

所得税

2012年5月30日，财政部和国税总局发布了财税[2012]48号（“48号文”），该文件在财税[2009]72号文（已于2010年12月31日到期，72号文将三个特定行业（即化妆品制造、医药制造和饮料制造（不含酒类制造）的企业发生的广告费和业务宣传费支出扣除限额的比例由15%提高到30%）的基础上，将广告费和业务宣传费支出的企业所得税税前扣除限额放宽政策延长5年，并对72号文中的一些策略略作调整。48号文追溯至2011年1月1日生效，有效期至2015年12月31日止。

48号文的要点以及相对于72号文的主要变化

48号文明确了特定行业的广告费和业务宣传费支出的企业所得税税前扣除政策：

- a. 对化妆品制造与销售、医药制造和饮料制造（不含酒类制造）企业发生的广告费和业务宣传费支出，税前扣除限额继续维持在当年销售（营业）收入的30%。
- b. 对签订广告费和业务宣传费分摊协议（“分摊协议”）的关联企业，其中一方发生的不超过当年销售（营业）收入税前扣除限额比例内的广告费和业务宣传费支出可以在本企业扣除，也可以将其中的部分或全部按照分摊协议归集至另一方扣除。另一方在计算本企业广告费和业务宣传费支出企业所得税税前扣除限额时，可将按照上述办法归集至本企业的广告费和业务宣传费不计算在内。
- c. 烟草企业的烟草广告费和业务宣传费支出，一律不得在计算应纳税所得额时扣除。

所得税

关于企业由于投资未到位而发生的利息扣除问题，《国家税务总局关于企业投资者投资未到位而发生的利息支出企业所得税前扣除问题的批复》（国税函[2009]312号）规定，根据企业所得税法实施条例第二十七条规定，凡企业投资者在规定期限内未缴足其应缴资本额的，该企业对外借款所发生的利息，相当于投资者实缴资本额与在规定期限内应缴资本额的差额应计付的利息，其不属于企业合理的支出，应由企业投资者负担，不得在计算企业应纳税所得额时扣除。具体计算不得扣除的利息，应以企业一个年度内每一账面实收资本与借款余额保持不变的期间作为一个计算期间，每一计算期间内不得扣除的借款利息应按照期间借款利息发生额乘以该期间企业未缴足的注册资本占借款总额的比例计算。公式为：企业每个期间不得扣除的借款利息=该期间借款利息额*该期间未缴足注册资本额/该期间借款额。

营改增试点方案补充政策

财政部和国家税务总局于2012年6月29日共同出台《关于交通运输业和部分现代服务业营业税改征增值税试点若干税收政策的补充通知》，即财税[2012]53号（“53号文”）。53号文针对试点地区营业税改增值税试点方案中提供国际运输服务、符合条件的动漫企业提供的若干服务、船舶代理服务和经营租赁服务的增值税处理方法提供了补充政策。

53号文规定，未与我国政府达成双边税收或运输免税安排的国家/地区的单位或者个人，向试点地区的单位或者个人提供的国际运输服务，自2012年1月1日起扣缴义务人暂按3%的征收率代扣代缴增值税。53号文中应扣缴额的计算公式将境外运输服务提供方收取的服务费通常视为含税价格。

53号文明确规定自2012年1月1日起，船舶代理服务统一按照港口码头服务缴纳增值税（适用增值税税率为6%）。财税[2011]133号文中第四条的相关规定相应废止。

53号文规定了试点地区的一般纳税人，以试点方案实施日期2012年1月1日以前购进或自制的有形动产为标的物提供的经营租赁服务，可以自2012年7月1日起选择适用“简易计税方法”计算缴纳增值税。

中国出入境新管理法

加强实施与规范服务并重-中国出入境新管理法出台

2012年6月30日，全国人民代表大会常务委员会审议通过了《中华人民共和国出境入境管理法》（以下简称“新管理法”），将于2013年7月1日起实施。新管理法强调对在中国境内访问和工作的外国人进行更严格的管理，加大对非法就业的惩处力度，增设新的签证类别及吸引更多的外国人才，同时为外国人申请中国境内永久居留资格提供了机会。

（1）管理办法更趋严格

新管理法规定在中国境内工作的外国人要按照规定取得工作许可和工作类居留证件。任何中国单位和个人不得聘用未取得工作许可和工作类居留证件的外国。新管理法定义的非法就业行为包括：

- a. 未按照规定取得工作许可和工作类居留证件在中国境内工作的；
- b. 超过工作许可限定范围在中国境内工作的；或
- c. 外国留学生违反勤工助学管理规定，超过规定的岗位范围或者时限在中国境内工作的。

对在中国境内非法就业的外国人和非法聘用、接收外国人的单位予以现金重罚。有关部门有权遣返非法入境、非法居留、非法就业的外国人。被遣送出境的人员，自被遣送出境之日起一至五年内不准入境。

