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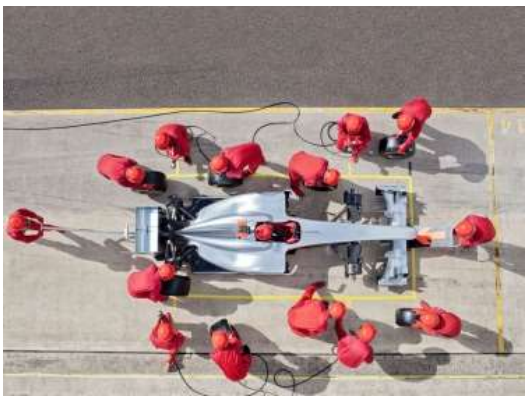
中国 | 税务与商务咨询 | 研发与政府激励服务 | 2015 年 12 月 11 日

English

税务快讯

税务总局明确自主创新优惠政策若干实施意见



继财政部、国家税务总局在 10 月末发布通知（即财税[2015]116 号[1]），将两项自主创新企业所得税优惠政策从 2015 年 10 月 1 日起推广至全国范围后，国家税务总局于 11 月 30 日在其网站公布 2015 年公告 81 号[2]和 82 号[3]，就有关政策的执行口径作出具体规定。这两份公告同样自 2015 年 10 月 1 日起施行。

81 号公告

公告背景

根据 116 号文的规定，有限合伙制创业投资企业（以下简称“合伙制创投企业”）以股权投资方式投资于未上市中小高新技术企业满 2 年（即 24 个月，下同）的，该合伙制创投企业的法人合伙人可按照其对未上市中小高新技术企业投资额的 70%抵扣该法人合伙人从该合伙制创投企业分得的应纳税所得额，当年不足抵扣的，可以结转至以后年度抵扣。其中，法人合伙人对未上市中小高新技术企业的投资额按照以下两项因子的乘积计算：1）合伙制创投企业对未上市中小高新技术企业的投资额；2）法人合伙人占合伙制创投企业的出资比例。

适用对象——上述优惠政策的适用对象必须同时满足以下两项条件：

- “合伙制创投企业”系依照《合伙企业法》、《创业投资企业管理暂行办法》（发改委令第 39 号）、《外商投资创业投资企业管理规定》（外经贸部、科技部、工商总局、税务总局、外汇管理局令 2003 年第 2 号）所设立的，专门从事创业投资活动的有限合伙企业。
- “法人合伙人”系实行查账征收的居民企业。

因此，非居民法人合伙人，或通过境外合伙企业投资境内未上市中小高新技术企业的法人合伙人均不得享受上述优惠政策。

“满 2 年”的计算——上述所称的“投资于未上市中小高新技术企业满 2 年”具体包含两层含义：

- 合伙制创投企业投资于未上市高新技术企业的实缴投资须满 2 年；且
- 法人合伙人对合伙制创投企业的实缴出资须满 2 年。

公告解读对此提供了一则示例，假设 A 企业于 2012 年 10 月 2 日投资于某合伙制创投企业，后者又于 2013 年 10 月 2 日投资于未上市中小高新技术企业，则至 2015 年 10 月 2 日该投资符合“满 2 年”条件，A 企业可享受优惠政策。

“投资额”/“出资比例”的计算——为适应公司注册资本登记制度改革，公告规定，合伙企业对高新技术企业的投资额，以及合伙人占合伙企业的出资比例，均根据投资人对被投资企业的实缴出资额及其占比计算。

“可抵扣的投资额”/“（从合伙制创投企业）分得的应纳税所得额”的合并计算——作为法人合伙人，一家居民企业投资于多个符合条件的合伙制创投企业，可合并计算其可抵扣的投资额和应分得的应纳税所得额。换而言之，一家合伙制创投企业所对应计算得出的可抵扣投资额，可以用于抵扣同一居民企业作为法人合伙人从另一家合伙制创投企业分得的应纳税所得额。合并计算的规定将有利于可抵扣投资额的充分使用；但须注意的是，合并计算后可抵扣的投资额仍大于分得的应纳税所得额的，超过部分可结转下一年度抵扣从合伙制创投企业分得的应纳税所得，但不得用于抵扣法人合伙人当年取得的其他应纳税所得。

资料报送及留存——公告对纳税人享受上述优惠政策的相关程序做了以下规定：

- 符合条件的合伙制创投企业应在相关年度终了后 3 个月内向其主管税务机关报送《有限合伙制创业投资企业法人合伙人应纳税所得额分配情况明细表》（以下简称《应纳税所得额分配表》）。税务机关受理后，该表格的其中一份将交由法人合伙人保存。

- 符合条件的法人合伙人应在办理相关年度企业所得税汇缴申报时或之前，向其主管税务机关提交《法人合伙人应纳税所得额抵扣情况明细表》以及上述已经受理的《应纳税所得额分配表》等资料，以办理备案手续享受优惠政策。
- 符合条件的法人合伙人同时应根据国税发[2009]87 号的规定留存有关资料备查。

