

投资与税务

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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 年度起企业资产损失不再进行审批,由企业在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,请注意一下几点:

- 一、资产损失应以清单申报的方式向税务机关申报扣除
- 二、 部分资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资产损失,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,不单独进行资产损失专项申报和清单申报,由总机构一并进行资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



企业所得税法第四十七条规定,企业实施其他不具有合理商业目的的安排而减少其应纳税收入或者所得额的,税务机关有权按照合理方法调整,即所谓的一般反避税条款。

国家税务总局颁布的《特别纳税调整实施办法(试行)》(国税发[2009]2号,下文简称"2号文"),进一步明确了税务机关对存在避税嫌疑的企业可启动一般反避税调查,并按照经济实质对企业的避税安排重新定性,取消企业从避税安排中获得的税收利益。对于没有经济实质的企业,特别是设在避税港并导致其关联方或非关联方避税的企业,可在税收上否定该企业的存在。

国家税务总局颁布的《国家税务总局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》(国税函[2009]698号,下文简称"698号文"),对"滥用组织形式等安排间接转让中国居民企业股权,且不具有合理商业目的,规避企业所得税纳税义务的",可以采用"看穿"的做法,即否定被用作税收安排的境外控股公司的存在,对股权转让交易进行征税。698号文中还规定非居民企业向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。

> 关联企业股权转让之公允价格的确定

按照企业所得税法规定,如股权转让行为不符合 59 号文的特殊性税务处理条件,则应按符合独立交易原则的公允价值转让。然而,如何合理评估关联企业之间股权转让的公允价值一直是税务机关研究的重要课题之一。我们注意到,在实际案例中,关联企业的内部股权转让通常以账面价值的等价形式出现,但是,这种定价方法较难被税务机关接受。

目前税务局认可的估值方法主要有三种:收益现值法、重置成本法和市场比较法。在实践中,税务机关可能一套以上的评估方法,综合评估交易的公允价值。在实际案例中究竟采用何种方法作为估价的最合理的方法,往往是企业和税务机关讨论的焦点。

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。

CIT

Announcement on Measures for CIT Deduction on Asset Losses of Enterprises, SAT Announcement [2011] No.25 and HuGuoShuiSuo [2011] No. 101. Since Year 2011, the enterprise does not need to get approval of the asset loss from the tax authorities. The enterprise can declare it to the tax authorities before the annual tax filing, and for those have not declare asset loss will not allow to tax deduction.

There are few points need to pay attention during the practice:

For those assets loss need to prepare the detail list to declare to the tax authorities for the tax



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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