

税务快讯

新版《高新技术企业认定管理工作指引》出台

继今年初科技部、财政部和国家税务总局联合发布新修订的《高新技术企业认定管理办法》(国科发火[2016]32号,以下简称“新办法”)后,三部委于2016年6月22日联合发布了《高新技术企业认定管理工作指引》(国科发火[2016]195号,以下简称“新指引”)。新指引作为新办法的配套文件,自2016年1月1日起执行。

政策背景

企业所得税法规定,企业所得税的法定税率为25%,但对国家需要重点扶持的高新技术企业,可减按15%的税率征收企业所得税。为此,三部委曾于2008年先后发布《高新技术企业认定管理办法》(国科发火[2008]172号,以下简称“原办法”)以及《高新技术企业认定管理工作指引》(国科发火[2008]362号,以下称“原指引”),为高新技术企业的认定管理工作建立了相关规范。

随着近年来科学技术的发展,原办法与指引已无法充分适应现行需求,实践中反映出高新技术领域范围与当下产业现状不符,对中小企业支持力度不够等问题。在此背景下,新办法应运而生;与之配套的新指引也在历时长久的意见征询和修订讨论后出台。新办法与新指引分别取代原办法与原指引,自2016年1月1日起生效。

变化要点

完善认定评价体系

	新指引相关规定	简评
企业年限		
	• “须注册成立一年以上”是指企业须注册成立365个日历天数以上;“当年”、“最近一年”和“近一年”都是指企业申报前1个会计	• 明确新办法中对年限的具体定义

年度；“近三个会计年度”是指企业申报前的连续3个会计年度（不含申报年）；“申请认定前一年内”是指申请前的365天之内（含申报年）。

知识产权

- 不具备**知识产权**的企业不能认定为高新技术企业。
- 高新技术企业认定中，对企业知识产权情况采用**分类评价方式**，其中：发明专利（含国防专利）、植物新品种、国家级农作物品种、国家新药、国家一级中药保护品种、集成电路布图设计专有权等**按Ⅰ类评价**；实用新型专利、外观设计专利、软件著作权等（不含商标）**按Ⅱ类评价**。
- 按Ⅱ类评价的知识产权在申请高新技术企业时，仅限使用一次。
- 在申请高新技术企业及高新技术企业资格存续期内，知识产权有多个权属人时，只能由一个权属人在申请时使用。
- 申请认定时专利的有效性以企业申请认定前获得授权证书或授权通知书**并能提供缴费收据**为准。
- 发明、实用新型、外观设计、集成电路布图设计专有权可在国家知识产权局网站查询专利标记和专利号；**国防专利**须提供国家知识产权局授予的国防专利证书；**植物新品种**可在农业部植物新品种保护办公室网站和国家林业局植物新品种保护办公室网站查询；**国家级农作物品种**是指农业部国家农作物品种审定委员会审定公告的农作物品种；**国家新药**须提供国家食品药品监督管理局签发的新药证书；**国家一级中药保护品种**须提供国家食品药品监督管理局签发的中药保护品种证书；软件著作权可在国家版权局中国版权保护中心网站查询软件著作权标记（亦称版权标记）。
- 取消原指引中“核心自主知识产权”的描述，明确知识产权对高新技术企业认定的必要性
- 增加知识产权的分类评价方式（Ⅰ类/Ⅱ类），该分类与创新能力评价打分权重相挂钩。同时明确，Ⅱ类知识产权在申请高新技术企业资格时仅限使用一次
- 强调知识产权权属，不再接受“五年期以上全球独占许可”方式
- 明确如何认定专利的有效性，并增加国防专利、植物新品种、国家级农作物品种、国家新药、国家一级中药保护品种的专利判定方法

高新技术产品（服务）

- **主要产品（服务）**是指高新技术产品（服务）中，拥有在技术上发挥核心支持作用的知识产权的所有权，且收入之和在企业同期高新技术产品（服务）收入中超过**50%**的产品（服务）。
- **总收入**是指收入总额减去不征税收入。
- 增加主要产品（服务）的概念，并强调了核心支持作用知识产权所有权及收入比例要求
- 明确总收入的计算口径

科技人员占比

- **企业科技人员**是指直接从事研发和相关技术创新活动，以及专门从事上述活动的管理和提供直接技术服务的，累计实际工作时间在183天
- 将原先的科技人员及研究开发人员统一归为科技人员；并明确人数计算口径。

