

增值税

国家税务总局于2009年10月21日发布国税函[2009]585号文《关于纳税人资产重组有关增值税政策问题的批复》，规定：

- 纳税人在资产重组过程中将所属资产、负债及相关权利和义务转让给控股公司，但保留上市公司资格的行为，不属于整体转让企业产权行为。对其资产重组过程中涉及的应税货物转让行为，应照章征收增值税。
- 上述控股公司将受让获得的实物资产再投资给其他公司的行为，应照章征收增值税。

税收协定

根据中华人民共和国政府对外签署的避免双重征税协定（含内地与香港、澳门签署的税收安排，以下统称税收协定）的有关规定，就缔约对方居民申请享受股息、利息和特许权使用费等条款规定的税收协定待遇时，如何认定申请人的“受益所有人”身份的问题，国家税务总局于2009年10月27日发布国税函[2009]601号文《关于如何理解和认定税收协定中“受益所有人”的通知》，规定：

- “受益所有人”是指对所得及所得据以产生的权利或财产具有所有权和支配权的人。“受益所有人”一般从事实质性的经营活动，可以是个人、公司或其他任何团体。代理人、导管公司等不属于“受益所有人”。导管公司(shell company)是指通常以逃避或减少税收、转移或累积利润等为目的而设立的公司。这类公司仅在所在国登记注册，以满足法律所要求的组织形式，而不从事制造、经销、管理等实质性经营活动。
- 在判定“受益所有人”身份时，不能仅从技术层面或国内法的角度理解，还应该从税收协定的目的（即避免双重征税和防止偷漏税）出发，按照“实质重于形式”的原则，结合具体案例的实际情况进行分析和判定。一般来说，下列因素不利于对申请人“受益所有人”身份的认定：
 - ✓ 申请人有义务在规定时间内将所得的全部或绝大部分（比如60%以上）支付或派发给第三国（地区）居民。
 - ✓ 除持有所得据以产生的财产或权利外，申请人没有或几乎没有其他经营活动。
 - ✓ 在申请人是公司等实体的情况下，申请人的资产、规模和人员配置较小（或少），与所得数额难以匹配。
 - ✓ 对于所得或所得据以产生的财产或权利，申请人没有或几乎没有控制权或处置权，也不承担或很少承担风险。

- ✓ 缔约对方国家（地区）对有关所得不征税或免税，或征税但实际税率极低。
- ✓ 在利息据以产生和支付的借款合同之外，存在债权人与第三人之间在数额、利率和签订时间等方面相近的其他贷款或存款合同。
- ✓ 在特许权使用费据以产生和支付的版权、专利、技术等使用权转让合同之外，存在申请人与第三人之间在有关版权、专利、技术等的使用权或所有权方面的转让合同。

契税

国家税务总局于 2009 年 10 月 27 日发布国税函[2009]603 号文《关于明确国有土地使用权出让契税计税依据的批复》，明确指出：

- 出让国有土地使用权，契税计税价格为承受人为取得该土地使用权而支付的全部经济利益。对通过“招、拍、挂”程序承受国有土地使用权的，应按照土地成交总价款计征契税，其中的土地前期开发成本不得扣除。

出口退税

国家税务总局于 2009 年 9 月 15 日发布国税函[2009]538 号文《关于生产企业开展对外承包工程业务出口货物退（免）税问题的批复》，规定：

- 属于增值税一般纳税人生产企业开展对外承包工程业务而出口的货物，凡属于现有税收政策规定的特准退税范围，且按规定在财务上作销售账务处理的，均实行免、抵、退税办法；
- 凡属于国家明确规定不予退（免）税的货物，按现行规定予以征税；
- 不属于上述两类货物范围的，如生活用品等，实行免税办法。

为了鼓励科学研究和技术开发，财政部、海关总署、国家税务总局于 2009 年 10 月 10 日发布财税[2009]115 号文《关于研发机构采购设备税收政策的通知》，对外资研发中心进口科技开发用品免征进口税收，主要内容包

- 外资研发中心适用《科技开发用品免征进口税收暂行规定》免征进口税收，应分别满足下列条件：
 - ✓ 对 2009 年 9 月 30 日及其之前设立的外资研发中心，应同时满足下列条件：
 1. 研发费用标准：(1)对新设立不足两年的外资研发中心，作为独立法人的，其投资总额不低于 500 万美元；作为公司内设部门或分公司的，其研发总投入不低于 500 万美元；(2)对设立两年及以上的外资研发中心，企业研发经费年支出额不低于 1000 万元。
 2. 专职研究与试验发展人员不低于 90 人。
 3. 设立以来累计购置的设备原值不低于 1000 万元。

