

## 税务快讯

# 税务总局明确高新技术企业 员工和股东有关个人所得税 优惠政策细则



为促进大众创业、万众创新，培育经济发展新的驱动力，财政部和国家税务总局于 2015 年 10 月 23 日发布财税[2015]116 号文件（以下简称 116 号文<sup>1</sup>），将目前只适用于国家自主创新示范区的两项个人所得税优惠政策自 2016 年 1 月 1 日起推广至全国。新政策将允许符合条件的高新技术企业员工或者个人股东分期缴纳因股权激励或者转增股本产生的个人所得税。国家税务总局随后于 2015 年 11 月 16 日出台 80 号公告<sup>2</sup>，就相关的应纳税所得额和应纳税额的计算以及征管程序事宜提供了进一步的指引。该公告将于 2016 年 1 月 1 日起施行。

根据 116 号文的规定，在如下两种情形中，如果个人一次缴纳个人所得税有困难的，可以在不超过 5 个公历年度内分期缴纳个人所得税：

- 高新技术企业转化科技成果，给予本企业相关技术人员股权激励；
- 符合条件的中小高新技术企业以未分配利润、盈余公积、资本公积向个人股东转增股本（该行为通常在个人所得税角度被视为企业向个人股东分配股息红利）。

## 80 号公告要点

### 关于股权激励

**应纳税所得额：**对于高新技术企业授予符合条件员工的股权激励，计税价格参照获得股权时的公平市场价格确定：

- 上市公司股票的公平市场价格，按照取得股票当日的收盘价确定。取得股票当日为非交易时间的，按照上一个交易日收盘价确定。
- 非上市公司股权的公平市场价格，依次按照如下方法确定：
  - 净资产法，即根据个人取得的股权份额所对应的企业净资产确定；
  - 类比法，即根据最近一段时期企业股东转让股权时的合理转让价格类比确定；
  - 税务机关同意采纳的其他合理方法。

**应纳税额：**116 号文明确，股权激励的应纳税额可参照上市公司向员工授予股票期权的有关优惠规定计算。这一计算方式将有关所得除以“规定月份数”以确定适用税率。80 号公告进一步明确，在计算股权激励应纳税额时，“规定月份数”按员工在企业的实际工作月份数确定；但员工在企业工作月份数超过 12 个月的，按 12 个月计算。

### 关于转增股本

80 号公告强调，以未分配利润、盈余公积、资本公积转增股本分期缴纳个人所得税的优惠政策仅适用于非上市并且未在全国中小企业股份转让系统挂牌的中小高新技术企业。

同时 80 公告明确，不符合以上条件的企业在转增股本时必须按现行规定及时代扣代缴个人股东的个人所得税。

### 税务申报和代扣代缴义务

符合条件的企业和员工可自行制定分期缴税计划，由企业于发生股权激励、转增股本的次月 15 日内，向主管税务机关办理分期缴税备案手续。办理备案手续时，企业应向主管税务机关报送以下材料：

- 高新技术企业认定证书；
- 股东大会或董事会决议；
- 《个人所得税分期缴纳备案表》；
- 相关技术人员参与技术活动的说明材料、企业股权激励计划、能够证明股权或股票价格的有关材料、企业转化科技成果的说明、最近一期企业财务报表等（适用于股权激励备案）；
- 上年度及转增股本当月企业财务报表、转增股本有关情况说明等（适用于转增股本备案）。

纳税人分期缴税期间需要变更原分期缴税计划的，应重新制定分期缴税计划，由企业向主管税务机关重新报送《个人所得税分期缴纳备案表》。

根据 80 公告的规定，纳税人在分期缴税期间因分红或转让有关股权取得现金收入的，相关企业应及时代扣股权奖励或转增股本尚未缴清的个人所得税，并于次月 15 日内向主管税务机关申报纳税。

## 评论与建议

80 号公告进一步明确了 116 号文中有关个人所得税分期缴纳优惠政策的相关操作细节，并就其税收申报和代扣代缴义务提供了明确指引。

在 116 号文和 80 号公告发布前，非上市公司在股权奖励方面的税收优惠政策较为有限。这两项新文件的发布为符合条件的高新技术企业和个人提供了享受税收优惠政策的机会。

对于有望符合有关优惠政策适用条件的企业，建议就优惠条件的满足和政策具体适用，以及税收申报和代扣代缴的相关要求进行内部评估，或者寻求专业意见以协助企业和有关个人及时办理手续，以享受优惠政策。

### 相关阅读

<sup>1</sup> [德勤税务快讯——国家自主创新示范区有关税收试点政策推广到全国范围](#)

<sup>2</sup> [国家税务总局关于股权激励和转增股本个人所得税征管问题的公告\(国家税务总局公告 2015 年第 80 号\)](#)

