

税务快讯



境外投资和所得 信息报告新规发布

简介

国家税务总局于 6 月 30 日发布 2014 年第 38 号公告，要求居民企业就境外投资和所得信息履行报告义务。公告将自 2014 年 9 月 1 日起施行。

具体内容

境外投资信息报告

根据 38 号公告，居民企业需就其持股 10%（含）以上的外国企业填报《居民企业参股外国企业信息报告表》。该项填报要求适用于以下任一情形：

- 1) 在 2014 年 9 月 1 日，居民企业直接或间接持有外国企业股份或有表决权股份达到 10%（含）以上；

- 2) 在 2014 年 9 月 1 日后，居民企业在被投资外国企业中直接或间接持有的股份或有表决权股份自不足 10% 的状态改变为达到或超过 10% 的状态；
- 3) 在 2014 年 9 月 1 日后，居民企业在被投资外国企业中直接或间接持有的股份或有表决权股份自达到或超过 10% 的状态改变为不足 10% 的状态。

在判断上述情形时，应按中国会计制度进行确认。同时，根据公告解读，间接持股比例按各层持股比例相乘计算，中间层持有股份超过 50% 的，按 100% 计算。

公告要求上述表格在办理企业所得税预缴申报时填报。由于企业所得税通常按季度预缴，因此公告似乎意味着上述表格应在填报情形发生后的最近一次企业所得税预缴中进行提交；换言之，符合第 1) 项填报情形的居民企业可能需要在十月初（即第三季度企业所得税的申报期）填报相关表格。

需要填报的信息主要包括被投资外国企业、持有外国企业 10% 以上股份的其他股东、担任外国企业高管的中国居民个人，外国企业股份变动等有关信息。

受控外国公司有关信息报告

38 号公告要求居民企业在办理企业所得税年度申报时附报以下资料：

- 《受控外国企业信息报告表》（“受控外国企业”即中国居民控制且实际税负低于 12.5% 的外国企业，即使该企业因符合一定条件而使其未分配利润豁免于视同分配回中国，该表格仍需填报）
- 未分配利润被视同分配回中国的受控外国企业按中国会计制度编报的年度独立财务报表
- 纳入境外所得税抵免范围的外国企业按中国会计制度编报的年度独立财务报表

境外所得有关信息报告

38 号公告允许税务机关在税务检查（如税务审计、转让定价调查等）时要求居民企业报告与其境外所得相关的信息。

其他

- 居民企业能够提供合理理由，证明确实不能按期报告有关信息的，可以向税务机关提出延期申请。然而，38 号公告明确，限制提供相关信息的境外法律规定、商业合同或协议，不构成上述“合理理由”。
- 非居民企业在境内设立机构、场所，取得发生在境外但与其所设机构、场所有实际联系的所得的，参照公告规定报告相关信息。

德勤观点

随着中国“走出去”投资的迅速发展，以及经合组织防止税基侵蚀和利润转移计划的推动，境外所得的税收征管无疑将成为中国税务机关未来的一项工作重心，这一趋势在 38 号公告的发布中已经得到了明确的印证。相关纳税人的税务合规成本和税收风险亦将随之上升。

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Tax Newsflash



New reporting requirements for foreign investments/income introduced

Introduction

The Chinese State Administration of Taxation (SAT) issued a notice on 30 June 2014 (Bulletin 38) that will require Chinese resident enterprises to report holdings in foreign enterprises, as well as other information relating to foreign-source income. The new rules will apply as from 1 September 2014.

Details

Information on foreign investments

According to Bulletin 38, a resident enterprise will be required to report a holding of 10% or more in a foreign enterprise on a specific form ("Information Reporting for Participation of a Resident Enterprise in a Foreign Enterprise"). The form will have to be completed for each foreign enterprise if:

- 1) On 1 September 2014, the resident enterprise holds, directly or indirectly, 10% or more of the foreign enterprise;
- 2) After 1 September 2014, the direct or indirect holding of the resident enterprise in the foreign enterprise increases from less than 10% to 10% or more; or
- 3) After 1 September 2014, the direct or indirect holding of the resident enterprise in the foreign enterprise decreases from 10% or more to less than 10%.

Chinese accounting rules will have to be followed in determining whether a filing obligation arises. The interpretation notes that accompany Bulletin 38 clarify that the indirect participation percentage is to be calculated by multiplying the shareholding percentage at each tier of the ownership chain (if an intermediary shareholder holds more than 50% of the shares of a lower-tier entity, its shareholding percentage will be considered to be 100% for calculation purposes).

The form will be required to be submitted with the prepayment of enterprise income tax (EIT). Since the prepayment of EIT normally is done on a quarterly basis, the bulletin seems to suggest that the form will have to be filed with the prepayment due immediately after a filing obligation arises. In other words, a resident enterprise falling under situation 1) above likely will have to file the form in early October at the time the third-quarter prepayment of EIT is made.

Information will have to be provided on the foreign invested enterprise, other shareholders with a holding of 10% or more, any Chinese resident individuals that are part of the senior management of the invested enterprise, changes to the participation percentage, etc.

Information on controlled foreign corporations (CFCs)

Bulletin 38 will impose an obligation on a resident enterprise to submit the following documents at the time it files its annual EIT return:

- A "CFC Information Reporting Form" for each CFC (i.e. each foreign company that is controlled by the Chinese resident and that is subject to an effective tax rate of no higher than 12.5%), regardless of whether the CFC is exempt from the "deemed dividend distribution" (under which the undistributed profits derived by a CFC may be taxed in China as a deemed distribution to the Chinese parent);
- Chinese GAAP financial statements for each CFC that is subject to the deemed dividend distribution; and
- Chinese GAAP financial statements for each foreign enterprise that is eligible for a foreign tax credit.

Information on foreign-source income

Bulletin 38 allows the Chinese tax authorities to request information relating to foreign-source income during the course of a tax inspection (e.g. tax audit, transfer pricing review, etc.).

Miscellaneous

- The resident enterprise may request an extension if there are valid reasons for a delay in submitting or reporting the information. However, Bulletin 38 specifies that "valid reasons" do not include a situation in which foreign rules or business contracts prohibit the enterprise from providing such information.
- The reporting requirements may also apply to an establishment of a nonresident enterprise if the enterprise derives foreign income that is effectively connected with the establishment.

Deloitte comments

With the rapid increase in outbound investment from China, as well as the evolution of the OECD base erosion and profit shifting (BEPS) project, foreign-source income clearly will become an area of focus by the Chinese tax authorities. Bulletin 38 signals the tax authorities' intent to strengthen administration in this area, and affected taxpayers' compliance costs and tax risks likely will rise accordingly.

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