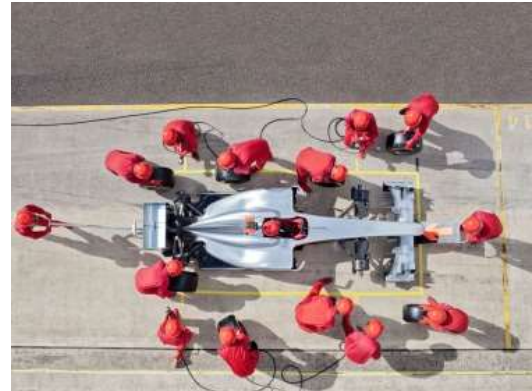


税务快讯

国家自主创新示范区有关税收试点政策推广到全国范围



继财政部和国家税务总局在今年六月发布文件，将中关村国家自主创新示范区的四项税收试点政策推广至所有国家自主创新示范区、合芜蚌自主创新综合试验区和绵阳科技城（统称“示范区”，参见 [6月29日的德勤税务快讯](#)）之后，国务院在 10 月 21 日的常务会议上决定，将上述税收试点政策进一步推广到全国，以促进大众创业、万众创新，培育经济发展新的驱动力。为此，财政部和国家税务总局于 10 月 23 日发布财税[2015]116 号文件，对此次政策推广的相关事项加以明确。其中，有关企业所得税和个人所得税的政策分别自 [2015 年 10 月 1 日](#) 和 [2016 年 1 月 1 日](#) 起在全国范围内实施。

企业所得税

关于有限合伙制创业投资企业法人合伙人企业所得税政策：根据企业所得税法的规定，创业投资企业投资于未上市的中小高新技术企业 2 年（即 24 个月）以上的，其投资额的 70% 在股权持有满 2 年的当年可抵扣该创业投资企业的应纳税所得额。116 号文所称的“中小高新技术企业”是指注册在中国境内实行查账征收的、经认定取得高新技术企业资格，且年销售额和资产总额均不超过 2 亿元、从业人数不超过 500 人的企业。

116 号文将此项税收优惠推广应用至全国范围内的有限合伙制创业投资企业投资于未上市中小高新技术企业的行为。由于合伙企业本身并不是企业所得税的纳税人，因此 116 号文将此项优惠给予合伙企业的法人合伙人，用来抵扣法人合伙人从该有限合伙制创业投资企业分得的应纳税所得额。抵扣额按照法人合伙人对未上市中小高新技术企业的投资额（即创业投资企业对中小高新技术企业的投资额和法人合伙人占创业投资企业的出资比例乘积）的 70% 来计算确定。

虽然 116 号文并未明确提及，但一般认为该项优惠主要针对有限合伙制创业投资企业的居民企业合伙人。对于有限合伙制创业投资企业的非居民企业合伙人，其通过合伙制创业投资企业取得的所得应如何进行中国企业所得税处理尚未在法规层面得到明确，因此这一类法人合伙人是否能够适用该项优惠政策目前并不清晰。

关于技术转让所得企业所得税政策：企业所得税法规定，在一个纳税年度内，居民企业技术转让所得不超过 500 万元的部分，免征企业所得税；超过 500 万元的部分，减半征收企业所得税。根据此前的规定，对于示范地区之外的居民企业，上述“技术转让”一般是指转让技术的所有权或 5 年以上全球独占许可使用权。116 号文实施后，在全国范围内，转让 5 年以上**非独占许可使用权**被纳入“技术转让”的范围，因此相应的所得可享受上述减免税待遇。

值得注意的是，上述优惠不适用于居民企业从直接或间接持有股权之和达到 100% 的关联方取得的技术转让所得。

个人所得税

关于企业转增股本个人所得税政策：以未分配利润、盈余公积、资本公积向个人股东转增股本时，一般被视为个人股东取得股息所得，因而适用 20% 税率征收个人所得税。116 号文实施后，全国范围内的中小高新技术企业以未分配利润、盈余公积、资本公积向个人股东转增股本时，个人股东一次缴纳个人所得税确有困难的，可以根据实际情况自行制定分期缴税计划，在不超过 5 个公历年度内分期缴纳。

116 号文取消了该项优惠政策在示范地区试点时分期缴税计划须经税务机关事先核准的规定；该政策在全国范围实施后，仅要求纳税人将有关资料报主管税务机关备案。另外，此项优惠政策不适用于上市中小高新技术企业或在全国中小企业股份转让系统挂牌的中小高新技术企业向个人股东转增股本的情形。

关于股权激励个人所得税政策：根据个人所得税法的有关规定，员工获得股权激励应按照“工资薪金所得”项目缴纳个人所得税。116 号文实施后，对于高新技术企业转化科技成果，给予本企业相关技术人员的股权激励，个人一次缴纳税款有困难的，可以根据实际情况自行制定分期缴税计划，在不超过 5 个公历年度内分期缴纳。但此项优惠政策不适用于企业面向全体员工实施的股权激励。

116 号文同样取消了该项优惠政策在示范地区试点时分期缴税计划须经税务机关事先核准的规定；该政策在全国范围实施后，仅要求纳税人将有关资料报主管税务机关备案。

值得注意的是，116号文同时明确，股权激励的应纳税额可参照财税[2005]35号文件中上市公司员工取得有关股票期权所得的规定计算。这一计算方式将应税所得按照“规定月份数”（即等待期包含的月份数，但不超过12）予以分摊，从而起到降低边际税率的效果。这似乎意味着116号文的分期缴税待遇主要针对设有等待期条款的股权激励计划。而不具备等待期的股权激励是否能够适用116号文的分期缴税待遇仍有待观察。

相关文件：

[关于将国家自主创新示范区有关税收试点政策推广到全国范围实施的通知\(财税\[2015\]116号\)](#)

