

## 企业所得税

财政部、国家税务总局于 2008 年 2 月 22 日发布财税[2008]1 号文《关于企业所得税若干优惠政策的通知》主要内容：

- 2008 年 1 月 1 日之前外商投资企业形成的累积未分配利润，在 2008 年以后分配给外国投资者的，免征企业所得税；2008 年及以后年度外商投资企业新增利润分配给外国投资者的，依法缴纳企业所得税。
- 对原有关重组、改制、转制等企业改革，其他单项优惠政策，自 2008 年 1 月 1 日起，继续按原优惠政策规定的办法和时间执行到期。
- 软件生产企业实行增值税即征即退政策所退还的税款，由企业用于研究开发软件产品和扩大再生产，不作为企业所得税应税收入。
- 我国境内新办软件生产企业经认定后，自获利年度起，第一年和第二年免征企业所得税，第三年至第五年减半征收企业所得税。
- 软件生产企业的职工培训费用，可按实际发生额在计算应纳税所得额时扣除。
- 企事业单位购进软件，凡符合固定资产或无形资产确认条件的，可以按照固定资产或无形资产进行核算，经主管税务机关核准，其折旧或摊销年限可以适当缩短，最短可为 2 年。
- 集成电路设计企业视同软件企业，享受上述软件企业的有关企业所得税政策。
- 对投资者从证券投资基金分配中取得的收入，暂不征收企业所得税。

国家税务总局于 2008 年 2 月 27 日发布国税发[2008]23 号文《关于外商投资企业和外国企业原有若干税收优惠政策取消后有关事项处理的通知》主要内容：

- 再投资退税——凡在 2007 年底以前完成再投资事项，并在国家工商管理部门完成变更或注册登记的，可以办理再投资退税。
- 外国企业取得利息、特许权使用费等免所得税——凡该等事项所涉及的是在 2007 年底以前签订，且符合免税条件的，在合同有效期内可继续给予免税，但不包括延期和补充合同或扩大的条款。
- 享受定期减免税优惠的外商投资企业在 2008 年后条件发生变化的，应按原规定补缴税收。

国家税务总局于 2008 年 2 月 13 日发布财税[2008]21 号文《关于贯彻落实国务院实施企业所得税过渡优惠政策有关问题的通知》主要内容：

- 原适用 15% 企业所得税率，并享受企业所得税定期减半优惠过渡的企业，应一律按照过渡税率计算的应纳税额实行减半征税，即 2008 年按 18% 税率计算的应纳税额实行减半征税，2009 年按 20% 税率计算的应纳税额实行减半征税，2010 年按 22% 税率计算的应纳税额实行减半征税，2011 年按 24% 税率计算的应纳税额实行减半征税，2012 年及以后年度按 25% 税率计算的应纳税额实行减半征税。

- 对原适用 24%或 33%企业所得税率，并享受企业所得税定期减半优惠过渡的企业，2008 年及以后年度一律按 25%税率计算的应纳税额实行减半征税。

**国家税务总局于 2008 年 3 月 10 日发布国税发[2008]28 号文《关于印发〈跨地区经营汇总纳税企业所得税征收管理暂行办法〉的通知》主要内容：**

- 需就地预缴企业所得税的机构为总机构、具有主体生产经营职能的二级分支机构。
- 三级及以下分支机构计入二级分支机构就地预缴企业所得税；不具有主体生产经营职能，且在当地不缴纳增值税、营业税的产品售后服务、内部研发、仓储等企业内部辅助性二级及以下分支机构、居民企业在境外设立的分支机构和上年度认定为小型微利企业的居民企业的分支机构均无需就地预缴企业所得税。
- 新设分支机构，设立当年不需就地预缴企业所得税。
- 总、分支机构统一计算全部企业所得税预缴额，然后按总机构 50%、分支机构合计 50%比例分摊所得税预缴额。
- 各分支机构间分摊预缴比例按照 35%营业收入+35%工资总额+30%资产总额的组成比例来确定。

☞ 编者按：目前各地方税务局在政策把握上还不一致，而且分支机构就地预缴企业所得税的方法，尚有许多问题存在，如亏损分支机构的预缴如何退？总机构汇算清缴为亏损，怎样退库等，有待于税务部门的进一步明确。

