

## 税务快讯

# 国税总局颁布工资薪金和职工福利费的扣除新规



国家税务总局于 2015 年 5 月 8 日发布了 2015 年第 34 号公告（以下简称“34 号公告”），明确了工资薪金和职工福利费税前扣除的相关问题。34 号公告适用于 2014 年度及以后年度企业所得税汇算清缴。之前尚未进行税务处理的事项，符合公告规定的也可按 34 号公告执行。

## 福利性补贴

如何对企业向员工支付的款项进行定性对所得税处理来说非常重要，因为合理的工资薪金没有税前扣除限额（国有性质的企业除外），而职工福利费则只能在工资薪金总额的 14% 限额内扣除。在 34 号公告出台前，不少税务机关往往将企业发放的一些补贴如住房补贴、交通补贴等认定为职工福利费进行税前扣除处理，而不将其视为工资薪金的组成部分。34 号公告则规定符合以下条件的福利性补贴可作为企业发生的工资薪金支出在税前扣除：

- 列入企业员工工资薪金制度；
- 固定与工资薪金一起发放；
- 符合《国家税务总局关于企业工资薪金及职工福利费扣除问题的通知》（国税函[2009]3号，以下简称“3号文”）第一条规定（注：即在对工资薪金进行合理性确认时，可按五个原则掌握：1) 企业制订了较为规范的员工工资薪金制度；2) 企业所制订的工资薪金制度符合行业及地区水平；3) 企业在一定时期所发放的工资薪金是相对固定的，工资薪金的调整是有序进行的；4) 企业对实际发放的工资薪金，已依法履行了代扣代缴个人所得税义务；5) 有关工资薪金的安排，不以减少或逃避税款为目的。）

34号公告的出台意味着部分上述提及的补贴项目将有望作为工资薪金在税前扣除，这一做法亦接近于财政部之前发布的财企[2009]242号文件中有关职工福利费财务管理的规定，该文件明确将按月按标准发放或支付的住房补贴、交通补贴、通讯补贴等纳入职工工资总额，不再纳入职工福利费管理。

34号公告的发布虽然对纳税人较为有利，但仍有部分事项有待澄清。比如，

- “福利性补贴”的界定尚不清晰。和传统的现金补贴有所不同，某些以实报实销形式发放的补贴会与员工实际发生的费用相关联，这类补贴项目是否属于34号公告下福利性补贴的范围；
- 如何理解34号公告下的“固定”发放（如按月还是按季发放等）以及“与工资薪金一起发放”等概念；
- 3号文将个人所得税的代扣代缴作为判断工资薪金合理性的前提，那么免征个人所得税的补贴（如外籍员工免税补贴等）是否可根据34号公告规定作为工资薪金进行扣除。

## 年终预提工资薪金

不少企业会在年底12月份预提当月工资和年终奖，但于次年才实际发放。很多税务机关会在实践中要求这些企业仅在实际发放时才准予在税前扣除12月份工资和年终奖。34号公告将改变这一做法。根据34号公告，企业在年度汇算清缴结束前向员工实际支付的已预提汇缴年度工资薪金，准予在汇缴年度扣除。企业所得税的年度汇算清缴一般应于次年的5月31日前完成。34号公告的规定接近于权责发生制下的会计处理，这一政策的明确将有助于减少财税差异。

# 劳务派遣安排

在劳务派遣安排下，派遣员工虽然在法律意义上受雇于劳务派遣公司，但在经济实质上则服务于接受劳务派遣的企业。派遣员工的数量、任职资格、薪酬标准等一般由接受劳务派遣的企业决定，并且该企业对派遣员工工作结果承担责任和风险。在费用支付安排方面，有些劳务派遣公司会向企业收取包括派遣员工的工资薪金福利和派遣服务费在内的总价，再将其中的工资薪金福利部分支付给派遣员工；而有些劳务派遣公司可能只向企业收取派遣服务费，由企业向派遣员工直接支付工资薪金和福利。根据原先 15 号公告（即国家税务总局公告 2012 年第 15 号）的规定，实践中往往按照“实质重于形式”的原则对劳务派遣安排下的费用进行工资薪金、福利费或是劳务费的区分，但 34 号公告废止了 15 号公告里的相关规定，并且提供了如下指引：

- 企业按照协议（合同）约定直接支付给劳务派遣公司的费用，应作为劳务费支出；
- 企业直接支付给员工个人的费用，应作为工资薪金支出和职工福利费支出。

由此可见，34 号公告的规定似乎将根据费用的直接收款方来判定相关支出应按“工资薪金/职工福利费”还是“劳务费”支出进行税务处理。

由于国有性质的企业可税前扣除的工资薪金不得超过有关部门给予的限定数额，因此若按上述理解，则在劳务派遣安排下通过劳务派遣公司支付的派遣员工工资将作为劳务费支出在税前扣除，从而不受上述限定数额的限制。

另外，如果企业员工的工资薪金全部通过劳务派遣公司发放，企业仅直接向员工发放职工福利费，则在此劳务派遣安排下所有员工的工资薪金费用可能会被视为劳务费支出，从而导致职工福利费的扣除限额为零。（注：如之前所述，职工福利费扣除限额为工资薪金总额的 14%。）此类企业可能需要考虑将部分工资薪金调整为直接向员工支付，以实现职工福利费的税前扣除。

相关文件：

[国家税务总局关于企业工资薪金和职工福利费等支出税前扣除问题的公告（国家税务总局公告 2015 年第 34 号）](#)

[国家税务总局关于 34 号公告的解读](#)

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## Tax Newsflash

# SAT Issues New Rules on Deduction of Salaries and Welfare Expenses



China's State Administration of Taxation (SAT) issued guidance on 8 May 2015 (Bulletin [2015] No. 34 (Bulletin 34)) that clarifies the deduction of salaries and employee welfare expenses for enterprise income tax (EIT) purposes. Bulletin 34 applies to EIT returns for 2014 and thereafter, but also may apply where the tax treatment of these issues for previous years has not yet been dealt with.