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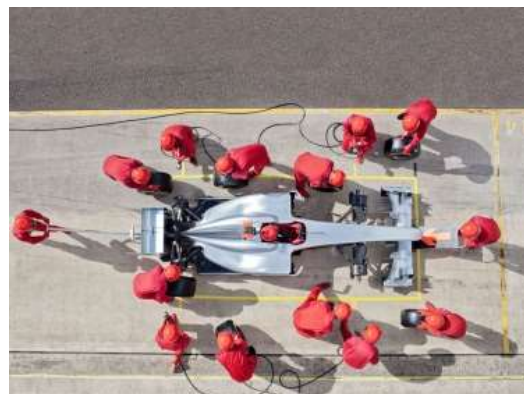


China | Tax & Business Advisory | Global Business Tax Services | 3 November 2015

[中文](#)

Tax Newsflash

Income Tax Incentives Extended Nationwide to Stimulate Technological Innovation



China's Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly issued guidance on 23 October 2015 (Caishui [2015] No. 116 (Circular 116)) that extends four income tax incentives nationwide, with a view to stimulating technological innovation. These incentives initially were piloted in the Beijing Zhongguancun National Independent Innovation Demonstration Zone (NIIDZ), and then expanded to all other NIIDZs, He-Wu-Beng Independent Innovation Comprehensive Pilot Zone (in Anhui province) and Mianyang Science and Technology City (in Sichuan province) (collectively, "pilot areas") from 1 January 2015 (see [Deloitte Tax Newsflash dated 29 June 2015](#)). According to Circular 116, the enterprise income tax (EIT) incentives apply as from **1 October 2015**, and the individual income tax (IIT) incentives will apply as from **1 January 2016**.

EIT Incentives

Deduction granted to corporate partners of venture capital partnerships investing in unlisted small and medium-sized High-New Technology Enterprise (SMHNTEs): The EIT law grants a deduction to venture capital companies that invest in unlisted SMHNTEs, provided the investment has been held for at least two years (i.e. 24 months). Qualifying venture capital companies may deduct 70% of the investment amount from the taxable income. An SMHNTE is a high-new technology enterprise that meets the following requirements:

- 1) annual sales not exceeding RMB 200 million;
- 2) total assets not higher than RMB 200 million; and
- 3) no more than 500 employees.

Circular 116 expands the incentive to corporate partners in a venture capital limited partnership, which is registered under Chinese partnership law, and which invests in unlisted SMHNTEs. Since a partnership is not a taxable entity, Circular 116 allows the deduction to "pass-through" to a corporate partner; that partner may deduct the qualifying amount from that partner's share of the taxable income of the partnership. The qualifying amount of the deduction is calculated by multiplying 70% of the amount of the qualifying investment by the partnership in the SMHNTE by the share of investment in the partnership attributable to that partner.

This incentive generally is believed to be designed to benefit resident enterprises that invest in SMHNTEs through Chinese venture capital limited partnerships. In view of the limited guidance currently available in relation to the tax treatment of nonresident enterprise partners of Chinese limited partnerships, it is unclear whether the incentive will be available to nonresident enterprise partners of such partnerships.

Expanded scope of "technology transfer": Under the EIT law, the first RMB 5 million of income derived in respect of a tax year by a Chinese resident company from the transfer of technology is tax-exempt, with the remainder subject to a 50% reduction in the EIT rate. For resident enterprises registered outside the piloted areas, the term "technology transfer" means a transfer of ownership of qualifying technology, or a worldwide exclusive licence of the right to use qualifying technology for a period of five years or more. Circular 116 revises the interpretation of the term "technology transfer" to include a transfer of a "non-exclusive" licence of the right to use qualifying technology for more than five years.

We would note, however, that based on guidance issued by the MOF/SAT in 2010, this incentive is not available in respect of a technology transfer between two parties, which are related through a direct or indirect 100% shareholding relationship.

IIT Incentives

Deferred payment of IIT on capitalization of undistributed profits or reserves: The conversion by an enterprise of its undistributed profits or reserves to capital generally is considered a dividend distribution by that enterprise to its shareholders, thereby resulting in individual shareholders being subject to IIT at the rate of 20% in respect of the amount of that dividend distribution. Where such a capitalization of undistributed profits or reserves is made by an SMHNTTE, Circular 116 allows the IIT to be paid by installment over a five-year period if the individual shareholder is unable to settle his/her tax liabilities immediately.

Although not subject to pre-approval, the taxpayer must report the relevant information to the tax authorities.

The deferred payment option is not available if the SMHNTTE is listed on a Chinese stock exchange or quoted on the National Equities Exchange and Quotations.

Deferred payment of IIT on stock awards: According to the IIT law and relevant regulations, stock awards granted to employees generally are subject to IIT as "wages and salaries." For stock awards granted by High-New Technology Enterprises (HNTEs) to their qualifying technical employees, Circular 116 allows the IIT to be paid by installment over a five-year period if the employee is unable to settle his/her tax liability immediately. The deferred IIT payment option is not available to a stock award plan designed to cover all employees.

Although not subject to pre-approval, the taxpayer must report the relevant information to the tax authorities.

Circular 116 allows the IIT on the stock award to be calculated by reference to a preferential policy available for employee stock options offered by listed companies, where the taxable income is divided by the "number of stipulated months" (i.e. number of months in the vesting period, capped at 12) to determine the applicable tax bracket. It appears that Circular 116 should be applied to stock awards with a vesting period; it is unclear whether and how Circular 116 could be applied to a stock award plan without a vesting period.

Relevant circular:

[Notice to Extend Relevant Tax Policies Piloted in National Independent Innovation Demonstration Zones to Nationwide \(Caishui \[2015\] No.116\) \(Chinese version\)](#)

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