



## 税务快讯

### 委托境外研发费用重享加计扣除

2018 年 6 月 25 日，财政部、国家税务总局、科技部发布[财税\[2018\]64 号通知](#)（以下简称“64 号通知”），允许企业就委托境外机构进行研发活动发生的研究开发费用享受加计扣除优惠政策。64 号通知自 2018 年 1 月 1 日起执行。

#### 新规背景

2008 年新企业所得税法实施之后，企业委托境外进行研发活动发生的研发费用一度未被明确排除在可享受加计扣除优惠的研发费用范围之外；但根据 2015 年发布的[财税\[2015\]119 号通知](#)，企业委托境外进行研发活动所发生的费用，自 2016 年起不得加计扣除。

为进一步发挥加计扣除优惠政策对研发创新活动的激励效应，财税部门近年来对该项优惠政策进行了数次完善，扩大可享受加计扣除的研发费用范围，并将科技型中小企业的研发费用加计扣除比例从一般企业的 50% 上调至 75%。今年 4 月 25 日，国务院常务会议决定推出七项支持创业创新和小微企业发展的减税措施，“取消企业委托境外研发费用不得加计扣除限制”便在其列，64 号通知的发布系对上述会议决定的落实。

#### 新规要点

##### 费用范围

64 号通知废止了[财税\[2015\]119 号](#)中“企业委托境外机构或个人进行研发活动所发生的费用，不得加计扣除”的规定，允许企业将委托境外进行研发活动发生的研发费用纳入可加计扣除的研发费用范围。

但 64 号通知明确，上述“委托境外进行研发活动”不包括委托境外个人进行的研发活动。这意味着此次扩大的可加计扣除研发费用仅限于企业

委托境外机构进行的研发活动；企业委托境外个人进行研发活动发生的费用仍不得加计扣除。

## 费用限额

委托境外进行研发活动所发生的费用，按照费用实际发生额的 80% 计入委托方的委托境外研发费用。委托境外研发费用不超过境内符合条件的研发费用三分之二的部分，可以按规定在企业所得税前加计扣除。

64 号通知未对上述“符合条件”作出解释，一般理解此处系指符合加计扣除条件的境内研发费用。

值得注意的是，64 号通知有关境内外研发费用占比限制的规则与现行高新技术企业认定办法较为接近。

## 程序规则

**合同登记：**企业委托境外进行研发活动应签订技术开发合同，并由委托方到科技行政主管部门进行登记。

**资料留存备查：**鉴于从 2017 年度企业所得税汇算清缴起，企业所得税优惠事项已取消备案手续，改由企业自行判别、申报享受，并将相关资料留存备查，64 号通知就企业委托境外进行研发活动享受研发费用加计扣除的留存备查资料进行了列举。除委托研发合同、研发支出辅助账等常规资料以外，针对委托境外进行研发活动的特点，其留存备查资料清单新增以下项目：

- 委托境外研发银行支付凭证、受托方开具的收款凭据
- 当年委托研发项目的进展情况

有关银行支付凭证和受托方收款凭据的资料要求，可能会使尚未完成对外支付的委托研发费难以享受加计扣除政策。

**费用支出明细：**与委托境内进行研发活动的要求相同，委托方与受托方存在关联关系的，委托方应向受托方取得研发项目费用支出明细情况。

## 执行时间

64 号通知自 2018 年 1 月 1 日起执行。根据现行研发费用加计扣除政策，当年符合条件未享受加计扣除优惠的可以追溯享受，追溯期限最长为 3 年。

## 政策解读与建议

64 号通知扩大了企业可加计扣除的研发费用范围，响应国家鼓励创新的政策导向，将促进中国企业利用并集合全球优质的研发资源。随着该项优惠措施的落实，企业在研发模式的安排上可以从全球的角度出发，在综合考虑各项因素的基础上对境内外的研发资源进行有效布局，确保研发税收优惠应享尽享，提升研发效率。

我们预计相关部门将陆续推出有关的操作方法，对实践反馈的实施细节问题予以明确。有鉴于此，建议拟进行或正在进行委托境外研发的企业，应密切关注各地后续出台的操作指引，据此进行相关研发费用加计扣除的可行性分析和风险评估，并在此基础上展开有关的研发及业务模式分析、委托研发合同条款审阅等准备工作。在必要时，相关企业可以

考虑寻求专业机构的协助，在风险可控基础上及时有效地推进可加计扣除费用的归集、申报工作。

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## Tax Newsflash

### R&D super deductions reinstated for cross-border contract R&D arrangements

On 25 June 2018, China's Ministry of Finance, the State Administration of Taxation, and the Ministry of Science and Technology issued guidance (Caishui [2018] No. 64 (Circular 64)) that reinstates research and development (R&D) super deduction policies for certain cross-border contract R&D arrangements. Circular 64 applies retroactively as from 1 January 2018.