**国家外汇管理局、国家税务总局联合发布汇发[2008]8 号文《关于试行服务贸易对外支付税务备案有关问题的通知》，税务总局又以国税函[2008]219 号文《关于服务贸易对外支付税收征管有关问题的通知》明确做法：**

- 本通知所称服务贸易对外支付包括：因运输、旅游、通信、建筑安装及劳务承包、保险、金融服务、计算机和信息服务，专有权利使用和特许、体育文化和娱乐服务、其他商业服务、政府服务等交易而发生的对外支付。
- 以上服务贸易项目的对外支付需要先到当地税务部门备案，然后付汇。七天内再到当地税务部门申报应缴税收或对免税项目的说明。
- 备案的金额为，每次对外支付在 5 万美元以上（不含 5 万美元）。每次付汇金额在 5 万美元以下（含 5 万美元）的，无需办理税务备案。
- 本办法自 2008 年 4 月 1 日起执行。

☞ 编者按：该办法在向税务部门申报的资料中多了《备案表》。看似可以先付汇后缴税，但备案中也是需要税务部门确认章，不符合条件的合同照样被挡回。同时，企业更多了法律责任。

**国家税务总局于 2008 年 3 月 21 日发布国税函[2008]251 号文《关于小型微利企业所得税预缴问题的通知》强调：**

- 企业在当年首次预缴企业所得税时，须向主管税务机关提供企业上年度符合小型微利企业条件的相关证明材料。
- 企业在上年度符合小型企业条件的，可在申报季度企业所得税时将利润总额×5%作为减免所得税。
- 年度汇算清缴中发现企业不符合小型企业条件的，补缴已免的 5%企业所得税。

以上信息仅提供德安客户及对本公司业务感兴趣之人士参考，我们将尽量确保上述信息的准确性，我们提请读者注意，上述内容系有关文件的摘要，在实际应用时，须参照全文为准。同时，我们欢迎各位就上述信息咨询本公司的专业人士，也欢迎各位登陆我们的网站 [www.deanipa.com.cn](http://www.deanipa.com.cn)。我们将为我们的客户提供实实在在的增值服务。上述摘编如中、外文不一致的，以中文为准。

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**Corporate Income Tax (CIT)**

**The Ministry of Finance and State Administration of Taxation (SAT) issued Circular on Some Preferential Policies of CIT (Cai Shui[2008]No.1) on Feb. 22, 2008, mainly including the following points:**

- Accumulative undistributed profits of foreign-invested enterprises, generated before Jan. 1, 2008 and distributed to foreign investors after year 2008, shall be exempt from CIT. Profits of FIEs made in or after year 2008 shall be subject to CIT while being distributed to foreign investors.
- From Jan. 1, 2008, original preferential CIT policies related to enterprise reforms like restructure, system reform and system transformation, and other separate incentive policies shall be still applicable for those enterprises in the originally prescribed period.
- If tax refunded to the software development enterprises that are eligible for policy of instant VAT refund upon levy is used for research and development of software products or expansion of production of the enterprises, those VAT refund shall not be taken as taxable corporate income.
- After being identified, newly-formed software development enterprises in China shall be exempt from CIT in the first two years in which they begin to make profits, and enjoy exemption of half CIT in the following three years.
- Staff training expenses of software development enterprises could be deducted from taxable income on an actual basis.
- If software products purchased by enterprises or institutions are up to the standard of recognition of fixed assets or intangible assets, they could be recorded in accounts of fixed assets or intangible assets. With approval of competent tax authorities, time limit of depreciation or amortization of the software products could be properly shortened to two years at least.
- Enterprises engaging in integrated circuit design shall be regarded as software development enterprises to enjoy the CIT policies applicable for the above-mentioned software enterprises.
- Income derived by investors from distribution of securities investment fund shall not be subject to CIT temporarily.

**SAT issued Circular on Treatment of Issues Following the Cancellation of Some Preferential Tax Policies Applicable for FIEs (Guo Shui Fa[2008]No.23) on Feb. 27, 2008, including the following points:**

- Reinvestment tax refund — Enterprises that completed their operation of reinvestment as well as the relevant registration at State Administration Bureau of Industry and Commerce before year 2007 could handle their reinvestment tax refund.
- Exemption of CIT on interests, royalty income and others derived by foreign enterprises — if contracts, involved with above-mentioned income for which policy of tax exemption is applicable, were signed before the end of year 2007, such kinds of income shall continue to be exempt from income tax within the valid period of contracts. But this is not applicable for the prolonged contract period, supplementary contracts and added items to contracts.
- If the qualification of FIEs for enjoying periodical preferential policy of tax reduction/exemption changes, the FIEs shall be required to repay tax according to the original regulations.

