

关于“关联企业借款利息税前扣除”专题通讯

此前相关政策

2011年6月9日，国家税务总局发布了2011年第34号公告（以下简称“34号公告”），其中，34号公告对如何进行企业间借款利率与金融企业贷款利率的比较提供了政策上的指引

2009年1月8日，《国家税务总局关于印发〈特别纳税调整实施办法（试行）〉的通知》（以下简称“国税发[2009]2号”）

2008年9月19日，财政部、国家税务总局联合发布了《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》（以下简称“财税[2008]121号文”）

适用对象

主要为关联企业制定，非关联企业不适用。关联企业之间的借款，具体表现为：居民企业之间的关联方借款和居民企业与非居民企业之间的关联方借款两种方式。

政策目的

- 防止企业通过资本弱化的方法规避税收
- 加强转让定价同期资料准备要求

分析

- 《企业所得税法》第46条规定“企业从其关联方接受的债权性投资与权益性投资的比例超过规定标准而发生的利息支出，不得在计算应纳税所得额时扣除”。
- 《企业所得税法实施细则》第119条及财税[2008]121号文第一条也明确说明了“在计算应纳税所得额时，企业实际支付给关联方的利息支出，不超过以下规定比例和税法及其实施条例有关规定计算的部分，准予扣除，超过的部分不得在发生当期和以后年度扣除”。
- 关联企业借款利息允许税前扣除的前提条件是实际支付，不包括挂帐、计提等会计处理方法形成的借款利息。
- 关联企业借款利息允许税前据实扣除的条件，应满足以下两个条件之一：
 - I. 能够按照税法及其实施条例的有关规定提供相关资料，并证明相关交易活动符合独立交易原则；借款利率不能超过按照金融企业同期同类贷款利率，而且需要企业提供有关证明资料。
 - II. 企业的实际税负不高于境内关联方。

- According to the article 119 of the Rules for The Implementation of the CIT Law and article 1 of the Caishui [2008] No.121 circular, in computing the taxable income, an enterprise is allowed to deduct its interest expenses actually paid to its related parties up to the ratio prescribed below and the amount allowed under the CIT Law and the Implementation rules. The exceeding portion of the interest expenses should not be deducted either in the current year or the following years.
- The pre-requisite for the Inter-company loan interest expenses deductible under CIT is that the expense is actually paid which not included unpaid debts and provision of the interest borrowing.
- When an enterprise computes its taxable income, the interest expenses actually paid to its related parties can be deducted if:
 - I. The enterprise can provide the relevant supporting documents according to the CIT Law, the Implementation Rules, and relevant regulations, and prove that the relevant transactions are conducted at arm's length; or
 - II. The effective tax rate of the enterprise paying interest expenses to a domestic related party is not higher than that of the domestic related party.
- According to the CIT Law, as long as the part of the interest fee is not more than the same period in accordance with financial institutions lending rates similar amount, the enterprise can self-reporting deductions. However, when the taxpayer computing the deductible amount, it should consider that the similar financial institutions lending rates over the same period which including People's Bank of China's benchmark rate and floating interest rates, otherwise it will effect on the less payment on the interest expense.

Emphasized items

1. under the arm's length, the exceed part of the interest paid is not allow to deduct before tax;
2. if the prescribed ratio of its debt investment from related parties to its equity investment (debt/equity ratio) is exceed the standard requirement (5:1 for financial institutions; 2:1 for other enterprises), it is not allow to deduct before tax based on the principal;
3. the interest expenses is not allow to deduct before tax if the investment amount is not fully received

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