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投资与税务
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国务院取消 14 项税务行政审批项目

近日，国务院决定取消和下放90项行政审批项目。其中，有14项税务行政审批项目被取消，包括对增值税一般纳税人资格认定审批；申请开具红字增值税专用发票审核等。

财政部、国家税务总局出台新政策鼓励企业重组以及非货币性资产投资

国务院于2014 年发布了国发[2014]14 号《关于进一步优化企业兼并重组市场环境的意见》，该文件中落实和完善财税政策的部分要求财税部门"修订完善兼并重组企业所得税特殊性税务处理的政策，降低收购股权（资产） 占被收购企业全部股权（资产）的比例限制，扩大特殊性税务处理政策的适用范围。抓紧研究完善非货币性资产投资交易的企业所得税、企业改制重组涉及的土地增值税等相关政策"。

鉴于此，财政部和国家税务总局于2014 年年底联合发布了109 号文和116 号文，就上述的"比例限制"、"扩大适用范围"以及"非货币性资产投资"进行了一定明确。

109 号文的主要内容

109 号文的第一条及第二条针对59 号文关于股权收购、资产收购下适用特殊重组的一定条件进行了修改，放宽了股权/资产收购的比例限制：

59号文	109号文
股权收购，收购企业购买的股权不低于被收购企业全部股权的75%	股权收购，收购企业购买的股权不低于被收购企业全部股权的50%
资产收购，受让企业收购的资产不低于转让企业全部资产的75%	资产收购，受让企业收购的资产不低于转让企业全部资产的50%

109号文的第三条，则在59号文的基础上增加如下两种能满足特殊重组的重组类型：

企业重组类型	条件	特殊性税务处理
➢ 100%直接控制的居民企业之间 ➢ 受同一或相同多家居民企业100%直接控制的居民企业之间	➢ 按账面净值划转股权或资产 ➢ 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	➢ 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 ➢ 划入方企业取得的被划转资产，应按其原账面净值计算折旧扣除

此外，109号文追溯到2014年1月1日，对109号文发布前尚未处理完结的企业重组税务事项有效。

116号文的主要内容

116号文的内容是对原仅适用于上海自由贸易试验区的91号文的延伸，将非货币性资产投资的优惠政策复制到全国范围。

116号文的主要内容如下：

企业	税务处理
投资企业	➢ 投出非货币性资产产生所得的税务处理： 非货币性资产转让所得 = 非货币性资产评估后的公允价值 – 计税基础 （该所得可在不超过5年期限内，分期均匀计入相应年度的应纳税所得额，计算企业所得税。 转让收入确认时点：投资协议生效并办理股权登记手续） ➢ 取得被投资企业股权的税务处理： 取得股权的计税基础 = 非货币性资产的原计税成本 + 每年确认的非货币性资产转让所得 （该取得股权的计税基础，将分期逐年进行调整）
被投资企业	取得非货币性资产的计税基础 = 非货币性资产的公允价值

对于投资企业而言，若5年内出现转让取得的股权、收回投资、注销，则上述递延纳税政策终止，将一次性计算缴纳企业所得税。

116号文所称的非货币性资产投资，包括以非货币性资产出资设立新的居民企业以及将非货币性资产注入现存的居民企业。而企业发生非货币性资产投资，若符合59号文特殊重组的规定.，也可以采用特殊重组的税务处理。

此外，和109号文一样，116号文也追溯到2014年1月1日，对116号文发布前尚未处理完结的非货币性资产投资事项有效。

跨国公司向境外关联方支付费用将面临更为严格的审查

2015 年 3 月 18 日，国家税务总局（以下简称“税务总局”）公布了《关于企业向境外关联方支付费用有关企业所得税问题的公告》（国家税务总局公告 2015 年第 16 号，以下简称“16 号公告”）及其解读（以下简称：总局公告解读），进一步明确了企业向境外关联方支付费用相关的转让定价问题。16 号公告所涵盖的内容包括所有向境外关联方支付的费用，因此其范围比之前的 146 号文所规定的服务费和特许权使用费更广。针对企业向境外关联方支付费用，16 号公告在继续强调相关交易应当符合独立交易原则的同时，又规定了四类费用“在计算企业应纳税所得额时不得扣除”。我们认为，16 号公告是税务总局的又一项落实税基侵蚀和利润转移(BEPS)行动计划的重要举措。

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The State Council cancelled 14 tax administrative approval items

Recently, the State Council decided the cancelation and devolution of 90 items of administrative examination and approval. Among them, 14 items of tax administrative examination and approval items were cancelled, including the approval of the cognizance of the value-added tax general taxpayer qualification; examination for negative VAT special invoices issuance application etc.

MOF and SAT issued new regulations to encourage corporate restructuring and investment with non-monetary assets

The State Council issued a circular Guofa [2014] No.14 “Guidelines on Further Optimizing Market Environment for M&A Restructuring”, which requires finance and tax authorities to “amend the regulations governing special tax treatment for M&A restructuring activities, relax the ratio limit on the acquired shares (assets) out of the total shares (assets) of the acquiree entity, broaden the scope for special tax treatment and release relevant regulations on Corporate Income Tax (CIT) treatment for investment with non-monetary assets”.

