

企业所得税

国务院于 2007 年 12 月 6 日通过《中华人民共和国企业所得税法实施条例》共有 8 章 133 条。明确了：

- 对“实际管理机构”界定为对企业的生产经营、人员、财务、财产等实施实质性全面管理和控制的机构。
- “合理的”工资薪金予以据实扣除。
- 业务招待费按发生额 60%的比例、最高不超过当年销售（营业）收入的 5%。
- 广告宣传费按销售收入的 15%扣除，当年未扣除部分结转以后年度扣除。
- 对高新技术企业认定明确三个重要问题
 - 高新技术企业范围问题
 - 高新技术企业的认定标准问题
 - 核心自主知识产权问题
- 小型微利企业年应纳税所得额不超过 30 万元，所得税税率为 20%。
- 对来自所有非上市企业，以及连续持有上市公司股票 12 个月以上取得的股息、红利收入，给予免税，不再实行补税率差的做法。
- 取得第一笔生产经营收入的年度为减免税起始年度。

国务院于 2007 年 12 月 26 日发布国发[2007]39 号文《关于实施企业所得税过渡优惠政策的通知》明确了：

- 自 2008 年 1 月 1 日起，原享受低税率优惠的企业，在新税法施行后 5 年内逐年过渡到法定税率。其中享受 15%优惠税率的企业，自 2008 年起税率按 3%、2%、2%、2%、1%逐年递增；享受 24%税率的企业，2008 年起按 25%税率执行。

☞ 编者按：根据该文件优惠政策表列示，原享受低税率优惠企业不包括浦东新区及外高桥保税区内除生产性企业之外的企业，该等企业是否存在优惠税率的过渡问题尚不明确。

个人所得税

十届全国人大常委会第三十一次会议于 2007 年 12 月 29 日通过了关于修改个人所得税法的决定。个人所得税起征点自 2008 年 3 月 1 日起由 1600 元提高到 2000 元。

国家税务总局于 2007 年 11 月 20 日发布国税函[2007]1145 号文《关于个人取得房屋拍卖收入征收个人所得税问题的批复》内容为：

- 个人通过拍卖市场取得的房屋拍卖收入在计征个人所得税时，其房屋原值应按照纳税人提供的合法、完整、准确的凭证予以扣除；

- 不能提供完整、准确的房屋原值凭证，不能正确计算房屋原值和应纳税额的，统一按转让收入全额的 3% 计算缴纳个人所得税。
- 在房屋拍卖后缴纳营业税、契税、土地增值税等税收的同时，一并申报缴纳个人所得税。

出口退税

国家税务总局于 2007 年 11 月 22 日发布国税函[2007]1150 号文《关于外贸企业申报出口退税期限问题的通知》内容为：

- 外贸企业在 2008 年 1 月 1 日后申报出口退税的，申报出口退税的截止期限调整为，货物报关出口之日起 90 天后第一个增值税纳税申报期截止之日。
- 确有特殊原因在规定期限内无法申报出口退税的，按现有规定申请办理延期申报手续。

国家税务总局于 2007 年 12 月 3 日发布国税发[2007]123 号文《关于印发〈增值税小规模纳税人出口货物免税管理办法（暂行）的通知〉》内容为：

- 小规模纳税人应办理出口货物免税认定。
- 已办理出口货物免税认定的小规模纳税人，其认定内容发生变化的，须持相关证件向税务机关申请办理出口货物免税认定变更手续。
- 小规模纳税人自营出口货物报关后，应向海关申请签发出出口货物报关单，并及时登录“口岸电子执法系统”出口退税子系统，规定提交相关电子数据。
- 小规模纳税人自营或委托出口货物后，须在次月向主管税务机关办理增值税纳税申报时，提供《小规模纳税人出口货物免税申报表》及电子申报数据。
- 小规模纳税人出口货物应征税额：

$$\text{增值税应征税额} = (\text{出口货物离岸价} \times \text{外汇人民币牌价}) \div (1 + \text{征收率}) \times \text{征收率}$$

本办法自 2008 年 1 月 1 日起执行。

耕地占用税

国务院发布 07 年第 511 号令《中华人民共和国耕地占用税暂行条例》废止了原有的条例内容。主要为：

- 外商投资企业被纳入耕地占用税的纳税人。
- 耕地占用税以纳税人实际占用的耕地面积为计税依据，按照规定的适用税额一次性征收。
- 获准占用耕地的单位或者个人应当在收到土地管理部门的通知之日起 30 日内缴纳耕地占用税。
- 本条例自 2008 年 1 月 1 日起施行。

企业投资管理

商务部于 2007 年 12 月 11 日发布 2007 年第 18 号令《外商投资商业领域管理办法补充规定（三）》就现在《外商投资商业领域管理办法》（商务部令 2004 年第 8 号）中有关香港和澳门服务提供者投资商业领域问题做出如下补充规定：

- 对于同一香港、澳门服务提供者在内地累计开设店铺超过 50 家的，如经营商品包括药品、农药、农膜、化肥、植物油、食糖、棉花等商品，且上述商品属于不同品牌，来自不同供应商的，允许香港、澳门服务提供者控股，出资比例不得超过 65%。

The State Council issued Circular on Implementation of Transitional Preferential Policy of CIT (Guo Fa [2007]No.39) on December 26, 2007, stipulating definitely that:

- Since January 1, 2008 when the new CIT law came into effect, enterprises that were subject to a reduced income tax rate under the old CIT law will be eligible for a five-year transition period, during which the tax rate will gradually increase to the unified rate. Tax rate of 15% applicable for enterprises that enjoyed the preferential tax rate shall increase year by year respectively by 3%, 2%, 2%, 2% and 1%, and enterprises that enjoyed preferential tax rate of 24% will be subject to 25% since 2008.

