

## 企业所得税

财政部、国家税务总局于 2009 年 7 月 31 日发布财税[2009]72 号文《关于部分行业广告费和业务宣传费税前扣除政策的通知》，规定：

- 对化妆品制造、医药制造和饮料制造（不含酒类制造）企业发生的广告费和业务宣传费支出，不超过当年销售（营业）收入 30% 的部分，准予扣除；超过部分，准予在以后纳税年度结转扣除。
- 对采取特许经营模式的饮料制造企业，饮料品牌使用方发生的不超过当年销售（营业）收入 30% 的广告费和业务宣传费支出可以在本企业扣除，也可以将其中的部分或全部归集至饮料品牌持有方或管理方，由饮料品牌持有方或管理方作为销售费用据实在企业所得税前扣除。
- 烟草企业的烟草广告费和业务宣传费支出，一律不得在计算应纳税所得额时扣除。
- 本通知自 2008 年 1 月 1 日起至 2010 年 12 月 31 日止执行。

## 个人所得税

国家税务总局于 2009 年 8 月 17 日发布国税发[2009]121 号文《关于明确个人所得税若干政策执行问题的通知》，内容包括：

- 个人在公司（包括关联公司）任职、受雇，同时兼任董事、监事的，应将董事费、监事费与个人工资收入合并，统一按工资、薪金所得项目缴纳个人所得税。

国家税务总局于 2009 年 8 月 24 日发布国税函[2009]461 号《关于股权激励有关个人所得税问题的通知》，规定：

- 个人因任职、受雇从上市公司取得的股票增值权所得和限制性股票所得，由上市公司按照“工资、薪金所得”项目和股票期权所得个人所得税计税方法，依法扣缴其个人所得税。
- 股票增值权被授权人获取的收益，是由上市公司根据授权日与行权日股票差价乘以被授权股数，直接向被授权人支付的现金。上市公司应于向股票增值权被授权人兑现时依法扣缴其个人所得税。
- 股票增值权个人所得税纳税义务发生时间为上市公司向被授权人兑现股票增值权所得的日期；限制性股票个人所得税纳税义务发生时间为每一批次限制性股票解禁的日期。

## 税收征管

国家税务总局于 2009 年 7 月 27 日发布国税发[2009]114 号文《进一步加强税收征管若干具体措施》，其中内容包括：

- 加强欠税清理。实行欠税目标责任管理，严格控制新欠，陈欠较年初压缩 20% 以上，对于往年陈欠，可暂先将欠税清理入库。
- 加强对跨地区经营汇总纳税企业总分机构管理。加强总分机构主管税务机关的信息沟通，核实月度或季度预缴税款准确性。
- 加强企业所得税税前扣除项目管理。重点对与同行业投入产出水平偏离较大又无正当理由的成本项目进行核查。分析工资支出扣除数额，确保扣除项目的准确性。按规定由企业自行计算扣除的财产损失，在企业自行计算扣除后，主管税务机关要加强实地核查，进行追踪管理。
- 加强股权交易税收监管。对非居民企业转让境内股权交易，及时收集交易信息，掌握交易的经济实质，防范非居民企业实施的滥用组织形式、滥用避税地、滥用税收协定的避税行为。
- 加强反避税管理。强化对跨境关联交易监控，重点监控在中国境内承担单一生产、分销或合约研发等有限功能和风险的企业，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。
- 加强非居民提供劳务税收管理。

## 增值税

国家税务总局于 2009 年 8 月 20 日发布国税函[2009]432 号文《关于增值税即征即退实施先评估后退税有关问题的通知》，规定：

- 主管税务机关受理享受增值税即征即退优惠政策的纳税人的退税申请后，应对其销售额变动率和增值税税负率开展纳税评估。
- 销售额变动率或者增值税税负率正常的，主管税务机关应办理退税手续。
- 销售额变动率或者增值税税负率异常的，主管税务机关应暂停退税审批，并在 20 个工作日内通过案头分析、税务约谈、实地调查等评估手段核实指标异常的原因。
- 本通知自 2009 年 9 月 1 日起执行。

## 房产税

财政部、国家税务总局发布财税[2009]3 号文《关于对外资企业及外籍个人征收房产税有关问题的通知》，规定：

- 自 2009 年 1 月 1 日起，对外资企业及外籍个人的房产征收房产税，在征税范围、计税依据、税率、税收优惠等方面按照《中华人民共和国房产税暂行条例》（国发[1986]90 号）及有关规定执行。
- 以人民币以外的货币为记账本位币的外资企业及外籍个人在缴纳房产税时，均应将其根据记账本位币计算的税款按照缴款上月最后一日的人民币汇率中间价折合成人民币。



