DE'AN
NEWSLETTER
INVESTMENT AND TAXATION
投资与税务
· 德安通讯 · 2010 年 02 月 < 总第 114 期 >

企业所得税

财政部、国家税务总局于 2009 年 12 月 25 日发布财税[2009]125 号《关于企业境外所得税收抵免有关问题的通知》，通知如下：

- 居民企业以及非居民企业在中国境内设立的机构、场所（以下统称企业）依照企业所得税法第二十三条、第二十四条的有关规定，应在其应纳税额中抵免在境外缴纳的所得税额的，适用本通知。
- 企业应按照企业所得税法及其实施条例、税收协定以及本通知的规定，准确计算下列当期与抵免境外所得税有关的项目后，确定当期实际可抵免分国（地区）别的境外所得税税额和抵免限额：
  - ✓ 境内所得的应纳税所得额（以下称境内应纳税所得额）和分国（地区）别的境外所得的应纳税所得额（以下称境外应纳税所得额）；
  - ✓ 分国（地区）别的可抵免境外所得税税额；
  - ✓ 分国（地区）别的境外所得税的抵免限额。
- 企业不能准确计算上述项目实际可抵免分国（地区）别的境外所得税税额的，在相应国家（地区）缴纳的税收均不得在该企业当期应纳税额中抵免，也不得结转以后年度抵免。
- 企业应按以下规定计算实施条例第七十八条规定的境外应纳税所得额：
  - ✓ 居民企业在境外投资设立不具有独立纳税地位的分支机构，其来源于境外的所得，以境外收入总额扣除与取得境外收入有关的各项合理支出后的余额为应纳税所得额。各项收入、支出按企业所得税法及实施条例的有关规定确定。
  - ✓ 居民企业在境外设立不具有独立纳税地位的分支机构取得的各项境外所得，无论是否汇回中国境内，均应计入该企业所属纳税年度的境外应纳税所得额。
  - ✓ 居民企业应就其来源于境外的股息、红利等权益性投资收益，以及利息、租金、特许权使用费、转让财产等收入，扣除与取得该项收入有关的各项合理支出后的余额为应纳税所得额。
- 可抵免境外所得税税额，是指企业来源于中国境外的所得依照中国境外税收法律以及相关规定应当缴纳并已实际缴纳的企业所得税性质的税款。
- 企业抵免境外所得税额后实际应纳所得税额的计算公式为：
  企业实际应纳所得税额 = 企业境内外所得应纳税总额 — 企业所得税减免、抵免优惠税额 — 境外所得税抵免额。
- 企业取得来源于中国香港、澳门、台湾地区的应税所得，参照本通知执行。

国家税务总局于 2009 年 12 月 10 日发布国税函[2009]698 号《关于加强非居民企业股权转让所得企业所得税管理的通知》，规定：

- 本通知所称股权转让所得是指非居民企业转让中国居民企业的股权（不包括在公开的证券市场上买入并卖出中国居民企业的股票）所取得的所得。
- 扣缴义务人未依法扣缴或者无法履行扣缴义务的，非居民企业应自合同、协议约定的股权转让之日起 7 日内，到被转让股权的中国居民企业所在地主管税务机关申报缴纳企业所得税。非居民企业未按期如实申报的，依照税收征管法有关规定处理。
- 股权转让所得是指股权转让价减除股权成本价后的差额。

  股权转让价 是指股权转让人就转让的股权所收取的包括现金、非货币资产或者权益等形式的金额。

  股权成本价是指股权转让人投资入股时向中国居民企业实际交付的出资金额，或购买该 项股权时向该股权的原转让人实际支付的股权转让金额。
- 境外投资方（实际控制方）通过滥用组织形式等安排间接转让中国居民企业股权，且不具有合理的商业目的，规避企业所得税纳税义务的，主管税务机关层报税务总局审核后可以按照经济实质对该股权转让交易重新定性，否定被用作税收安排的境外控股公司的存在。
- 非居民企业向其关联方转让中国居民企业股权，其转让价格不符合独立交易原则而减少应纳税所得额的，税务机关有权按照合理方法进行调整。
- 非居民企业取得股权转让所得，符合财税〔2009〕59 号文件规定的特殊性重组条件并选择特殊性税务处理的，应向主管税务机关提交书面备案资料，证明其符合特殊性重组规定的条件。

