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税务快讯

支持企业兼并重组政策出台

中国财政部与国家税务总局于 2015 年 1 月 8 日公布财税[2014]109 号和 116 号文件（以下简称 109 号和 116 号文），扩大了企业重组特殊性税务处理适用范围（注：在特殊性税务处理下，重组交易方在重组时可不确认相应的应税所得或损失而获得递延纳税待遇），允许对非货币性资产投资环节产生的应税所得在不超过五年的期限内作分期计税处理。上述两则文件追溯自 2014 年 1 月 1 日起执行，并适用于通知发布前尚未处理的重组或投资行为。

上述政策的出台回应了国务院在 2014 年 3 月下发的《关于进一步优化企业兼并重组市场环境的意见》中所提出的扩大特殊性税务处理政策的适用范围，完善非货币性资产投资交易相关政策的要求。

背景

企业重组通常会导致股权或资产的应税转让，但如果一项境内的股权或资产收购交易符合下列所有条件，则相关交易方可选择适用特殊性税务处理，从而实现递延纳税（注：对于跨境重组交易，需满足额外条件以适用特殊性税务处理）：

- 重组交易具有合理的商业目的，且不以减少、免除或者推迟缴纳税款为主要目的。
- 被收购股权不低于被收购企业全部股权的 75%，或被收购资产不低于转让企业全部资产的 75%（以下简称最低收购比例）。
- 企业重组后的连续 12 个月内不改变重组资产原来的实质性经营活动。
- 重组交易对价中股权支付金额不低于交易支付总额的 85%。
- 企业重组中取得股权支付的原主要股东，在重组后连续 12 个月内，不得转让所取得的股权。

109 号文

109 号文将上述股权或资产收购中的最低收购比例由 75%降至 50%；同时，109 号文新增了一项适用于居民企业集团内股权或资产划转的特殊性税务处理。该特殊性税务处理要求同时符合下列条件：

- 股权或资产划转发生在 100%直接控制的居民企业之间，以及受同一或相同多家居民企业 100%直接控制的居民企业之间。
- 股权或资产划转按账面净值进行。
- 重组交易具有合理商业目的、不以减少、免除或者推迟缴纳税款为主要目的。
- 股权或资产划转后连续 12 个月内不改变被划转股权或资产原来实质性经营活动。
- 划出方企业和划入方企业均未在会计上确认损益。

若符合条件的交易方选择适用上述特殊性税务处理，则：

- 划出方企业和划入方企业均不确认所得。
- 划入方企业取得被划转股权或资产的计税基础，以被划转股权或资产的原账面净值确定。
- 划入方取得的被划转资产，应按其原账面净值计算折旧扣除。

116 号文

居民企业以非货币性资产对其他居民企业进行投资时，投资方通常需将非货币性资产的公允价值扣除其计税基础后的余额，计算确认非货币性资产转让所得。116 号文执行后，税务机关将允许纳税人将上述所得，在不超过 5 年期限内，分期均匀计入相应年度的应纳税所得额，按规定计算缴纳企业所得税；以非货币性资产对外投资而取得的被投资企业股权的计税基础，亦需根据上述所得的计税处理分期进行相应调整。这一政策曾在中国（上海）自由贸易试验区进行试点，随着 116 号文的发布该项政策将被推向全国。

企业发生非货币性资产投资，若同时符合特殊性税务处理条件的，116 文允许纳税人选择按特殊性税务处理。

德勤观点

109 号和 116 号文件的发布受到业界的普遍欢迎，股权和资产收购交易将从中受益。109 号文新增的一项特殊性税务处理，在一定程度上近似于原外资企业所得税法下 207 号文对于集团重组的税收政策；该项特殊性税务处理未对股权或资产的收购比例和股权支付比例作出要求，为集团内部的重组交易提供了税收便利。但遗憾的是，新增的这项特殊性税务处理并不适用于集团内部的跨境重组交易以及由于境外母公司的集团内重组行为（如合并、分立、清算等）导致境内企业股权被转让的情形。

预计国家税务总局将发布更为详细的操作指引，并就相关问题（如“划转”行为的界定）进行明确。相关纳税人应根据有关文件积极评估其重组交易享受特殊性税务处理等递延纳税待遇的可行性，密切关注法规和实务动向，并在需要时寻求专业顾问的协助。

如您有任何问题，请联系：

并购重组税务服务
全国及华南区领导人
香港
傅振煌
合伙人
+852 2238 7333
dannpo@deloitte.com.cn

华北区
北京
张慧
合伙人
+86 10 8520 7638
jenzhang@deloitte.com.cn

华东区
上海
王鲲
合伙人
+86 21 6141 1035
vicwang@deloitte.com.cn

德勤华永会计师事务所（特殊普通合伙）
中国 上海
延安东路 222 号
外滩中心 30 楼

Deloitte.
德勤

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中文

Tax Newsflash

Guidance Issued to Facilitate Corporate Reorganizations

China's Ministry of Finance and the State Administration of Taxation (SAT) published two circulars (i.e. Caishui [2014] No. 109 and 116) on 8 January 2015 that relax the requirements for reorganizations to qualify for special tax treatment (i.e. no gain or loss will be recognized on the date of reorganization for enterprise income tax purposes, but will be deferred to the time of a subsequent taxable disposition) and to grant a maximum five-year period to pay tax by installment on gains realized when a nonmonetary asset is contributed for equity. The circulars apply retroactively as from 1 January 2014, as well as to any transaction whose tax treatment has not been finalized.