## Welfare subsidies

How to characterize a payment to an employee is important for EIT purposes because there is no deduction ceiling on reasonable salaries (except for state-owned companies), but the deduction of welfare expenses is capped at 14% of the total salaries deducted. Before the issuance of Bulletin 34, many tax authorities had treated certain common allowances such as housing allowances and transportation allowances as welfare expenses, rather than salaries, for EIT purposes, on the basis that the employer had called these allowances as welfare subsidies. Bulletin 34 now provides that welfare subsidies may be considered "salaries" rather than "welfare" expenses for EIT purposes if the following conditions are satisfied:

- The welfare subsidies are listed in the employer's salary policies;
- The welfare subsidies are regularly paid together with salary; and
- The welfare subsidies qualify as "reasonable salaries" as provided in article 1 of Guoshuihan [2009] No. 3 (Circular 3). *(note: Circular 3 set out five principles to determine "reasonable salaries": 1) the employer has formulated well-regulated salary policies; 2) the employer's salary standards are in line with the industry and regional level; 3) the salaries paid in a certain period are relatively regular, and their adjustment is undertaken in order; 4) the employer has withheld individual income tax for salaries actually paid; and 5) the salary arrangement is not established for purpose of avoiding or reducing taxes.)*

Given the standard in Bulletin 34, at least some of the common allowances mentioned above now may be deducted as salaries, and this treatment appears in line with a 2009 circular issued by the Ministry of Finance (Caiqi [2009] No. 242), which removed standard monthly cash allowances for housing, transportation and communication from the scope of welfare expenses and treat them as salaries for financial accounting purposes.

While Bulletin 34 brings good news to taxpayers, some uncertainties will likely remain as some concepts used in Bulletin 34 are not fully explained. We set out a few potential issues below,

- What is considered welfare subsidies is not defined. Some subsidies to employees are provided in the form of reimbursements, rather than the traditional form of cash allowances, which are not linked to any actual expenses of an employee. Will such reimbursement be considered welfare subsidies within the meaning of Bulletin 34?;
- There is no guidance on how "regularly" the subsidy should be paid (e.g. monthly, quarterly, etc.) or on how to interpret the phrase "paid together with salaries"; and
- Since Circular 3 lists the withholding of individual income tax as a condition for qualifying reasonable salaries, will the fact that a payment is exempt from individual income tax, such as certain allowances paid to a foreign employee, disqualify such an allowance from being treated as "salaries."

## Year-end salaries payables

Many enterprises accrue their employees' December salaries and year-end bonuses in December of the relevant year but will not make the actual payment until the following year. As a result, many such enterprises were not allowed to deduct such salaries and bonuses until they are actually "paid" to the employees. Bulletin 34 will change this situation. According to Bulletin 34, salary expenses accrued in a calendar year may be deducted in the annual tax return for that year if the salaries are actually paid before the final annual EIT settlement, which must be completed by 31 May of the following year. Bulletin 34 seems to adopt the "accrual basis" concept and should result in fewer book-to-tax adjustments.

# Labor dispatch arrangement

Under a labor dispatch arrangement, personnel are legally employed by an HR agency and assigned to another company that effectively acts as the economic employer, which normally decides on the number, qualification and compensation of such personnel and bears the risks and responsibilities of their work. Some HR agencies may charge the company a lump sum that includes both the salary or welfare (which would further be passed on to the personnel) and a mark-up for the HR intermediary services, while other HR agencies may only charge an HR service fee, leaving it up to the company to settle the salaries/welfare directly with the individual. A prior guidance, Bulletin 15 (Bulletin [2012] No. 15) recommended a "substance-over-form" approach to distinguish between "salaries/welfare" and "service charges," regardless of the charging arrangement. Bulletin 34 abolishes this approach, thus repealing Article 1 of Bulletin 15 and provides the following guidance:

- Expenses paid directly by a company to an HR agency based on a labor dispatch service contract will be considered service charges of the company for EIT purposes; and
- Expenses directly paid by a company to the personnel dispatched will be considered salaries or welfare expenses for EIT purposes.

Accordingly, under Bulletin 34, whether a payment should be treated as salaries/welfare or service charges seems to depend on the immediate recipient of the payment.

For state-owned companies whose deduction of salaries is subject to a cap, where salary costs are paid through an HR agency, a labor dispatch arrangement may be more beneficial for EIT purposes because the salaries may be deducted as service charges for which there is no ceiling on the deduction.

However, if a company pays all of its salaries through an HR agency and only pays welfare directly to the personnel under a labor dispatch arrangement, no welfare expenses would be deductible since the deduction of welfare expenses is subject to a ceiling calculated as 14% of deductible salaries and the company has no salary expenses. Such companies may wish consider arranging at least part of the salaries paid directly to the dispatched personnel to secure the deduction of welfare expenses.

Relevant circulars:

[Bulletin of the State Administration of Taxation on Issues of Deduction of Salary and Welfare Expenses of Enterprises \(Bulletin of the State Administration of Taxation \[2015\] No. 34\) \(Chinese version\)](#)

[Interpretation Notes of Bulletin 34 issued by the State Administration of Taxation \(Chinese version\)](#)

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