

新企业所得税法

2007年3月16日全国人大通过了新的《中华人民共和国企业所得税法》标志着内外资企业所得税将于2008年1月1日起予以统一。其主要内容包括：

- 企业所得税的税率为25%，小型微利企业和特定高新技术企业分别实行20%和15%两档低税率，无地域限制；非居民企业适用税率20%。
- 企业发生的公益性捐赠支出，在年度利润总额12%以内准予税前扣除。
- 采用“突出行业导向，限制地域性优惠”的税收优惠政策。国家将发展重点放在科技、环境保护、能源节约、生产安全和风险投资上，并持续向农业、林业、畜牧业、渔业方面投资。
- 新所得税法专设一章节——特别纳税调整，加强反避税方面的规定，表明了政府加强关联企业转让定价管理的决心，同时还将出台四项更具体的反避税举措。
- 自2008年起，企业所得税时间延续至年度终了之日五个月内。

以下是企业需要关注或进一步等待明确的问题：

- 对于新税法颁布前已经批准设立的外商投资企业，原来执行的优惠税率，可在五年内，逐步过渡到25%税率，如何过渡，尚需在实施细则中明确。
- 目前有些税率优惠不是税收法律、行政法规规定的，将不会有过渡性优惠的安排。
- 新法公布前应享受定期减免税优惠的（包括外商投资生产性企业的“两免三减半”），可继续享受到期满为止，但未获利而尚未享受优惠的，优惠期从2008年起算。
- 2007年作为新、旧税法的过渡期，在计算企业所得税时，尤其应注意时间性差异导致的税率差问题。
- 原向其注册地税务机关申报纳税的内资企业分支机构，2007年起也将由总机构汇总缴纳，届时国家可能会制定财政转移支付的方法。
- 新税法没有再提及再投资退税的有关规定，原有的规定在2007年内尚能执行。
- 新税法仅明确在中国境内设立机构、场所的非居民企业从居民企业取得与该机构、场所有实际联系的股息、红利等权益性投资收益可以免税，但未提及外商投资企业向其外国投资者支付利润时是否免征股息预提所得税。

☞ 编者按：企业所得税，涉及一个企业内由收入到成本、费用的每个环节。新税法的颁布，无疑将有许多方面问题需要明确，这将期待于实施细则和日后一系列法规的明确。对于众所关注的问题，我们也将努力尽早寻找答案。近期，我们欲就税改后的衔接问题和企业遇到的实际问题，开设一个专题讲座，欢迎大家共同参与。如有什么问题和想法，也请联系我们。

企业所得税

国家税务总局于 2007 年 3 月 9 日发布国税函[2007]305 号文《关于企事业单位公务用车制度改革后相关费用税前扣除问题的批复》内容为：

- 企事业单位公务用车制度改革后，在规定的标准内，为员工报销的油料费、过路费、停车费、洗车费、修理费、保险费等相关费用，以及以现金或实物形式发放的交通补贴，均属于企事业单位的工资薪金支出，应计入企事业单位的工资总额，按照现行的计税工资标准进行税前扣除。

☞ 编者按：这里没有指增加收入，影响个人所得税，而是强调应计入内资企业所得税的税前列支工资总额。

合并申报外商投资企业所得税

国家税务总局于 2007 年 2 月 28 日发布国税发[2007]23 号文《关于规范和加强涉外企业汇总（合并）申报缴纳所得税管理有关问题的通知》主要内容为：

- 外商投资企业总机构的税务机关应在汇缴机构涉外企业所得税税种登记完成后，为其出具《外商投资企业汇总申报缴纳所得税确认单》；
- 分支机构进行所得税税种登记时，应将总机构税务机关出具的上述《确认单》报税务部门审核确认；
- 分支机构发生有财产损失需税前扣除、技术开发费加计扣除、固定资产加速折旧、无形资产加速摊销等需审核、备案的涉税事项，需向其主管税务机关报送，并取得《分支机构审核、备案事项确认单》；