以上的人员，包括在职、兼职和临时聘用人员。

- 企业当年职工总数、科技人员数均按照全年月平均数计算。

月平均数 = (月初数 + 月末数) ÷ 2

全年月平均数 = 全年各月平均数之和 ÷ 12

研发活动及费用归集范围

- 试验费用包括新药研制的临床试验费、勘探开发技术的现场试验费、田间试验费等。

• 其他费用是指上述费用之外与研究开发活动直接相关的其他费用，包括技术图书资料费、资料翻译费、专家咨询费、高新科技研发保险费，研发成果的检索、论证、评审、鉴定、验收费用，知识产权的申请费、注册费、代理费，会议费、差旅费、通讯费等。此项费用一般不得超过研究开发总费用的 20%，另有规定的除外。

• 企业在中国境内发生的研究开发费用，是指企业内部研究开发活动实际支出的全部费用与委托境内其他机构或个人进行的研究开发活动所支出的费用之和，不包括委托境外机构或个人完成的研究开发活动所发生的费用。

• 销售收入为主营业务收入与其他业务收入之和。

• 主营业务收入与其他业务收入按照企业所得税年度纳税申报表的口径计算。

指标评价体系

• 知识产权、科技成果转化能力、研究开发的组织管理水平、成长性指标等四项指标，用于评价企业利用科技资源进行创新、经营创新和取得创新成果等方面的情况。

• 依照《促进科技成果转化法》，科技成果是指通过科学研究与技术开发所产生的具有实用价值的成果（专利、版权、集成电路布图设计等）。科技成果转化是指为提高生产力水平而对科技成果进行的后续试验、开发、应用、推广直至形成新产品、新工艺、新材料，发展新产业等活动。

• 科技成果转化形式包括：自行投资实施转化；向他人转让该技术成果；许可他人使用该科技成果；以该科技成果作为合作条件，与他人共同实施转化；以该科技成果作价投资、折算股份或者出资比例；以及其他协商确定的方式。

• 研究开发组织管理水平由技术专家根据企业研究开发与技术创新组织管理的总体情况，结合以下几项评价，进行综合打分。（1）制定了企

• 明确将试验费用纳入研发费用归集；并对其他费用项目作了更详尽的列举，将其其他费用占比从 10% 提高到 20%

• 明确将委托个人进行研发的支出纳入研发费用归集口径

• 明确销售收入的计算口径

• 将单一定量评价体系改为定性与定量结合的评价体系，新增四个指标项下的评价维度及分值

• 对科技成果及科技成果转化进行明确定义，对转化形式做具体的说明

• 更新研发组织管理水平（包括辅助账的建立）的评价体系，使之更为全面、合理

• 对企业成长性进行评价时将总资产增长率改为净资产增长率

业研究开发的组织管理制度，建立了研发投入核算体系，编制了研发费用辅助账；（2）设立了内部科学技术研究开发机构并具备相应的科研条件，与国内外研究开发机构开展多种形式的产学研合作；（3）建立了科技成果转化的组织实施与激励奖励制度，建立开放式的创新创业平台；（4）建立了科技人员的培养进修、职工技能培训、优秀人才引进，以及人才绩效评价奖励制度。

- 由财务专家选取企业净资产增长率、销售收入增长率等指标对企业成长性进行评价。

细化认定材料内容

从材料数量上，新指引对于申请高新技术企业认定提交材料的要求从原指引下的 5 项增加为 8 项。

从材料内容上，新指引不仅细化了原指引下技术创新活动的证明材料，为创新能力评价工作提供基础，还新增包括了企业职工和科技人员情况说明材料以及近三个会计年度企业所得税年度纳税申报表（包括主表及附表）等内容。

调整中介机构要求

新指引仍然要求由符合条件的中介机构为高新技术企业出具专项审计报告或鉴证报告。新指引将注册会计师和税务师一并作为认可的执业资质，同时规定承担认定工作当年的注册会计师或税务师人数占中介机构职工全年月平均人数的比例不低于 30%，相对应原指引规定的“不低于 20%”有所提高。

