



税务快讯

多项个人所得税优惠衔接事项获明确

2018年12月27日晚，财政部、国家税务总局公布[财税\[2018\]164号文件](#)（以下简称“164号文”），对包括全年一次性奖金、上市公司股权激励、外籍个人免税津补贴、领取企业年金、解除劳动关系一次性补偿收入等在内的多项税收优惠新旧法衔接处理事项作出明确。本期快讯将针对其中广受关注的若干事项进行重点解读。

全年一次性奖金

- 居民个人取得符合规定的全年一次性奖金，在**2021年12月31日前**，不并入当年综合所得，以全年一次性奖金收入除以12个月得到的数额，按照按月换算后的综合所得税率表（以下简称月度税率表），确定适用税率和速算扣除数，**单独计算纳税**。
- 居民个人取得上述全年一次性奖金，也可以**选择**并入当年综合所得计算纳税。
- 自**2022年1月1日起**，居民个人取得全年一次性奖金，应并入当年综合所得计算缴纳个人所得税。
- 国税发[2005]9号中关于原全年一次性奖金计税方法条款从2019年起废止。

德勤观察

根据上述规定，在2019年至2021年的过渡期间，居民个人可选择将其取得的全年一次性奖金单独适用优惠算法计算纳税，或者并入当年综合所得计算纳税。需注意这两种计税方法针对不同收入人群可能会产生不同的影响。对于除奖金以外的年综合所得收入额大于其可以享受的年度扣除额的居民个人，奖金单独计算纳税可能有助于降低个人税负；反之，若除奖金以外的年综合所得收入额尚未超过各项扣除额，则把奖金

并入当年综合所得计税可能更有利于个人充分享受各项扣除额度而降低个人税负。

同时，164号文中的该项过渡政策仅适用于居民个人，对于非居民个人取得的奖金，能否参照居民个人适用优惠算法，尚待政策的进一步明确。

对于在过渡期间发放年终奖金的企业，建议复核其薪酬政策，并提前与员工沟通上述新规的影响，从而帮助员工做出适当的选择，最大程度地享受税改红利。

上市公司股权激励

- **居民个人**取得股票期权、股票增值权、限制性股票、股权奖励等股权激励（以下简称股权激励），符合相关条件原适用财税[2005]35号的优惠计税方法按“工资、薪金所得”征税的，在**2021年12月31日前**，不并入当年综合所得，**全额单独适用综合所得税率表**，计算纳税。
- 居民个人一个纳税年度内取得两次以上（含两次）股权激励的，应合并按上述规定计算纳税。
- 2022年1月1日之后的股权激励政策另行明确。
- 财税[2005]35号等文件中关于原股权激励计税方法条款从2019年起废止。

德勤观察

上市公司股权激励个人所得税优惠政策是否得以延续，也一直是许多企业十分关心的一项议题。在164号文下，居民个人取得的符合条件的股权激励所得，仍区别于年度综合所得，全额单独适用综合所得税率表计税，在一定程度上保留了原有优惠。另外，不同于全年一次性奖金过渡政策三年以后取消的做法，164号文提出2022年1月1日之后的股权激励政策另行明确，这也意味着未来可能仍有股权激励的单独政策出台。

与全年一次性奖金政策类似，164号文有关股权激励的优惠政策只提及居民个人。非居民个人能否参照居民个人适用上述优惠计税方法，尚需关注后续政策规定。

需要注意的是，关于实施股权激励计划的境内企业，现有文件中有关股权激励计划资料报送的规定仍然有效，因此企业仍应及时向税务机关报送相关资料，以避免因未及时履行相关程序而使员工无法顺利享受164号文中的优惠政策。

外籍个人免税津补贴

- **2019年1月1日至2021年12月31日期间**，外籍个人符合**居民个人条件**的，可以选择享受个人所得税专项附加扣除，也可以选择按照相关规定，享受住房补贴、语言训练费、子女教育费等津补贴免税优惠政策，但**不得同时享受**。外籍个人一经选择，在一个纳税年度内不得变更。

- 自 **2022 年 1 月 1 日起**，外籍个人不再享受住房补贴、语言训练费、子女教育费津补贴免税优惠政策，应按规定享受专项附加扣除。

德勤观察

在现行税法下，外籍个人以非现金形式或实报实销形式取得的搬迁、住房、伙食、洗衣补贴，探亲费、语言培训费及子女教育费等补贴，在合理范围内的部分可免征个人所得税。该项免税政策是否会在新税法下得以延续一直备受在华工作的外籍人士关注。

