

增值税

国家税务总局于 2005 年 11 月 18 日发布国税函[2005]1097 号文《关于辅导期增值税一般纳税人增购增值税专用发票预缴增值税有关问题的通知》要点如下：

- 纳税人在辅导期内增购专用发票，继续实行预缴增值税的办法，预缴的增值税可在本期增值税应纳税额中抵减，抵减后预缴增值税仍有余额的，应于下期增购专用发票时，按次抵减。
- 纳税人发生预缴税款抵减的，应自行计算需抵减的税款并向主管税务机关提出抵减申请。
- 纳税人预缴增值税余额大于本次预缴增值税的，不再预缴税款可直接购买增值税专用发票；纳税人本次预缴增值税大于预缴增值税余额的，应按差额部分预缴后再购买增值税专用发票。

营业税

国家税务总局于 2005 年 9 月 25 日发布国税函[2005]912 号文《关于外国企业在华提供信息系统的运行维护及咨询服务征税问题的批复》要点如下

- 现行规定中有关技术服务费用应合并作为特许权使用费征收预提所得税的技术服务，是指作为专有技术的授让方式而发生的传授、指导、培训等劳务形式；
- 境外母公司与其全球子公司签订《IT 运行、维护和咨询服务协议》，在境外为其包括境内被投资单位在内的全球子公司提供信息系统和相关软件的运行、维护和咨询服务，境外母公司负责在境内外统一安排技术人员提供服务，垫付相关费用，然后向用户收取服务费和代垫的软件费。属于对我国用户已有信息系统包括其受让的相关软件的正常运行提供的支持、维护和咨询服务，应区分不同情况进行税务处理。
- 属于境外提供劳务部分，不征收营业税和企业所得税；属于境内劳务部分取得的收入，应根据《营业税暂行条例》及《外商投资企业和外国企业所得税法》缴纳营业税和企业所得税；
- 境外母公司收取的其代垫的我国用户使用境外企业提供软件的软件费，应按照无形资产转让收入和特许权使用费分别征收营业税和企业所得税。对其中符合财税字[1999]273 号规定的技术转让免征营业税条件的，可免征营业税。

税收优惠

—— 就业再就业

最近，国务院、国家税务总局相继发文国发[2005]36 号和国税发[2005]183 号，《关于进一步加强就业再就业工作的通知》内容为：

- 延长 2005 年底即将到期的再就业有关税收优惠政策。
- 《通知》规定的相关税收优惠政策自 2006 年起开始执行，政策审批的截止时间暂定为 2008 年底。
- 对有劳动能力和就业愿望的国有企业下岗失业人员，国有企业关闭破产需要安置的人员，国有企业所办集体企业下岗职工，享受城市居民最低生活保障且失业 1 年以上的城镇其他登记失业人员，均发放《再就业优惠证》，提供相应的政策扶持。

—— 再投资退税

国家税务总局于 2005 年 11 月 17 日发布国税函[2005]1093 号《关于外国投资和再投资退还企业所得税有关问题的通知》要点如下：

- 以受让方式取得外商投资企业股权的外国投资者，在受让股权后，以该外商投资企业分配的在其受让股权前实现的利润，在中国境内再投资的，不得享受有关利润再投资退税优惠。
- 外国投资者从与其有直接拥有或间接拥有或被同一人拥有 100% 股权关系的关联方受让股权，且按该关联转让方股权成本价成交的，该外国投资者在受让股权后，以该外商投资企业分配的在其受让股权前实现的利润，在中国境内再投资的，按有关规定享受利润再投资退税优惠。

—— 采购国产设备退税

国家税务总局于 2005 年 11 月 14 日发布国税函[2005]1092 号文《关于小规模纳税人外商投资企业采购国产设备退税问题的批复》要点为：

- 在增值税防伪税控认证系统增加小规模纳税人增值税专用发票认证功能之前，对小规模纳税人外商投资企业采购国产设备取得的增值税专用发票按有关规定进行函调无误的情况下，按现行出口退税规定办理退税事宜。

投资管理

发展改革委、科技部、财政部、商务部等九部委于 2005 年 11 月 15 日发布外汇管理局第 39 号令《创业投资企业管理暂行办法》要点如下：

- 创业投资企业指向创业企业进行股权投资，以期所投资创业企业发育成熟或相对成熟后主要通过股权转让获得资本增值收益的投资方式；
- 国家对创业投资企业实行备案管理，接受创业投资管理部门的监管，投资运行符合有关规定的可享受政策扶持；
- 创业投资企业应当具备的条件为：
 - 已在工商局办理注册登记
 - 实收资本不低于 3000 万元人民币，或者首期实收资本不低于 1000 万元人民币且全体投资者承诺在注册后的 5 年内补足不低于 3000 万元人民币实收资本
 - 投资者不得超过 200 人
 - 至少有 3 名具备 2 年以上创业投资或相关业务经验的高级管理人员承担投资管理责任
 - 经营范围限于：创业投资业务；代理其他创业投资企业等机构或个人的创业投资业务；创业投资咨询；为创业企业提供创业管理服务业务；参与设立创业投资企业与创业投资管理顾问机构
- 创业投资企业不得从事担保业务和房地产业务。
- 本管理办法自 2006 年 3 月 1 日起施行。