82 号公告

公告背景

根据 116 号文的规定，自 2015 年 10 月 1 日起，全国范围内的居民企业转让 5 年或以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。其中，年度技术转让所得不超过 500 万元的部分，免征企业所得税；超过 500 万元的部分，减半征收企业所得税。

公告要点

适用对象——公告明确，转让符合条件的 5 年及以上非独占许可使用权的技术，限于其拥有所有权的技术。这意味着，类似于转许可安排下所取得的许可使用费收入，将不得适用上述减免税政策。

值得注意的是，82 号公告阐明，有关技术转让所得减免税待遇的其他事宜，仍应按其他有关文件的规定执行。例如，根据国税函[2009]212 号和财税[2010]111 号文件，为了享受减免税待遇，境内的非独占许可使用权转让，一般须经省级或以上科技部门认定登记；跨境的非独占许可使用权转让，一般须经省级或以上商务部门认定登记。同时，居民企业从直接或间接持有股权之和达到 100%的关联方取得的技术转让所得，仍不得享受上述减免税政策。

技术转让所得计算公式——符合条件的 5 年及以上非独占许可使用权技术转让所得应按以下公式计算：

技术转让所得 = 技术转让收入 – 无形资产摊销费用 – 相关税费 – 应分摊期间费用

- 技术转让收入：应按转让协议约定的许可使用权人应付许可使用权使用费的日期确认收入的实现。以下两项不得计入技术转让收入：
  - 销售或转让设备、仪器、零部件、原材料等非技术性收入；
  - 不属于与技术转让项目密不可分的技术咨询、服务、培训等收入。

- 无形资产摊销费用：相应的无形资产按税法规定当年计算摊销的费用。该无形资产同时涉及自用和对外许可使用的，应按照受益原则合理划分。

- 相关税费：技术转让过程中实际发生的有关税费，包括除企业所得税和可抵扣增值税以外的各项税金及其附加、合同签订费用、律师费等。

- 应分摊期间费用：技术转让按照当年销售收入占比分摊的期间费用（不含上述无形资产摊销费用和相关税费）。

相关阅读：

[1] 有关 116 号文的德勤税务快讯

[2] 国家税务总局关于有限合伙制创业投资企业法人合伙人企业所得税有关问题的公告（国家税务总局公告 2015 年第 81 号）

[3] 国家税务总局关于许可使用权技术转让所得企业所得税有关问题的公告（国家税务总局公告 2015 年第 82 号）

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China | Tax & Business Advisory | Research & Development and Government Incentives | 11 December 2015 中文

Tax Newsflash

SAT Clarifies EIT Incentives to Stimulate Technological Innovation

On 30 November 2015, China's State Administration of Taxation (SAT) published two bulletins (Bulletins 81[1] and 82[2]) on its website that provide additional guidance on enterprise income tax (EIT) incentives. The Ministry of Finance and SAT issued a circular (Circular 116[3]) on 23 October 2015 that extended the application of the EIT incentives nationwide to stimulate technological innovation. Bulletins 81 and 82 apply retroactively as from 1 October 2015, the effective date of Circular 116.

Bulletin 81

Background

Circular 116 grants a deduction to a corporate partner in a venture capital limited partnership that invests in unlisted small or medium-sized high-new technology enterprises (SMHNTEs), provided the investment is held for at least two years (i.e. 24 months). The deduction is calculated as 70% of the amount invested in the SMHNTE and it may be used to offset any taxable income allocated from the partnership, with the unutilized amount carried forward to future years.

Highlights

Scope of application: Bulletin 81 clarifies the scope of application of the incentive as follows:

- A venture capital limited partnership refers to a limited partnership engaged in venture capital investment activities and established pursuant to the *Chinese Partnership Law*, the *Provisional Administrative Measures on Venture Capital Investment Enterprises* (Decree No. 39 of the National Development and Reform Commission) and/or the *Administrative Regulations on Foreign-invested Venture Capital Investment Enterprises* (Decree [2003] No. 2 of the Ministry of Foreign Trade and Economic Cooperation, Ministry of Science and Technology, State Administration of Industry and Commerce, SAT and State Administration of Foreign Exchange).
- A corporate partner refers to a partner that is a resident enterprise under the EIT Law.

The bulletin thus clarifies that a nonresident enterprise, or a resident enterprise investing in an SMHNTE through a foreign partnership, is excluded from the scope of application of the incentive.

"Two-year" test: The two-year test will be met only if both of the following conditions are satisfied:

- The partnership has held the investment in the SMHNTE for at least two years; and
- The corporate partner has held the investment in the partnership for at least two years.

The interpretation notes that accompany Bulletin 81 include an example to illustrate the application of the two-year test: Where Company A made an investment in a qualifying partnership on 2 October 2012, and the partnership invested in an SMHNTE one year later (i.e. on 2 October 2013), the two-year test is met on 2 October 2015 and Company A should be eligible for the incentive.

