

税务快讯

改制重组继续获土地 增值税和契税优惠政 策支持



财政部和国家税务总局近日发布《关于企业改制重组有关土地增值税政策的通知》（财税[2015]5号，以下简称“5号文”）和《关于进一步支持企业事业单位改制重组有关契税政策的通知》（财税[2015]37号，以下简称“37号文”），延续了之前有关支持企业改制重组的多项土地增值税和契税减免税政策，并在此基础上引入了部分新的优惠措施（如有关企业分立的土地增值税免税规定）。两份文件的执行期限均为2015年1月1日至2017年12月31日。

通常情况下，房地产交易的转让方需要就其增值额按30%至60%的累进税率缴纳土地增值税；而受让方通常应按照成交价格缴纳契税，适用税率范围一般是3%至5%。

以下表格简要梳理了5号文和37号文中的主要减免税政策，其中部分交易类型不能同时适用土地增值税和契税的减免。另外，5号文中关于土地增值税的优惠政策均不适用于房地产开发企业。

交易类型	5号文 (转让方的土地增值税)	37号文 (受让方的契税)
企业整体改建（制） （即非公司制企业整体改建（制）为有限责任公司或股份有限公司，有限责任公司整体改建或变更为股份有限公司，股份有限公司整体改建或变更为有限责任公司，且改建（制）或变更后公司承继原企业权利、义务）	免税（原企业投资主体需存续或相同）*	
企业合并		
企业分立		
房地产出资	免税	无优惠政策**
同一投资主体内部所属企业之间的资产划转 （即母公司与其全资子公司之间，同一公司所属全资子公司之间，同一自然人与其设立的个人独资企业、一人有限公司之间土地、房屋权属的划转）	无优惠政策**	免税
企业破产中的资产处置	无优惠政策**	债权人承受破产企业房地产权属的，免税 非债权人承受破产企业土地、房屋权属，且与原企业全部职工（或30%以上）签订服务年限不少于三年的劳动用工合同的，免税（或减半征收）

* 对于企业改制的免征契税待遇，原企业投资主体在改制（变更）后的公司的持股比例还应当超过 75%；而对于企业合并和企业分立，原企业投资主体在合并、分立后企业中的持股比例可以发生变化。

** 由于相关文件未提供减免税优惠，除另有特殊规定外，一般应当适用土地增值税和契税的基本规定。

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Tax Newsflash

Land Appreciation Tax and Deed Tax Relief Extended to Promote Mergers and Acquisitions



China's Ministry of Finance and the State Administration of Taxation recently issued two circulars (Circulars 5 and 37) to extend various forms of tax relief relating to land appreciation tax (LAT) and deed tax, to promote mergers and acquisitions (M&As). The circulars extend most previous LAT and deed tax exemptions granted to real estate transfers in specified M&A transactions, and also introduce certain new forms of relief for specified transactions (notably, an LAT exemption for "splits"). The relief is retroactively effective from 1 January 2015 and will expire on 31 December 2017.

LAT generally is imposed on a transferor of real property at progressive rates ranging from 30% to 60% of the transferor's gain from the sale. Deed tax generally is imposed on a transferee of real property at a rate of 3% to 5% of the real property's purchase price.

The LAT and deed tax relief provided by the circulars is summarized below. Some transactions are eligible for LAT relief but not deed tax relief, or vice versa. However, LAT relief will not be granted if the relevant entities are engaged in the real estate development business.

Types of restructuring or transaction	Circular 5 (LAT on transferors)	Circular 37 (Deed tax on transferees)
Company “reformation” (i.e. a nonincorporated entity converts to an incorporated entity or a limited liability company converts to a joint stock company (or vice versa), where the post-restructuring entity assumes all legal rights and obligations of the pre-restructuring entity)	Exempt, provided that original investors of the pre-restructuring entity(ies) remain as shareholders of the post-restructuring entity(ies)*	
Merger		
Split (i.e. division of an entity into two or more entities)		
Disposal of real property for capital contribution purposes	Exempt	No relief**
Intragroup assignment of real property (i.e. assignment between a parent company and its 100% subsidiaries or between such subsidiaries; or between an individual and his or her sole proprietorship or his or her 100%-owned companies)	No relief**	Exempt
		Exempt for a creditor receiving the real property;
Disposal of real property in bankruptcy process	No relief**	Exempt (or tax reduced by 50%) for a noncreditor receiving the real property, provided the noncreditor takes over all (or more than 30%, for the 50% tax reduction) of the employees for an employment period of no less than three years

* For the deed tax exemption to be granted in a company reformation, the original investors must hold more than 75% of the shares of the post-restructuring entity. In a merger and a split, the original investors' relative shareholdings in the post-restructuring entity may change.

**No relief is provided in the relevant circular. Therefore, the general LAT or deed tax rules should apply, unless other regulations or circulars provide otherwise.

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