公司法（修订）

全国人民代表大会于 2005 年 10 月 27 日发布[2005]第 42 号主席令 修订现有公司法，于 2006 年 1 月 1 日起施行。主要修订内容如下：

- 有限责任公司最低注册资本降至 3 万并可分期缴足

Value-added Tax (“VAT”)

The State Administration of Taxation (“SAT”) issued Circular On Prepaying VAT For Ordinary VAT Payers Purchasing Additional VAT Invoices In The Trial Period (Guo Shui Han [2005] No. 1097) on 18 November 2005. The key points are as follows:

- For VAT payers purchasing additional VAT invoices, the policy of prepaying VAT shall still be carried out. The prepaid VAT can be deducted from the current VAT payable. If there is a balance for the prepaid VAT after the deduction, the balance shall be deducted in turn when purchasing additional VAT invoices in the subsequent periods.
- For the VAT to be deducted from the current VAT payable, the VAT payer shall calculate it by itself and apply to the local tax bureau for the deduction.
- If the balance of prepaid VAT is bigger than the prepaid VAT in the current period, the VAT payer doesn't need to prepay VAT any more, and may purchase VAT invoices directly.

Business Tax (“BT”)

The SAT issued Reply On Tax Issues Relative To Information System Maintenance And Consulting Services Rendered by Foreign Enterprises (Guo Shui Han [2005] No.912) on 25 September 2005. The key points are as follows:

- Pursuant to the prevailing regulations, technology service fee should be combined together as royalty for calculation of (withholding) income tax only when the fee is paid in consideration of labor of tuition, coaching and training which usually accompany transfer for proprietary technology.
- A foreign parent company will, according to the service contract it signed with its subsidiaries worldwide on IT operation, maintenance and consulting, bear the obligation to provide operation, maintenance and consulting services on information system and related software to its subsidiaries worldwide, including the one(s) in China, and the services are provided abroad, i.e. the foreign parent will certainly arrange technical force, pay advancement for relevant expenses and finally charge service fee and software advancement on terminal users. The transaction, if takes place in China, should be regarded as support, maintenance and consulting provided to serve the information system and related software already used by Chinese subsidiaries, and the resulting tax treatment varies in different situations.
- For the part of services provided abroad, no BT or corporate income tax will be eligible; for the part of services provided at home, however, BT and income tax should be charged pursuant to *the Provisional Regulations on Business Tax* and *the Income Tax Law Of The People's Republic Of China For Enterprise With Foreign Investment and Foreign Enterprises*; and
- Advancement charged by the foreign parent company on software users in China should be regarded as intangible assets transfer proceeds and royalty and accordingly is liable for business tax and corporate income tax respectively. If some of this meet the requirements on examination of business tax pursuant to Cai Shui Zi [1999] No.273, BT should be exempted.

Tax Incentives

— Re-employment

Recently the State Council issued Circular Regarding Further Enforcing Re-employment (Guo Fa [2005] No. 36) closely followed by a Circular (Guo Shui Fa [2005] No.183) issued by the SAT aimed at implementing the former. The key points are as follows:

- The tax preferential policy regarding re-employment to expire by the end of 2005 will be extended.
- The tax preferential policy in the Circular will be implemented starting from the year of 2006, and the deadline for policy review is set forth temporarily as the end of 2008.
- For the laid-off workers from state-owned enterprises who have working abilities and also a wish to work, the workers to be assigned with a new job after state-owned enterprises' bankruptcy, the laid-off workers from collectively-owned enterprises affiliated to state-owned enterprises, and the other registered unemployed who are entitled to the lowest city living support given by the governments and keep jobless for more than 1 year, all of them are granted Re-employment Preferential Certificate, and enjoy the relevant preferential policies.

— Re-investment Tax Refund

The SAT issued Circular On Foreign Enterprise Income Tax Refund To Foreign Investor For Its Re-investment (Guo Shui Han [2005] No. 1093) on 17 November 2005. The key points are as follows:

- For a foreign investor who acquires a foreign-invested enterprise' equity in the form of transfer and re-invests in the PRC after the equity transfer of with the dividends distributed from the enterprise which are realized before the transfer, it shall not enjoy the tax preferential policy of re-investment tax refund.
- A foreign investor acquires equity in the form of transfer from a related party who directly owns or indirectly owns the investor or is 100% owned together with the investor by the same person, and the related-party transfer of equity is done at a cost price. For the investor who re-invests in the PRC after the equity transfer with the dividends distributed from the enterprise which are realized before the transfer, it shall enjoy the tax preferential policy of re-investment tax refund per the relevant regulations.

