

税务快讯

税务总局印发《非居民纳税人享受税收协定待遇管理规程（试行）》



为贯彻落实国家税务总局于今年 8 月末发布的《非居民纳税人享受税收协定待遇管理办法》（国家税务总局公告 2015 年第 60 号，以下简称“60 号公告”^{1,2}），明确各级税务机关在非居民纳税人享受税收协定待遇管理工作中的具体职责和操作流程，税务总局于 10 月 29 日出台了非居民享受协定待遇管理规程（税总函[2015]128 号，以下简称“128 号文”）。128 号文自 2015 年 11 月 1 日开始施行，与 60 号公告的施行时间保持一致。

法规要点

128 号文要求地方税务机关加强对非居民享受税收协定待遇的事中事后管理，定期对非居民提交的享受协定待遇相关材料进行抽查，抽查重点涵盖来自实际税率较低的国家（地区）、信用不良或享受协定优惠金额较大的非居民纳税人。抽查的频率和比例如下：

- 享受股息、利息、特许权使用费或财产收益协定条款待遇的，于季度终了 3 个月内对该季度享受税收协定待遇情况进行抽查，同一条款的抽查比例不低于该季度享受该条款待遇非居民纳税人户数的 30%；

- 享受税收协定其他条款待遇的，于季度终了 6 个月内对该季度享受税收协定待遇情况进行抽查，同一条款的抽查比例不低于该季度享受该条款待遇非居民纳税人户数的 10%。

主管税务机关的重点审查内容包括：

- 税收居民身份证明是否符合规定要求，是否存在双重税收居民身份的情况；
- 申报所得类型及适用协定条款是否正确，非居民纳税人是否符合享受协定待遇条件；
- 税款金额计算是否正确；
- 是否存在滥用税收协定的风险。

地方税务机关认为非居民不符合享受协定待遇条件要求非居民补税且补税金额大于等于 500 万元的，将填写《不应享受协定待遇补征税款案件情况简表》，层报国家税务总局。总局会定期汇总各地申报的表格并予以通报。对税收风险较大和执行不一致的案件，将不定期组织专家会审。

省税务机关对非居民纳税人不当享受协定待遇的情况进行信用档案管理。地方税务机关定期制作《非居民纳税人享受协定待遇不良信用清单》并层报总局，总局将定期通报非居民的信用信息。信用不良的非居民纳税人会被各级税务机关作为重点管理对象。

德勤解读

60 号公告将享受协定待遇的事前审批、事前备案程序调整为自行判断，税务机关必然要加强后续管理。128 号文作为 60 号公告的配套法规，给地方税务机关在实务操作中如何加强后续管理给予了一定指引，非居民纳税人可以从中了解到自身在享受税收协定后将以何种方式受到监管，从而可以更为合理地评估自身的税务风险。

如我们在 60 号公告的税务评论中所说，60 号公告并未改变对非居民享受协定待遇的实质性要求，且 128 号文中要求的税务机关的抽查频率和比率均不低，因此非居民纳税人和扣缴义务人在作自行判断时，依然有必要遵循审慎原则。

相关阅读

¹ [国家税务总局关于发布《非居民纳税人享受税收协定待遇管理办法》的公告 \(国家税务总局公告 2015 年第 60 号\)](#)

² [德勤税务评论——税务总局发布申请协定待遇新办法](#)

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Tax Newsflash

SAT Clarifies New Rules on Tax Treaty Benefit Claims



China's State Administration of Taxation (SAT) issued guidance (Circular 128) on 29 October 2015 that clarifies the responsibilities of the tax authorities at all levels of the government when they assess whether a nonresident is entitled to benefits under China's tax treaties. Circular 128 supplements guidance released in August 2015 (Bulletin 60)¹ that eliminated the advance approval and registration requirement for nonresidents to obtain treaty benefits and introduced a new self-assessment procedure. Both sets of guidance applied as from 1 November 2015.

Highlights of Circular 128

Bulletin 60 relaxes the procedures for nonresident enterprises and individuals to obtain benefits under China's tax treaties by allowing treaty benefits to be enjoyed based on assessments made by the nonresident recipient of China-source income or the Chinese withholding agent and the submission of certain documentation.² The tax authorities can subsequently review the documentation and request additional information from the nonresident or the withholding agent, and if the authorities conclude that a nonresident improperly obtained benefits under a treaty, they may require the nonresident to pay the relevant tax.

Circular 128 requires the local tax authorities to carry out periodic assessments of a certain percentage of nonresidents claiming treaty benefits. These examinations specifically will target nonresidents located in jurisdictions that have low effective tax rates, those claiming significant tax benefits and nonresidents with poor credit ratings.

The tax authorities are directed to carry out “sample” examinations of nonresidents that claim tax benefits under the dividends, interest, royalties and capital gains provisions within three months after the end of each quarter. For each of these four articles, the authorities must examine at least 30% of the total number of nonresidents claiming treaty benefits based on the same article during the relevant quarter. Additionally, for other treaty articles, the authorities must, within six months of the end of each quarter, examine at least 10% of the total number of nonresidents claiming benefits based on the same article during the relevant quarter.

The examinations will focus on the following issues:

- Whether the nonresident’s tax residence certificate meets the requirements under Chinese law and whether the nonresident was a dual resident for tax purposes;
- Whether the income concerned was correctly categorized for purposes of obtaining the relevant treaty benefits, whether the correct treaty provision was applied and whether the nonresident was eligible to obtain the benefits;
- Whether the tax payable was calculated correctly; and
- Whether any tax treaty abuse was present.

If the local tax authorities discover that a nonresident recipient of China-source income does not qualify for benefits under a relevant treaty and the authorities require the taxpayer to pay back at least RMB 5 million in taxes, the local tax authorities must prepare a *Tax Adjustment Case Summary of Ineligibility for Tax Treaty Benefits* ("Summary") and submit the Summaries to the next level of tax authorities. These Summaries will ultimately be submitted to the SAT, which will circulate the consolidated Summaries to tax authorities throughout the country. For cases that expose high tax risks and/or inconsistencies in practice, the SAT will set up expert panel reviews.

The provincial level tax authorities must maintain credit files that contain information on nonresidents that have inappropriately claimed treaty benefits and must complete a *Poor Credit List of Nonresident Taxpayers Claiming Tax Treaty Benefits*. Such information will ultimately be submitted to the SAT and circulated by the SAT to other tax authorities regularly. Nonresidents with poor credit ratings will be targeted for further examinations by tax authorities at all levels.

Deloitte comments

Bulletin 60 relaxes the procedure for nonresidents to obtain benefits under China's tax treaties and shifts from an advance approval/registration system to a system based on follow-up administration by the tax authorities. Circular 128 provides guidance to the local tax authorities on how they should conduct and strengthen the subsequent administration.

It should be noted that Bulletin 60 does not make changes to the substantive requirements (such as beneficial ownership, satisfying the purpose test, etc.) that must be met for a nonresident to be entitled to treaty benefits. Further, the frequency and proportion of sample examinations by the tax authorities as required under Circular 128 are not low. Therefore, when making self-assessments for tax treaty benefit purposes, both the nonresident recipient of income and the Chinese withholding agent should ensure that the claims are valid and accurate.

Notes:

¹ [See *Bulletin to Issue Administrative Measures for Nonresident Taxpayers to Enjoy Tax Treaty Benefits \(Bulletin of the State Administration of Taxation \[2015\] No. 60\) \(Chinese version\)*](#)

² [See *Deloitte Tax Analysis on Bulletin 60*](#)

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