	外国人	单位
最高罚金	二万元	十万元
违法所得	没收	没收

（2）新增签证类别吸引外国人才

新管理法在普通签证类别中增设了“人才引进”的签证类别，旨在吸引外国专门人才来中国工作和生活。有关主管机关对符合该计划规定的外国人才给予社会保险、个人所得税、医疗服务、子女教育等相关领域的优惠政策待遇。

（3）永久居住

新管理法规定对中国经济社会发展做出突出贡献或者符合其他在中国境内永久居留条件的外国人，可以申请并取得永久居留资格。

Corporate Income Tax (“CIT”)

Regarding the company interest deduction issue incurred by the investment not in place, the State Administration of Taxation has replied it (Guoshuihan [2009] No. 312). According to Article 27 of the regulations for the Implementation of the Corporate Income Tax Law that a corporate investor who did not paid in full contribution of capital within the prescribed time, for those interest of the borrowings from outside which is equivalent to the provision of interest payable that the difference between the investors who paid in capital and the capital amount which within the time limit should be paid, which does not belong to the reasonable expenses to the company and it should be burden by the company investors, and not allowed to tax deduction. To calculate the interest which cannot be deducted, the company should use each year carrying amount of paid-in capital and loan balance remains unchanged during the period as a calculation period. Each calculation period shall not be deducted the interest on borrowings should be in accordance with the interest on borrowings incurred for the period multiplied by the proportion of the total borrowings of the registered capital of the enterprises are not fully paid during calculation. The formula is: company cannot be deducted for each period of interest on borrowings = the amount of interest on borrowings on that period * not fully paid up registered capital during the period / that period borrowing amount.

Additional policies relating to the VAT transformation pilot program

The Ministry of Finance and the State Administration of Taxation jointly issued a new circular Caishui [2012] No.53 (“Circular 53”) on 29 June 2012, titled “Supplementary Notice Regarding Certain Policies on the Pilot Program for the Transformation of Transportation and Certain Modern Service Industries from Business Tax to Value Added Tax (hereafter referred to as “the VAT Transformation Pilot Program”)”. Circular 53 provides additional policies related to the VAT transformation Pilot Program in the Pilot Region for international transportation services, certain services of qualified animation enterprises, shipping agency services and operating lease services.

Circular 53 stipulates that where a foreign transportation service provider is from a country or region which does not have a double treaty or transportation treaty with China on the tax exemption of international transportation income, it shall be provisionally subject to a withholding VAT rate of 3% on international transportation services provided to recipients in the Pilot Region from 1 January 2012. It

also provides a formula for computing the amount of VAT to withhold which basically treats the service fee charged by the foreign transportation service provider as a VAT inclusive charge.

Circular 53 clarifies that the shipping agency service income should be subject to VAT as port services (i.e., at the applicable VAT rate of 6%) from 1 January 2012. The relevant provision in Article 4 of circular Caishui [2011] No. 133 was abolished at the same time.

Circular 53 stipulates a general VAT payer in the Pilot Region deriving operation lease income from the leasing of tangible movable assets purchased or self-manufactured by the general VAT payer prior to the effective date of the VAT transformation pilot program, i.e., 1 January 2012, can choose to be taxed under the “Simplified Tax Calculation Method” from 1 July 2012 on such operating lease income.

China’s new Exit-Entry Administration Law

Tightened enforcement and opportunities for foreign nationals - China’s new Exit-Entry Administration Law

The National People’s Congress Standing Committee enacted a new law – the “Exit-Entry Administration Law” (“the New Law”) on 30 June 2012, scheduled to be implemented on 1 July 2013. The New Law emphasizes on stricter enforcement over foreign visitors / workers and imposes harsher penalties for being employed illegally. It also introduces a new visa category to attract foreign talents and provides an opportunity to apply for China’s permanent residence status.

(1) Stricter enforcement measures

The New Law requires foreigners working in China to obtain work permits and residence permits. Chinese entities or individuals are not allowed to employ foreigners who do not properly hold work permits and residence permits. It defines foreign individual being employed illegally as:

- a. Working without a valid work permit and residence permit;
- b. Working outside the location or scope of responsibilities stated in a work permit; or
- c. Overseas students working outside the scope or timeframe, breaching the administrative regulations by taking part-time jobs while studying in China.

Monetary penalties for being employed illegally in China will be imposed heavily for foreign employees and sponsoring employers. The authority has the right to repatriate the foreigner to his/her home country. The foreigner will be forbidden to re-enter China with the next one to five years following his/her deportation accordingly.

	For Employees	For Employees
Maximum Fine	RMB 20,000	RMB 100,000
Relevant Income	Confiscated	Confiscated

(2) New visa category to attract foreign talents

The New Law introduces a new visa sub-category in the “ordinary visa” category called “talent introduction” to attract highly talented foreign individuals to work and live in China. The relevant authorities offered preferential treatment in social security, individual income tax, medical services, children’s education and some other areas for the experts who are covered by the program.

(3) Permanent residence program

The New Law allows foreign nationals with outstanding contributions to China’s economic and social development or who meet existing permanent residence requirement to apply for permanent residence status. It is expected that the implementation details for this new program will be issued in the near future.

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