— Tax Refund For Purchase Of Domestically Produced Equipments

The SAT issued Reply To Issues In Tax Refund For Foreign-invested Enterprises With A Status Of Small-scaled VAT Payer To Purchase Domestically Produced Equipments (Guo Shui Han [2005] No. 1092) on 14 November 2005. The key points are as follows:

- Before the addition of a function of designating VAT invoices for small-scaled VAT payers to the VAT Fake-proof Control and Designation System, if a foreign-invested enterprise with a status of small-scaled VAT payer obtains VAT invoices for buying domestically produced equipments and the invoices are through the tax bureau's investigation with no error found, the enterprise enjoys an export tax refund per the existing regulations.

Investment Management

The nine ministries including Development And Reform Commission, Technology Ministry, Finance Ministry, Ministry Of Commerce issued Interim Measures For Venture Capital Investment Enterprises Management (Order No.39 of Foreign Exchange Administration Bureau) on 15 November 2005. The key points are as follows:

- By a venture capital investment enterprise, it means that an investor invests in the enterprise in a form of equity in an expectation to obtain the capital gains in a transfer of the equity after the enterprise has developed into a mature or relatively mature one;
- Venture capital investment enterprises will be put in file, and be supervised by venture capital investment regulatory authorities. Those whose investment operations comply with the relevant regulations will enjoy the preferential policies;
- To meet the following criteria, venture capital investment enterprises:
 - Shall be registered with Administration For Industry And Commerce;
 - Shall be with paid-in capital of no less than RMB 30 million, or with the initial injection of no less than RMB 10 million into paid-in capital and all the investors' promise to make paid-in capital of no less than RMB 30 million within 5 years after registration by further injections;
 - Shall have no more than 200 investors;
 - Shall have at least 3 advanced management staff with more than 2 years' experience in venture capital investment or other relevant working experience to bear investment management responsibility;
 - Shall be with business scope limited to: venture capital investment operations; venture capital investment on behalf of other venture capital investment enterprises or individuals; venture capital consulting; provision of venture capital management to other venture capital investment enterprises; participation in setting up venture capital investment enterprises and venture capital investment management consulting agencies.
- Venture capital investment enterprises shall not engage in guarantee operations and real estate operations.
- The Measure will be effective on 1 March 2006.

Company Law (Amended)

The National People's Congress issued amended Company Law as Chairman's Order No.42 on 27 October 2005. The amended Company Law will be effective on 1 January 2006. The key points are as follows:

- Reduce the registered capital threshold for limited liability companies to RMB 30,000 and allow the injections for registered capital by installments.
- Allow a limited liability company to be set up by one natural person
- Reduce the registered capital threshold for stock-limited companies to RMB 5 million
- Increase the ratio of intangible property to the total injection so as to make the forms of injection sound
- Loosen a restriction on company's investment in other companies loosened in an appropriate way.

- Standardize company's provision of guarantee to others and decide to impose penalty on high executives for the loss brought about by their law-breaking practices;
- Reveal a series of regulations for managing listed companies and stock-limited companies
- Standardize related-party transactions;
- Enlarge the scope of enterprises which are allowed to issue company bonds;
- Protect the independence of accounting firms in terms of system, and simultaneously clarify the compensation responsibility to be borne by the intermediary agencies;
- Simplify the announcement procedure for company's merger or separation, and simultaneously emphasize the company's liquidation responsibility

Securities Law (Amended)

The National People's Congress issued amended Securities Law as Chairman's Order [2005] No.43 on 27 October 2005. The amended Securities Law will be effective on 1 Jan. 2006. The key amended issues are as follows:

- Unless otherwise specified by the State, securities should be managed and regulated as a business separated from banking, trust and insurance.
- Stock can be traded in spot transaction or in other ways permitted by State Council.
- State-owned enterprise and state-controlled enterprise should buy and sell listed stocks in accordance with regulations set forth by the State.
- Securities investment advisory agencies and investment professionals should not trade stock of listed companies to which they render consulting services, nor should they provide or disseminate false or misleading information to investors through media or other means. Otherwise, they should be liable for the damages due to the losses they cause to investors.

What's New

- Shanghai Tax Bureau will further standardize the administration in taxation registration for de-registered enterprises. For this purpose, it issued Measures For Administering Taxation Registration Of De-registered Enterprises, stipulating that de-registration taxation registration involves paying off taxes, canceling and submitting official tax invoices, and de-registering of taxation. It also stipulates that taxpayers can engage taxation agencies with qualifications (taxation firms with an approval of establishment) to handle the application for de-registering taxation, or handle it by themselves. If the tax authorities find out more taxes to be paid during or after an inspection into the result of paid-off taxes, they will impose penalties or late payment interests accordingly.
- It is stressed in the official document (Guo Shui Fa [2005] No.196) recently issued by the SAT that the original threshold of RMB 800 for individual income tax stipulated in Tax Law before amendments shall be adopted in calculating individual income tax ("IIT") imposed on the incomes of salary or wage which are actually received before 31 December 2005, no matter whether the payments of IIT are put into treasury after 1 January 2006.

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