对于中介机构存在工作严重失误或弄虚作假等行为的，新指引将原指引罚则规定的“取消其参与认定工作资格”改为“3 年内不得参与高新技术企业认定相关工作”。

改进评审专家标准

新指引对参与高新技术企业评审的专家条件，选取办法及职责做了更为细致的规定，主要调整包括：

- 规定评审工作除技术专家外，还需要财务专家共同参与，分别从技术指标和财务指标进行评价打分
- 明确选取技术专家和财务专家需符合的具体条件
- 要求每个企业的评审专家不得少于 5 人(其中技术专家不少于 60%，至少有 1 名财务专家)
- 将专家库的备选专家人数从不少于评审专家的 5 倍减少到 3 倍

加强监督管理力度

2016 年初发布的新办法增加了“监督管理”章节，明确要求科技部、财政部和税务总局建立随机抽查与重点检查机制，加强对各地高新技术企业认定管理工作的监督检查。此次新指引明确并细化了新办法中监督管理工作的具体内容，包括认定环节以及后续管理环节中对认定管理工作

的重点检查、企业年报、复核、更名及重大变化事项的处理、异地搬迁以及其他等相关规定，后续监管力度明显增强。

明确新旧指引过渡事项

三部委同时明确，2016年1月1日前已按原办法认定的仍在有效期内的高新技术企业，其资格依然有效，按照税法有关规定享受企业所得税优惠政策。同时，按原办法认定的高新技术企业，在2015年12月31日前发生有关情况且已经对此做出处罚决定的，仍按原办法相关规定进行处理，认定机构5年内不再受理企业认定申请的处罚执行至2015年12月31日止。

解读与建议

相比原指引，此次出台的新指引从高新技术企业的认定管理角度提供了更加清晰的指导，增加了高新技术企业评审的客观性和公平性；同时也对高新技术企业资质的申请提出了更为严格的要求，强调知识产权的质量与企业的创新能力，注重加强知识产权和企业高新产品（服务）的关联性。从监管管理角度，新指引引入了诸多高新技术企业报告义务，未来针对高新技术企业的检查也将渐趋规范化、规模化和常态化。

2016年作为新办法和新指引落地实施的第一个年度，拟申请及正在享受高新技术企业税收优惠政策的企业尤其要注意认定条件的变化和对企业更严格的合规要求。我们建议企业应采取以下措施：

- 结合自身的实际情况，依照新办法和新指引重新评估判断企业是否符合享受高新技术企业资质的条件，应重点关注高新技术领域、知识产权所有权、高新技术产品（服务）、研究开发费用、科技人员等认定口径的变化及相关联系；
- 重视文档管理的合规性要求，提高合规性文档(涉及企业高新产品（服务）营收、知识产权、人力资源、研发活动及费用等方面)的管理水平；
- 建立完善企业风险控制体系，将高新技术企业资质申请及税收优惠政策的享受作为企业内控核查的组成部分，从技术、法务、财务及税务等多角度实施核查，避免合规性风险，并积极应对可能出现的问题；
- 就新指引的落地实施事项积极与有关政府部门保持必要的沟通，或咨询专业机构，寻求意见和支持。

德勤研发与政府激励服务团队在科技创新优惠政策领域具备丰富的专业服务经验，能够在以下方面为企业提供助力：

优惠申请协助（高新技术企业资格、研发费用加计扣除等）——帮助企业最大程度地享受优惠政策带来的财务效益

流程梳理、系统改造及知识转移——借助德勤管理工具、协助进行流程和系统的落地改造，并通过培训等实现知识转移

政府沟通、检查稽查协助及税务争议解决——基于与监管机构良好沟通及丰富的经验，协助企业妥善应对质疑和争议

集团研发架构设计及整体税务安排——合理安排集团研发职能，提高公司治理效率

创新企业投资全流程管理——协助创新企业吸引投资，覆盖进入、运营、退出的全流程策划

如您在科技创新优惠政策相关领域有任何问题，请随时和德勤研发与政府激励服务团队取得联系。

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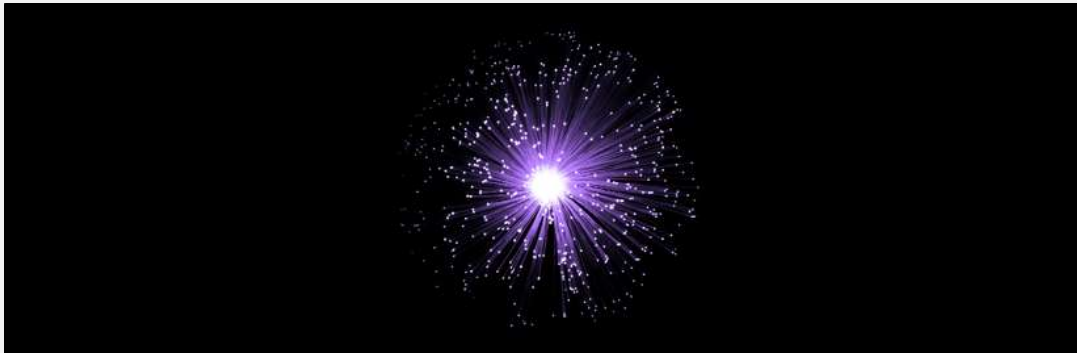
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Tax Newsflash

