



税务快讯

境外投资者以分得利润再投资递延纳税政策更新

2018 年 11 月 19 日，国家税务总局公布了 2018 年第 53 号公告（以下简称“53 号公告”），对境外投资者以分配利润直接投资暂不征收预提所得税的操作指引进行了更新。53 号公告自 2018 年 1 月 1 日起施行。

政策背景

为鼓励境外投资者在华投资，国家在 2017 年年底出台激励措施，从 2017 年起，允许境外投资者以分配利润直接投资享受暂不征收预提所得税的优惠政策（以下简称“递延纳税政策”，详情参见 2018 年 1 月 9 日发布的[德勤税务快讯](#)）。今年 9 月，财政部、国家税务总局等部委联合发布财税[2018]102 号文件（以下简称“102 号文”），扩大了该项优惠政策的适用范围。此次发布的 53 号公告系 102 号文在执行层面的指引性文件。

53 号公告概要

根据规定，享受上述递延纳税政策的境外投资者再投资行为，必须在再投资范围、再投资方式、资金来源、资金路径方面符合限定条件。

在 102 号文扩大可适用递延纳税政策的再投资范围基础上，53 号公告进一步在再投资方式、资金路径方面作出了有利于纳税人的解释，因此 102 号文和 53 号公告的施行将扩大递延纳税政策的适用范围。

而在其它方面（如享受递延纳税政策的程序性规则等），53 号公告基本保留了原有的规定。

再投资范围

原规定要求，享受递延纳税政策的再投资对象限于外商投资鼓励类项目，102号文则将其**扩大至所有非禁止外商投资的项目和领域**。因此，53号公告不再要求境外投资者在收回投资、补缴税款或追补享受环节提供有关资料，以证明其再投资对象属于鼓励类投资项目。

再投资方式

根据规定，享受递延纳税政策的再投资方式限于以下类型：

- 新增或转增中国境内居民企业实收资本或者资本公积
- 在中国境内投资新建居民企业
- 从非关联方收购中国境内居民企业股权
- 财政部、税务总局规定的其他方式

53号公告明确，**境外投资者以分得的利润用于补缴其在境内居民企业已经认缴的注册资本**，增加实收资本或资本公积的，属于上述“新增或转增中国境内居民企业实收资本或者资本公积”的情形，在符合其他条件的前提下可以享受递延纳税政策。

资金路径

根据规定，享受递延纳税政策的再投资行为中，用于投资的资金须从利润分配企业的账户直接转入被投资企业或股权转让方账户，在直接投资前不得在境内外其他账户周转。

53号公告明确，境外投资者按照金融主管部门的规定，**通过人民币再投资专用存款账户划转再投资资金，并在相关款项从利润分配企业账户转入境外投资者人民币再投资专用存款账户的当日，再由境外投资者人民币再投资专用存款账户转入被投资企业或股权转让方账户的**，视为符合前述有关资金路径的条件，在符合其他条件的前提下可以享受递延纳税政策。

需要注意的是，53号公告的上述解释虽然在一定程度上放宽了对资金路径的要求，但对于资金划转的时间性要求仍然较高，投资款项转入再投资专户的**当日**即需要进一步划转至被投资企业或股权转让方账户。如果无法在一日内完成上述资金划转即可导致无法享受税收优惠。

另外，对于实践中由于外汇管制原因导致的境内利润分配企业无法将股息作为其境外股东的股权收购款项直接汇往境外股权转让方账户，进而使股东无法享受再投资递延纳税政策的情形，53号公告的发布似乎并未提供十分有效的解决途径。

适用时间

102号文和53号公告自2018年1月1日起施行。具体而言，境外投资者自2018年1月1日及以后取得的股息、红利等权益性投资收益，将其用于对华直接投资且符合有关条件的，即可适用102号文和53号公告的新规定。

2017年1月1日至12月31日期间发生的利润再投资行为，仍适用原规定。

结语

与原规定相比，102号文和53号公告放宽了境外投资者享受递延纳税政策的条件，尤其是扩展了可以适用税收优惠的再投资范围，因此将受到广大境外投资者的欢迎，进一步发挥该项政策的激励效应。对于希望享受该项政策的境外投资者而言，应注意某些交易安排仍会由于条件限制而被排除在政策适用范围之外，需要据此考虑投资方案的制定与调整。同时，一些实践中的事项还有待澄清（例如追补享受递延纳税政策时获得的退税款的处理，哪些具体的股权处置情形将导致补缴税款等），建议有关企业继续关注实践和法规的进展，与税务机关和专业咨询机构就此保持积极沟通。