☞ 编者按：鉴于该文件公布时间较迟，在今年的汇缴时，各地税务部门掌握的口径有所差异，需联系主管税务机关进行确认。

税收优惠

财政部、国家税务总局于 2007 年 2 月 7 日发布财税[2007]31 号文《关于促进创业投资企业发展有关税收政策的通知》内容有：

- 凡采取股权投资方式投资于未上市中小高新技术企业两年及以上，并符合一定条件的，可按其对该企业投资额的 70% 抵扣应纳税所得额。
- 符合抵扣条件并在当年不足抵扣的，可在以后纳税年度逐年延续抵扣。
- 本通知自 2006 年 1 月 1 日起实施。

上海市地方税务局于 2007 年 2 月 28 日发布沪地税外[2007]9 号文《关于本市部分外商投资企业有关地方所得税优惠政策延期执行至 2007 年底的通知》内容为：

- 下列外商投资企业可继续执行本市原规定的地方所得税优惠政策至 2007 年底：
 - 设立在虹桥、闵行、漕河泾经济技术开发区内生产性外商投资企业；
 - 设立在浦东新区内的外商投资企业；

设立在本市的产品出口型外商投资企业和先进技术型外商投资企业。

anti-avoidance, which demonstrates the determination of the government to strengthen the administration over transfer pricing between related parties as well as the implication that the four more detailed measures to combat tax-avoidance are to be introduced.

- As from 2008, the period of corporate income tax filing is extended as within five months upon the end of the corresponding year.

Issues necessary for enterprises to pay attention to or to be further clarified are as follows:

- The current tax rates as tax incentive for foreign-invested enterprises that have obtained approval on their establishment before the promulgation of the new Corporate Income Tax Law will be gradually increased to 25%. How to increase is to be clarified in the implementing regulations of the new Corporate Income Tax Law.
- As currently some tax preferential treatments are not based on the provisions of tax laws and administrative regulations, arrangements for transit preferential treatments will not apply to the said tax preferential treatments.
- The tax holiday with a period (including the “2-year exemption and 3-year reduction by half” for foreign-invested enterprises with production nature) that shall be enjoyed before the promulgation of the new law can be grandfathered till the expiry. However, the tax holiday for those enterprises that make no profits and have not enjoyed tax incentives is calculated as from 2008.
- Special attention shall be paid to the issue of tax rate difference due to timing difference for the purpose of corporate income tax for the year of 2007, a transit period between the new tax law and the old one.
- As from 2007, headquarters will file the tax combined with branches of domestic-invested enterprises that originally files the tax with the tax authorities where such branches are registered. The State may draw up the measures for financial transfer payment accordingly.
- There is no reference to the provisions related to tax refund for reinvestment, and original provisions can be implemented within the year of 2007.
- In the new CIT law, it is definitely stipulated that, if a tax non-resident enterprise has establishment or place in the PRC and obtains such equity investment income as dividend and bonus related to the establishment or place from tax resident enterprises, the equity investment income could be exempt from income tax. Whereas, the new regime does not state whether the profits paid to foreign investors by foreign-invested enterprises would be exempt from accrued income tax of dividend.

☞ Editorial comments: Each link from revenue to cost and expenses is in connection with CIT. Promulgation of the new CIT is followed by many indefinite issues, and those issues are expected to be

explained or further clarified in subsequent detailed rules of implementation and series of regulations. We will make efforts to seek for explanation of those focused issues. In the coming days we are going to hold a seminar of special subject with regard to transition from the old CIT to the new CIT and actual questions incurred by enterprises after the reform of CIT. We are looking forward to the kind participation of personalities of various circles. If you have any questions or opinions, please feel free to contact us.