New Guidelines Issued for Recognition of HNTTE Status

On 22 June 2016, China's Ministry of Finance, State Administration of Taxation and Ministry of Science and Technology jointly issued revised guidelines for the recognition of High-New Technology Enterprise (HNTTE) status ([Guo Ke Fa Huo \[2016\] No. 195](#) ("Guidelines")). The Guidelines, which were issued after an extensive consultation procedure, expand on the criteria to qualify as an HNTTE and the procedures for obtaining HNTTE status, which are contained in the revised administrative measures issued on 29 January 2016 ([Guo Ke Fa Huo \[2016\] No. 32](#) ("Administrative Measures")).

HNTTE status is beneficial because qualifying companies are subject to a 15% enterprise income tax, rather than the standard 25% rate. The Guidelines and the Administrative Measure apply retroactively as from 1 January 2016, and they replace the previous guidance dating from 2008, which had become outdated.

Highlights of the Guidelines

Rules	Comments
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Relevant periods:

• A company applying for HNTTE status must be "incorporated for at least one year," which means that the enterprise

• The Guidelines provide detailed definitions of the relevant periods used in

must have been incorporated for at least 365 calendar days. "The current year," "the most recent year" and "the recent year" mean one fiscal year before an application for HNTE status is submitted. "The most recent three fiscal years" means three continuous fiscal years before an HNTE application is submitted (not including the year in which the application is filed). "Within one year before the application of recognition" means within 365 days before the application (including the year the application is made).

Intellectual property:

- Enterprises that do not own **intellectual property (IP) rights** are not eligible for HNTE status.
- An assessment for HNTE status is made based on the IP rights held by the enterprise. Patents for inventions (including national defense patents), new varieties of plants, state-level agricultural varieties, new state-level medicines, state-level-1 protected traditional Chinese medicines, exclusive rights to layout-design of integrated circuits, etc. are under **Category I**; and new utility model patents, design patents, software copyrights (excluding trademarks) are under **Category II**.
- IP rights that fall under Category II may be used only once for the application of HNTE status.
- If there is more than one owner of IP during the application process and during the period of HNTE status, the IP may be used in the application only by one of the owners.
- The validity of patents will be determined based on the authorization certificate/ notice received before the application is made and **any relevant payment receipts**.
- Patent marks and patent numbers for inventions, utility models, design patents, and exclusive rights to layout-designs of integrated circuits should be able to be verified on the website of the State Intellectual Property Office (SIPO). **National defense patents** must have national defense patent certificates authorized by SIPO. **New varieties of plants** must be able to be verified on the websites of New Varieties of Plants Protection Office of the Ministry of Agriculture/ State Forestry Administration. **State-level agricultural varieties** are those approved by the State Agricultural

the standard for the recognition of HNTEs.

- The description of the "core proprietary IP right" found in the 2008 rules is eliminated. The Guidelines clarify that the enterprise must own IP rights to qualify for HNTE status. Specifically, "a global exclusive license to use the IP for at least five years" is no longer permitted.
- The categorization of IP rights is newly added and gives sets weights to factors evaluated in determining the innovative capability of the enterprise. The Guidelines emphasize that IP rights under Category II may be used only once for an HNTE status application.
- The Guidelines clarify how to determine the validity of patents and provide the methods for determining when there is a national defense patent, new varieties of plants, state-level agricultural varieties, new state-level medicines, state-level-1 protected traditional Chinese medicine.

Varieties Committee of the Ministry of Agriculture. **New state-level medicine** must have a New Medicine Certificate issued by the State Food and Drug Administration. **State-level-1 protected traditional Chinese medicine** must be supported by a Protected Traditional Chinese Medicine Certificate issued by the State Food and Drug Administration. Marks of software copyrights (also called "copyright marks") must be verified on the website of Copyright Protection center of the National Copyright Administration.