☞ Editorial Comments: According to the above Circular, enterprises that enjoyed preferential policy of reduced tax rate excluded non-productive enterprises in Pu Dong District and WaiGaoQiao Bonded Area, and it is not stipulated whether such enterprises are eligible for transition period of preferential tax rate.

Individual Income Tax (IIT)

The 31st meeting of the 10th term Standing Committee of the National People's Congress of PRC passed a resolution on amending IIT law on December 29, 2007. IIT threshold shall be raised from RMB 1600 to 2000 as of March 1, 2008.

The State Administration of Taxation (SAT) issued Approval for Levying IIT on Individual Income from Auction of House (Guo Shui Han[2007]No.1145) on November 20, 2007, stipulating that:

- When calculating IIT on individual income derived from auctioning house through auction market, original value of house shall be deducted from the income by virtue of legitimate, complete and accurate vouchers provided by the IIT payers.
- If complete and accurate vouchers of original value of the house cannot be provided, and the original value and taxable income cannot be correctly calculated either, 3% of the total auction income shall be taken as the calculating basis of the IIT.
- While paying business tax, deed tax, land appreciation tax and others on house auction, IIT shall be filed and paid simultaneously.

Export Tax Refund

SAT issued Circular on Time Limit of Applying for Export Tax Refund by Foreign Trade Enterprises (Guo Shui Han [2007]No.1150) on November 22, 2007, including the following points:

- As for the foreign trade enterprises that applied for export tax refund after January 1, 2008, the deadline of the tax refund application shall be the last day of the time limit of the 1st VAT filing after the 90th day of completing the export customs declaration.
- If an enterprise cannot apply for export tax refund in the required time limit due to certain special situation, it is allowed to delay the procedure of the application according to the current regulations.

SAT issued Circular on Measures (Provisional) for Administration of Export Tax Exemption of Small-scale VAT Payers (Guo Shui Fa[2007]No.123) on December 3, 2007, stipulating that:

- Small-scale VAT taxpayers are required to go through the procedure of export tax exemption confirmation;
- As for the small-scale VAT payers who have handled the export tax exemption confirmation, if there are changes in the confirmed items, they shall go through the procedure of the changes with providing relevant certificates at tax authorities;
- After completing the export customs declaration, small-scale VAT payers with export license shall apply for form of export customs declaration to the customs, and log in the export tax refund sub-system of Port Electronic System of Executing Laws to submit the required electronic data.
- After small-scale VAT payers have their goods exported with their own export license or through exportation agent, they shall provide Application Form of Export Tax Exemption and relevant electronic data while going through VAT filing at competent tax authorities in the next month;
- Tax payable on small-scale VAT payers' exporting goods:

$$\text{VAT payable} = (\text{export FOB} \times \text{quote price of foreign exchange to RMB}) \div (1 + \text{tax rate}) \times \text{tax rate}$$
- This Measure came into effect as of January 1, 2008.

Farmland Occupancy Tax (FOT)

The State Council issued year-2007 No.511 Ordinance — Provisional Regulations on Farmland Occupancy Tax of PRC and simultaneously abolished the old regulations. The Provisional Regulations include the following points:

- Foreign-invested enterprises are included in the scope of FOT payers;
- Actual quantity of farmland occupied by the taxpayers shall be taken as taxation basis, and FOT shall be one-time levied according to the prescribed amount of tax;
- Enterprises or individuals who are granted approval for using farmland shall pay FOT within 30 days after receiving the notification of land administration;
- This Regulation came into effect as of January 1, 2008.

Administration of Enterprises Investment

Ministry of Commerce (MOC) issued Supplementary Regulation (III) of Administration Measures for Foreign Investment into Commercial Industry (year-2007 Ordinance No.18) on December 11, 2007, regarding service providers of Hong Kong and Macao investing into commercial industry — an issue included in Measures for Administration of Foreign Investment into Commercial Industry (year-2004 MOC Ordinance No.8). The Supplementary Regulation (III) stipulates that:

- A service provider of Hong Kong/Macao shall be allowed to hold stock with capital contribution less than 65%, if it has totally set up more than 50 stores in the mainland China dealing in commodities of different brands provided by different suppliers, including pharmacy, agricultural chemicals, agricultural plastic film fertilizers, vegetable oils, sugar, cotton, etc.

- Service provider should meet the standard and the relevant requirement of “service provider” as prescribed by both Closer Economic Partnership Arrangement between the Mainland China and Hong Kong, and Closer Economic Partnership Arrangement between the Mainland China and Macao.

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