

营业税

财政部、国家税务总局于 2009 年 8 月 25 日发布财税[2009]112 号文《关于对跨年度老合同实行营业税过渡政策的通知》，规定：

- 跨年度老合同涉及的境内应税行为的确定和跨年度老合同涉及的建筑、旅游、外汇转贷及其他营业税应税行为营业额的确定，按照合同到期日和 2009 年 12 月 31 日(含 12 月 31 日)孰先的原则，实行按照《中华人民共和国营业税暂行条例》(国务院令第 136 号)、《中华人民共和国营业税暂行条例实施细则》[(93)财法字第 40 号]及相关规定执行的过渡政策。上述跨年度老合同涉及的税率、纳税义务发生时间、纳税地点、扣缴义务人、人民币折合率、减免税优惠政策等其他涉税问题，自 2009 年 1 月 1 日起，应按照新条例和新细则的规定执行。
- 文到之前纳税人已缴、多缴、已扣缴、多扣缴的营业税税款，允许从其以后的应纳税额中抵减或予以退税。

财政部、国家税务总局于 2009 年 9 月 27 日发布财税[2009]111 号文《关于个人金融商品买卖等营业税若干免税政策的通知》，将有关营业税优惠政策明确如下：

- 对个人（包括个体工商户）从事外汇、有价证券、非货物期货和其他金融商品买卖业务取得的收入暂免征收营业税。
- 对中华人民共和国境内（以下简称境内）单位或者个人在中华人民共和国境外（以下简称境外）提供建筑业、文化体育业（除播映）劳务暂免征收营业税。
- 境外单位或者个人在境外向境内单位或者个人提供的完全发生在境外的《中华人民共和国营业税暂行条例》（国务院令第 540 号，以下简称条例）规定的劳务，不属于条例第一条所称在境内提供条例规定的劳务，不征收营业税。
- 本通知自 2009 年 1 月 1 日起执行。

海关监管

海关总署发布 2009 年 44 号公告《关于明确税款保证金征收方式相关事宜的通告》，规定：

- 纳税义务人在海关尚未确定商品归类、完税价格、原产地等征税要件的情况下要求先放行货物的，海关应向其收取足额税款担保。有关征收担保的具体方式，现明确如下：
 - ✓ 一般情况下海关应对上述货物收取全额税款保证金或金融机构保函后放行。
 - ✓ 为方便企业尽快取得税单并实施增值税款抵扣，减少资金成本压力，应企业申请，海关可以先根据企业申报征收税款，同时按海关认定的应征税款和已征税款的差额部分收取税款担保后放行。

中国海关总署于 2009 年 9 月 16 日发布 2009 年第 62 号公告《关于来料加工装配厂转型为法人企业进口税收问题》，规定：

- 自 2009 年 7 月 1 日至 2011 年 6 月 30 日，来料加工装配厂（指不具有独立法人资格的来料加工装配厂，但不包括独立法人企业下属的非独立法人分支机构，以下简称来料加工厂）以外商提供的免税进口不作价设备出资设立外商投资法人企业的，对其在 2008 年 12 月 31 日及以前已经办理了加工贸易手册备案，并且在 2009 年 6 月 30 日及以前申报进口的尚处在海关监管年限内的设备，免于补缴进口关税和进口环节增值税。
- 对申请享受上述税收优惠政策的不作价设备，外商投资法人企业应在 2011 年 6 月 30 日之前一次性向主管海关提出减免税申请，经主管海关审批同意后，按照有关规定办理相关手续。

特许权

国家税务总局于 2009 年 9 月 14 日发布国税函[2009]507 号文《关于执行税收协定特许权使用费条款有关问题的通知》，规定：

- 凡税收协定特许权使用费定义中明确包括使用工业、商业、科学设备收取的款项的，有关所得应适用税收协定特许权使用费条款的规定。税收协定对此规定的税率低于税收法律规定税率的，应适用税收协定规定的税率。上述规定不适用于使用不动产产生的所得，使用不动产产生的所得适用税收协定不动产条款的规定。
- 在服务合同中，如果服务提供方提供服务过程中使用了某些专门知识和技术，但并不转让或许可这些技术，则此类服务不属于特许权使用费范围。但如果服务提供方提供服务形成的成果属于税收协定特许权使用费定义范围，并且服务提供方仍保有该项成果的所有权，服务接受方对此成果仅有使用权，则此类服务产生的所得，适用税收协定特许权使用费条款的规定。
- 在转让或许可专有技术使用权过程中如技术许可方派人员为该项技术的使用提供有关支持、指导等服务并收取服务费，无论是单独收取还是包括在技术价款中，均应视为特许权使用费，适用税收协定特许权使用费条款的规定。