High-New technology products/ services:

- **The main products/services** are those supported by the core IP owned by the enterprise. The revenue from these products/services must exceed 50% of the revenue derived by all high-new technology products/services of the same periods.
- **Total revenue** is gross income after deducting nontaxable income.
- The Guidelines provide definitions of the main products/services and emphasize the ownership of core IP and the ratio of revenue.
- The Guidelines clarify how total revenue will be calculated.

Technical personnel:

- **Technical personnel**, including full and part-time employees and temporary personnel, must be directly engaged in R&D and relevant technical innovation activities, or specifically engaged in management or technical services relating to those activities. The aggregate actual working period of technical personnel must exceed 183 days.
- The Guidelines consolidate technical personnel and R&D personnel into a single classification, "technical personnel," and clarify how head count is determined.
- The total number of employees of the current year and technical personnel must be calculated based on **the annual monthly average headcount**.
Monthly average headcount = (headcount at the beginning of the month + headcount at the end of the month) ÷ 2
Annual monthly average headcount = the sum of the monthly average headcount ÷ 12

R&D activities and scope of R&D expenses:

- **Experimental expenditure** includes clinical trial fees for researching new medicines, onsite expenditure incurred for exploration and development technologies, field experiment expenditure, etc.
- **Other expenditure** is expenditure excluded from the above expenditure.
- The Guidelines specify that experiment expenditure is included within the scope of R&D and the guidelines provide more examples of "other expenditure." The proportion of other expenditure is increased from 10% to 20%.

but directly related to R&D activities, including expenses for technical books and materials, translations of materials, expert consulting, insurance for R&D of high-new technology, searches, analyses, assessments, identification, assessment and acceptance of R&D achievements, applications, registration, and agency fees for IP, travel and conference expenses, telecommunications, etc. The total amount of other expenditure may not exceed 20% of the total amount of R&D expenses, unless otherwise provided by different rules.

- R&D expenses incurred in China are the total R&D expenses incurred by the enterprise for internal R&D activities, as well as expenditure incurred by other domestic institutions/ individuals for R&D activities that have been assigned by the enterprise.

- Sales are the sum of main operating income and other operating income.

- The calculation of main operating income and other operating income must be based on the annual enterprise income tax return.

Evaluation systems:

- The Guidelines provide for four indicators that must be examined to determine the innovative capabilities of an enterprise: (1) the IP rights owned by the enterprise; (2) the ability of the enterprise to convert R&D into productivity; (3) the ability of the enterprise to organize and manage R&D activities; and (4) the growth capability

- Under the Law Promoting the Converting of Technical Achievements, technical achievements are those with practical value that are achieved as a result of scientific research and technical development, and include patents, copyrights, layout-designs of integrated circuits, etc. The ability to convert technical achievements means conducting activities to improve productivity levels, such as follow-up experiments, development, application and promotion of technical achievements in order to develop new products, technologies and materials.

- Converting technical achievements includes converting by own investments, transferring the technical achievements to other parties, permitting other parties to use the technical achievements, converting the

- Expenditure incurred for assigning responsibility to individuals for R&D activities are within the scope of R&D expenses.

- The Guidelines clarify the calculation of sales income.

- The Guidelines use qualitative and quantitative evaluation indicators (as opposed to a single quantitative evaluation). The scope and rating of the four indicators are new.

- The Guidelines clearly define the term “technical achievements” and what it means to convert technical achievements into productivity, and the methods for converting technical achievements are explained in detail.

- The evaluation of organization and management of R&D activities is updated, and is more comprehensive and reasonable.

- The total asset growth rate is replaced by the net asset growth rate in the evaluation of growth capability.

technical achievements with other parties under cooperative arrangements, using technical achievements to invest or convert shares/ the investment ratio and other methods determined by negotiation.

- Technical experts must be appointed to make an assessment of capabilities of the applicant to organize and manage R&D and innovation activities, and the Guidelines specify the methodologies that must be used in making this assessment. The following must be examined: (1) the R&D system, the accounting system for R&D input and the ledger for R&D expenses; (2) whether the enterprise has set up an institution for carrying out internal scientific and technical R&D, and has the ability to conduct the R&D, and whether it is collaborating with domestic and international R&D institutions; (3) whether the enterprise has established systems for organizing, processing and carrying out innovative technical projects and the corresponding incentive or award systems for its employees; and (4) whether the enterprise provides training to technical experts and employees, and has systems for attracting talent and conducting performance evaluations.

