

企业所得税

国家税务总局于2009年12月31日发布国税函[2009]772号《关于企业以前年度未扣除资产损失企业所得税处理问题的通知》，规定：

- 根据《国家税务总局关于印发〈企业资产损失税前扣除管理办法〉的通知》（国税发[2009]88号）第三条规定的精神，企业以前年度（包括2008年度新企业所得税法实施以前年度）发生，按当时企业所得税有关规定符合资产损失确认条件的损失，在当年因为各种原因未能扣除的，不能结转在以后年度扣除；可以按照《中华人民共和国企业所得税法》和《中华人民共和国税收征收管理法》的有关规定，追补确认在该项资产损失发生的年度扣除。
- 企业因以前年度资产损失未在税前扣除而多缴纳的企业所得税税款，可在审批确认年度企业所得税应纳税款中予以抵缴，抵缴不足的，可以在以后年度递延抵缴。

税收协定

国家税务总局于2010年1月26日发布国税函（2010）46号文《关于税收协定有关条款执行问题的通知》，对国家税务总局的国税函（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》有关执行问题做了补充：

- 如果技术受让方在合同签订后即支付费用，包括技术服务费，即事先不能确定提供服务时间是否构成常设机构的，可暂执行特许权使用费条款的规定；待确定构成常设机构，且认定有关所得与该常设机构有实际联系后，按协定相关条款的规定，对归属常设机构利润征收企业所得税及对相关人员征收个人所得税时，应将已按特许权使用费条款规定所做的处理作相应调整。
- 对2009年10月1日以前签订的技术转让及服务合同，凡相关服务活动跨10月1日并尚未对服务所得做出税务处理的，应执行上述规定及国税函（2009）507号文有关规定，对涉及跨10月1日的技术服务判定是否构成常设机构时，其所有工作时间应作为计算构成常设机构的时间，但10月1日前对技术转让及相关服务收入执行特许权使用费条款规定已征收的税款部分，不再做调整。

税收管理

国家税务总局于 2010 年 2 月 20 日同时发布国税发[2010]18 号文《关于印发〈外国企业常驻代表机构税收管理暂行办法〉的通知》及国税发[2010]19 号文《关于印发〈非居民企业所得税核定征收管理办法〉的通知》，以规范外国企业常驻代表机构税收管理，以及规范非居民企业所得税核定征收工作。其中国税发[2010]18 号文规定：

- 自 2010 年 1 月 1 日起，代表机构的核定利润率不应低于 15%。

2009 年企业所得税政策调整盘点

财政部、国家税务总局按照新企业所得税制度体系的总体设想，陆续出台了 80 多个与企业所得税相关的配套政策文件。本文就这些政策进行了梳理，以方便企业查阅。

- 部分重要税前扣除政策得到明确
 - ✓ 国家税务总局下发了国税函〔2009〕3 号文《关于企业工资薪金及福利费扣除问题的通知》，明确了判断“合理工资薪金”的原则及扣除原则；明确了企业职工福利费包括的三个方面。
 - ✓ 财政部、国家税务总局下发的财税〔2009〕57 号《关于企业资产损失税前扣除政策的通知》，国家税务总局发布的国税发〔2009〕88 号《关于印发〈企业资产损失税前扣除管理办法〉的通知》，明确了新《企业所得税法》下企业资产损失税前扣除的管理规定。
 - ✓ 财政部、国家税务总局发布的财税〔2009〕72 号《关于部分行业广告费和业务宣传费税前扣除政策的通知》进一步明确，自 2008 年 1 月 1 日起至 2010 年 12 月 31 日止，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的税前扣除比例为不超过当年销售（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。
 - ✓ 财政部、国家税务总局发布财税〔2009〕29 号《关于企业手续费及佣金支出税前扣除政策的通知》，明确了企业发生与生产经营有关的手续费及佣金支出的扣除政策，规定扣除限额按与具有合法经营资格中介机构或个人所签订服务协议或合同确认的收入金额的 5% 计算。
- 完善了企业所得税征收管理规定
 - ✓ 国家税务总局印发了《特别纳税调整实施办法（试行）》，制定了较全面的反避税法律框架和管理指南。对税务机关对纳税人的转让定价、预约定价安排、成本分摊协议、受控外国企业、资本弱化、一般反避税等特别纳税调整事项的实体确认及程序管理问题进行了明确规定。
 - ✓ 国家税务总局印发了《企业所得税汇算清缴管理办法》，加强了企业所得税的征收管理。同时对跨地区汇总纳税企业、合并纳税企业集团及一般企业的汇算清缴流程、涉及的相关资料均作了规定。
 - ✓ 国家税务总局印发了《企业所得税核定征收办法》，明确了不得核定征收的特殊纳税人的类别。
 - ✓ 国家税务总局发布了国税函[2009]34 号文《关于加强企业所得税预缴工作的通知》，加强了企业所得税预缴管理。
- 一些特定业务的税务处理方法得到明确
 - ✓ 财政部、国家税务总局发布财税[2009]59 号文《关于重组业务所得税处理若干问题的通知》，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”。

- If service activities, under contracts of technology transfer and service signed before October 1, 2009, had been still proceeding after Oct. 1, and the relevant tax treatment had not been done yet, then duration of the whole service activities shall be counted when judging the formation of PE, according to the above-said rules and the Circular (GuoShuiHan [2009] No.507). If revenue from the above-mentioned kind of technology transfer and service had been taxed before Oct. 1, 2009 according to the Royalties clauses, relevant adjustment shall not be required.