**SAT released Circular on IIT Issues Related to Stock Option Incentive (GuoShuiHan [2009] No.461) on Aug. 24, 2009, stipulating that:**

- When individuals have income from their stock appreciation right and restricted stock due to being employed or taking office in listed companies, those listed companies shall withhold their IIT according to the tax item of salary and compensation as well as the taxation methods for stock option.
- The authorized individuals' proceeds from stock appreciation right shall be equal to the stock price difference between granting day and exercise day times the authorized stock amount, and realized in the form of cash directly paid by the listed companies. The companies shall withhold IIT of the authorized individuals when cashing in their proceeds from stock appreciation right.
- Individuals shall incur liability for paying IIT on the day when the listed companies cash in their proceeds from stock appreciation right. As for the proceeds from restricted stock, individuals shall become liable for paying IIT on the day when the restricted stock is unbanned every time.

### **Tax Levy Administration**

**SAT issued Detailed Measures for Strengthening Tax Levy Management (GuoShuiFa [2009] No.114) on July 27, 2009, including the following points:**

- Further clearance of tax arrears. Tax authorities shall carry out responsibility management of target tax arrears to control newly emerging tax delinquency. Old tax arrears shall be shrunk by more than 20%, comparing with the amount at the beginning of the year. Tax arrears of the previous years shall be settled and paid temporarily.
- Management of consolidated CIT payment of trans-regional enterprises. Information communication between competent tax authorities of both headquarters and branches shall be strengthened for insuring the accuracy of monthly or quarterly prepaid tax.
- Management of pre-tax deduction. Tax inspection shall focus on the cost items that obviously depart from regular proportion of output to input in comparison with enterprises of the same industry and without justified reasons. Tax authorities shall also specially inspect accuracy of staff payment deduction and validity of assets loss deduction.
- Supervision over tax on equity transaction. As to non-resident enterprises transferring domestic equity, tax authorities shall collect transaction information, ascertain the nature of transaction, and prevent non-resident enterprises from committing tax evasion through abusing organizational form, tax haven and tax treaties.
- Management of tax anti-avoidance. Supervision and control over trans-border related party transaction shall be intensified, focusing on those companies established in China by transnational enterprises and oriented to limited functions and risk such as simple production, distribution or contract research & development, and preventing transnational enterprises from transferring offshore business losses to domestic enterprise under the circumstances of the global financial crisis.
- Strengthen management of taxation on the non-resident enterprises that provide services to domestic institutions.

### **Value-added Tax (VAT)**

**SAT issued Circular on Making Assessment Prior to Tax Refund When Handling VAT Refund Upon Payment (GuoShuiHan [2009] No.432) on Aug. 20, 2009, stipulating:**

- When handling VAT refund application made by taxpayers who're entitled to the preferential policy of VAT refund upon payment, competent tax authorities shall conduct a tax assessment of taxpayers' sales fluctuation rate and VAT burden rate.
- Tax authorities shall handle VAT refund for the taxpayers who have regular sales fluctuation rate and VAT burden rate.
- As for taxpayers who incur abnormal sales fluctuation rate and VAT burden rate, tax authorities shall temporarily suspend the approval for the tax refund, but investigate the reason for the abnormal indicators within 20 working days through case analysis, communication, on-the-spot inspection and other means.
- This Circular came into effect as of Sep. 1, 2009.

## **Real Estate Tax**

### **The Ministry of Finance and SAT issued Circular on Levying Real Estate Tax on Foreign-Invested Enterprises and Foreign Individuals (CaiShui [2009] No.3), stipulating that:**

- Since Jan. 1, 2009, real estate tax shall be levied on the real estate owned by FIEs and foreign individuals. In respect of tax scope, tax basis, tax rate, preferential policy and others, they shall abide by Provisional Regulations of Real Estate Tax of PRC (GuoFa [1986] No.90).
- When FIEs and foreign individuals pay real estate tax, if they do not use RenMinBi as bookkeeping currency, their tax that is calculated on the base of their bookkeeping currency should be converted into RenMinBi according to middle price of RenMinBi exchange released in the last day of the past month..
- Tax authorities in the location of real estate shall be responsible for levy of real estate tax, following regulations of PRC Tax Levy Management Law.

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