

2008 企业所得税法问答之二

Questions and Answers on 2008 PRC Enterprise Income Tax Law (PRC EIT Law) - Part II

问：企业所得税法的扣除项目如何分类？

Q: How does the PRC EIT law classify Deductible Items?

答：企业所得税的扣除项目可以分为四类：不予扣除、限额扣除、加计扣除、和资本支出扣除。

A: The PRC Enterprise Income Tax Law provides for four major categories of deductions: non-deductible items; deductions within prescribed limits; additional deductions, and investment credits.

1. 不予扣除项目：

不予扣除项目包括所得税税款、滞纳金、罚金、与生产经营无关的支出(条例 27 条)、当期发生的资本性开支(条例 28 条)、用于获取不征税收入而发生的费用和获取不征税收入而购置资产的折旧额(条例 28 条)、不属于按规定可以扣除的增值税(条例 31 条)、为投资者或职工购买的商业保险(条例 36 条)、企业之间支付的管理费(条例 49 条)等。

1. Non-deductible items include: -

Income tax, surcharge, fines, expenses not incurred in the production of taxable income (Article 27 of Implementation Regulations), capital expenditure (Article 28 of Implementation Regulations), expenses incurred and depreciation for the assets purchased for the earning of non-taxable income (Article 28 of Implementation Regulations), VAT that is not included under PRC law as deductible items against income (Article 31 of Implementation Regulations), premiums of commercial policies paid for the investors or employees (Article 36 of Implementation Regulations), the management fees paid among enterprises (article 49 of Implementation Regulations), etc

2. 限额扣除项目：

- 职工福利费不超过工资总额 14% 的部分，可以扣除 (条例 40 条)；
- 工会经费不超过工资总额 2% 的部分可以扣除(条例 41 条)；
- 职工教育经费不超过工资总额 2.5% 的部分可以扣除，余额可以结转到以后年度扣除(条例 42 条)；
- 业务招待费按发生额的 60% 扣除，但不得超过收入 0.5% (条例 43 条)；
- 广告费和业务宣传费按发生额扣除，但不得超过收入 15%，余额结转到以后年度扣除(条例 44 条)；
- 公益性捐赠支出不超过会计利润 12% 准予扣除，会计利润须依照国家会计制度的规定核算(条例 51 条)。

2. Deduction within prescribed limits: -

- Employee welfare expenses not exceeding 14% of total salaries and wages

(article 40 of Implementation Regulations);

- Trade union funds contributed by the enterprise not exceeding 2% of total salaries and wages (article 41 of Implementation Regulations);
- Staff education expenses incurred by the enterprise are deductible to the extent not exceeding 2.5% of total salaries and wages. The excess amount can be carried forward for deductions in future tax years (article 42 of Implementation Regulations).
- Entertainment expenses incurred by the enterprise in connection with production and operations are deductible at 60% of the amount but it shall not exceed 0.5% of the sales (business) revenue in the year (article 43 of Implementation Regulations);
- Advertising and promotional expenses incurred by the enterprise are deductible subject to a cap of 15% on the total amount of sales (business) revenue of the year. The excess amount can be carried forward for deduction against income in succeeding tax years (article 44 of Implementation Regulations);
- Donation to foundations and charities are deductible to the extent not exceeding 12% of the accounting profits, which is ascertained in accordance with the PRC accounting rules (articles 52 and 53 of Implementation Regulations).

限额以外金额，倘若不予结转到以后年度的（或予以结转但限于 5 个年度内扣除的），属于不得扣除支出和项目。

The excess amount shall become a non-deductible item if there is no provision for it to be carried forward for deduction in succeeding tax years (or if there is such provision, but the deduction is restricted to a period of 5 tax years).

3. 加计扣除：

Additional deductions

企业为开发新技术、新产品、新工艺发生的研究开发费用，未形成无形资产计入当期损益的，在按照规定据实扣除的基础上，按照研究开发费用的 50% 加计扣除；形成无形资产的，按照无形资产成本的 150% 摊销。（条例 95 条）

Research and development expenses incurred by the enterprise in the development of new technology, product and technological process, if not capitalized as assets, are given an additional deduction at 50% of the actual amount; where these expenses are capitalized as assets, it shall be deductible at 150% of the actual amount (article 95 of Implementation Regulations).

企业安置残疾人员的，在按照支付给残疾职工工资据实扣除的基础上，按照支付给残疾职工工资的 100% 加计扣除。残疾人员的范围适用《中华人民共和国残疾人保障法》的有关规定。（条例 96 条）

Salaries and wages actually paid to the employees, who have been certified as disabled persons under the PRC Law on the Safeguard of Disabled Persons, are deductible at 200% of the actual amount incurred by the enterprise (article 96 of

Implementation Regulations).

4. 特定资本支出抵扣

Special deductions for capital expenditure

投资额抵扣:

Investment credits:

创业投资企业采取股权投资方式投资于未上市的中小高新技术企业 2 年以上的, 可以按照其投资额的 70% 在股权持有满 2 年的当年抵扣该创业投资企业的应纳税所得额; 当年不足抵扣的, 可以在以后纳税年度 结转抵扣。(条例 97 条)

Where a venture capital enterprise has invested in the equity capital of an unlisted small and medium high technology enterprises for more than two years, 70% of the invested amount can be deductible against its taxable income in the tax year in which the investment has been held for two years; any excess amount not offset due to insufficient taxable income can be carried forward for offsetting in succeeding tax years (article 97 of Implementation Regulations).

专用设备投资额 (税款抵扣):

Expenditure on specialized equipment (deduction of tax payable): -

企业购置并实际使用《环境保护专用设备企业所得税优惠目录》、《节能节水专用设备企业所得税优惠目录》和《安全生产专用设备企业所得税优惠目录》规定的环境保护、节能节水、安全生产等专用设备的, 该专用设备的投资额的 10% 可以从企业当年的应纳税额中抵免; 当年不足抵免的, 可以在以后 5 个纳税年度结转抵免。(条例 100 条)

Were the enterprise has purchased and actually used the specialized equipment in the environmental protection, energy or water conservation, and production safety as prescribed in the “Catalog of Preferential Income Tax Treatment for Specialized Equipment in Environmental Protection”, “Catalog of Preferential Income Tax Treatment for Specialized Equipment in Energy or Water Conservation”, and “Catalog of Preferential Income Tax Treatment for Specialized Equipment in Production Safety”, 10% of the invested amount can be credited against the tax payable. Where the amount of tax payable is insufficient for credits, the excess amount can be carried forward for credits in the next 5 tax years (article 100 of Implementation Regulations).

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