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## Tax Newsflash

# SAT Clarifies New IIT Incentives for Qualifying Employees and Shareholders of HNTEs



China's Ministry of Finance and the State Administration of Taxation (SAT) issued guidance on 23 October 2015 (Circular 116<sup>1</sup>) that extends two individual income tax (IIT) incentives nationwide as from 1 January 2016, with a view to stimulating technological innovation. The incentives, which currently are available only in National Innovation Demonstration Zones, will allow a deferred IIT payment for qualifying employees and individual shareholders of “high-new technology enterprises” (HNTEs) for stock awards or the capitalization of undistributed profits/reserves. The SAT issued Bulletin 80 on 16 November 2015 to provide additional guidance on the calculation of taxable income/tax and administration issues of the incentives.<sup>2</sup> Bulletin 80 also will apply as from 1 January 2016.

Circular 116 will allow the IIT to be paid by installment over a five-year period if the relevant individual taxpayer is unable to settle his/her tax liabilities immediately in either of the following two situations:

- Stock awards are granted to qualifying employees by an employer with HNTE status; or
- A qualifying small or medium-sized HNTE (SMHNTE) converts its undistributed profits or reserves (including capital surplus) to capital (such a conversion generally is considered a dividend distribution by that enterprise to its shareholders for IIT purposes).

## Highlights of Bulletin 80

### Stock awards

**Taxable income:** The taxable income from stock awards granted to qualifying employees by HNTEs will be determined based on the fair market value (FMV) of the stock on the date of the grant:

- For listed HNTEs, FMV refers to the stock's closing price on the grant date, or the last trading date if the grant date is not a trading day; and
- For unlisted HNTEs, FMV refers to the assessed value by using the following methods (in the following order):
  - Net asset method, i.e. the FMV assessed by reference to the net asset value in proportion to the shares;
  - Comparable method, i.e. the FMV assessed by reference to the reasonable price of comparable stock sales in a recent period; or
  - Other reasonable method, as agreed upon by the tax authorities.

**Tax calculation:** Circular 116 will allow the IIT on stock awards to be calculated by reference to the preferential method available for employee stock options offered by listed companies, where the income may be divided by the "number of stipulated months" to determine the applicable tax bracket. When using this method to calculate the IIT on stock awards, Bulletin 80 clarifies that the number of stipulated months refers to the number of the employee's actual working months for the HNTE enterprise, capped at 12 months.

### Capitalization of undistributed profits or reserves

Bulletin 80 emphasizes that the deferred payment option for the capitalization of undistributed profits or reserves may be applied only where the SMHNTE is unlisted and its stock is not quoted on the National Equities Exchange and Quotations.

Bulletin 80 confirms that companies that do not fulfill the conditions above must withhold the relevant IIT in a timely manner when the capitalization was made.

## Tax reporting and withholding obligations

Qualifying enterprises and individuals have discretion to determine an installment payment plan, although the plan must be reported to the tax authorities within 15 days of the month following the month in which the stock awards were granted, or the capitalization was made. The following documentation also must be reported:

- HNTE certificate of the enterprise;
- Relevant resolution of the shareholding meeting or the board of directors;
- Reporting form for IIT installment payments (Reporting Form);
- Information on the relevant technology-related activities and achievements by qualifying employees, the stock awards plan, the stock price and the latest financial statements (for stock awards only); and
- Financial statements for the last year and the month in which the capitalization was made, and information on the capitalization (for capitalization of undistributed profits or reserves only).

The Reporting Form must be updated and resubmitted if the individual taxpayer subsequently makes any change to the original installment payment plan.

Bulletin 80 also suggests that, where the relevant individual has applied to make deferred IIT payments and then derives cash proceeds from dividend declarations or the sale of the relevant stock/shares, the relevant enterprise must withhold any outstanding IIT from the proceeds and file a return with the tax authorities within 15 days following the month in which the event occurred.

## Comments

Bulletin 80 offers clear guidance on the deferred IIT payments provided for in Circular 116, and the corresponding reporting and withholding requirements to claim the incentives.

Before the issuance of Circular 116 and Bulletin 80, limited IIT incentives were offered to unlisted companies in terms of stock awards. The new rules provide an opportunity for qualified HNTEs and individuals to enjoy preferential tax treatment.

Companies that potentially may benefit from the tax incentives should conduct an internal assessment or seek professional advice on how to qualify for the incentives, and comply with the reporting and withholding requirements.

Notes:

<sup>1</sup> See [Deloitte Tax Newsflash on Circular 116](#)

<sup>2</sup> See [Bulletin on Administration Issues for Individual Income Tax on Stock Awards and Capitalizations \(Bulletin of the State Administration of Taxation \[2015\] No. 80\) \(Chinese version\)](#)

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