

税务总局详解企业所得税法实施条例新意亮点

Officials of State Administration of Taxation Elaborated on Highlights in the Implementation Regulations of PRC Enterprise Income Tax Law

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悠悠十三载，漫漫合并路。自 1994 年的酝酿工作开始至 2007 年 3 月 16 日通过《企业所得税法》（以下简称“新税法”），我国内、外资企业所得税制度的合并宣告完成，这是我国在构建社会主义和谐社会进程中的一项制度创新。新制度优越性的发挥有赖于有效地贯彻实施。日前，与新税法配套的《企业所得税法实施条例》（以下简称“《实施条例》”）在社会各界的殷殷企盼中出台了。为使广大纳税人与税务人员能够更好地理解与贯彻《实施条例》精神，中国税务报记者就《实施条例》中的若干问题采访了国家税务总局有关负责人。

It has been a 13-year journey from the preliminary work in 1994 to the passing of the PRC Enterprise Income Tax Law (referred to as “the EIT Law” hereafter) on 16th March 2007, which marked the completion of the unification of two tax systems for domestically funded and foreign funded enterprises in China. It is a system innovation in the process of building socialism and a harmonized society within the country. To reap the benefits of the new tax system depends very much on its implementation in an effective manner. A few days ago, the State Council announced the long-awaited Implementation Regulations of the PRC EIT Law (referred to as “the Implementation Regulations” hereafter), which is to come into play with the implementation of the EIT Law. To enable the taxpayers and the tax administrators to better understand and follow the spirit inside the Implementation Regulations, the reporter interviewed the officials in charge of the State Administration of Taxation on certain questions about the Implementation Regulations.

国家税务总局有关负责人表示，《实施条例》的起草，主要遵循了合法规范、结合实际、接轨国际、严谨具体、便于操作等原则。在符合税法规定原意的前提下，将现行有效的企业所得税政策内容纳入《实施条例》，体现政策的连续性。《实施条例》还结合经济活动、经济制度发展的新情况，对税法条款进行细化，体现政策的科学性。此外，《实施条例》的起草还借鉴了国际通行所得税政策的处理办法和国际税制改革的新经验，体现了国际惯例和政策的前瞻性。

The officials in charge made the remarks that the drafting of the Implementation Regulations followed the principles of legality, practicality, global convergence, conservatism, and easy operability. The drafts have brought the existing tax policy into the contents of the Implementation Regulations and demonstrated the continuity of the tax policies, without stepping outside the scope of the EIT Law. The Implementation Regulations give details to the EIT Law taking into account the economic activities and the latest development of the economic systems, and this has demonstrated the scientific properties of the current policies. In addition, the drafting committee borrowed the prevailing international income tax policies and learned from

the experiences of international tax reforms. The Implementation Regulations have embodied international custom and shows the forward-lookingness of the tax policies.

据有关负责人介绍,《实施条例》共有 8 章 133 条,主要细化了企业所得税法的有关规定。对其中一些关键性政策的设计思路,有关负责人进行了详细解答。

According to the officials in charge, the Implementation Regulations contain 8 chapters with 133 clauses, mainly giving details to the provisions in the EIT Law. The officials in charge gave detailed elaborations on certain key policies and designs in the EIT Law.

实际管理机构界定旨在保护税收权益

The definition of actual management organization is to protect tax sovereignty.

借鉴国际经验,新税法明确实行法人所得税制度,并采用了规范的居民企业 and 非居民企业的概念。

To share the international experiences, the EIT Law expressly lays down the legal person income tax system, adopting the defined concept of resident and non-resident enterprises.

法人所得税制下的纳税人认定的关键是着重把握居民企业和非居民企业的标准。新税法采用注册地和实际管理机构所在地的双重标准来判断居民企业和非居民企业。注册地较易理解和掌握,实际管理机构所在地的判断则较难理解。

《实施条例》中对实际管理机构是如何界定的?相关的考虑是什么?

The key to define the taxpayer under the legal person income tax system is the criteria for resident enterprises and non-resident enterprises. The EIT Law uses the place of incorporation and actual management organization as the criteria to determine the resident and non-resident enterprises. It is easier to understand and apprehend place of incorporation but it is difficult to understand the criteria for place of actual management. How is the place of actual management determined in the Implementation Regulations and what are the relevant considerations?