国家税务总局于 2009 年 12 月 31 日发布国税函[2009]777 号《关于企业向自然人借款的利息支出企业所得税税前扣除问题的通知》，就企业向自然人借款的利息支出企业所得税税前扣除问题，通知如下：

- 企业向股东或其他与企业有关联关系的自然人借款的利息支出，应根据《中华人民共和国企业所得税法》（以下简称税法）第四十六条及《财政部、国家税务总局关于企业关联方利息支出税前扣除标准有关税收政策问题的通知》（财税[2008]121 号）规定的条件，计算企业所得税扣除额。
- 企业向除第一条规定以外的内部职工或其他人员借款的利息支出，其借款情况同时符合以下条件的，根据税法第八条和税法实施条例第二十七条规定，准予扣除。
  - ✓ 企业与个人之间的借贷是真实、合法、有效的，并且不具有非法集资目的或其他违反法律、法规的行为；
  - ✓ 企业与个人之间签订了借款合同。

个人所得税

财政部、国家税务总局于 2009 年 12 月 31 日发布财税[2009]167 号《关于个人转让上市公司限售股所得征收个人所得税有关问题的通知》，规定：

- 自 2010 年 1 月 1 日起，对个人转让限售股取得的所得，按照“财产转让所得”，适用 20%的比例税率征收个人所得税。

- 个人转让限售股，以每次限售股转让收入，减除股票原值和合理税费后的余额，为应纳税所得额。即：
  应纳税所得额＝限售股转让收入－（限售股原值+合理税费）
  应纳税额 ＝ 应纳税所得额×20%
- 限售股转让所得个人所得税，以限售股持有者为纳税义务人，以个人股东开户的证券机构为扣缴义务人。
- 对个人在上海证券交易所、深圳证券交易所转让从上市公司公开发行和转让市场取得的上市公司股票所得，继续免征个人所得税。

以上信息仅提供德安客户及对本公司业务感兴趣之人士参考，我们将尽量确保上述信息的准确性，我们提请读者注意，上述内容系有关文件的摘要，在实际应用时，须参照全文为准。同时，我们欢迎各位就上述信息咨询本公司的专业人士，也欢迎各位登陆我们的网站 www.deancpa.com.cn。我们将为我们的客户提供实实在在的增值服务。上述摘编如中、外文不一致的，以中文为准。

※※※

Corporate Income Tax

The Ministry of Finance and State Administration of Tax (SAT) released Circular on Issues Regarding Deduction of Offshore CIT of Enterprises (CaiShui [2009] No.125) on Dec. 25, 2009, stipulating that:

- This Circular is applicable for the enterprise (here “the enterprises” refer to resident enterprises and permanent establishments set up in China by non-resident enterprises) that are allowed to deduct their offshore CIT payment from their domestic CIT in accordance with the Article 23 and 24 of CIT law.
- The enterprises should determine the actual deductible offshore CIT as well as deduction limit of each country (region) concerned, after correctly calculating the following items related to the offshore CIT deduction, according to the CIT law, the Implementation Regulations, Tax Treaties and this Circular:
  - ✓ Domestic taxable income as well as taxable income from each foreign country (region) concerned;
  - ✓ Deductible offshore CIT of each foreign country (region) concerned;
  - ✓ Offshore CIT deduction limits of offshore of each foreign country (region) concerned.
- If the enterprises cannot correctively calculate the above-said items, they shall not be allowed to deduct the offshore CIT from their domestic CIT payable of the period.
- The enterprises should calculate the taxable offshore income specified by Article 78 of the CIT Implementation Regulations, according to the following rules:
  - ✓ If a resident enterprise has an offshore branch which is not an independent taxpaying entity and has offshore income, the taxable income of the branch shall be equal to its total offshore revenue minus various reasonable expenses related to the revenue. The revenue and expenses shall be recognized in accordance with relevant regulations of CIT law.

- ✓ Revenue derived by the above-said branch shall be treated as the enterprise's taxable offshore income of the fiscal year, no matter the revenue is to be remitted back to China or not.
- ✓ If a resident enterprise has revenue from its offshore equity investment gains like dividend and bonus, and other proceeds from interests, rent, royalties, assets transfer, etc., the relevant taxable income shall be equal to the total revenue minus various reasonable expenses related to the revenue.