Corporate Income Tax

State Administration of Taxation (SAT) issued Approval for Pretax Deduction of Relevant Expenses Subsequent to Reform of System of Vehicle Use for Business of Enterprises and Institutions (GuoShuiHan[2007]No.305) on March 9, 2007, stipulating that

- Subsequent to the Reform of System of Vehicle Use for Business of Enterprises and Institutions, such relevant expenses as gas, toll, parking, car washing, repair, insurance, etc. reimbursed to staff, and traffic allowance paid to staff in the form of cash or substance, as long as they are in the prescribed criteria, shall be regarded as part of salary of staff, computed into total amount of salary paid to staff by enterprises and institutions, and deducted from pretax profit according to existing criteria of taxable salary.

☞ Editorial comments: Total amount of salary in connection with computation of domestic enterprises income tax is specified in the Approval, but impact of the increased income on individual income tax is not mentioned.

Consolidated Filing of Foreign Enterprises Income Tax (FEIT)

SAT issued Circular on Standardizing and Enhancing Administration of Consolidated Income Tax Filing and Payment of Foreign Investment Enterprises (FIEs) (GuoShuiFa[2007]No.23) on February 28, 2007, mainly stating that

- Competent tax authorities should issue Confirmation Letter for Consolidated Filing and Payment of Income Tax by FIEs to headquarters of FIEs, after HQ of FIEs complete their registration of category of foreign investment enterprises income tax;
- When handling registration of category of income tax, branches should provide competent tax authorities with the above-said Confirmation Letter for their review;
- If branches incur tax-related issues that need to be reviewed and filed, such as pretax deduction of property damage, accumulated deduction of technical development expenses, accelerated depreciation

of fixed assets, accelerated amortization of intangible assets, they should report those issues to competent tax authorities, and obtain Confirmation Letter for Reviewed and Filed Issues of Branches.

☞ Editorial comments: Due to the delayed promulgation of the above-said Circular, different tax authorities might not render a perfectly same account of it. Thus, taxpayers should contact competent tax authorities to confirm relevant requirement while handling consolidated filing and payment of income tax.

Preferential Treatment of Tax

The Ministry of Finance and SAT issued Circular on Tax Policies Related to Promoting Development of Investment into Newly-started Enterprises (CaiShui[2007]No.31 on February 7, 2007, indicating that

- If an enterprise invested in an unlisted middle or small scale high-tech enterprise by way of equity investment for two years or above, and at the same time met other relevant requirements, an amount equal to 70% of amount of the investment could be deducted from the enterprise's taxable income.
- If taxable income of an enterprise qualified for the deduction is less than the deductible amount, the remaining could be continuously deducted in the following years.
- This Circular came into effect on January 1, 2006.

Shanghai Local Tax Bureau issued Circular on Prolonging Implementation of Local Preferential Treatment of Income Tax Given to Partial FIEs in Shanghai to the End of 2007 (HuDiShuiWai[2007]No.9) on February 28, 2007, stating that

- The following FIEs would enjoy local preferential treatment of income tax till end of 2007:
 - ✓ Productive FIEs established in Hongqiao, Minhang and Caohejing Economic & Technological Development Zone;
 - ✓ FIEs established in Pudong New District;
 - ✓ Goods-exporting FIEs and technologically advanced FIEs established in Shanghai.

What's New

- FIEs registered before December 31, 2006 should perform 2006 joint annual inspections. This year FIEs are required to apply for online joint annual inspections before June 30.

The newsletter is merely provided to our clients and those who have interest in our business for reference. We'll do our best to ensure the accuracy of the information in the newsletter. We have to remind you that the content in the newsletter is abstracted from relevant documents, and therefore in practice the original documents should be used for reference. Meanwhile, we welcome all of you to consult professionals in our firm regarding the information in the newsletter, and also welcome all of you visit our website www.dean CPA.com.cn. We will render affordable and value-added services to our clients. If there is a discrepancy between Chinese and English versions, Chinese version will prevail.

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