有关负责人表示,从国际上来看,特别近十几年的国际实践看,实际管理机构一般是指对企业的生产经营活动实施日常管理的地点,但在法律层面,也包括作出重要经营决策的地点。在处理方式上,税法中一般只作出原则性规定或不规定,然后逐步通过案例判定形成具体标准。为维护国家税收主权,防止纳税人通过一些主观安排逃避纳税义务,《实施条例》采取了适当扩展实际管理机构范围的做法,将其规定为:对企业的生产经营、人员、账务、财产等实施实质性全面管理和控制的机构。这样有利于今后根据企业的实际情况作出判断,能更好地保护我国的税收权益,具体的判断标准,可根据征管实践由部门规章去解决。

The officials in charge made the remarks that from the experiences of international practices in recent decades, the place of actual management is in general the place where the enterprise carries on its daily production and business activities. From a legal perspective, it also includes the place where important business decisions are

made. From an administrative perspective, the tax law only lays down the principle or does not lay down anything, leaving the detailed rules to be developed from decided tax cases. To protect tax sovereignty and the willful tax evasion, the Implementation Regulations have expanded the scope for place of actual management and provide that it is the place where the enterprise exercises actual and overall management and control over its production, staff, books of accounts and assets. That helps the issue of administrative decisions later with reference to the actual situations of the enterprises, better protect the tax sovereignty of our country. Detailed criteria can be developed by issuing ministerial rules from the practices in tax collections and administrations.

纳入预算的财政拨款为不征税收入

Budgeted fiscal appropriation is non-taxable income

新税法在收入总额的规定中新增加了不征税收入的概念，财政拨款等三项收入为不征税收入，企业收到的各种财政补贴是否属于财政拨款的范畴呢？《实施条例》对此是如何规定的？

The EIT Law introduces the concept of non-taxable income. Fiscal appropriation is one of the three items of non-taxable income. What about the various types of subsidies enterprises receive from local governments at the provincial levels or below? How is it provided under the Implementation Regulations?

有关负责人表示，《实施条例》将税法规定的不征税收入之中的“财政拨款”界定为：各级政府对纳入预算管理的事业单位、社会团体等组织拨付的财政资金，但国务院和国务院财政、税务主管部门另有规定的除外。这就在一般意义上排除了各级政府对企业拨付的各种价格补贴、税收返还等财政性资金，相当于采用了较窄口径的财政拨款定义。之所以这样规定，主要考虑：一是，企业取得的财政补贴形式多种多样，既有减免的流转税，也有给予企业从事特定事项的财政补贴，都导致企业净资产增加和经济利益流入，予以征税符合立法精神；二是，当前个别地方政府片面为了招商引资，采取各种财政补贴等变相“减免税”形式给予企业优惠，侵蚀了国家税收，对企业从政府取得的财政补贴收入征税，有利于加强财政补贴收入和减免税的规范管理；三是，按照现行财务会计制度规定，财政补贴给企业的收入，在会计上作为政府补助，列作企业的营业外收入，税收在此问题上应与会计制度一致。

The officials in charge remarked that the fiscal appropriation, defined as non-taxable income under the Implementation Regulations, is the funds appropriated to the institutions, social bodies and organizations administered under the budget of the local governments, with the exceptions that the State Council, the Ministry of Finance and the State Administration of Taxation provide otherwise. That in general excludes the subsidies and the rebates of local taxes that the enterprise receives from various local governments, and narrows down the scope for fiscal appropriations as an item of non-taxable income. The main considerations for these are (i) the various types of subsidies that the enterprise receives not only include exemption and reduction of turnover taxes, but also include special subsidies for the enterprises to carry on designated activities, both resulting in the increase in net assets and economic benefits flowing in, thus the imposition of income tax being lawful; (ii) the imposition of income tax on the enterprises that receive subsidies from local governments strength

the administration of tax exemption and reduction since the local governments offer various types of tax exemption and reduction in disguise in luring inbound investments, resulting in the erosion of the tax base at the national level; and (iii) the existing legal rules on accounting for government subsidies classify government subsidies as non-operating revenue. That tax rules should be consistent with the accounting rules on government subsidies.

“合理”工资薪金才能税前扣除

Deduction of reasonable wages and salaries before tax

新税法对企业实际发生的各项支出作出了统一规范，规定对企业发生的真实合理的成本费用支出予以税前据实扣除。《实施条例》对具体各项税前扣除的项目及标准予以了明确。

The EIT Law unifies the deduction of actual payments for various items of expenses, and provides that enterprises can claim deductions of actual and reasonable cost and expense before tax. The Implementation Regulations make specific provisions for the items to be deducted and the criteria for deduction before taxes.