- Deductible offshore CIT is defined as the CIT that enterprises have actually paid on their offshore income according to relevant tax laws and regulations of related countries (regions).
- After the deduction of offshore CIT, the actual CIT payable shall be calculated according to the following formula:
  Actual CIT payable = total of domestic CIT and offshore CIT － preferential CIT reduction and deduction － deductible offshore CIT
- This Circular is also applicable for enterprises that have income from Hong Kong, Macao and TaiWan.

SAT issued Circular on Enhancing Management of CIT on Income Derived by Non-Resident Enterprises from Transferring Equity (GuoShuiHan [2009] No.698 on Dec. 10, 2009, stipulating that:

- Under this Circular, the income from equity transfer refers to the proceeds derived by non-resident enterprises from transferring the equity of China's resident enterprises (exclusive of dealing in stock of China's resident enterprises in public stock markets).
- If tax withholder did not or can not withhold the related CIT, the non-resident enterprise should go to the competent tax authorities of the resident enterprise to handle CIT filing within 7 days since the equity transfer date prescribed by contract or agreement. Non-resident enterprises failing to handle the CIT filing on time shall be punished according to the relevant regulations.
- Equity transfer income is equal to equity transfer price minus equity cost.
  Equity transfer price is equivalent to transferor's gains in the forms of cash, non-monetary assets, equity and others from transferring equity.
  Equity cost price equals equity transferor's actual fund contribution to the resident enterprise when making investment, or equity transferor's actual payment for acquiring the equity to the original transferor.
- If offshore investor (substantial controller) conducts indirect transfer of equity of China's resident enterprise by abusing structural relationship and with unreasonable business purpose, to avoid liability for CIT payment, the competent tax authorities have right to re-examine and determine the nature of the equity transfer, and deny the existence of the offshore holding company which is considered having tax planning purpose.
- When a non-resident enterprise transfers equity of a resident enterprise to its related party, if the transfer price is obviously away from the principle of arm's length price and the taxable income gets down, tax authorities have right to make an adjustment based on a proper measure.
- If a non-resident enterprise has income of equity transfer and meets the requirements (prescribed by ordinance of CaiShui [2009] No.59) for special restructuring and chooses the special tax treatment, it should submit relevant paperwork to tax authorities to certify its compliance with special restructuring.

SAT released Circular on Pre-tax Deduction of Interest Expenses of Enterprises Borrowing Money from Natural Person (GuoShuiHan [2009] No.777 on Dec. 31, 2009, stipulating that:

- If an enterprise borrows money from its shareholders or other related natural persons and incurs interest expenses, the enterprise should calculate the deductible expenses before CIT according to the Article 46 of the CIT law and *Circular on Pre-tax Deduction of Interest Expenses of Enterprises Borrowing Money from Its Related Parties* (CaiShui [2008] No.121) issued by the Ministry of Finance and SAT.
- when an enterprise borrows money from its staff members or other natural persons and incurs interest expenses, if the borrowing meets both of the two following requirements, the interest expenses can be deducted before CIT according to the Article 8 of the CIT law and the Article 27 of the CIT Implementation Regulations:
  - ✓ The borrowing between the enterprise and the natural persons is true, legal and valid, without illegal fund raising purpose and other illegal action involved;
  - ✓ Loan agreement between the enterprise and the natural persons is available.

Individual Income Tax

The Ministry of Finance and SAT released Circular on Issues Regarding Levy of IIT on Individual Income from Transferring Restricted Stock of Listed Companies (CaiShui [2009] No.167) on Dec. 31, 2009, stipulating that:

- Since Jan. 1, 2010, individuals who have proceeds from transferring restricted stock shall be liable for IIT according to the taxable item of "proceeds from property transfer"; and the applicable tax rate is 20%.
- As for individual transfer of restricted stock, taxable income shall be equal to proceeds from each restricted stock transfer minus original value of the stock and reasonable expenses. Here is the formula:
  Taxable income = proceeds from restricted stock transfer – (original value of the stock + reasonable tax and expenses)
  Tax payable = taxable income × 20%
- The holders of the restricted stock shall be liable for paying IIT on transfer of that stock, and securities companies in which the individual stockholders open their accounts shall be liable for withholding the IIT.
- Individuals who have proceeds from dealing in public stock of listed companies at Shanghai and Shenzhen Securities Exchanges shall be continuously exempt from paying IIT.

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@deancpa.com.cn	**Jude Wang**	电子信箱(Email): weiwen@deancpa.com.cn
周剑英	联系电话(Tel): 53832277*118		
Jenny Zhou	电子信箱(Email): jenny.zhou@deancpa.com.cn		