- The net asset growth rate, sales income growth rate and other indicators can be selected by financial experts when evaluating the growth capability of an enterprise.

HNTE applications:

The Guidelines increase the number of application documents from five to eight.

The Guidelines clarify what must be included in the supporting documents that constitute the basis for the evaluation of innovation ability, and add the requirements that explanatory documents relating to employees and technical personnel be included. Additionally, the annual enterprise income tax returns for the most recent three fiscal years (including main form and appendix), must be included.

Requirements relating to service firms:

R&D expenses must be verified by reports issued by qualified services firms (which may be composed of certified public accountants (CPAs) or tax accountants (TAs)). Service firms that fail to comply or that have engaged in serious misconduct or included false information in their reports will not be permitted to be involved in HNTE status recognition for three years.

The Guidelines require that the number of CPAs and TAs for the year who are used to support applications for HNTE status may not be less than 30% of the annual monthly average headcount of employees of the service firm (increased from "no less than 20%" in the 2008 guidelines).

Requirements for experts:

The Guidelines clarify and revise the requirements for expert reviewers and provide detailed rules for selecting expert reviewers and define the scope of their duties.

The main clarifications/revisions are as follows:

- There must be both technical and financial experts, and assessments will be made based on both technical and financial indicators.
- The Guidelines specify detailed requirements for selecting qualifying technical and financial experts. There must be at least five expert reviewers for each enterprise, and at least 60% of all reviewers must be technical experts and there must be at least one financial expert on the team.
- The number of alternate experts is reduced from five times the number of expert reviewers to three times.

Post-HNTE status supervision:

The Administrative Measures require the relevant national and provincial government authorities to set up a mechanism to conduct random inspections and examinations in order to strengthen the supervision of HNTEs.

The Guidelines clarify the scope of supervision activities, which include examinations for recognition, annual reports, any relocations, etc. Post-recognition supervision clearly has been enhanced.

Transition rules:

The Guidelines clarify that enterprises recognized as HNTEs before 1 January 2016 under the 2008 rules and that currently benefit from HNTE status still are qualified and eligible to enjoy the enterprise income tax benefits. For HNTEs that were recognized under the 2008 rules, but whose status was revoked and not permitted to reapply for HNTE status for five years, the blackout period ended on 31 December 2015.

Comments

The Guidelines provide clear and practical guidance on the administration of the recognition of HNTE status, but they impose stricter requirements to qualify, emphasize the need for IP ownership and innovation, and focus on strengthening the connection between IP and high-new products/services. The Guidelines also introduce reporting obligations on HNTEs. In future, examinations of HNTEs will be more standardized.

Enterprises that intend to apply for HNTE status or that already are enjoying the enterprise income tax benefits accorded to HNTEs should be aware of the changes in the recognition requirements and the stricter compliance requirements, and should take the following actions:

- Re-evaluate whether they are eligible for HNTE status in accordance with the Administrative Measures and Guidelines, and understand the changes in the stipulations regarding fields of high-new technologies, IP ownership, high-new products/services, R&D expenses, technical personnel, etc.
- Comply with the new requirement relating to documentation, and improve the management of documentation (related to the revenue of high-new products/ services, IP rights, human resources, R&D activities and expenditure, etc.)
- Establish or improve risk control procedures, which shall be able to help the enterprises review the HNTE status recognition application and the eligibility of tax benefits entitlement from angles of technology, legal, accounting and tax, etc., to avoid compliance risks and be prepared for any issues that may arise.
- Continue to monitor local administration practices relating to implementation of the Guidelines, and obtain professional assistance, as needed.

Deloitte's team of R&D and Government Incentives professionals can assist enterprises with the following:

Applying for preferential treatment (e.g. HNTE status and the R&D super deduction): maximizing the financial benefits of applicable preferential policies.

Process re-engineering, system transformation and knowledge transfer: implementing necessary amendments to processes and systems by leveraging Deloitte's proprietary tools, and transfer knowledge by training.

Assistance with tax audits and dispute resolution: responding appropriately to challenges and disputes using effective communications approaches and leveraging rich experience from prior cases.

R&D structuring and planning for group companies: enhancing corporate governance efficiency.

End-to-end advisory services: assisting enterprises in investor attraction, operations and exit strategies.

If you have any questions regarding preferential policies for technology innovation, please contact members of the Deloitte R&D and Government Incentive services team.

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