有关负责人表示，关于工资税前扣除，《实施条例》规定，企业合理的工资、薪金予以据实扣除，这意味着取消实行多年的内资企业计税工资制度，切实减轻了内资企业的负担。但允许据实扣除的工资、薪金必须是“合理的”，对明显不合理的工资、薪金，则不予扣除。对一般雇员而言，企业按市场原则所支付的报酬应该认为是合理的，但也可能出现一些特殊情况，如在企业内任职的股东及与其有密切关系的亲属通过多发工资变相分配股利的，或者国有及国有控股企业管理层的工资违反国有资产管理规定的规定变相提高的，这些复杂多样的工资、薪金情况都将对企业所得税的税基产生侵蚀，因此，从加强税基管理的角度出发，《实施条例》在工资、薪金之前加上了“合理的”的限定。有关负责人透露，今后，国家税务总局将通过制定与《实施条例》配套的《工资扣除管理办法》对“合理的”进行明确。

According to the officials, in respect of deduction of wages and salaries, the Implementation Regulations provide that actual and reasonable wages and salaries can be deducted from income. It means that scrapping the limited deduction of wages and salaries for domestically funded enterprises in the past years relieve them of the tax burden. The amount of deducted wages and salaries must be reasonable. Obviously unreasonable amount is not deductible. To the employees in general, the remunerations that the enterprise pays should be considered to be reasonable. There may be exceptions. Where the shareholders and their close relatives work as the employees in the company, the payment of excessive wages and salaries is the distribution of dividends in disguise. Alternatively the wages and salaries of the management working for the state owned enterprises are raised in breach of the rules of the departments for the supervision and administration of state owned assets. All these complicated cases relating to wages and salaries will erode the tax base of the enterprise income tax. To strengthen the administration over tax bases, the Implementation Regulations add the qualification “reasonable” to wages and salaries. The official revealed that the State Administration of Taxation shall issue the

“Administrative Measures for the Deduction of Wages” to clarify what is considered to be “reasonable” wages and salaries in the Implementation Regulations.

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%扣除

60% of the incurred business entertainment expenses are deductible, not exceeding 0.5% on the sales (business) turnover for current year

《实施条例》规定：企业发生的与生产经营活动有关的业务招待费，按照发生额的 60%扣除，但最高不得超过当年销售（营业）收入的 5%。这一规定是出于何种考虑？

The Implementation Regulations provide that 60% of the business entertainment expenses incurred in connection with production and business activities shall be deductible from income, but the maximum amount shall not exceed 0.5% of the sales (business) turnover for the current year. What are the policy considerations lying behind this rule?

有关负责人表示，业务招待费是由商业招待和个人消费混合而成的，其中个人消费的部分属于非经营性支出，不应该税前扣除。因此，就需要对业务招待费进行一定的比例限制。但商业招待和个人消费之间通常是难以划分的，国际上的处理办法一般是在二者之间人为规定一个划分比例，比如意大利，业务招待费的 30%属于商业招待可在税前扣除，加拿大为 80%，美国、新西兰为 50%。借鉴国际做法，结合现行按销售收入比例限制扣除的经验，根据有关专家学者从严掌握的意见，我们采取了两者结合的措施，将业务招待费扣除比例规定为发生额的 60%，同时规定最高不得超过当年销售（营业）收入的 5%。

The official said that the amount of business entertainment expenses is a mix of corporate entertainment and personal consumption. Among them, the personal consumption falls under non-business expenses that should not be deducted before tax. Therefore, there is a requirement to limit the amount of business entertainment to a certain percentage. However, it is difficult to distinguish between business entertainment and personal consumption. The international practice is to arbitrarily set a relative percentage between the two. In Italy 30% of the business entertainment expenses is deductible before tax. In Canada, the amount is 80%. In the US and New Zealand, the amount is 50%. Taking into consideration of international practices and the existing practice of limiting the deduction of business entertainment to a percentage of the sales amount, we combine the two practices as per experts' recommendations on the adoption of a strict policy: business entertainment is subject to a 60% deduction and not exceeding 0.5% of the sales amount (business turnover) for the current year.

