

## 税务快讯

# 国务院暂缓推进优惠政策专项清理



国务院于2015年5月11日发布国发[2015]25号文件（即《国务院关于税收等优惠政策相关事项的通知》，以下简称“25号通知”），表示将暂缓推进2014年末启动的优惠政策专项清理工作。国务院曾于2014年12月发布62号通知，要求各部委和地方政府机关对税收等优惠政策进行清理和规范，即对违反国家法律法规的优惠政策予以废止；没有法律法规障碍，确需保留的优惠政策须向国务院作专题请示。62号通知同时要求各省级人民政府和有关部门在2015年3月31日前向财政部报送优惠政策的专项清理情况。

25号通知明确，上述专项清理工作将待今后另行部署后再进行。25号通知同时对以下涉及优惠政策的事项进行了规定：

- 各地区/部门已经出台的优惠政策，有规定期限的，按规定期限执行；没有规定期限又确需调整的，相关政府和部门应按照把握节奏、确保稳妥的原则设立过渡期，在过渡期内继续执行。
- 各地与企业已签订合同中的优惠政策，继续有效；对已兑现的部分，不溯及既往。
- 各地区/部门今后制定出台新的税收优惠政策（或涉及中央批准设立的非税收入优惠政策），除法律、行政法规已有规定事项外，应报国务院批准后执行；其他由地方政府和相关部门批准后执行，其中安排支出一般不得与企业缴纳的税收或非税收入挂钩。

# 观察与评论

国务院要求各地政府对违反法律法规规定的优惠政策进行清理，其目的是为了形成有利于所有企业和投资者的公平市场竞争环境，以避免各地政府因招商引资所可能产生的恶性竞争局面。

62号通知甫一发出便引起了很多企业的高度重视，企业及其投资者尤其关注优惠政策清理是否会对其正在享受或者申请的地方性优惠政策（如财政补贴等）产生不利影响，包括入驻时承诺的优惠政策是否会被取消、已取得的扶持补助是否需要退还等。62号通知下发后，实践中出现了部分地方政府部门中止某些优惠待遇，以及暂缓进行鼓励措施谈判的现象，加重了企业及投资者在这一方面的顾虑。

地方政府方面亦担心优惠政策清理工作对当地吸引投资带来潜在的负面效应，同时影响其政府公信力。而在优惠政策清理的过程中，由于缺乏详细明晰的标准和统一的政策理解，在执行层面对哪些优惠政策属于清理范围也引起了一些争议。

这次发布的25号通知可以被视为中央政府对企业界和地方政府所反映的上述问题的积极反馈。对投资者而言，已签合同中优惠政策继续有效以及对已兑现的部分不溯及既往的承诺尤其值得欢迎，这将打消投资者的相关顾虑，有助于各地已签项目的实施和推进。

需要注意的是，虽然本次专项清理暂缓进行，但从25号通知来看，有关优惠政策的规范工作仍将继续。结合我们与有关政府部门的沟通情况，地方政府部门未来应仍可制定与各地经济发展有关的产业扶持政策，但涉及财政补贴的，一般不得与企业缴纳的税收或非税收入挂钩。因此，未来符合25号通知规定的某些地方性财政补贴措施（如一次性的固定金额补贴等）仍有望得到继续实施。

相关文件：

[《国务院关于税收等优惠政策相关事项的通知》国发\[2015\]25号](#)

[《国务院关于清理规范税收等优惠政策的通知》国发\[2014\]62号](#)

作者：

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上海

徐祖明

合伙人

+86 21 6141 1278

[jexu@deloitte.com.cn](mailto:jexu@deloitte.com.cn)

严庆乐

高级经理

+86 21 6141 1097

[eyan@deloitte.com.cn](mailto:eyan@deloitte.com.cn)

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如您有任何问题，请联系：

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**全球企业税服务主管合伙人**

**上海**

**蒋颖**

合伙人

+86 21 6141 1098

[vivjiang@deloitte.com.cn](mailto:vivjiang@deloitte.com.cn)

---

**华北区**

**北京**

**吴嘉源**

合伙人

+86 10 8520 7501

[kevnq@deloitte.com.cn](mailto:kevnq@deloitte.com.cn)

---

**华东区**

**上海**

**徐祖明**

合伙人

+86 21 6141 1278

[jexu@deloitte.com.cn](mailto:jexu@deloitte.com.cn)

---

**华南区**

**香港**

**展佩佩**

合伙人

+852 2852 6440

[sachin@deloitte.com.hk](mailto:sachin@deloitte.com.hk)

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德勤华永会计师事务所（特殊普通合伙）

中国 上海

延安东路 222 号

外滩中心 30 楼

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## Tax Newsflash

# State Council Suspends "Clean-up" of Preferential Policies



China's State Council issued a notice (Guofa [2015] No. 25, Notice 25) on 11 May 2015 that suspends the "clean-up" of preferential policies initiated in the year-end of 2014. The clean-up (set out in Notice 62) required local governments to review and abolish any local incentives that violated central government policies/law, and required State Council approval of incentives that did not violate central government policies/law but that were considered essential to the local/regional government. Local governments were required to report the status of these policies to the Ministry of Finance by the end of March 2015.