作者：

上海

朱正萃

合伙人

+86 21 6141 1262

kzhu@deloitte.com.cn

北京

陈莹

高级经理

+86 10 8520 7881

yichen@deloitte.com.cn

毕国辉

经理

+86 10 8520 7547

jebi@deloitte.com.cn

如您有任何问题，请联系国际税收服务团队：

全国和华东区领导人

上海

王鲲

合伙人

+86 21 6141 1035

vicwang@deloitte.com.cn

华北区

北京

张慧

合伙人

+86 10 8520 7638

jenzhang@deloitte.com.cn

华南区

香港

林嘉雪

合伙人

+852 2852 6536

shalam@deloitte.com.hk

华西区

成都

张书

合伙人

+86 28 6789 8008

tonzhang@deloitte.com.cn



Deloitte (“德勤”)泛指一家或多家德勤有限公司(即根据英国法律组成的私人担保有限公司,以下称“德勤有限公司”),以及其成员所网络和它们的关联机构。德勤有限公司与其每一家成员所均为具有独立法律地位的法律实体。德勤有限公司(又称“德勤全球”)并不向客户提供服务。请参阅[关于德勤](#)中有关德勤有限公司及其成员所更为详细的描述。

隐私

感谢您对德勤中国服务的关注。德勤中国希望可以继续使用您的个人资料(特别是姓名及联系信息),以向您发送市场和政策最新动态,以及由德勤中国举办、赞助或宣传之研讨会及其他活动的邀请函。如您日后不希望收到由德勤中国发出的信息,请回复电邮并在邮件主题栏中填上“Unsubscribe”。

如欲更新您的个人资料,请[点击](#)此处。

德勤中国泛指德勤·关黄陈方会计师事务所(香港)、德勤·关黄陈方会计师事务所(澳门)、德勤华永会计师事务所(特殊普通合伙)(中国大陆)以及其于香港、澳门及中国大陆从事业务之关联机构。

本通信中所含内容乃一般性信息,任何德勤有限公司、其成员所或它们的关联机构(统称为“德勤网络”)并不因此构成提供任何专业建议或服务。任何德勤网络内的机构均不对任何方因使用本通信而导致的任何损失承担责任。

© 2018 德勤·关黄陈方会计师事务所(香港)、德勤·关黄陈方会计师事务所(澳门)、德勤华永会计师事务所(特殊普通合伙)(中国大陆)版权所有 保留一切权利。

如您日后不希望收到关于该话题的信息,请回复电邮并在邮件主题栏中填上“取消订阅”。

Deloitte.

China | Tax & Business Advisory | International Tax Services | 23 November 2018

[中文](#)



Tax Newsflash

New guidance relaxes requirements for foreign investors to benefit from deferral of dividend withholding tax

China's State Administration of Taxation (SAT) issued guidance (Bulletin 53) on 19 November 2018 that updates previous guidance on the deferral of withholding tax on dividends distributed to foreign investors and reinvested in China. Bulletin 53 applies retroactively as from 1 January 2018.

Background

With a view to encouraging and expanding foreign investment in China, in January 2018, the government announced (Circular 88) that the 10% withholding tax on profits

distributed by a Chinese resident enterprise to a foreign investor will be deferred if the profits are used to invest in domestic projects encouraged by China. The deferral applies until the foreign investor disposes of the reinvestment in China. The incentive applies retroactively as from 1 January 2017 (see [Deloitte Tax Newsflash on 9 January 2018](#)).

Under the original guidance, four conditions must be satisfied to benefit from the deferral:

1. *Profit distribution*: There must be a distribution of profits (cash or non-cash) in the form of dividends or other equity investment income arising from an actual distribution of retained earnings realized by PRC resident enterprise, including undistributed earnings from previous years.
2. *Form of reinvestment*: The distributed profits must be used in a "direct equity investment," such as:
 - a. Increasing the paid-in capital or capital reserves of an existing Chinese resident enterprise by a new capital injection or by transferring retained earnings to capital;
 - b. Setting up a new Chinese resident enterprise;
 - c. Acquiring an equity interest in an existing Chinese resident enterprise from an unrelated party; or
 - d. Other forms of investment as specified by the Ministry of Finance (MOF) or SAT.
3. *Route of reinvestment*: Cash distributions used for reinvestment must be transferred directly by the profit-distributing enterprise to the invested enterprise or equity transferor.
4. *Scope of reinvestment*: The profits must be reinvested in encouraged projects, i.e. the business activities of the invested enterprises must fall within the scope of encouraged industries as found in the Catalogue for the Guidance of Foreign Investment Industries or the Catalogue of Priority Industries for Foreign Investment in the Central-Western Region.

The MOF, SAT and other government authorities issued more guidance (Circular 102) in September 2018 that expands the scope of the reinvestment to benefit the deferral incentive. Bulletin 53 was issued to update the previous guidance to bring it in line with Circular 102.

Highlights of Bulletin 53

Bulletin 53 expands the scope of possible reinvestments according to Circular 102, and provides clarifications for determining whether the conditions relating to the form and route of the reinvestment are satisfied.