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

Limiting the deduction of advertising expenses to 15% on sales revenue, and remaining amount being carried over for deduction in future years

《实施条例》对广告费和业务宣传费的扣除是合并在一起考虑的，规定企业每一纳税年度发生的符合条件的广告费和业务宣传费，除国务院财政、税务主管部门另有规定外，不超过当年销售（营业）收入 15% 的部分，准予扣除；超过部分，准予在以后纳税年度结转扣除。

The Implementation Regulations consider the combined amount of advertising expenses and business promotion expenses, and provide that the amount of deductible advertising and promotion expenses shall not exceed 15% of the sales amount (business turnover), except for the provisions of the Ministry of Finance and the State Administration of Taxation to the contrary. The amount exceeding the prescribed 15% can be carried over to future tax years for deduction.

有关负责人解释说，广告费具有一次性投入大、受益期长的特点，因而应该视同资本化支出，不能在发生当期一次性扣除。业务宣传费与广告费性质相似，也应一并进行限制。《实施条例》规定按销售（营业）收入的 15% 扣除，并允许将当年扣除不完的部分向以后纳税年度结转扣除。同时，考虑到部分行业和企业的广告费、业务宣传费发生情况较为特殊，需要根据其实际情况作出具体规定，为此，根据有关部门和专家意见，增加了“除国务院财政、税务主管部门另有规定外”，以便以后根据不同行业的广告费和业务宣传费实际发生情况，根据新税法的授权在部门规章中作出具体的扣除规定。

The officials in charge explained that advertising expenses that possess the properties of one-off payment of a large sum and benefit the enterprise for a long period of time should be regarded as a capitalized payment and cannot be deducted in whole in the current tax year. Business promotion has similar properties and should be subject to limits on deduction. The Implementation Regulations permit the deduction of advertising and promotion expenses up to 15% of the sales amount (business turnover), and that the portion in excess of the 15% can be carried over to future tax years for deduction. The administration has given due consideration to the advertising and business promotion expenses in some industry sectors that require specific measures to be adopted. In the light of expert opinions and views from relevant departments, the qualification “except for the provisions of the Ministry of Finance and the State Administration of Taxation to the contrary” has been included in the Implementation Regulations with a view to making ministerial rules on the deduction of advertising and business promotion expenses for different industry sectors, in accordance with the provision for the delegation of rule making power in the EIT Law.

间接抵免有利企业“走出去”

Indirect credit helps Chinese enterprises “go abroad”

新税法规定，居民企业来自间接控制的境外公司的股息、红利等权益性投资收益所负担的境外所得税，可以实行间接抵免。《实施条例》将居民企业对境外公司的间接控制规定为控股 20%，这是出于何种考虑？

In accordance with the EIT Law, the corporate income tax the resident enterprises bear indirectly on the dividend and bonus issues from equity investment outside China is eligible for indirect credit. The Implementation Regulations provide that the

resident enterprise should hold 20% controlling interest in the equity of the foreign company. What are the policy considerations on this?

有关负责人表示，新税法保留了现行对境外所得直接负担的所得税给予抵免的办法，又引入了对股息、红利间接负担的所得税给予抵免，即间接抵免的方法。实行间接抵免，有利于我国居民企业“走出去”，提高国际竞争力。从国际惯例看，实行间接抵免一般都要求以居民企业对外国公司有实质性股权参与为前提。美国、加拿大、英国、澳大利亚、墨西哥等国规定，本国公司直接或间接拥有外国公司 10% 以上有表决权的股票的，实行间接抵免；日本、西班牙规定的比例为 25% 以上。我国税法中首次引入间接抵免办法，参考其他国家的做法，《实施条例》规定控股比例为 20%。

The officials said that the PRC EIT law retains the direct credit for tax paid on dividends and bonus issues at the shareholder level and it also introduces the indirect credit for tax on profits earned at the company level out of which the dividends and bonus issued are paid. The adoption of direct and indirect credits gives a helping hand to Chinese resident enterprises going international and increases their competitiveness in international market. From the perspective of international practices, indirect credit are given on condition that resident enterprises should have actual equity investments in foreign companies. In accordance with the tax laws in the US, Canada, the UK, Australia, and Mexico, resident enterprises holding 10% or more voting rights in the equity investment in foreign companies are eligible for indirect credit. The tax law requires the equity interest in foreign companies to be 25% for Japanese and Spain investors. It is the first time the PRC EIT law adopts the indirect credit method. The Implementation Regulations provide that the equity interest in foreign companies is 20% for resident enterprises to receive the indirect credit.