- Institutions or individuals inside the territory of PRC (hereinafter “inshore”) providing services in respects of construction, cultural and sports businesses (exclusive of broadcasting and televising) outside the territory of PRC (hereinafter “offshore”) shall be temporarily exempt from business tax.
- When offshore institutions or individuals provide inshore institutions or individuals with services that are totally completed outside the territory of PRC, and prescribed by the Provisional Regulations of PRC Business Tax Law (Ordinance No.540 of the State Council, hereinafter “the Regulations”), and not included in the scope of services as prescribed in the Article 1 of the Regulations, the provision of that kind of service shall be exempt from business tax.
- This Circular came into effect as of Jan. 1, 2009.

Administration of the Customs

The Customs of China issued year-2009 No.44 Circular — Notice About Clarifying Some Issues Regarding the Way of Levying Tax Deposit, stipulating that:

- If taxpayers apply to the Customs for advance release of their goods before the Customs verifies the category of goods, dutiable value, origin of goods and other tax-related factors, the Customs shall charge the taxpayers tax deposit in full. The way to levy the tax deposit is stipulated as follows:
 - ✓ Generally, the Customs shall levy full tax deposit on the above-mentioned kind of goods or require letter of guarantee of financial institution before releasing the goods.
 - ✓ In order to enable enterprises to obtain tax receipts and go through with VAT deduction as quickly as possible for the purpose of reducing their pressure of capital cost, the Customs could levy tax based on enterprises’ application and tax filing. Simultaneously, the Customs shall levy tax deposit on difference of tax payable deemed by the Customs and tax already paid by enterprises, and then release the goods.

The Customs of China issued year-2009 No.62 Circular — Issues Regarding Import Tax of the Contract Processing and Assembly Plants That Are Transformed into Legal Entity on Sep. 16, 2009, stipulating that:

- From July 1, 2009 to June 30, 2011, if a contract processing or assembly plant (herein referred to the plant without identity of independent legal entity, but exclusive of branches of independent legal entities; hereinafter “the contract plant”) is transformed into a FIE through taking in foreign investment of imported tax-free equipment without fixed price, and has handled registration of processing trade handbook before or on Dec. 31, 2008, it shall be exempt from import tariff and import VAT on the equipment that is declared for importation before or on June 30, 2009 but is still within the time limit of supervision of the Customs.
- As for entitlement of the above-mentioned preferential tax policies for the equipment without fixed price, the FIEs should make an one-off application for the tax reduction/exception to the Customs before June 30, 2011, and handle relevant formalities with the approval of the Customs.

Royalties

SAT released Circular on Issues regarding Royalties Articles in China's Tax Treaties (GuoShuiHan [2009] No.507) on Sep. 14, 2009, stipulating that:

- All the payments for using industrial, commercial and scientific equipment under the royalties articles in China's tax treaties shall be subject to the regulations of royalties articles in the tax treaties. If the relevant rate in the tax treaties is lower than that kind of rate in the PRC tax laws, then the rate in the tax treaties shall be adopted. The above-mentioned rules are not applicable for payment for using real estate, which shall be subject to regulations of real estate articles in the tax treaties.
- As per a service contract, if the service provider uses certain specialized knowledge and technology in the course of the provision of service, but such knowledge and technology is not licensed to the service recipient, then such service payment shall not be considered royalties. But, when the payment for the service result is considered royalties under the royalty articles in the tax treaties, and the service provider retains ownership of the service result, and the service recipient is just granted a right to use the service result, then such payment for the service shall be subject to the regulations of royalties articles of the applicable tax treaty.
- In the course of licensing a use right of specialized technology, if the licensor assigns personnel to provide services like support and guidance related to the use of the licensed technology, and charges service fee, regardless of whether the service fee is included in the total amount of the royalties or invoiced separately, the fee shall be subject to the royalties provision of the applicable tax treaty.
- The following kinds of payment shall be considered revenue from services, rather than royalties:
 - ✓ Payments for after-sale services in connection with the trading of goods;
 - ✓ Payments for services provided under a product warranty;
 - ✓ Payments for services provided by institutions or individuals that engage in professional services like engineering, management, consulting service, etc.
 - ✓ Other similar payments stipulated by SAT.

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张有礼	联系电话(Tel): 53832277*168	王伟文	联系电话(Tel): 53832277*111
Youli Zhang	电子信箱(Email): ylzhang@dean CPA.com.cn	Jude Wang	电子信箱(Email): weiwen@dean CPA.com.cn
周剑英	联系电话(Tel): 53832277*118		
Jenny Zhou	电子信箱(Email): jenny.zhou@dean CPA.com.cn		