Tax Treaty

Based on the relevant regulations in *Agreement on Avoidance of Double Taxation* and CEPA between the Mainland and Hong Kong/Macao (hereinafter “the tax treaty”), and aiming at the issue of how to confirm identity of “beneficial owner” when contracting party residents apply for enjoying tax treaty policies related to dividend, interests, royalties and others, SAT issued Circular on How to Understand and Recognize “Beneficial Owner” in the Tax Treaty (GuoShuiHan [2009] No.601) on October 27, 2009, stipulating that:

- “Beneficial owner” refers to those who are entitled to own and control earnings, and rights or possessions generating such earnings. Generally, beneficial owners are individuals, companies or other entities that engage in substantial business activities. Agents and shell companies are not beneficial owners. Shell companies, in most cases, are set up for the purpose of tax evasion or reduction, transfer or accumulate profits and others. Registered in local government, shell companies have legal form, but never engage in substantial business activities such as manufacturing, marketing, management, etc.
- Recognizing the identity of beneficial owners should be based on the principle of “economic substance over form”, and combined with actual circumstance of cases. Besides technical and law standpoint, purpose of the tax treaty (avoidance of double taxation and prevention from tax evasion) should be taken into consideration. Commonly, the following conditions may affect the recognition of identity of beneficial owners:
 - ✓ Applicants are liable to pay or dispatch all or most (more than 60%) of their earnings to residents of the third country (region) within a prescribed period.
 - ✓ Except holding the rights and possessions that can generate earnings, the applicants have no or little other business activities.
 - ✓ Applicant is a company or an entity of other forms with small amount of assets, small scale and little staff, which cannot be matched with its earnings.
 - ✓ Applicants have no or little rights to control or dispose the earnings as well as possessions or rights generating such earnings; and they also take no or little risk.
 - ✓ Contracting country (region) dose not levy tax on that earnings, or the actual tax rate applicable for that earning is very low.
 - ✓ Besides the loan contract according to which interest shall be produced and paid, there exists other loan or savings contract signed by applicant and the third party, with approximately same amount of interest, rate, signing time, etc.
 - ✓ Besides the transfer contract of use right of copy, patent, technology and others according to which royalties shall be derived and paid, there exists other contract with similar contents signed by applicant and the third party.

Deed Tax

SAT released **Reply to the Issue Regarding Clarifying Taxation Base of Deed Tax on Transfer State-owned Land Use Right (GuoShuiHan [2009] No.603) on October 27, 2009, definitely pointing that:**

- As for transferring state-owned land use right, taxation base of deed tax is defined as all the economic benefits paid by transferee for obtaining the land use right. Those who obtain state-owned land use right through procedures of “bidding, auction and listing” shall pay deed tax calculated on the basis of total price of the land transaction, and early development cost of the land cannot be deducted.

Export Tax Refund

SAT released **Reply to the Issue Regarding Export Tax Refund (Exemption) of Productive Enterprises Undertaking Offshore Contract Engineering Projects (GuoShuiHan [2009] No.538) on Sep. 15, 2009, stipulating that:**

- Productive enterprises (general VAT payers only) that need to export goods used for their undertaking of offshore contract engineering projects shall be entitled to the policies of export tax exemption, deduction and refund, as long as the export goods are included in category of especially-approved tax refund prescribed by the current tax policies, and regarded as sales in accounting treatment.
- If the goods are not eligible for export tax refund (exemption) policies according to the state regulations, it shall be taxed.
- Goods exclusive of the two above-said types like articles for daily use shall be eligible for export tax exemption.

In order to encourage scientific research and technical development, the Ministry of Finance, the Customs and SAT issued Circular on Tax Policies for Research & Development Institutions Purchasing Equipment (CaiShui [2009] No.115) on Oct. 10, 2009, including the following points:

- Foreign-invested R&D institution shall be exempt from import tax according to *Provisional Regulations on Import Tax Exemption for Scientific Development Articles*, if they meet the following conditions:
 - ✓ Foreign-invested R&D institutions established on or before Sep. 30, 2009 should meet all of the requirements as follows:
 1. R&D expense standards: 1) newly-established foreign-invested R&D institutions, at the age of less than 2 years, have total investment of no less than USD 5 millions if they're legal entities, or total R&D investment of no less than USD 5 millions if they're internal divisions or branches; 2) for the institutions of more than 2 years old, the annual R&D expenses are no less than RMB 10 millions.
 2. No less than 90 professional research personnel are required.
 3. Original value of equipment purchased since the establishment amounts to RMB 10 millions.

- ✓ Foreign-invested R&D institutions established on or after Oct. 1, 2009 should meet all of the requirements as follows:
 1. R&D expense standards: the institutions have total investment of no less than USD 8 millions if they're legal entities, or total R&D investment of no less than USD 8 millions if they're internal divisions or branches.
 2. No less than 150 professional research personnel are required.
 3. Original value of equipment purchased since the establishment amounts to RMB 20 millions.
- This Circular is valid in the period from July 1, 2009 to Dec. 31, 2010.

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. 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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