Notice 25 now suspends the clean-up initiative indefinitely, but indicates that it will be re-instituted at a future date. The notice also clarifies the following with respect to preferential policies:

- Policies that were granted by local governments and various departments of the State Council for a specific term will remain in effect for that term; the relevant governments/departments should establish a transitional period properly for policies that were granted without a termination date and need to be abolished, and such policies will remain in effect for the transitional period.

- Policies granted under contracts or agreements with local governments will continue to be valid, and any benefits that already have been granted will not be clawed back.
- If a local government/department wishes to introduce a new preferential tax policy, the policy must be approved by the State Council, unless otherwise stipulated by law or regulations. Where approval from the State Council is not required (e.g. certain nontax preferential policies), a preferential policy generally may not be in the form of a government subsidy linked to tax or nontax revenue contributed by enterprises.

## Observations and comments

The purpose of the clean-up was to create a level playing field for investors and enterprises, by mandating that local governments eliminate preferential policies that were identified as being in conflict with or inconsistent with central government policy/law. It was designed to dissuade local governments from engaging in what effectively amounted to “bidding wars” to compete for foreign or local investment.

Notice 62 gave rise to considerable concern and confusion on the part of businesses about the sustainability and future of various incentives (in particular, financial subsidies) granted by local governments; this intensified when some governments discontinued preferential treatment or put them on hold.

Local governments were concerned about the potential negative impact of Notice 62 on investment and how it would affect the government’s credibility. A lack of standards and consistent interpretations made it difficult to determine whether a specific policy conflicted with central government policy, which resulted in some disputes.

Notice 25 is the central government's response to the concerns articulated by the business community and local governments. The notice is particularly welcomed by businesses because it confirms the validity of contractually agreed upon policies and commits to a "no-claw back" rule for previously granted benefits.

Although the clean-up of preferential policies is suspended, Notice 25 indicates that the regulation of preferential policies will continue, albeit in a more benign manner. Based on Notice 25 and our communications with certain government officials, it appears that local governments still have some discretion to grant financial subsidies to certain encouraged businesses, provided the amount of the subsidy is not linked to the tax or nontax revenue contributed by the business (e.g. one-time fixed amount subsidies) and, therefore, these policies are likely to continue.

Relevant circulars:

[Notice of State Council on Certain Issues of Tax and Other Preferential Policies \(Guofa \[2015\] No. 25\)\(Chinese version\)](#)

[Notice of State Council on Cleaning up and Regulating Tax and Other Preferential Policies \(Guofa \[2014\] No. 62\)\(Chinese version\)](#)

Authors:

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### Shanghai

**Jeff Xu**

Partner

+86 21 6141 1278

[jexu@deloitte.com.cn](mailto:jexu@deloitte.com.cn)

**Eddie Yan**

Senior Manager

+86 21 6141 1079

[eyan@deloitte.com.cn](mailto:eyan@deloitte.com.cn)

---

If you have any questions please contact:

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### Global Business Tax Services Country Leader

#### Shanghai

**Vivian Jiang**

Partner

+86 21 6141 1098

[vivjiang@deloitte.com.cn](mailto:vivjiang@deloitte.com.cn)

---

#### Northern China

##### Beijing

**Kevin Ng**

Partner

+86 10 8520 7501

[kevng@deloitte.com.cn](mailto:kevng@deloitte.com.cn)

#### Eastern China

##### Shanghai

**Jeff Xu**

Partner

+86 21 6141 1278

[jexu@deloitte.com.cn](mailto:jexu@deloitte.com.cn)

#### Southern China

##### Hong Kong

**Sarah Chin**

Partner

+852 2852 6440

[sachin@deloitte.com.hk](mailto:sachin@deloitte.com.hk)

---

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Deloitte Touche Tohmatsu Certified Public Accountants LLP

30/F Bund Center

222 Yan An Road East

Shanghai 200002, China

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