#### Background

China's enterprise income tax (EIT) law grants tax super deductions for qualifying expenses incurred in respect of R&D activities. Based on guidance issued in 2015 (Caishui [2015] No. 119), expenses incurred in connection with cross-border contract R&D arrangements are not eligible for the super deduction as from 2016.

To encourage R&D and innovation activities, the government subsequently has enhanced super deduction incentives on several occasions, including expanding the scope of qualifying

R&D expenses and increasing the super deduction rate for small and medium-sized tech enterprises from 50% to 75%. On 25 April 2018, the State Council decided to reinstate super deduction policies for cross-border contract R&D expenses, which was one of seven tax reduction measures to support entrepreneurship, innovation and development of small and micro businesses approved at the executive meeting. The publication of Circular 64 gives effect to those measures.

## Highlights

### Scope of R&D expenses

According to Circular 64, expenses incurred by a domestic enterprise for contract R&D activities entrusted to foreign parties (excluding foreign individuals) are eligible for a super deduction.

### Deduction cap

Eighty percent of the actual expenses incurred by an enterprise in engaging a foreign organization to carry out cross-border contract R&D may be treated as foreign R&D expenses, eligible for a super deduction for EIT purposes, but the expenses may not exceed two-thirds of the enterprise's "qualifying domestic R&D expenses." Circular 64 does not clarify what constitutes qualifying domestic R&D expenses, but the term generally is interpreted as domestic R&D expenses that are eligible for a super deduction.

The method for calculating the deduction cap in Circular 64 appears to be similar to the approach used to calculate qualifying overseas contract R&D expenses for the recognition of high and new technology enterprise status.

### Administrative procedures

*Contract registration:* To qualify for a super deduction, the cross-border contract R&D arrangement must be supported by a written technology development contract between the domestic enterprise and the foreign organization to which cross-border R&D activities were assigned. The domestic enterprise must register the contract with the competent administrative department of science and technology.

*Documentation requirements:* Enterprises self-assess their entitlement to EIT benefits<sup>7</sup> but must maintain relevant documents in the event of a future investigation. Circular 64 lists the documents that must be retained by the enterprise to support super deductions under cross-border contract R&D arrangements, including contracts, ledgers for R&D expenses, bank payment vouchers for the cross-border contract R&D activities, receipts issued by the contractor and evidence of progress of the R&D project during the year.

The requirement for bank payment vouchers and receipts may prevent the enterprise from enjoying a super deduction on cross-border contract R&D expenses incurred but not yet paid.

*Statement of expenses:* As for domestic R&D activities, where the enterprise and the foreign contractor are related parties,

the latter must provide a breakdown of the expenses incurred to the enterprise.

## Effective date

Circular 64 applies retroactively as from 1 January 2018. Based on the existing rules, if a qualifying enterprise does not apply for an R&D super deduction in the year in which the expenses are incurred, it still may enjoy the benefit retroactively provided an application for the super deduction is made within the following three years.

## Comments

Circular 64 expands the scope of the R&D super deduction in accordance with China's policy of promoting innovation and should facilitate the utilization and integration of global quality R&D resources by Chinese enterprises. With the implementation of the incentive, enterprises can take a global perspective when planning their R&D activities and manage the allocation of domestic and overseas resources to obtain both the maximum available tax benefits and improved R&D efficiency.

More detailed guidance on specific aspects of the measures is expected from relevant departments. Enterprises conducting or planning to conduct cross-border contract R&D should monitor the issuance of future guidance and consider conducting a feasibility analysis and risk assessment of the super deductions for qualifying R&D expenses, which may include an analysis of the enterprise's R&D expenses and business model, and a review of contract terms.

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