164 号文的上述规定基本平移自专项附加扣除暂行办法征求意见稿中的相关条款（注：该条款曾被写入暂行办法征求意见稿，但并未出现在终稿中）。至此，有关外籍个人免税补贴的衔接规定基本得以明确；在推行国民待遇的同时，三年过渡期的设定体现了确保平稳过渡的理念。

鉴于以上变化，对于拥有大量外籍雇员的企业，建议尽早审视新规定对其现行薪酬福利政策可能带来的影响，及时和外籍员工进行有效沟通，并相应地制定和调整短期和中长期的规划安排。

个人领取企业年金、职业年金

- 个人达到国家规定的退休年龄，领取符合相关规定的企业年金、职业年金，不并入综合所得，全额单独计算应纳税款。不同情况下所适用的计算方法及税率表如下：
 - 按月领取：适用月度税率表计算纳税；
 - 按季领取：平均分摊计入各月，按每月领取额适用月度税率表计算纳税；
 - 按年领取：适用综合所得税率表计算纳税。
- 因出境定居而一次性领取的年金个人账户资金，或个人死亡后，其指定的受益人或法定继承人一次性领取的年金个人账户余额，适用综合所得税率表计算纳税。对个人除上述特殊原因外一次性领取年金个人账户资金或余额的，适用月度税率表计算纳税。
- 财税[2013]103 号文件中关于个人领取年金的计税规定从 2019 年起废止。

解除劳动关系、提前退休的一次性补偿收入

- 个人与用人单位解除劳动关系取得一次性补偿收入（包括用人单位发放的经济补偿金、生活补助费和其他补助费），在当地上年职工平均工资 3 倍数额以内的部分，免征个人所得税；超过 3 倍数额的部分，不并入当年综合所得，单独适用综合所得税率表，计算纳税。
- 个人办理提前退休手续而取得的一次性补贴收入，应按照办理提前退休手续至法定离退休年龄之间实际年度数平均分摊，确定适用税率和速算扣除数，单独适用综合所得税率表，计算纳税。
- 国税发[1999]178 号等系列文件中关于个人取得的一次性经济补偿收入或补贴收入的计税规定从 2019 年起废止。

结语

164 号文件的发布充分体现了国家对政策平稳过渡的持续性和可执行性的考虑。针对纳税人普遍关心的全年一次性奖金、上市公司股权激励等部分现有税收优惠政策，国家设置了三年的合理过渡期限，在过渡期内大体平移现行政策的基础上，根据新税法的实际情况对计税规定作了相应的调整；同时就某些政策设定纳税人选择权利，使纳税人可以更灵活有效地享受税改红利，再一次充分体现了国家减税降费的决心与力度。

值得注意的是，过渡期政策将在三年后取消，因此无论企业还是个人均需未雨绸缪，早做规划。此外，164 号文件中的若干项规定仅适用于居民个人，对于非居民个人的有关事项应如何处理，以及相关政策的后续执行细节，都将有待进一步指引的发布，企业和个人也应对此继续保持关注。

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Tax Newsflash

Guidance issued on transition rules for preferential IIT policies

China's Ministry of Finance and the State Administration of Taxation jointly released guidance (Caishui [2018] No. 164 (Circular 164)) on 27 December 2018 that contains transition arrangements for various preferential individual income tax (IIT) policies that are available before the new IIT law enters into effect (on 1 January 2019).

Annual bonus

Under the existing IIT law, an employee's qualifying annual bonus may be taxed separately from his/her regular salary income (which falls within the scope of "comprehensive income" for IIT assessment under the new IIT law) and is divided by 12 to determine the applicable tax bracket/rate.

Circular 164 grants a transition rule that applies through **31 December 2021**. Under this rule, a resident individual may elect to have his/her qualifying annual bonus be taxed separately from other comprehensive income and divide the bonus amount by 12 to determine the applicable tax bracket/rate. Since the tax bracket/rate table for comprehensive income under the revised IIT law is designed on an annual basis, a modified "monthly" tax bracket/rate table will be used to compute the tax on the annual bonus.

Alternatively, a resident individual may elect to include the annual bonus in his/her comprehensive income for IIT assessment purposes.

As from **1 January 2022**, all annual bonus income derived by a resident individual will have to be included in an individual's comprehensive income for IIT assessment purposes.