高新技术企业按领域划分

New and high technology enterprises by industry sectors

新税法根据国民经济和社会发展的实际需要，借鉴国际上的成功经验，按照“简税制、宽税基、低税率、严征管”的要求，对现行内外资企业所得税优惠政策进行了全面的调整和整合，实现了两个转变：政策体系上将以区域优惠为主转变为以产业优惠为主、区域优惠为辅，优惠方式上将直接税额式减免转变为直接税额式减免和间接税基式减免相结合。《实施条例》对税法中规定的企业所得税优惠政策的范围、条件和认定标准进行了初步明确。

In the light of the requirement for national economic and social development, successful international experiences and the requirement for simple tax system, broad tax bases, low tax rates, and stringent tax collections and administration, the PRC EIT Law adjusts and integrates the tax preferential policies for both domestically and foreign funded enterprises, and gives effect to changes in two dimensions: the tax policy changes from region-specific preferences to industry-specific preferences, which is to be supplemented by regional tax preferences; the form of tax preferential treatment changes from direct tax exemption and reduction to direct tax exemption and reduction, which is to be combined with reduction in tax bases for indirect taxes.

The Implementation Regulations make clarifications on the scope, the conditions, and the recognition criteria for tax preferential treatments as laid down in the EIT Law.

对于高新技术企业的认定，有关负责人表示，对高新技术企业认定有三个重要问题。第一，高新技术企业的范围问题。《实施条例》将高新技术企业的界定范围，由现行按高新技术产品划分改为按高新技术领域划分，规定产品（服务）应属于《国家重点支持的高新技术领域》的范围，以解决现行政策执行中产品列举不全、覆盖面偏窄、前瞻性不足等问题。第二，高新技术企业的具体认定标准问题。《实施条例》原则规定研究开发费用占销售收入的比例、高新技术产品（服务）收入占企业总收入的比例、科技人员占企业职工总数的比例不低于规定比例，以及其他条件。具体的指标将在国务院科技、财政、税务主管部门会同国务院有关部门制定的认定办法中明确，以便今后根据发展的需要适时调整。

The officials in charge said that there are three important issues in the recognition of new and hi-tech enterprises. The first is the scope of new and hi-technology enterprises. The Implementation Regulations change the classification of new and high technology by products to classification of the new and high technology by sectors. The Implementation Regulations provide that the products (services) of new and hi-tech enterprises should fall under the scope of <the new and hi-technology industry sectors that receive prior supports from the State> so that it can avoid the problems that product listing and coverage under existing policies are too narrow and that the existing policy is not forward looking. The second issue is the recognition criteria. The Implementation Regulations provide those criteria in principle: the amount of research and development as a percentage to sales; the sales revenue of new and hi-tech products (or services) as a percentage of total revenue; the ratio of employees who possess technical qualifications to the total number of employees in the company, and other conditions to be met. The Ministry of Science and Technology, the Ministry of Finance, and the State Administration of Taxation shall formulate policies on this and give the detailed benchmarks with the flexibility to make adjustments for later development.

第三，核心自主知识产权问题。《实施条例》拟将高新技术企业的首要条件界定为拥有“自主知识产权”，但考虑到目前国家并没有对“自主知识产权”进行正式界定，如果将其理解为企业自身拥有的知识产权，则把商标权、外观设计、著作权等与企业核心技术竞争力关系不大的也包括在内，范围太宽泛。因此，《实施条例》最后采用“核心自主知识产权”作为高新技术企业的认定条件之一，相对容易操作，也突出了技术创新导向。其内涵主要是企业拥有的、并对企业主要产品或服务在技术上发挥核心支持作用的知识产权。

The third issue is the core proprietary IP rights. The Implementation Regulations lay down the primary requirement for getting recognized as new and high technology enterprises is the ownership in “proprietary IP rights”. In view of the fact that there is no official definition of “proprietary IP rights”, the inclusion of trademark rights, exterior design, copyright that may not have bearing on the core technological competitiveness of the enterprise into the “proprietary IP rights” will make the scope too wide. The Implementation Regulations finally adopt the “core proprietary IP rights” as one of the criteria for getting recognized to be new and hi-tech enterprises.

It is relatively easy to operate and has pointed out the direction for technological innovation. The key point is the IP rights that the enterprise owns and that give core technical support to the main products and services of the enterprise.

