

## 所得税

根据《国家税务总局公告 2011 年第 25 号》及《沪国税所(2011)101 号》自 2011 年度起企业财产损失不再进行审批，由企业 in 所得税汇算清缴之前自行向税务机关申报，未经申报的损失，不得在税前扣除。

实际操作中，请注意以下几点：

一、 财产损失应以清单申报的方式向税务机关申报扣除

二、 部分财产损失需采用专项申报。专项申报中下列事项需出具专业技术鉴定报告：

（一）存货损失数额较大的[指占企业减少当年应纳税所得、增加亏损 10%以上，或损失金额 100 万元以上（含 100 万元）]，应有专业技术鉴定报告；

（二）固定资产损失金额较大的[指占企业减少当年应纳税所得、增加亏损 10%以上，或单项损失金额 100 万元以上（含 100 万元）]或自然灾害等不可抗力原因造成固定资产毁损、报废的，应有专业技术鉴定报告；

（三）生产性生物资产损失金额较大的[指占企业减少当年应纳税所得、增加亏损 10%以上，或损失金额 100 万元以上（含 100 万元）]，企业应有专业技术鉴定报告和责任认定、赔偿情况的说明。

三、 总机构及其分支机构发生的财产损失，除应按专项申报和清单申报的有关规定，各自向其主管税务机关申报外，各分支机构同时还应上报总机构。总机构在本市的，其在本市的分支机构，不单独进行财产损失专项申报和清单申报，由总机构一并进行财产损失专项申报和清单申报。

四、 企业纳税调整后亏损超过 500 万元（含）需出具专项鉴证报告

## 转让定价

近期税务机关对非居民企业间接转让中国居民企业股权交易是否适用“看穿”原则，以及涉及关联企业之间的股权转让价格是否符合独立交易原则尤为关注。

➤ “看穿”非居民企业间接转让中国居民企业股权交易



deduction

- For some of the assets loss need to prepare itemized reporting which needs to issue the professional inspection report by the accounting firm.
  1. For the inventory loss value more than 1 million or reduced 10% of the taxable income or net loss, the enterprise needs to obtain the professional inspection report;
  2. For the fixed asset loss incurred by the natural disaster which force majeure causes damage or scrapped and the value more than 1 million or reduced 10% of the taxable income or net loss, the enterprise needs to obtain the professional inspection report
  3. For the biological asset which is for manufacturing purpose, it loss value more than 1 million or reduced 10% of the taxable income or net loss, the enterprise needs to obtain the professional inspection report and explanation of compensation or the identification of the responsibility.
- For both the holding company and subsidiary company have the asset loss, it needs follow the new measures to declare to each tax authorities and the subsidiary need to declare to holding company as well. The holding company need to declare the asset loss to the tax authorities if both holding company and subsidiary in the same city.
- After income tax adjustment, if the enterprise loss over 5million in current year, it need to issue the professional inspection report.

## Transfer pricing

Recently, the tax authority pays attention to two aspects: whether the 'look through' principle applies when a non-resident enterprise transfers the equity of a Chinese resident enterprise indirectly; and whether the price of the equity transfer between related parties is in line with arm's length principle.

- 'Look through' the indirect transfer of equity interest in a Chinese enterprise by a non-resident enterprise

Article 47 of the Corporate Income Tax (CIT) Law of the People's Republic of China stipulates that where an enterprise implements an arrangement without a reasonable business purpose to reduce the taxable revenue or taxable income, the tax authority has the right to adjust in accordance with reasonable methods i.e. using the general anti-tax avoidance rules.

The State Administration of Taxation (SAT) promulgated the 'Implementation Measures of Special Tax Adjustments (Provisional)' (GuoShuiFa [2009] No. 2, hereinafter referred to as 'Circular 2'). Circular 2 further stipulates that the tax authority can carry out a general anti-tax avoidance investigation where there is an abusive tax arrangement, and withdraw the tax benefits the non-resident enterprise gains from such an arrangement by re-characterizing its tax arrangement based on its economic substance. The tax authorities can refuse to recognize the existence of the offshore intermediate holding company that is used for tax planning purposes, especially if it is established in a tax haven, through which the related parties and unrelated parties avoid paying taxes.

The SAT promulgated the 'Strengthening the Administration of CIT Liability on Incomes of Non-resident Enterprises from Transfer of Equity Interests' (GuoShuiHan [2009] No. 698,

hereinafter referred to as 'Circular 698'). Circular 698 specifies that for the companies which 'indirectly transfer the equity interests in a Chinese resident enterprise by abuse of organization form for an unreasonable commercial purpose to avoid paying the CIT', the tax authority may apply 'look through' principles by denying the existence of the offshore intermediate holding company where there is an abusive tax arrangement, and re-characterizing the indirect transfer as direct transfer of equity interests in a Chinese enterprise, thus levying the CIT on capital gains derived from such transfer of equity interests. Circular 698 also stipulates that where the non-resident enterprise transfers the equity interests in a Chinese enterprise to its affiliate(s) and the transfer price thereof is not in line with the arm's length principle and results in less taxable income, the tax authority has the right to adjust using reasonable methods.

➤ **Determination of arm's length price regarding related party equity transfer**

In accordance with the CIT Law of People's Republic of China, the equity interests shall be transferred at an arm's length price if the transaction does not fulfill the special tax treatment criteria stipulated in Circular 59. However, how to determine the arm's length price of an equity transfer transaction between related parties has been one of the important subjects of the tax authority's research. It is not uncommon that the transfer price of equity interests between related parties is equivalent to the net book value in practice. Such a pricing policy, however, will be very difficult to accept by the tax authority.

Three evaluation methods are recognized by the tax authority, namely Income Approach, Replacement Cost Approach and Market Comparison Approach. In practice, the tax authority may adopt more than one of the above evaluation methods to conduct a comprehensive evaluation so as to determine the arm's length price of the tested transaction. In actual cases, which approach to select is often the focus of negotiation between the taxpayer and the tax authority.

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<b>张有礼</b>	联系电话(Tel): 53832277*5168	<b>王伟文</b>	联系电话(Tel): 53832277*5111
<b>Youli Zhang</b>	电子信箱(Email): ylzhang@dean CPA.com.cn	<b>Jude Wang</b>	电子信箱(Email): weiwen@dean CPA.com.cn
<b>周剑英</b>	联系电话(Tel): 53832277		
<b>Jenny Zhou</b>	电子信箱(Email): jenny.zhou@dean CPA.com.cn		