As a response, the MOF and SAT jointly issued Circular 109 and Circular 116 respectively in December 2014 to clarify further regarding the above mentioned "ratio limit", "scope broadening" and "investment with non-monetary assets".

Main contents of Circular 109

Articles 1 & 2 of Circular 109 relax the "ratio limits" in relation to share or asset acquisition to enjoy special restructuring under Circular 59:

Circular 59	Circular 109
For a share acquisition, the shares acquired should be at least 75% of the total shares of the acquire entity	For a share acquisition, the shares acquired should be at least 50% of the total shares of the acquire entity
For an asset acquisition, the assets acquired should be at least 75% of the total shares of the acquire entity	For an asset acquisition, the assets acquired should be at least 50% of the total shares of the acquire entity

Article 3 of Circular 109 adds the following two additional situations which can qualify for special restructuring:

Restructuring situation	Conditions	Special tax treatment
➢ The PRC transferor and the PRC transferee have a 100% direct-investment holding relationship ➢ The PRC transferor and the PRC transferee are 100% directly owned by the same PRC shareholder or the same group of PRC shareholders	➢ The shares or assets will be assigned （"划转"） with net book value (NBV) ➢ The assignment （"划转"）is conducted for reasonable commercial purposes and not for tax purposes such as reduction of taxes, exemption of taxes or deferral of taxes ➢ The original operating activities of those shares or assets assigned （"划转"）should not be changed within 12 months of the assignment ➢ Neither the transferor or the transferee will recognize profit/loss for accounting purpose	➢ Neither the transferor or the transferee needs to recognize income derived from the assignment ➢ The tax basis of the shares/assets received by the transferee shall be based on the original NBV of the transferor ➢ The depreciation of the assets received by the transferee shall be calculated with the basis of the original NBV

Circular 109 took effect 1 January 2014 and is valid for corporate restructuring cases unresolved before the issuance date of the circular.

Main contents of Circular 116

The CIT treatment for investment with non-monetary assets under Circular 91, which was adopted for entities in Shanghai Pilot Free Trade Zone, has been expanded to the rest of China due to the release of the Circular 116.

Entity	Tax treatment
Investor	➢ Tax treatment for the gains derived from investment with non-monetary assets Investment gains = fair market value (FMV) of the invested assets – tax basis of the assets (Investment gains can be realized equally for no more than five years for CIT purposes. The investment gains will be realized when the investment agreement becomes effective and relevant registrations have proceeded.) ➢ Tax treatment for the shares of the investee obtained Tax basis of the shares obtained = the original tax basis of the invested assets + investment gain realized each year (The tax basis should be adjusted each year in line with the investment gain realized.)
Investee	Tax basis of the non-monetary assets obtained = FMV

If the investor later transfers the shares obtained or retracts those investments or is liquidated, the above tax deferal treatment is terminated and all the gains are immediately subject to CIT.

Circular 116 also adds that investment with non-monetary assets includes situations when a new PRC resident enterprise is established with non-monetary assets or an existing PRC resident enterprise is injected with such assets. When the entity conducts investment with non-monetary assets and it also qualifies for special restructuring under Circular 59, the entity can elect such special tax treatment stipulated in Circular 59.

Similar to Circular 109, Circular 116 also took effect 1 January 2014 and is valid for investment cases unresolved before the issuance date of the circular.

Further scruting on intra-group outbound payments under way

On March 18, 2015, the State Administration of Taxation (SAT) released the Public Notice Regarding Certain Corporate Income Tax Matters on Outbound Payments to Overseas Related Parties (SAT Public Notice [2015] No.16, hereinafter referred to as the "Public Notice 16") as well as its official Interpretation (hereinafter referred to as the "SAT's Interpretation"). Public Notice 16, together with the SAT's Interpretation, further set out SAT's position from a transfer pricing perspective in relation to the outbound payments. Compared to Circular 146, Public Notice 16 deals with all types of outbound payments to overseas related parties, rather than focusing on outbound service fee and royalty fee payments. Public Notice 16 reiterates that outbound payments to overseas related parties should follow the arm's length principle, and more importantly, specifies four types of payments that should not be deductible for corporate income tax (CIT) purpose. It is considered that Public Notice 16 is SAT's another important enforcement in response to the action plan on base erosion and profit shifting (BEPS).

The newsletter is merely provided to our clients and those who have interest in our business for reference. We'll do our best to ensure the accuracy of the information in the newsletter. We have to remind you that the content in the newsletter is abstracted from relevant documents, and therefore in practice the original documents should be used for reference. Meanwhile, we welcome all of you to consult professionals in our firm regarding the information in the newsletter, and also welcome all of you visit our website www.deancpa.com.cn. We will render affordable and value-added services to our clients. If there is a discrepancy between Chinese and English versions, Chinese version will prevail.

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