

企业所得税

国家税务总局于2010年2月22日发布国税函[2010]79号文《关于贯彻落实企业所得税法若干税收问题的通知》，其中包括以下内容：

- 关于租金收入确认问题。

根据《实施条例》第十九条的规定，企业提供固定资产、包装物或者其他有形资产的使用权取得的租金收入，应按交易合同或协议规定的承租人应付租金的日期确认收入的实现。出租方如为在我国境内设有机构场所、且采取据实申报缴纳企业所得税的非居民企业，也按本条规定执行。

- 关于债务重组收入确认问题。

企业发生债务重组，应在债务重组合同或协议生效时确认收入的实现。

- 关于股权转让所得确认和计算问题

企业转让股权收入，应于转让协议生效、且完成股权变更手续时，确认收入的实现。

转让股权收入扣除为取得该股权所发生的成本后，为股权转让所得。

企业在计算股权转让所得时，不得扣除被投资企业未分配利润中按该项股权所可能分配的金额。

- 关于股息、红利等权益性投资收益收入确认问题

企业权益性投资取得股息、红利等收入，应以被投资企业股东会作出利润分配或转股决定的日期，确定收入的实现。

- 关于固定资产投入使用后计税基础确定问题

企业固定资产投入使用后，由于工程款项尚未结清未取得全额发票的，可暂按合同规定的金额计入固定资产计税基础计提折旧，待发票取得后进行调整。但该项调整应在固定资产投入使用后12个月内进行。

- 企业筹办期间不计算为亏损年度问题

企业自开始生产经营的年度，为开始计算企业损益的年度。企业从事生产经营之前进行筹办活动期间发生筹办费用支出，不得计算为当期的亏损，应按照《国家税务总局关于企业所得税若干税务事项衔接问题的通知》（国税函[2009]98号）第九条规定执行，即企业可以在开始经营之日的当年一次性扣除，也可以按照新税法有关长期待摊费用的处理规定处理。

关于外商投资企业因国家发展规划调整（包括城市建设规划等）被实施关停并清算，导致其不符合原《中华人民共和国外商投资企业和外国企业所得税法》及过渡性政策规定条件税收优惠处理问题，国家税务总局于 2010 年 2 月 12 日发布国税函[2010]69 号《关于政府关停外商投资企业所得税优惠政策处理问题的批复》，规定：

- 根据原《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十九条的规定，应当补缴或缴回已享受的企业所得税优惠税款。
- 外商投资企业的外国投资者依照《中华人民共和国外商投资企业和外国企业所得税法》第十条的规定，将从企业取得的利润于 2007 年 12 月 31 日前直接再投资于该企业，增加注册资本，或者作为资本投资开办其他外商投资企业，如经营期不少于五年并经税务机关批准已退还其再投资部分已缴纳所得税的 40% 税款，再投资不满五年撤出的，应当缴回已退的税款。

国家税务总局于 2010 年 1 月 26 日发布国税函[2010]39 号《关于建筑企业所得税征管有关问题的通知》，规定：

- 实行总、分机构体制的跨地区经营建筑企业应严格执行国税发（2008）28 号文件规定，按照“统一计算、分级管理、就地预缴、汇总清算、财政调库”的办法计算缴纳企业所得税。
- 建筑企业跨地区设立的不符合分支机构条件的项目经理部（包括与项目经理部性质相同的部门等），应汇总到总机构或分支机构统一计算，按照国税发（2008）28 号文件规定的办法计算缴纳企业所得税。
- 各地税务机关自行制定的与本通知相抵触的征管文件，一律停止执行并予以纠正；对按照规定不应就地预缴而征收了企业所得税的，要及时将税款返还给企业。未按本通知要求进行纠正的，税务总局将按照执法责任制的有关规定严肃处理。

增值税

国家税务总局于 2010 年 2 月 8 日发布国税函[2010]56 号《关于折扣额抵减增值税应税销售额问题通知》，将有关问题进一步明确如下：

- 纳税人采取折扣方式销售货物，销售额和折扣额在同一张发票上分别注明是指销售额和折扣额在同一张发票上的“金额”栏分别注明的，可按折扣后的销售额征收增值税。未在同一张发票“金额”栏注明折扣额，而仅在发票的“备注”栏注明折扣额的，折扣额不得从销售额中减除。

- Start-up period issues

The year when an enterprise officially commences its production and operation shall be regarded as the fiscal year. Expenses and expenditures that enterprises have ever incurred during the start-up period shall not be calculated into the loss of the fiscal year. According to the *Circular on Some Tax Transition Issues of CIT* (GuoShuiHan [2009] No.98) issued by SAT, start-up expenses can be one-off deducted in the year of enterprise's business commencement, as well as treated as long-term amortization expense.

Regarding the facts that some foreign-invested enterprises (FIEs) are no longer entitled to the preferential tax policies prescribed in the original PRC FEIT law and transitional tax policies due to their closure and liquidation caused by the state development planning and adjustment (including urban construction planning), SAT released Reply to Issues of Preferential CIT Policies Treatment in Connection with FIEs Closed by Government (GuoShuiHan [2010] No.69) on Feb. 12, 2010, stipulating that:

- In accordance with the Article 79 of Implementation Regulations of the original FEIT law, enterprises should make a supplementary tax payment for the tax incentives they enjoyed previously.
- According to the Article 10 of the old FEIT law, the foreign investors of FIEs, who reinvest their share of profit directly to their enterprises and accordingly increase registered capital, or use those profit as capital to establish other FIEs with operating period no less than 5 years, shall obtain a refund of 40% income tax levied on the reinvested amount. If a foreign investor of FIE made such reinvestment before Dec. 31, 2007 and obtained the 40% reinvestment tax refund with approval of tax authorities and then withdrew their reinvestment within 5 years, they shall pay back the refund tax.

SAT released Circular on Some Issues Regarding CIT of Construction Enterprises (GuoShuiHan [2010] No.39) on Jan. 26, 2010, stipulating that:

- Trans-regional construction enterprises with branches in other places should strictly abide by principle of “uniform calculation, graded management, local prepayment, consolidated filing, fiscal adjustment” prescribed by the SAT's ordinance of GuoShuiFa [2008] No.28 when calculating and paying their CIT.
- If a trans-regional construction enterprise has project divisions (including sections of the same nature) that do not measure up to the branch standards, CIT of that divisions shall be consolidated to the headquarters or branches for uniform CIT calculation according to the SAT's ordinance of GuoShuiFa [2008] No.28.

Value-added Tax

SAT released Circular on Issues Regarding Deduction of Rebate from VAT Taxable Sales (GuoShuiHan [2010] No.56) on Feb. 8, 2010, further confirming the following points:

- For VAT payers who sell goods with offering rebate, if they write sales and rebate amount respectively in the column of “amount” of the same invoice, they shall pay VAT on the sales with deduction of rebate. If rebate is filled in the column of “remarks” of the invoice instead of the column of “amount”, then the rebate cannot be deducted from the sales.

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