DE'AN
NEWSLETTER
INVESTMENT AND TAXATION
投资与税务
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所得税

国家税务总局于近期发布了国家税务总局公告[2012]15号（“15号公告”），旨在澄清若干长期悬而未决的企业所得税税前扣除问题以及规范各地执行口径。

其中：

（1） 从事代理服务企业的营业成本

15号公告规定，从事代理服务、主营业务收入为手续费、佣金的企业（如证券、期货、保险代理等企业）（“代理服务企业”），其发生的营业成本（包括手续费及佣金支出），准予在企业所得税前据实全额扣除，而无需按限额扣除。

（2） 15号公告明确了企业在筹办期间的下列列支，可计入企业筹办费，并根据企业所得税有关规定在税前扣除或摊销：

（I） 业务招待费实际发生额的60%；及

（II） 实际发生的广告费和业务宣传费全额。

（3） 企业因雇佣季节工、临时工、实习生、返聘离退休人员以及接受外部劳务派遣用工所实际发生的费用，应区分为工资薪金支出和职工福利费支出进行税前扣除。这类工资薪金支出可计入企业工资薪金总额，作为计算其他各项受雇相关费用税前扣除的基数。

（4） 企业融资发生的合理的费用支出，如为发行债券、取得贷款、吸收保户储金等发生的融资费用，按照以下规定进行企业所得税处理：

（I） 符合资本化条件的，应计入相关资产成本；

（II） 不符合资本化条件的，应作为财务费用，准予在企业所得税前据实扣除。

（5） 以前年度发生的应扣未扣支出，企业向主管税务机关做出专项申报及说明后，准予追补至该项目发生年度计算扣除，但追补确认期限不得超过5年。

个人所得税

国家税务总局于 2012 年 4 月 26 日出台了国家税务总局公告[2012]年第 16 号（以下简称“16 号公告”），以解决港、澳税收居民因跨境工作取得受雇所得双重征税问题。16 号公告适用于自 2012 年 6 月 1 日起取得的工资薪金所得。

香港和内地双重征税问题的症结在于两个税收管辖区对于各自收入来源的划分标准存在分歧。当双方税务机关都认为对同一笔收入有征税权时，该部分收入难免被重复征税。为了解决这个问题，国税总局现在采纳了按照“实际停留天数”的标准对工资薪金和奖金收入来划分境内外收入，这种方法与香港税务局采用的计算方式一致。计算公式如下：

1. 在有关纳税年度开始或终了的任何 12 个月中于内地停留连续或累计不超过 183 天

应纳税额=当月境内外工资薪金总额应纳个人所得税额*(当月境内实际停留天数/当月公历天数)*(当月境内支付工资/当月境内外支付工资总额)

2. 在有关纳税年度开始或终了的任何 12 个月中于内地停留连续或累计超过 183 天

应纳税额=当月境内外工资薪金总额应纳个人所得税额*当月境内实际停留天数/当月公历天数

对于香港居民取得跨多个计税期间的收入（例如奖金），上述公式中的天数分别指的是据以获取该奖金的期间中属于在境内实际停留的天数以及据以获取该奖金的期间所包括的全部公历天数。

营改增试点

为了进一步明确财税[2011]131 号文（以下简称“131 号文”）中关于出口试点应税服务的增值税优惠政策，国税总局于 2012 年 4 月 5 日出台（于 2012 年 4 月 19 日公布）针对适用零税率的应税服务的增值税处理方法的具体实施细则，即国家税务总局公告[2012]年第 13 号（以下简称“13 号文”）《营业税改征增值税试点地区适用增值税零税率应税服务免抵退管理办法（“免抵退税法”）（暂行）》。其主要内容如下：

13 号文追溯自 2012 年 1 月 1 日起生效。该文明确了上海地区试点方案出口适用增值税零税率应税服务的增值税处理的具体实施细则，包括：

1. 进一步明确适用增值税零税率应税服务的范围：
   13 号文指出了判定出口应税服务的范围时，海关特殊监管区域及场所应属于“境内”区域；该文进一步阐述了提供研发服务、设计服务的组成范围；
2. 免抵退税具体计算方法：基本上试点方案出口适用增值税零税率计算方法遵照了现行出口货物的免抵退税方法。
3. 然而，要注意的是本文规定在试点企业计算免抵退税额的计税依据时，支付给非试点纳税人的价款应从应税服务取得的全部价款中扣除。另外，正如 131 号文中所述，试点应税服务的出口退税率应与其目前适用的增值税税率相同；
4. 免抵退税认定和申报所需要的具体资料要求及办理所需要时限。资料不齐全或内容不真实的零税率应税服务，不得申报办理免抵退税而需缴纳增值税；
5. 免抵退税的监控机制以及骗取国家出口退税款的处罚规定。

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Corporate Income Tax (CIT)

Recently the State Administration of Taxation (“SAT”) released Public Notice [2012] No.15 (“Notice 15”), aiming to clarify certain long-outstanding CIT deduction issues and standardizes the local implementations. Which included:

(1) Operating cost of enterprises engaging in agency services
    Notice 15 now allows operating costs (including commissions and handling charges) incurred by enterprises engaging in agency services whose main operating income are commissions and handling charges (e.g. securities, futures, insurance agents)(“agency service enterprises”) to be deductible in full on an actual basis for CIT purpose without limiting the deduction with a cap.

