

## 个人所得税

国家税务总局于 2006 年 9 月 10 日发布国税函[2006]866 号文《关于个人股权转让过程中取得违约金收入征收个人所得税问题的批复》主要内容为：

- 股权成功转让后，转让方个人因受让方个人未按规定期限支付价款而取得的违约金应并入财产转让收入，按照“财产转让所得”项目计算缴纳个人所得税。
- 税款由个人自行申报缴纳。

## 征收管理

国家税务总局于 2006 年 9 月 14 日发布国税发[2006]144 号文《关于加强房地产交易个人无偿赠与不动产税收管理有关问题的通知》主要内容为：

- 申报营业税免缴时应分别不同情况提供相应的材料原件：
  - 继承不动产时，提交公证机关出具的“继承权公证书”；
  - 遗嘱人处分不动产时，提交“赠于公证书”；
  - 其他情况赠于时，提交“赠于公证书”和“接受赠与书”或“赠与合同公证书”。
- 另外，还需出具房产所有权证和《个人无偿赠与不动产登记表》
- 无偿赠与不动产不得开具发票。
- 无偿赠与不动产应全额征收契税。
- 个人将受赠的房产对外销售时，在缴纳个人所得税时，不得扣除房屋原价，不得核定征收。

☞ 编者按：在赠与手续齐全时，即免除了营业税和个人所得税。但虚假申办存在补税、罚款的风险。

## 外资企业投诉办法

商务部于 2006 年 9 月 1 日发布 2006 年第 2 号令《外商投资企业投诉工作暂行办法》主要内容为：

- 全国外商投资企业投诉中心和地方各级政府具有受理职能的部门受理外商投资企业投诉。
- 投诉被受理后，原则上由投诉事项发生地的当地机构处理解决。
- 投诉受理条件：
  - 有明确的投诉对象和投诉请求；
  - 符合投诉主体资格；
  - 有具体的投诉事实、理由并附有相关证据材料；
  - 属于本办法规定的投诉事项范围。
- 匿名投诉不予受理。
- 本办法自 2006 年 10 月 1 日起施行

## 出口退税

国家发改委、财政部、国家税务总局、商务部、海关总署日前联合发出通知，明确从 9 月 15 日起调整部分出口商品的出口退税率，同时增补加工贸易禁止类商品目录。

海关总署、财政部、商务部、人民银行、税务总局于 2006 年 9 月 20 日发布第 52 号令，就加工贸易保税货物内销征收缓税利息适用利息率进行调整的有关问题发出公告：

- 缓税利息的利息率参照中国人民银行公布的 6 个月至 1 年的短期贷款年利率按日征收。现行的缓税利息率为 6.12%。
- 2006 年 10 月 10 日起实施。

## 外汇管理

国家外汇管理局于 2006 年 9 月 29 日发布汇发[2006]49 号文〈关于进一步改进贸易外汇收汇与结汇管理有关问题的通知〉内容为：

- 取消贸易项下外汇收汇与结汇待结汇账户和支付结汇管理。
- 外汇局按年度对收汇单位进行考核，根据企业的实际收汇情况，考核结果分为“关注企业”和“非关注企业”。
- 凡“关注企业”名单以内的收汇单位，经常项目外汇直接结汇或进入经常项目外汇账户后结汇，应当向外汇指定银行（以下简称“银行”）提供关于结汇款项性质的书面说明。
- 保税区、保税港、出口加工区、保税物流园区和保税物流中心企业不适用本通知。
- 本通知自 2006 年 11 月 1 日起实施。

## 市场交易管理

商务部、发展改革委、公安部、税务总局、工商总局于 2006 年 10 月 12 日发布 2006 年第 17 号令《零售商供应商公平交易管理办法》主要内容为：

- 零售商指依法办理登记，直接向消费者销售商品，年销售额 1000 万元以上的企业及其分支机构。
- 供应商指直接向零售商提供商品及相应服务的企业及其分支机构、个体工商户，包括制造商、经销商和其他中介商。
- 零售商不得滥用优势地位从事不公平交易和妨碍公平竞争。
- 零售商应当将所收取的促销服务费登记入账，向供应商开具发票，按规定纳税。
- 供应商供货时，不得从事妨碍公平竞争的行为。
- 本办法自 2006 年 11 月 15 日起施行。

☞ 编者按：具体内容详见正文。

商务部、发展改革委、公安部、税务总局、工商总局于 2006 年 9 月 12 日发布 2006 年第 18 号令《零售商促销行为管理办法》内容有：

- 零售商指依法登记注册，直接向消费者销售商品的企业及其分支机构、个体工商户。
- 零售商促销活动的广告和其他宣传，其内容应当真实、合法、清晰、易懂，不得使用含糊、易引起误解的语言、文字、图片或影像。不得以保留最终解释权为由，损害消费者的合法权益。
- 零售商开展促销活动，不得利用虚构原价打折或者使人误解的标价形式或价格手段欺骗、诱导消费者购买商品。



- No invoice shall be issued in the case of voluntary disposition of immovable property.
- Deed tax shall be paid in full in the case of voluntary disposition of immovable property.
- In event that an individual sells a house property from voluntary disposition by others, for the purpose of calculating and paying IIT, the original value of the house shall not be deducted from the taxable income, and the method of deeming a taxable income shall not apply.