**SAT issued Circular on Carrying out Transitional Preferential CIT Policies Prescribed by the State Council (Cai Shui [2008]No.21) on Feb. 13, 2008, stipulating that:**

- Enterprises eligible for CIT rate of 15% and transitional preferential policy of periodical half-CIT liability shall be charged half of CIT payable which is calculated according to transitional tax rate, i.e. those enterprises shall pay half of CIT payable respectively at the rate of 18% in 2008, 20% in 2009, 22% in 2010, 24% in 2011 and 25% in 2012.
- Enterprises eligible for CIT rates of 24% and 33% and also eligible for transitional preferential policy of periodical half-CIT liability shall be charged half of CIT payable which is calculated at the rate of 25% in and after year 2008.

**SAT issued Circular on Releasing Provisional Measures for Management of Levying CIT on Enterprises with Trans-regional Operation and Tax Consolidation (Guo Shui Fa[2008]No.28) on Mar. 10, 2008, mainly stipulating that:**

- Headquarters and second-level branches with major production and business functions shall be identified as organizations liable for prepaying CIT locally.
- CIT of branches of the third or lower level shall be consolidated into the second-level branches while prepaying CIT locally. The following branch organizations shall not be required to prepay CIT locally: internal supplementary branches of the second or lower level like divisions of after-sale service, interior research & development, storage and others which have no major production and business functions and do not pay VAT and business tax locally; branches established abroad by resident enterprises; and branches of enterprises which were identified as small-scale and slight-profit enterprises in the last year.
- Newly-formed branches shall not prepay CIT locally in the year of its establishment.
- If amount of the whole CIT prepayment of headquarter and its branches is totally calculated, it shall be allocated among them, with headquarter accounting for 50% and all the branches for the other half.

- Amount of CIT prepayment shall be allocated among the branches according to the following proportion: revenue of 35% + total salary of 35% + total assets of 30%.

☞ Editorial Comments: Tax authorities of different regions cannot keep consistency in carrying out relevant policies. There also exist some problems in mode of local CIT prepayment of branches, for instance, how to handle the prepaid CIT refund if branches incur loss? and how to deal with tax refund if annual CIT filing of headquarter is in loss? All these problems need to be further standardized by tax authorities.

**State Administration of Foreign Exchange and SAT jointly released Circular on Issues Regarding Tentative Exercise of Tax Register Related to Foreign Payment for Service Trade (Hui Fa[2008]No.8), and SAT issued Circular on Issues Regarding Management of Tax Levied on Foreign Payment for Service Trade (Guo Shui Han [2008]No.219), stipulating that:**

- The term of “Foreign payment for service trade” used in this Circular refers to the payment for the following business: transportation, tourism, telecommunication, constructional installment, labor service contract, insurance, financial service, computer & information service, use and royalty of patent, sports culture and entertainment service, other business service, government service, etc.
- The above-mentioned foreign payment for service trade needs to be registered and filed at the local tax authorities before paying foreign exchange, and then tax payable or statement on tax exemption items should be reported to the local tax authorities within seven days.
- One-off foreign payment of more than USD 50,000 shall be subject to the above-said tax register, and such tax register shall not be required for the foreign payment equal to or less than USD 50,000.
- This measure comes to effective as of April 1, 2008.

☞ Editorial Comments: An extra Form of Tax Register is added to the application documents provided to tax authorities. Although it seems that the foreign payment is prior to the tax payment, confirmation of tax authorities by stamping is required while handling the tax register. Contracts failing to meet the relevant regulations shall be rejected. Meanwhile, enterprises shall take more legal responsibility.

**SAT issued Circular on CIT Prepayment of Small-scale and Slight-profit Enterprises (Guo Shui Han[2008]No. 251) on Mar. 21, 2008, stressing the following points:**

- When prepaying CIT for the first time of the year, enterprises shall provide relevant documents for competent tax authorities to certify their last-year identification as small-scale and slight-profit enterprises.
- If enterprises meet the requirements for being small-scale enterprise in the last year, their CIT shall be reduced by 5% of total profit while they file quarterly CIT.
- If it is verified that an enterprises is not a small-scale enterprise while handling annual CIT filing, the enterprise shall be required to repay the reduced 5% of CIT.

*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](http://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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