

税务快讯



国税总局明确若干税收事项在取消审批后的管理程序

《国务院关于取消和调整一批行政审批项目等事项的决定》（国发[2015]11号）和《国务院关于取消和下放一批行政审批项目的决定》（国发[2014]5号）取消了4项与跨境税收有关的税务行政审批事项。

为适应上述4项行政审批事项的取消并加强后续管理，国家税务总局于2015年4月17日发布2015年第22号公告——《关于修改〈非居民企业所得税核定征收管理办法〉等文件的公告》（以下简称“22号公告”），对三份关于跨境税收管理的文件进行了修改。22号公告自2015年6月1日起施行。

具体内容

22 号公告中的以下两项文件修改特别值得关注：

- **国税发[2010]19 号《非居民企业所得税核定征收管理办法》第 9 条**

文件修改前，拟采取核定征收方式的非居民企业应填写一份《鉴定表》，报送主管税务机关审核。文件修改后，非居民企业不再需要主动向税务机关递交《鉴定表》。相反，主管税务机关应及时向非居民企业送达《鉴定表》。然而，22 号公告未就何为“及时”进行具体的定义。

上述修改与税收征管法第 35 条授权税务机关在某些情形下核定纳税人应纳税额的规定衔接紧密。此外，这一修改可能意味着非居民企业将无法主动选择核定征收的征税方式。

- **国家税务总局公告 2013 年第 72 号《国家税务总局关于非居民企业股权转让适用特殊性税务处理有关问题的公告》第 7 条**

文件修改前，进行跨境股权转让的非居民企业若未及时进行特殊性税务处理备案，将无法适用特殊性税务处理（即免税或递延的税务处理方式）。即使相关交易符合特殊性税务处理的所有实质性条件，非居民企业仍会因未及时备案而无法适用特殊性税务处理。

在实践中，上述备案要求已经导致了許多纳税人仅因未及时备案而丧失适用特殊性税务处理的权利。对于 22 号公告生效后发生的交易，这一情况将会发生改变：主管税务机关应根据实质性条件判断交易是否适用特殊性税务处理，同时告知纳税人按规定办理备案手续。

22 号公告并未明确表示，对于公告生效前发生的，且符合特殊性税务处理实质性条件，但未及时进行备案的非居民企业跨境股权转让交易，其特殊性税务处理是否适用无虞；相关的实践操作尚待观察。

德勤观点

22 号公告的发布与国务院进一步简政放权、取消行政审批事项（特别是缺乏明确法律依据的行政审批事项）的要求一致。我们预期税务行政审批制度的改革将有更多的进展。例如，2015 年 5 月 4 日，国务院发布了国发[2015]27 号文件，进一步取消了近 50 项涉税行政审批事项，包括享受税收协定优惠等事前审批项目。在这一背景下，纳税人有必要及时转变观念适应新的税务管理环境。

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Tax Newsflash



SAT Issues New Guidance Following Elimination of Tax-related Administrative Approvals

On 17 April 2015, China's State Administration of Taxation (SAT) issued Bulletin 22 (Bulletin [2015] No. 22) to amend three previously issued SAT documents. Bulletin 22's issuance was in response to the cancellation of four tax administrative approval/registration requirements by two State Council decisions earlier this year: The "Decision of the State Council to Abolish and Adjust Certain Administrative Approval Requirements" (Guofa [2015] No. 11) and "Decision of the State Council to Abolish Certain Administrative Approval Requirements or to Delegate Certain Items to Lower Authorities" (Guofa [2014] No. 5). Bulletin 22 will apply as from 1 June 2015.

Details

We highlight two key amendments of Bulletin 22 below:

- **Article 9 of Circular [2010] No. 19:** Administrative Measures for the Assessment and Collection of Enterprise Income Tax (EIT) on Nonresident Enterprises on a Deemed Income Basis

Prior to the amendment of Bulletin 22, a nonresident enterprise that intends to be taxed on a deemed income basis must complete an Assessment Form and submit the form to its competent tax authority to obtain approval. After the amendment of Bulletin 22, a nonresident enterprise is no longer required to submit the assessment form proactively to the tax authority. Instead, it is the competent tax authority that is required to provide the nonresident enterprise with the Assessment Form on a timely basis. However, what is considered timely is not defined in Bulletin 22. This amendment is consistent with Article 35 of the Tax Collection and Administration Law, which grants tax authorities the right to adopt a deemed income method in determining tax payable under certain circumstances. This amendment also seems to suggest that a nonresident enterprise will no longer be able to elect the deemed method proactively.

- **Article 7 of Bulletin [2013] No. 72:** Bulletin on the Special Reorganization Tax Treatment of Share Transfers by a Nonresident Enterprise

Prior to the amendment of Bulletin 22, a nonresident enterprise that has conducted cross-border transactions cannot enjoy the special reorganization treatment for tax purposes (i.e., tax free or deferred treatment) if the enterprise did not perform the registration of the transaction with the responsible PRC tax authority timely. This would be true even if the nonresident enterprise satisfies all the substantive requirements for the special reorganization tax treatment.

This registration requirement has caused many taxpayers to lose the special reorganization tax treatment because of their failure to register timely. After the amendment of Bulletin 22, a nonresident enterprise will not automatically lose the special reorganization tax treatment in this situation. Instead, the responsible authority will be required to review the case based on the substantive requirements while asking the enterprise to perform the necessary registration.

Bulletin 22 does not have any special provisions for transactions that occurred prior to its effective date but for which registration was not done timely. It remains to be seen whether the local tax authorities will grant "amnesty" to such transactions in respect of the registration requirement.

Deloitte comments

The issuance of Bulletin 22 is consistent with the State Council's mandate to streamline and reduce administrative approvals, some of which lack a clear legal basis. We expect to see more progress in this area. For instance, on 4 May 2015, the State Council further abolished around 50 tax-related administrative approvals in Guofa [2015] No. 27. An important abolition is the pre-approval for obtaining treaty benefits. Given this trend, taxpayers will need to change their mindsets to adapt to the new tax administration environment.

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