小型微利企业年应纳税所得额不超过 30 万元

Annual taxable income of small and low profit-making enterprise not exceeding RMB300,000

《实施条例》把年度应纳税所得额、从业人数、资产总额作为小型微利企业的界定指标。小型微利企业的标准为：工业企业年度应纳税所得额不超过 30 万元，从业人数不超过 100 人，资产总额不超过 3000 万元；其他企业，年度应纳税所得额不超过 30 万元，从业人数不超过 80 人，资产总额不超过 1000 万元。与现行的内资企业年应纳税所得额 3 万元以下的减按 18% 的税率征税、3 万元至 10 万元的减按 27% 的税率征税政策相比，优惠范围扩大，优惠力度有较大幅度提高。

The Implementation Regulations give the amount of annual taxable income, the number of employees and the amount of total assets as the benchmark for small profit-making enterprises. Specifically for production enterprises, the annual taxable income shall not exceed RMB300,000, total number of employees shall not exceed 100, and the total asset amount shall not exceed RMB 30 million; for non-production enterprises, the annual taxable income shall not exceed RMB300,000, the number of employees shall not exceed 80, and the total amount of assets shall not exceed RMB 10 million. The scope of the tax concession is larger and the magnitude of tax concession is higher than that as given under the old tax law for domestically funded enterprises.

有关负责人表示，《实施条例》中之所以将年度应纳税所得额界定为 30 万元，是经过认真测算的，按此标准将约有 40% 左右的企业适用 20% 的低税率。

The officials said that the dividing line that the annual taxable income is RMB300,000 drawn under the Implementation Regulations results from careful testing. About 40% of the enterprises shall be taxed at 20% given that this benchmark is adopted.

非营利组织的营利性收入也要缴税

The business profits that non-profit making organizations earn are taxable

新税法规定，符合条件的非营利组织的收入为免税收入。《实施条例》第八十五条规定，符合条件的非营利组织的收入，不包括非营利组织从事营利性活动取得的收入。这是为什么呢？

The PRC EIT Law provides that the income of qualified non-profit making organizations is exempted from tax. Article 85 of the Implementation Regulations provides that the income of the qualified non-profit making organizations excludes the income derived from profit-making activities of the non-profit making organization. Why is it?

有关负责人解释说，从世界各国对非营利组织的税收优惠来看，一般区分营利性收入和非营利性收入而给予不同的税收待遇。目前我国相关管理办法规定，非营利组织一般不能从事营利性活动。因此，为规范此类组织的活动，防止其从事经营性活动可能带来的税收漏洞，《实施条例》明确规定，对非营利组织的营利性活动取得的收入，不予免税。但考虑到有些非营利组织将取得的营利性收入也全部用于公益事业，属于国家重点鼓励的对象，故加上了“国务院财政、税务主管部门另有规定的除外”的规定。

The officials in charge said countries all over the world make a distinction between profit-making and non-profit making activities and give tax preference to non-profit making activities. The relevant legal rules in China provide that non-profit making organizations cannot carry out profit-making activities. To regulate these organizations and plug the loophole that may arise from the profit making activities carried out by these tax-exempt organizations, the Implementation Regulations expressly provide that the income derived from the profit-making activities would not be exempted from tax. Where some non-profit making organizations derive income from profit-making activities and use them in whole for charitable events, that should be primarily encouraged under the national policies. Therefore, the Implementation Regulations include the qualification “except for the provision of the Ministry of Finance and the State Administration of Taxation to the contrary”.

股息、红利持有 12 个月以上免税

Dividend and bonus issue derived from investment over 12 months being exempted from tax

新税法规定，符合条件的居民企业之间的股息、红利等权益性投资收益为免税收入。《实施条例》对“符合条件”的解释与老内资税法的规定有什么不同？是如何考虑的？

The PRC EIT Law provides that dividends, bonus issues and income from equity investment are tax-exempt income if they are distributed by resident enterprises that satisfy prescribed conditions. What are differences between the conditions to be met by the resident enterprises and the provisions on the taxation of dividends and bonus issues in the old tax law for domestically funded enterprises? What are the policy considerations?