The circulars are a response to a notice issued by the State Council in March 2014 asking the government to expand the scope of transactions eligible for special tax treatment and to make improvements to the relevant tax policies.

Background

Corporate reorganizations normally result in the taxable transfer of shares or assets, although in certain cases, an enterprise may elect for special treatment to effectively achieve a deferral of enterprise income tax if all of the following conditions are satisfied in a domestic share or asset acquisition (additional requirements must be met in cross-border reorganizations):

- The transaction has a bona fide business purpose and the primary purpose of the transaction is not to reduce, avoid or defer the payment of tax;
- At least 75% of the total equity of the target company, or the total assets of the transferor, is transferred in the acquisition (“minimum acquisition threshold”);
- There is no change in the original business operating activities of the target business for 12 months after the reorganization;
- At least 85% of the total consideration received by the transferor is in the form of equity; and
- The major transferor does not transfer the acquired equity for 12 months after the acquisition.

Circular 109

Circular 109 reduces the minimum acquisition threshold from **75%** to **50%** for a share or an asset acquisition to qualify for the special tax treatment and introduces a new form of special tax treatment for an intragroup "assignment" of shares or assets between resident enterprises. The new form of special tax treatment will apply if all of the following conditions are satisfied:

- The assignment of shares or assets are between resident enterprises that have a 100% direct control relationship, or that are both under the 100% direct control of the same resident enterprise or same group of resident enterprises;
- The assignment of shares or assets is based on the net book value (NBV);
- The transaction has a bona fide business purpose and the primary purpose of the transaction is not to reduce, avoid or defer the payment of tax;
- There is no change in the original business operating activities in relation to the shares or assets in concern for 12 months after the assignment; and
- Neither the transferring nor the transferee enterprise has recognized any profit or loss for financial accounting purposes.

If the qualifying parties elect for this special tax treatment:

- Neither the transferor nor the transferee enterprise will be required to recognize taxable income;
- The tax basis of the shares or assets received by the transferee will be determined based on the NBV in the hands of the transferor; and
- For tax depreciable assets assigned to the transferee enterprise, the tax depreciation will be calculated based on the NBV in the hands of the transferor.

Circular 116

Where a resident enterprise contributes nonmonetary assets for equity in another resident enterprise, it normally must recognize the fair market value of the assets over its tax basis as a taxable gain. However, Circular 116 now allows the taxpayer to spread the gain over a period of up to five years for enterprise income tax purposes and pay the relevant tax in installments. The tax basis of the acquired equity will step up according to the taxing schedule of the gain. The installment treatment has been piloted in the China (Shanghai) Pilot Free Trade Zone and now is rolled out nationwide.

Circular 116 also allows a taxpayer to elect to apply special tax treatment (provided the contribution of nonmonetary assets satisfies the relevant conditions) instead of the five-year installment treatment.

Deloitte Comments

Businesses generally have welcomed the issuance of Circulars 109 and 116 because the circulars will allow share or asset acquisitions to be carried out in a more tax-efficient manner. The new form of special tax treatment, which appear somewhat similar to income tax relief for intragroup share transfers under the pre-2008 Foreign-invested Enterprise Income Tax regime (i.e. Circular 207), may help facilitate intragroup reorganizations under which tax deferral will be granted regardless of the percentage of shares/assets acquired and the form of the consideration. Unfortunately, however, the new form of special tax treatment do not apply to intragroup cross-border reorganizations or transfers of the shares of a resident company as a result of the intragroup restructuring (e.g. merger, division, liquidation, etc.) of its foreign parent company.

The SAT is expected to issue further guidance that contains details on the implementation of the two circulars and clarifies certain aspects (e.g. definition of "assignment"). Affected taxpayers should evaluate and explore the possibilities to enjoy tax deferral of M&A deals, closely monitor the regulatory and practice development, and seek professional advice where necessary.

If you have any questions please contact:

Mergers & Acquisitions Services
National Leader / Southern China
Hong Kong
Danny Po
Partner
+852 2238 7333
dannpo@deloitte.com.cn

Northern China
Beijing
Jennifer Zhang
Partner
+86 10 8520 7638
jenzhang@deloitte.com.cn

Eastern China
Shanghai
Vicky Wang
Partner
+86 21 6141 1035
vicwang@deloitte.com.cn