Comments

During the three-year transition period from 1 January 2019 to 31 December 2021, Circular 164 allows a resident individual to have his/her qualifying annual bonus be taxed separately from his/her other comprehensive income or alternatively, the individual may include the bonus in his/her comprehensive income for IIT assessment purposes.

If a resident individual's other comprehensive income in a tax year is higher than his/her annual deductions, the individual may benefit from the separate taxing method; otherwise, it may be more beneficial for the individual to include the annual bonus in comprehensive income for IIT assessment.

Employers should consider reviewing their compensation and benefits policies and communicate with employees in advance

about the impact of Circular 164 in order to assist employees in making appropriate elections.

It should be noted that the transition arrangement in Circular 164 is applicable to only resident individuals; the rules applicable to nonresidents are still to be clarified.

Income from equity incentive plans by listed companies

Under the existing IIT law, an employee's qualifying income from equity incentive plans (e.g. stock options, stock appreciation rights, restricted stock) operated by listed companies may be taxed separately from the employee's regular salary income and divided by the number of stipulated months (capped at 12) to determine the applicable tax rate.

For the period through **31 December 2021**, Circular 164 provides the above income derived by a resident individual will be taxed separately from the individual's other comprehensive income and the new tax bracket/rate table for comprehensive income will be applied for IIT assessment purposes.

Qualifying income from equity incentive plans operated by listed companies derived by a resident individual in a calendar year should be consolidated for IIT assessment.

The IIT policies for such equity incentive income after 1 January 2022 will be separately announced.

Comments

The issuance of Circular 164 addresses concerns about whether the separate taxing method would be retained after 1 January 2019. Circular 164 indicates that the tax authorities likely will formulate and announce new IIT policies on equity incentive plans following the expiration of the three-year transition period.

To qualify for the separate taxing method, affected companies still should submit the relevant documents to the tax authorities in a timely manner.

Similar to the transition arrangement on annual bonus income, the separate taxing method in Circular 164 applies only to resident individuals. The rules applicable to nonresidents still are to be clarified.

Non-taxable benefits-in-kind (BIK) for foreign employees

Under the existing IIT law, certain BIKs (including relocation, housing rentals, meals and laundry, home leave, language training and childrens' education expenses) may be exempt from IIT for foreign employees working in China if they are paid on a reimbursement basis or if the expenses are settled directly by the employer at a reasonable amount.

Circular 164 provides that, for the period **1 January 2019 to 31 December 2021**, foreign employees who are resident in China may opt to claim either the relevant additional itemized

deductions (e.g. children's education, housing rental) or continue to enjoy the existing non-taxable BIKs (i.e. housing rental, children's education and language training). Once an election is made, it may not be changed within a tax year.

As from **1 January 2022**, foreign employees no longer will enjoy the non-taxable BIKs on housing rental, children's education and language training.

Comments

The three-year transition period on certain non-taxable BIKs is believed to address the concerns of foreign employees working in China and ensure a smooth transition to the new IIT law.

Employers with a large population of foreign employees may need to review the impact of Circular 164 on their existing compensation and benefit policies, communicate with foreign employees and make or adjust short and long-term plans, accordingly.

Enterprise annuities

Under the existing IIT law, after an employee reaches the statutory retirement age, any withdrawal from qualifying annuities may be taxed separately from his/her regular salary income.

Circular 164 provides that, under the new IIT law, such withdrawals still may be taxed separately from the taxpayer's other comprehensive income, and a tax bracket/rate table will be used, depending on the situation:

<i>New tax bracket/rate table for comprehensive income</i>	<ul style="list-style-type: none">• Annual withdrawal• Lump-sum withdrawal due to emigration from China• Lump-sum withdrawal by an individual's designated beneficiary or legal successor after the individual's death
<i>Modified "monthly" tax bracket/rate table</i>	<ul style="list-style-type: none">• Quarterly/monthly withdrawal• Lump-sum withdrawal in other situations

Severance pay

Under the existing IIT law, severance pay generally is exempt from IIT if the amount is less than the three times the local average wages. If the amount is higher than the threshold, only the excess is taxable and is taxed separately from the individual's regular salary income.

Circular 164 basically adopts the above taxing method under the new IIT law.

Conclusion

Circular 164 signals the government's intention to ensure a smooth transition to the new law. This is welcome news for businesses.

It is worth noting that some of the transition policies will expire in three years, so both employers and individuals should use this time to prepare for the upcoming changes and make plans accordingly. In addition, some policies provided by Circular 164 are applicable only to tax residents, with the tax treatment for nonresidents still to be clarified. Affected parties should continue to monitor developments.

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