Administration of Tax Levy

SAT issued two circulars on February 20, 2010 to standardize management of tax levied on representative office of foreign enterprises, as well as verification and collection of CIT of non-resident enterprises. They are Circular on Promulgation of Provisional Tax Management Measures for Permanent Establishments of Foreign Enterprises (GuoShuiFa [2010] No.18), and Circular on Promulgation of Management Measures for Verification and Collection of CIT of Non-resident Enterprises (GuoShuiFa [2010] No. 19). The Circular (GuoShuiFa [2010] No.18) stipulates that:

- Since Jan. 1, 2010, representative office's profit rate calculated on deem basis cannot be less than 15%.

Summary of Year-2009 CIT Policy Adjustment

In the light of general thoughts of the new CIT system, the Ministry of Finance and SAT have issued over 80 policies and ordinances affiliated with the new CIT law. Here we make a classification and summary of those policies for enterprise management's reference.

- Policies for some important pre-tax deductions have been clearly defined.
 - ✓ SAT enacted Circular on Issues Regarding Pre-tax Deduction of Staff Salary and Welfare of Enterprises (GuoShuiHan [2009] No.3), determining the principle of recognizing "reasonable salary" and principle of deduction, as well as the three factors that staff welfare should cover.
 - ✓ The Ministry of Finance and SAT issued Circular on Policies for Pre-tax Deduction of Corporate Assets Loss (CaiShui [2009] No.57), and SAT issued Circular on Promulgation of Management Measures for Pre-tax Deduction of Corporate Assets Loss (GuoShuiFa [2009] No.88), making clear the rules of pre-tax assets loss deduction under the new CIT law.
 - ✓ The Ministry of Finance and SAT issued Circular on Policies for Pre-tax Deduction of Advertisement and Promotion Expenses of Some Sectors (CaiShui [2009] No.72), further stipulating that, from Jan. 1, 2008 to Dec. 31, 2010, for industries of cosmetic, medicine and beverage (exclusive of alcohol), amount of pre-tax deduction of advertisement and promotion expenses shall be limited to no more than 30% of sales (business operation) revenue of the year. And the excessive amount can be carried forward to the following year(s) for continuous deduction.
 - ✓ The Ministry of Finance and SAT issued Circular on Policies for Pre-tax Deduction of Commission Charges of Enterprises (CaiShui [2009] No.29), prescribing rules of pre-tax deduction of commission charges related to production and operation of enterprises. According to it, deduction amount shall be limited to 5% of the revenue recognized by service agreement or contract signed with legally licensed agent or individuals.

- Management of CIT collection has been improved.
 - ✓ SAT issued Special Measures for CIT Adjustment (Trial), and formulated legal framework and systematic guidance of anti-tax avoidance, definitely stipulating how tax authorities shall verify and manage adjustment of special CIT items like transfer pricing, advance price arrangement (APA), cost allocation agreement, controlled foreign entities, capital weakening, common anti-tax avoidance, etc.
 - ✓ To strengthen CIT collection work, SAT issued Management Measures for Enterprises' Annual CIT Filing, prescribing the requirements for general procedures and documentations in connection with annual CIT filing of trans-regional enterprises, CIT consolidation enterprises and common enterprises.
 - ✓ SAT issued Measures for CIT Levy on the Deem Basis, pointing out the special tax payers that are not subject to the deem-based CIT treatment.
 - ✓ SAT issued Circular on Strengthening CIT Prepayment Job (GuoShuiHan [2009] No.34) to enhance the management of CIT prepayment.
- Measures for tax treatment of some special businesses
 - ✓ The Ministry of Finance and SAT released Circular on Some Issues Regarding CIT Treatment of Enterprise Restructuring (CaiShui [2009]No.59), stipulating that enterprise restructuring is subject to common tax treatment or special tax treatment according to different condition.
 - ✓ The Ministry of Finance and SAT issued Circular on CIT Treatment of Enterprise Liquidation (CaiShui [2009]No.60) to standardize CIT treatment related to enterprise liquidation.
 - ✓ SAT issued Measures for CIT Treatment of Real Estate Development Business (GuoShuiFa [2009] No.31), a solution to CIT treatment of real estate development enterprises under the new CIT law.

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.dean CPA.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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