有关负责人表示，对居民企业之间的股息、红利收入免征企业所得税，是对股息、红利所得消除双重征税的做法。根据老税法规定，内资企业如从低税率的企业取得股息、红利收入要补税率差。实施新税法后，为更好体现税收政策优惠意图，使西部大开发有关企业、高新技术企业、小型微利企业等享受到低税率优惠政策的好处，《实施条例》明确对来自于所有非上市企业，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。考虑到税收政策应鼓励企业对生产经营的直接投资，而以股票方式取得且连续持有时间较短（短于 12 个月）的间接投资，并不以股息、红利

收入为主要目的，其主要目的是从二级市场获得股票运营收益，不应成为税收优惠鼓励的目标。

The officials in charge said that the exemption of income tax on dividend and bonus issues that are distributed among resident enterprises is to eliminate double taxation. Under the old tax regulations for domestically funded enterprises, the distribution of dividends from an enterprise that pays tax at a lower rate to an enterprise that pays tax at a higher rate attracts additional taxes for the high-tax enterprise on the rate differences. In order to make the tax preferential treatment available to enterprises created in the development of the Western region, the new and high technology enterprises, and the small and low profit-making enterprises, the new EIT Law scraps the practice of imposing additional tax on the rate difference and exempts the income tax on dividend and bonus issues that are distributed by unlisted companies and listed companies, of which the ownership in the investment in the listed companies is over 12 months. To encourage direct investment in production and business activities, the stock speculations in the secondary capital market that is characterized by short-term ownership (less than 12 months) without the primary objective of receiving dividends and bonus issues should not become targets for tax preferential treatments.

取得第一笔生产经营收入的年度为减免税起始年度

The tax exemption and reduction commencing in the year the first sales transaction is reported

《实施条例》规定，企业从事国家重点扶持的公共基础设施项目的投资经营的所得，自项目取得第一笔生产经营收入的纳税年度起，享受“三免三减半”的税收待遇。该规定将“取得第一笔生产经营收入的纳税年度”作为减免税的起始年度，改变了现行外资税法将“获利年度”作为减免税的起始年度的规定，具体原因是什么呢？

The Implementation Regulations provide that enterprises deriving income from the investment in projects of public basic infrastructure that receive primary support from the state shall enjoy tax preferential treatment in the form of “three years’ tax exemption and three years’ tax reduction”, commencing from the tax year in which the first sales transaction for the project is reported. The old tax law for foreign invested enterprises provided that the year for tax exemption and reduction commences from the first profit-making year. The EIT Law has changed the previous practice from the first profit-making year to the year the first sales transaction occurs. What is the reason for this?

有关负责人表示，原外资企业所得税法以获利年度作为企业减免税的起始日，这样的规定在实践中产生了企业推迟获利年度来避税的问题，税收征管难度大。《实施条例》采用从企业取得第一笔生产经营收入所属纳税年度起计算减免税的新办法，一方面可以避免企业通过推迟获利年度来延期享受减免税待遇的做法；另一方面也可兼顾项目投资规模大、建设周期长的情况，较原内资企业从开业之日起计算减免税优惠，更为符合实际；还可鼓励企业缩短建设周期，尽快实现盈利，提高投资效益。

The officials in charge said that the old tax law for foreign invested enterprises adopted the first profit-making year as the year in which the tax exemption and reduction period commenced. That would in practice encourage the postponement of the first profit-making year to avoid paying taxes and made the tax collection and administration a difficult job. The Implementation Regulations adopt a new method under which the tax exemption and reduction commence from the year in which the first sales transaction is recorded. On one hand, this policy change can avoid the practices by the foreign invested enterprises of putting off the first profit-making year to later years. On the other hand, this policy change can address the issue that the investment scale is big with long period of construction. It is more realistic to the situation under which the domestically funded enterprises receive tax preferences from the date of incorporation. It also encourages the enterprises to shorten the construction period, make the project profitable at the earliest possible moment and improve the return on investment.

特别纳税调整强化反避税手段

Tax adjustment to strengthen the anti-tax avoidance measures

根据企业所得税法有关特别纳税调整的规定，借鉴国际反避税经验，《实施条例》对关联交易中的关联方、关联业务的调整方法、独立交易原则、预约定价安排、提供资料义务、核定征收、防范受控外国企业避税、防范资本弱化、一般反避税条款，以及对补征税款加收利息等方面作了明确规定。

To comply with the relevant provisions on special tax adjustments in the EIT Law and learn from international experiences, the Implementation Regulations expressly lay down provisions for the related parties or associated enterprises in the transactions with related parties, the adjustment methods for related party transactions, the principle of arm's length transactions, advanced pricing agreements, the obligations for providing information, collecting taxes as per prescribed profit margins, preventing the use of controlled foreign corporations, prevention on thin capitalization, general anti-tax avoidance, and the imposition of additional interest on overdue taxes.

