



## 税务快讯

### 税务总局扩大教师和研究人員协定条款适用范围



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2016年12月29日，国家税务总局发布 [2016年第91号公告](#)，扩大了税收协定中教师和研究人員条款的适用范围。该公告自发布之日起实施，也适用于公告实施之前尚未处理的事项。

#### 公告要点

##### 拓宽协定适用的“教育机构”范围

中国对外签署的部分税收协定中列有教师和研究人員条款。根据该条款，缔约一方的教师和研究人員在缔约另一方的大学、学院、学校或其他政府承认的教育机构或科研机构从事教学、讲学或科研活动取得的所得，符合规定条件的，可在缔约另一方享受规定期限的免税待遇。

91号公告出台前，上述所称“大学、学院、学校或其他政府承认的教育机构”，在中国是指经国家外国专家局批准具有聘请外籍教师和研究人員资格，并由教育部承认学历的大专以上全日制高等院校。

根据91号公告，可适用上述协定条款的“教育机构”，在中国是指实施学前教育、初等教育、中等教育、高等教育和特殊教育的学校，具体包括幼儿园、普通小学、成人小学、普通初中、职业初中、普通高中、成人高中、中专、成人中专、职业高中、技工学校、特殊教育学校、外籍人員子女学校、普通高校、高职（专科）院校和成人高等学校。由此可见，“教育机构”的概念较以往有较大拓宽。

需要注意的是，91号公告同时指出，培训机构不属于学校，因此在培训机构工作的人员很可能难以享受教师和研究人員条款的协定待遇。

## 更新协定待遇适用的税务资料要求

91 号公告同时更新了拟享受教师和研究条款协定待遇的非居民纳税人应提交的税务资料。这些资料主要包括：

- 有效期内的《外国专家证》、《外国人就业证》（或《外国人工作许可证》）的复印件；
- 《非居民纳税人税收居民身份信息报告表》；
- 《非居民纳税人享受税收协定待遇情况报告表》；
- 由协定缔约对方税务主管当局在纳税申报或扣缴申报前一个公历年度开始以后出具的税收居民身份证明；
- 与取得相关所得有关的合同、协议、支付凭证等资料。

需要注意的是，上述非居民纳税人一般应当在首次取得相关所得并进行纳税申报时，或者由扣缴义务人在首次扣缴申报时，报送相关资料。

### 德勤观点

91 号公告扩大了教师和研究条款协定待遇适用的“教育机构”范围，因此 91 号公告的出台为境内教育机构的外籍教师和研究条款协定待遇的机会，为境内各类型教育机构吸引外籍人才提供了强有力的税收政策支持，对教育行业的发展将起到积极作用。

须提请注意的是，并非中国对外签署的所有税收协定中都包含教师和研究条款。而且，对于拟享受该条款免税待遇的教师和研究条款而言，除了其所工作的教育机构符合条件以外，还需要同时满足有关境内活动性质、免税期限等方面的条件。换言之，相关纳税人应确认各项条件是否同时满足，以顺利享受税收协定下的免税待遇。

同时，结合现行外籍人员在中国合法就业、居住，以及税务管理等相关的法规和实践进展，可以预见未来税务机关将加强与其他政府部门的信息沟通和分享，以强化对非居民纳税人的税务监管。因此，拟享受教师和研究条款协定待遇的外籍人士亦应关注其各项合规义务，确保向中国政府部门提交各项信息资料的一致性，以准确反映其事实情况。

从实务操作角度，对于有望符合协定待遇适用条件的境内教育机构及其外籍人员，建议积极了解有关合同安排、免税期限计量等因素对协定条款适用的影响，对自身的适用情况进行内部评估，并在此基础上及时办理相关手续（若符合有关免税条件），以享受协定条款待遇。从人事管理角度，建议有关境内教育机构就 91 号公告的可能影响与外籍员工进行准确沟通，以有效管理员工预期，并作出适当应对。

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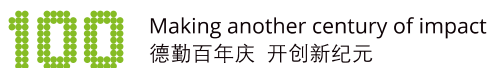
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## Tax Newsflash

### Scope of Nonresident Teachers/Researchers Eligible for Treaty Exemption Expanded



China's State Administration of Taxation (SAT) issued guidance on 29 December 2016 (Bulletin [2016] No. 91 (Bulletin 91)) that expands the scope of nonresident individuals who are eligible for tax treaty benefits under the teacher/researcher article of an applicable treaty.

The teacher/researcher article grants a tax exemption for payments made to an individual who is resident of a treaty partner country and who is temporarily present in China for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or other educational or scientific research institutions for a stipulated period.

Bulletin 91 applies as from the date of issuance and to any cases whose tax treatment has not yet been finalized.

#### Highlights

##### **Scope of eligible "educational institutions" expanded**

Before the issuance of Bulletin 91, the term "university, college, school or other educational institutions" included full-time institutions of higher education at or above the junior college level that had the capacity to hire foreign teachers or researchers as approved by the State Administration of

Foreign Experts Affairs and were accredited by China's Ministry of Education.

Bulletin 91 significantly expands the scope of "educational institutions" to include schools that provide preschool education, primary education, secondary education, higher education and special education. Qualified educational institutions now specifically include the following: kindergartens, primary schools, adult primary schools, junior secondary schools, vocational junior secondary schools, senior secondary schools, adult senior secondary schools, technical secondary schools, adult technical secondary schools, vocational senior secondary schools, skilled worker schools, special education schools, schools for children of foreigners, colleges and universities, technical colleges and universities, and adult colleges and universities.

Training institutions are not considered eligible "schools," so teachers or researchers working in such institutions will probably not be able to enjoy a tax exemption under an applicable tax treaty.

### **Documentation requirements for treaty exemption claim**

To claim treaty benefits under the teacher/researcher article, the following documents generally must be submitted to the competent tax authority:

- Photocopy of a valid foreign expert certificate and work permit (or employment license certificate);
- Reporting form of the tax residence status of the nonresident individual;
- Reporting form for a nonresident individual to claim tax treaty benefits;
- Tax residence certificate issued by the competent tax authorities of the other contracting state; and
- Relevant contracts, agreements, payment vouchers, etc.

The supporting documents must be submitted at the time the nonresident teacher/researcher derives the income for the first time and makes the relevant tax filing, or at the time the withholding agent makes the first withholding on the income.

### **Deloitte's View**

Bulletin 91 expands the scope of educational institutions under the teacher/researcher article, which will enable more foreign teachers/researchers in China's educational institutions to enjoy a tax exemption for income earned as a teacher/researcher. As a result, more domestic education institutions will be able to attract foreign talent, thus promoting the further development of China's education sector.

It should be noted, however, that not all of China's tax treaties contain teacher/researcher articles, and where such an article is available, there may be other specific requirements that must be met to enjoy the treaty exemption (e.g. requirements relating to the activities to be performed, the time period, etc.).

Given the more stringent enforcement of China's immigration rules, as well as the evolving compliance administration practice relating to foreign individuals, it is likely that the tax authorities will improve communications and information sharing with other Chinese authorities and intensify the tax administration on nonresident taxpayers. Thus, non-Chinese individuals who may be eligible for treaty benefits should pay close attention to their compliance obligations to ensure the consistency of all information provided to the various authorities.

Educational institutions that potentially may benefit from the new rules should review the relevant requirements and carry out an internal assessment to determine whether their contract arrangements will allow foreign teachers/researchers to qualify for treaty benefits. Such institutions also should make their foreign teachers/researchers aware of the potential impact of Bulletin 91 and the related compliance obligations.

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