(2) Notice 15 clarifies that the following expenses incurred during the pre-operating period of an enterprise can be included as pre-operating expenses and then to be depreciated/deducted for CIT

purpose according to the relevant CIT regulations:

(i) 60% of business entertainment expenses; and

(ii) All advertising and business promotion expenses.

(3) Actual expenses incurred for the employment of seasonal of temporary workers, interns, retired workers and labor dispatching workers are required to be booked into salaries and welfare expenses separately for CIT purpose. Such salaries expenses can be included in the total salary of the enterprise as the basis for calculation of the respective deduction caps on employment related expenses for CIT purposes.

(4) Reasonable expenses incurred in financing activities, such as debt issuance, loan and insurance deposit shall be treated as follows for CIT purpose:

(i) Those that meet capitalization conditions should be capitalized as costs of assets;

(ii) The rest should be recognized as financial expenses and deductible on an actual basis.

(5) Deductible expenses which should have been claimed but not claimed in prior years are allowed to be deducted in the year when they were incurred after the enterprise files a special application with the in-charge tax authorities. However, the retrospective claim cannot go beyond 5 years.

Individual Income Tax (IIT)

The State Administration of Taxation ("SAT") has issued the Public Notice [2012] No.16 ("Notice 16") dated 26th April 2012 to address the double taxation problems in favor of the Hong Kong (and Macao) tax residents. It effects from 1st June 2012 and applies to income obtained after the effective date.

The crux of these double taxation problems in Hong Kong and China is the difference in allocating the source of income between the two tax jurisdictions. When both tax authorities take the view that they have the taxing rights on the same income, the amount is inevitably taxed twice. In order to resolve the problems, the SAT now accepts the time apportionment of the salary and bonus income on the "physical day presence" basis so that it is in line with the apportionment basis adopted by the IRD. The formula as follow:

1. Staying in China for not more than 183 days in any 12 month period

IIT payable=IIT on full income * (No. of physical presence days in China in the month/No. of calendar

days in the month) * (Portion of income borne by PRC entity/Full income)

2. Staying in China for more than 183 days in any 12 month period

IIT payable= IIT on full income * (No. of physical presence days in China in the month/No. of calendar days in the month)

For income derived by a Hong Kong resident employee which covers several months (such as bonus), the time factor in the above formulae will be the number of physical presence days in China during the earning period of the bonus and the number of calendar days for the earning period of the bonus.

VAT Pilot Program

Further to the guidance provided in Circular CaiShui [2011] No. 131 (Circular 131) on the VAT treatment of exported Pilot Services, the SAT has now released the detailed implementation rules for the VAT treatment in relation to zero-rated exported Pilot Services on 5th April 2012 (publicized on 19th April 2012), SAT Public Notice [2012] No.13 (hereinafter referred to as "Circular 13"), entitled "Provisional Measures of Applying the Exempt, Credit and Refund ("ECR") Method to Zero-rated VAT Services in the transformation from Business Tax ("BT") to VAT under the Pilot Program". It included:

Circular 13 is effective retrospectively from 1st January 2012. It provides the detailed implementation rules for the VAT treatment in relation to the export of zero-rated Pilot Services under the Pilot Program in Shanghai, including:

1. Providing further clarification on the scope of Pilot Services eligible for zero-rated VAT treatment
   (i) Circular 13 clarifies that the regions and zones particularly supervised by the Chinese Customs authorities shall be regarded as "domestic regions" for the purposes of determining the export of Pilot services;
   (ii) It also provides a further elaboration of what constitutes research and development services and design services;
2. Detailed calculation method in applying the ECR method: it basically follows the current ECR method that is used for the exports of goods which is addressed in the circulars issued previously

on the exports of goods.

3. However, it is interesting to note that for the ECR calculation for Pilot Enterprise, the purchase cost paid to a non-Pilot Enterprise supplier is required to be netted off from the calculation of the "current ECR amount". On the other hand, the export refund rates for Pilot Services stay the same as their VAT rates so far, as clarified in Circular 131.
4. Detailed documentation requirements and timelines for performing the ECR assessment and application. Those Pilot Services where supporting documentations are not complete or the content is incorrect would not be eligible for the ECR method and subject to VAT accordingly;
5. Supervision of ECR application and applicable penalties for the fraud of the export VAT refund.

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