有关负责人表示，这些规定强化了反避税手段，有利于防范和制止避税行为，维护国家利益。他特别强调，税务机关实施特别纳税调整后，除应补缴税款外，还需缴纳按税款所属期银行贷款利率计算的利息另加 5 个百分点的利息。对能够及时向税务机关提供有关资料的，可以免除 5 个百分点的加收利息。

The officials in charge said that these provisions strengthen the measures to combat tax avoidance, help prevent and stop acts of tax avoidance and safeguard the interests of the nation. He specially emphasized that after tax adjustments taking effects, the taxpayer, in addition to the payment of additional tax, is liable to a penalty interest that is computed with reference to the bank's lending rate plus 5% in the period for which additional tax is collected. Where the taxpayer can submit the information to the tax authority on time, it can be exempted from the payment of additional interest on tax.

汇总纳税具体办法另行制定

Separate rules to be made for filing consolidated tax returns

新税法实行法人所得税的模式，因此，不具有法人资格的营业机构应该自动汇总计算纳税，但汇总纳税容易引发地区间税源转移问题，纳税人和地方政府都极为关注。《实施条例》中对此仅有一条原则性规定，这是出于什么考虑？

The EIT Law follows model of the income tax on legal persons. Organizations that are not legal persons should file income tax returns that forms part of the consolidated tax turn for the head office. The filing of consolidated tax returns by head offices would relocate the tax revenues between different regions in the country. Both the taxpayers and local governments are very much concerned about this issue. The Implementation Regulations only lay down one provision in principle. What are the policy considerations for this?

有关负责人表示，根据新税法的规定，不具有法人资格的营业机构应实行法人汇总纳税制度，由此将出现一些地区间税源转移问题，应予以合理解决。我们经过多次研究，考虑在新税法和《实施条例》施行后，应合理、妥善解决实行企业所得税法后引起的税收转移问题，处理好地区间利益关系。具体办法将由国务院财政、税务主管部门另行制定，报经国务院批准后实施，因此，《实施条例》中仅保留了原则性的表述。

The officials in charge told us that in accordance with the EIT Law, business organizations that are not legal persons should file tax returns to the tax bureau in the city where the head office is located. That will cause relocation of tax revenue among different regions in the country, and should be dealt with in a reasonable way. We have performed many studies in order to solve the problem of relocation of tax revenues among different regions in a reasonable and proper way and balance the interests among them after the implementation of the EIT Law and the Implementation Regulations. The detailed measures shall be formulated by the Ministry of Finance and the State Administration of Taxation, and submitted to the State Council for approval before taking effect. Therefore, the Implementation Regulations only state the principles in general.

法人母子公司不再合并纳税

Parent and subsidiary companies no longer file group tax returns

新税法规定，除国务院另有规定外，企业之间不得合并缴纳企业所得税。但《实施条例》并没有对集团内法人企业间合并纳税的相关规定，这一问题将如何解决？

The EIT Law provides that except for the provisions by the State Council to the contrary, enterprises should not file group income tax returns. However, the Implementation Regulations do not make relevant provisions for group of companies to file tax returns on a group basis. How will this problem be solved in future?

有关负责人表示，从 1994 年起，我国对经国务院批准成立的 120 家大型试点企业集团，实行合并缴纳企业所得税政策。当初政策出发点是在母子公司之间核算不真实、企业集团政企不分的情况下，减轻企业负担，支持企业集团发展。新税法实施后，从规范税制来讲，作为独立法人的母子公司也应分别独立纳税。对个别确需合并纳税的，由国务院另行规定。因新税法中已经有了授权性规定，因此在《实施条例》中就不再规定。

The official in charge said that as from 1994, the State Council has given approval to 120 large groups of corporations/enterprises to file group tax returns on a trial basis. The policy objective at that period of time is to relieve the enterprises of tax burden and support the development for the groups of enterprises because the operating results of the parent and individual subsidiaries did not present the true information and it is difficult to distinguish between the enterprises that are operated in accordance with commercial principle and the enterprises that form part of the governmental organizations. With the implementation of the EIT Law, the parent and subsidiary corporations that are legal persons shall file tax returns and pay tax separately. Where there is a requirement to file group tax returns, the State Council shall make separate regulations. Implementation Regulations need not deal with this again since the EIT Law has already made the provisions and delegated the authority on this.