✍ Editorial Comments: business tax and IIT can be exempted if all the required documents in relation to voluntary disposition are provided, but please note that the risks of paying the taxes exempted and fines can't be ruled out in fraudulent application for exemption.

## **Measures on Complaints from Foreign Invested Enterprises (“FIE”)**

**The Ministry of Commerce (the “MOFCOM”) issued The Interim Measures on Complaints from Foreign Invested Enterprises (MOFCOM Order [2006] No.2) on 1 September 2006.** The key points are as follows:

- The State Center for Complaints from FIE and the competent departments of local governments at various levels shall be responsible for accepting and hearing the complaints from FIE.
- After the complaints being accepted, in principle, they shall be handled by the local institutions where the complained matters occur.
- The conditions for accepting complaints:
  - There are clear complaint targets and claims;
  - Compliance with the requirements for complaint subject qualification;
  - there are the complaint facts, reasons and relevant documentary evidence;
  - Within the scope of complaint matters under the Measures.
- Complaints made in an anonymous manner shall be rejected.
- The Measures shall go into effect as of 1 October 2006.

## **Export Tax Refund**

**Recently, the National Development and Reform Commission (the “NDRC”), the Ministry of Finance (the “MOF”), the SAT, the MOFCOM, the General Administration of Customs (the “GAC”) jointly issued a Circular, specifying that from 15 September, the rates of export tax refund applicable to some export commodities shall be adjusted, and catalog for prohibited commodities in the processing trade will be revised with additions and supplements.**

**The GAC, the MOF, the MOFCOM, the People’s Bank of China (the “PBC”) and the SAT issued Order No. 52 on 20 September 2006, on issues concerning adjusting applicable rates of interest on deferred tax imposed on domestic sales of bonded goods in processing trade:**

- The interest on deferred tax shall be collected on a daily basis by reference of yearly interest rate of short-term loan with a period of 6 months to 1 year published by the People’s Bank of China. The prevailing rate of interest on deferred tax is 6.12%.
- The Order shall go into effect as of 10 October 2006.

## **Foreign Exchange Administration**

**The State Administration of Foreign Exchange issued Circular on Issues Concerning Further Improvement of the Administration of the Receipt and Settlement of Foreign Exchange of Trade Account (Hui Fa [2006] No.49) on 29 September 2006.** The key points are as follows:

- The administration of accounts for foreign exchange to be settled and making payments for settlement of foreign exchange in respect to receipt and settlement of foreign exchange is cancelled.
- The foreign exchange bureaus conduct an annual assessment on the units receiving foreign exchange and the units will be classified into “Enterprise Inviting Attention” and “Enterprise Inviting No Attention”, depending on the actual status of receipts of foreign exchange of the units.
- The units receiving foreign exchange on the list of “Enterprise Inviting Attention” shall provide designated foreign exchange banks (hereinafter referred to as the “Bank”) with explanation in writing on the nature of foreign exchange settlement in case of directly settling foreign exchange under current account or settling foreign exchange after being put into a foreign exchange bank account under current account.
- This Circular shall not apply to the enterprises in bonded zones, bonded ports, export processing zones, bonded logistic parks and bonded logistic centers.
- This Circular shall go into effect as of 1 November 2006.

## **Market Transaction Administration**

**The MOFCOM, the NDRC, the Ministry of Public Security (the “MPS”), the SAT and the State Administration for Industry and Commerce (the “SAIC”) issued Measures for the Administration of Fair Transaction between Retailers and Suppliers (Order [2006] No.17) on 12 October 2006.** The key points are as follows:

- “Retailers” means the enterprises and their branches that directly sell goods to the customers with an annual turnover of more than RMB 10 million.
- “Suppliers” means the enterprises and their branches, individual industrial and commercial households that directly provide goods and relevant services for Retailers, including manufacturers, agents and other intermediary providers.
- Retailers shall not abuse their dominate positions to engage in transactions in an unfair manner and impede fair competition.
- Retailers shall record the promotion service fee received from Suppliers in accounting books, issue the invoice to Suppliers and also pay taxes according to regulations.
- Suppliers shall not have the acts of impeding fair competition during the supply of goods.
- The Measures shall go into effect as of 15 November 2006.

 Editorial Comments: Please see the text of the Order for details.

**The MOFCOM, the NDRC, the MPS, the SAT and the SAIC issued Measures for the Administration of Promotion Acts of Retailers (Order [2006] No.18) on 12 September 2006.** The key points are as follows:

- “Retailers” means the legally registered enterprises and their branches, individual industrial and commercial households that directly sell goods to customers.

- Advertisements or other media used in the promoting activities carried out by Retailers shall contain such contents as true, lawful, explicit and easy to understand, and shall not contain such languages, words, pictures or videos as ambiguous, and apt to mislead. “Reserve the right to definitive interpretation” shall not be used as excuse in case of damaging the legitimate rights and interests of customers.
- During the carrying out of promotional activities, Retailers shall not use a fraudulent discount on original price or a labeling or pricing method that may mislead so as to cheating or inducing customers into buying goods.
- In the event customers require for invoices or purchase receipts for goods under promotion, Retailers shall immediately issue at no additional cost of customers.
- Retailers shall not reject or set up barriers for the requests of return or replacement of goods made by the customers by using promotion as an excuse.
- The Measures shall go into effect as of 15 October 2006.

☞ Editorial Comments: Please see the text of the Order for details.

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