporate joint venture;
  - ✓ Auction sector;
  - ✓ Books, newspaper and journal distribution business;
  - ✓ Video products wholesale business of FIEs of corporate joint venture;
  - ✓ Foreign-invested non-gas mine exploration enterprises;
  - ✓ Various non-gas mining enterprises.
- Jurisdiction over FIEs' merge & acquisition depends on amount of M&A transactions. As for FIEs of encouraged and permitted industries with amount of M&A transactions below USD 100 million and FIEs of restricted industries with amount of M&A transactions below USD 50 million, their M&A transactions shall be under the jurisdiction of provincial commerce authorities or national-level economic & technological development district administration.
- As for FIEs of the above-said industries approved originally by the Ministry of Commerce, their change issues shall be under the jurisdiction of provincial commerce authorities or national-level economic & technological development district administration.
- This Circular came into effect as of the date of its issuance.

*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.deancpa.com.cn](http://www.deancpa.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.*

张有礼	联系电话(Tel): 53832277*168	王伟文	联系电话(Tel): 53832277*111
<b>Youli Zhang</b>	电子信箱(Email): <a href="mailto:ylzhang@deancpa.com.cn">ylzhang@deancpa.com.cn</a>	<b>Jude Wang</b>	电子信箱(Email): <a href="mailto:weiwen@deancpa.com.cn">weiwen@deancpa.com.cn</a>
周剑英	联系电话(Tel): 53832277*118		
<b>Jenny Zhou</b>	电子信箱(Email): <a href="mailto:jenny.zhou@deancpa.com.cn">jenny.zhou@deancpa.com.cn</a>		