The documentation requirements and application process generally remain unchanged, except for the documents required to substantiate whether the reinvestment project is an encouraged project (see below).

Scope of reinvestment

Circular 102 removed the requirement that the distributed profits be reinvested in encouraged projects so that a foreign investor may enjoy the withholding tax deferral provided the

relevant project is permitted in China and other certain conditions are satisfied. To align with this change, Bulletin 53 no longer requires a foreign investor to produce documents to substantiate that the reinvested project is encouraged at the time the investor applies for deferral.

Form of the reinvestment

As noted above, the distributed profits must be used in a direct equity investment. Questions have arisen as to whether this criteria is met where a foreign investor uses the distributed profits to fulfill its commitment to contribute to the registered capital of an invested enterprise but it has not yet made the contribution, given the registered capital is not increased after the capital injection. However, Bulletin 53 confirms that this situation falls within the scope of increasing paid-in capital, etc. and, therefore, the foreign investor should be entitled to deferral, provided all other conditions are satisfied.

Route of reinvestment

Bulletin 53 provides that the requirement that the funds used for reinvestment be transferred directly by the profit-distributing enterprise to the invested enterprise or equity transferor will be deemed to be met where the RMB funds used for the reinvestment are first transferred from the profit-distributing enterprise to the RMB reinvestment dedicated account ("reinvestment account") of the foreign investor, and, ***on the same day that the funds are transferred to the reinvestment account***, the funds are further transferred to the account of the invested enterprise or equity transferor.

It appears that Bulletin 53 slightly relaxes the route requirement, even though the one-day back-to-back remittance still could be an impediment for certain investors.

In a situation where a foreign investor uses Chinese-source dividends as consideration to purchase the equity of a Chinese company from a foreign seller, China's foreign exchange rules may prevent the profit-distributing enterprise from directly remitting the dividends to the foreign seller. As a result, the foreign investor will fail the route requirement and will not be eligible for deferral. Bulletin 53 does not seem to address this situation.

Effective date

Circular 102 and Bulletin 53 both apply retroactively as from 1 January 2018 and can be applied to dividends and other equity investment income derived by foreign investors on or after that date and used for direct reinvestment in China, provided the other conditions are satisfied.

The previous guidance is applicable to reinvestments of profits made during the period 1 January to 31 December 2017.

Comments

The new guidance (i.e. Circular 102 and Bulletin 53) should be welcome by foreign investors as it relaxes the conditions for foreign investors to enjoy the deferral of withholding tax on

dividends. Foreign investors that wish to enjoy the incentive may wish to consider whether to adjust their investment plans so that they may qualify for the deferral. However, some practical issues remain unclear, such as whether a refund of withholding tax must be reinvested in China; in which situations previously suspended withholding tax will be recaptured, etc. Foreign investors should monitor future developments and consult with the tax authorities and/or seek professional advice, where necessary.

Authors:

Shanghai

Kevin Zhu

Partner

+86 21 6141 1262

kzhu@deloitte.com.cn

Beijing

Crystal Chen

Senior Manager

+86 10 8520 7881

yichen@deloitte.com.cn

Jessie Bi

Manager

+86 10 8520 7547

jebi@deloitte.com.cn

If you have any questions, please contact:

National & Eastern China

Leader

Shanghai

Vicky Wang

Partner

+86 21 6141 1035

vicwang@deloitte.com.cn

Northern China

Beijing

Jennifer Zhang

Partner

+86 10 8520 7638

jenzhang@deloitte.com.cn

Southern China

Hong Kong

Sharon Lam

Partner

+852 2852 6536

shalam@deloitte.com.hk

Western China

Chengdu

Tony Zhang

Partner

+86 28 6789 8008

tonzhang@deloitte.com.cn



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [About Deloitte](#) for a more detailed description of DTTL and its member firms.

Privacy

Thank you for your interest in Deloitte China services. Deloitte China would like to continue to use your personal information (in particular name and contact details) for the purpose of sending you marketing and regulatory updates, invitations to seminars and other events organized, sponsored or promoted by Deloitte China. If you do not wish to receive further communications from Deloitte China, please send a return email to the sender with the word "Unsubscribe" in the subject line.

If you would like to update your personal information, please click [here](#).

Deloitte China refers to Deloitte Touche Tohmatsu in Hong Kong, Deloitte Touche Tohmatsu in Macau, Deloitte Touche Tohmatsu Certified Public Accountants LLP in the Chinese Mainland and their respective affiliates practising in Hong Kong, Macau and the Chinese Mainland.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the "Deloitte Network") is by means of this communication, rendering professional advice or services. None of the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2018 Deloitte Touche Tohmatsu in Hong Kong, Deloitte Touche Tohmatsu in Macau, and Deloitte Touche Tohmatsu Certified Public Accountants LLP in the Chinese Mainland. All rights reserved.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.