Calculation of the "investment amount (in an SMHNTE)": According to Circular 116, the corporate partner's investment amount (in an SMHNTE) is calculated by multiplying the amount of the investment by the partnership in the SMHNTE by the share of investment in the partnership attributable to that partner.

Bulletin 81 provides that the amount of the partnership's investment in the SMHNTE refers to the amount of capital actually contributed by the partnership rather than the capital the partnership committed to contribute according to the investment agreement. Similarly, the share of the investment in the partnership attributable to the partner also should be calculated by the amount of capital actually paid by the partner in the partnership, rather than the capital the partner committed to pay according to the partnership agreement.

Pooling of deductions: Where a resident enterprise, as a partner, invests in multiple qualifying venture capital limited partnerships that, in turn, invest in qualifying SMHNTEs, the deductions attributable to each partnership may be pooled for offsetting all of the taxable income allocated from these partnerships to the resident enterprise. This mechanism helps to fully utilize the deductions. However, any unutilized deductions may not be used to offset the enterprise's taxable income from other sources; they only may be carried forward to subsequent years to offset future taxable income allocated from the qualifying partnerships.

Documentation requirements: Bulletin 81 sets out certain documentation requirements that must be met for an enterprise to apply for the incentive:

1) A qualifying venture capital limited partnership must submit a form detailing the allocation of its taxable income to its partners (Allocation Form). The Allocation Form must be submitted to the tax authorities within three months from the end of each tax year. After the tax authorities have processed the form, one copy will be returned to the partnership to pass on to the relevant partners.
2) A qualifying partner must submit a form detailing how the deductions were used, along with a copy of the Allocation Form and other relevant documents. This documentation must be submitted to the tax authorities by the time the partner's annual tax return is filed.
3) The qualifying partner must maintain the documents in accordance with Guoshuifa [2009] No. 87.

Bulletin 82

Background

According to Circular 116, the first RMB 5 million of income derived in respect of a tax year by a Chinese resident company from the transfer of a non-exclusive licence of the right to use qualifying technology for five years or more is exempt from EIT, with the remainder subject to a 50% reduction in the tax rate.

Highlights

Scope of application: To enjoy the tax exemption, the resident company must own the qualifying technology. Therefore, where technology is licensed to a resident company that sub-licenses the technology to other parties, the incentive cannot be applied to the income derived by the resident company from the sub-license arrangement.

Bulletin 82 also confirms the validity of other guidance (i.e. Guoshuihan [2009] No. 212 and Caishui [2010] No. 111) that requires the relevant technology transfer to be registered with the government authorities to enjoy the incentive. For example, a transfer of technology between domestic parties generally must be registered with the science and technology authorities at the provincial level or above, and a transfer by a resident company to a foreign party generally must be registered with the commerce authorities at the provincial level or above. The tax incentive is not available to a technology transfer between two parties that are related through a 100% direct or indirect shareholding.

Calculation of taxable income: The following formula must be used to calculate the taxable income from the transfer of a non-exclusive license of the right to use qualifying technology for five years or more:

Taxable income = Revenue from a transfer of technology – Amortization of relevant intangibles – Relevant taxes and expenses – Period expenses allocated to a transfer of technology

- Revenue from a transfer of technology: The revenue should be recognized at the time the royalties become due by the licensee according to the relevant agreement. The following items, however, are excluded from the revenue from a transfer of technology:
    - Non-technological revenue, such as revenue from the sale of equipment, spare parts and raw materials; and
    - Revenue from the provision of technology-related services, such as technical advisory services or training that is separate from the transfer of technology.

- Amortization of relevant intangibles: Amortization must be calculated according to the EIT law rather than the accounting rules. If the resident company uses the relevant intangibles (i.e. the qualifying technology) for its own operations and also licenses the technology to other parties, a reasonable allocation must be made.
- Relevant taxes and expenses: These are taxes and expenses incurred in the course of a transfer of technology, e.g. transaction taxes (excluding input VAT that may be credited), lawyer's fees, expenses incurred for the conclusion of contracts, etc.
- Period expenses allocated to a transfer of technology: Period expenses (i.e. general administrative expenses, selling expenses and financial expenses, but excluding the above-mentioned amortization, relevant taxes and expenses) that are allocated in proportion to the ratio of the revenue from the transfer of technology to the total revenue in the current year.

Notes:

[1] *Bulletin of the State Administration of Taxation on Enterprise Income Tax Issues for Corporate Partners of Venture Capital Limited Partnerships (Bulletin of the State Administration of Taxation [2015] No. 81) (Chinese version)*

[2] *Bulletin of the State Administration of Taxation on Enterprise Income Tax Issues for Transfer of Licence of the Right to Use Technology (Bulletin of the State Administration of Taxation [2015] No. 82) (Chinese version)*

[3] *Deloitte Tax Newsflash on Circular 116*

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