

一般反避税管理办法（试行）

Administrative Measures on the General Anti-Avoidance Rule (GAAR) (Trial)

国家税务总局令第 32 号

The State Administration of Taxation Order No. 32

第一章 总则

Chapter I General Provisions

第一条 为规范一般反避税管理，根据《中华人民共和国企业所得税法》（以下简称企业所得税法）及其实施条例、《中华人民共和国税收征收管理法》（以下简称税收征管法）及其实施细则，制定本办法。

Article 1 These Administrative Measures are stipulated to regulate the administration of general anti-avoidance pursuant to the Enterprise Income Tax Law of the People's Republic of China (EIT Law) and its Implementation Regulations, the Administration Law of Tax Collection of the People's Republic of China (Tax Administration Law) and its Implementation Regulations.

第二条 本办法适用于税务机关按照企业所得税法第四十七条、企业所得税法实施条例第一百二十条的规定，对企业实施的不具有合理商业目的而获取税收利益的避税安排，实施的特别纳税调整。

Article 2 These Measures are applicable in cases in which tax authorities make special tax adjustments on tax avoidance arrangements by an enterprise without reasonable commercial purpose and to obtain a tax benefit pursuant to article 47 of the EIT Law and article 120 of the Implementation Regulations of the EIT Law.

下列情况不适用本办法：

These Measures are not applicable to the following scenarios:

（一）与跨境交易或者支付无关的安排；

(1) Arrangements not involving cross-border transaction or payment; and

（二）涉嫌逃避缴纳税款、逃避追缴欠税、骗税、抗税以及虚开发票等税收违法行为。

(2) Illegal tax behaviors potentially related to evading tax payments, evading paying taxes due for recovery claim from tax authorities, cheating on taxes payable, refusing to pay taxes and providing forged tax invoices.

第三条 税收利益是指减少、免除或者推迟缴纳企业所得税应纳税额。

Article 3 A tax benefit refers to any reduction, exemption or deferral of EIT payable.

第四条 避税安排具有以下特征：

Article 4 A tax avoidance arrangement has the following features:

（一）以获取税收利益为唯一目的或者主要目的；

(1) obtaining a tax benefit is the sole purpose, or the main purpose; and

（二）以形式符合税法规定、但与其经济实质不符的方式获取税收利益。

(2) the tax benefit is obtained by using a scheme which is not consistent with its economic substance even though its form may be permissible by the tax laws

第五条 税务机关应当以具有合理商业目的和经济实质的类似安排为基准，按照实质重于形式的原则实施特别纳税调整。调整方法包括：

Article 5 Tax authorities shall make special tax adjustments in accordance with the principle of “substance over form” by referring to similar arrangements with a reasonable commercial purpose and economic substance as the benchmark. The adjustment methods include:

（一）对安排的全部或者部分交易重新定性；

(1) re-characterizing the arrangement in part or entirely;

（二）在税收上否定交易方的存在，或者将该交易方与其他交易方视为同一实体；

(2) disregarding the existence of a party to the transaction for tax purpose, or deem this party and the other party to the transaction as one entity;

（三）对相关所得、扣除、税收优惠、境外税收抵免等重新定性或者在交易各方向重新分配；

(3) re-characterizing relevant income, deduction, tax incentives and foreign tax credits etc. or re-allocating them among parties to the transaction; and

（四）其他合理方法。

(4) other reasonable methods.

第六条 企业的安排属于转让定价、成本分摊、受控外国企业、资本弱化等其他特别纳税调整范围的，应当首先适用其他特别纳税调整相关规定。

Article 6 In the event that an arrangement by an enterprise is dealt with by other specific special tax adjustment measures such as transfer pricing, cost sharing, controlled foreign corporations, thin capitalization etc., these specific special tax adjustment measures shall be applied first.

企业的安排属于受益所有人、利益限制等税收协定执行范围的，应当首先适用税收协定执行的相关规定。

In the event that an arrangement by an enterprise is dealt with by treaty provisions such as beneficial ownership, limitation-on-benefits etc., the treaty provisions shall be applied first.

第二章 立案

Chapter II Case Selection

第七条 各级税务机关应当结合工作实际，应用各种数据资源，如企业所得税汇算清缴、纳税评估、同期资料管理、对外支付税务管理、股权转让交易管理、税收协定执行等，及时发现一般反避税案源。

Article 7 All tax authorities shall timely identify potential cases for GAAR examination by utilizing various data resources in practical work such as enterprise income tax annual filing, tax assessment, contemporaneous documentation review, tax clearance for outbound payments, tax administration of equity transfer transactions and implementation of tax treaties etc.

第八条 主管税务机关发现企业存在避税嫌疑的，层报省、自治区、直辖市和计划单列市（以下简称省）税务机关复核同意后，报税务总局申请立案。

Article 8 Where the in-charge tax authority discovers that an enterprise is suspicious of tax avoidance, it shall report the case upwards through different levels to the provincial-level tax authorities for their review and consensus, who in turn further submit it to the State Administration of Taxation (SAT) for approval to initiate the case for GAAR examination.

第九条 省税务机关应当将税务总局形成的立案申请审核意见转发主管税务机关。税务总局同意立案的，主管税务机关实施一般反避税调查。

Article 9 Once the SAT formed an opinion after reviewing the application to initiate the case for GAAR examination, the provincial-level tax authorities shall forward the opinion to the in-charge tax authority. Where the SAT agreed to initiate the case for GAAR examination, the in-charge tax authority shall organize and carry out the GAAR examination.

第三章 调查

Chapter III Case Examination

第十条 主管税务机关实施一般反避税调查时，应当向被调查企业送达《税务检查通知书》。

Article 10 When the in-charge tax authority initiates the GAAR examination, it shall send a "Tax Examination Notice" to the enterprise being examined.

第十一条 被调查企业认为其安排不属于本办法所称避税安排的，应当自收到《税务检查通知书》之日起60日内提供下列资料：

Article 11 If the enterprise being examined did not believe the arrangement was a tax avoidance arrangement as referred in these Measures, it shall provide following materials within 60 days upon receiving the "Tax Examination Notice":

(一) 安排的背景资料；

(1) Background information with respect to the arrangement;

(二) 安排的商业目的等说明文件；

(2) Documents to explain the commercial purpose of the arrangement, etc.;

(三) 安排的内部决策和管理资料，如董事会决议、备忘录、电子邮件等；

(3) Internal decision and management information of the arrangement, such as board resolutions, memorandums, emails, etc.;

(四) 安排涉及的详细交易资料，如合同、补充协议、收付款凭证等；

(4) Detailed information of transactions involved in the arrangement, such as contracts, supplementary agreements, receipt and payment vouchers, etc.;

(五) 与其他交易方的沟通信息；

(5) Information with respect to communications with other parties to the transaction;

(六) 可以证明其安排不属于避税安排的其他资料；

(6) Other information which can prove that the arrangement is not a tax avoidance arrangement; and

(七) 税务机关认为有必要提供的其他资料。

(7) Other necessary information as determined by tax authorities.

企业因特殊情况不能按期提供的，可以向主管税务机关提交书面延期申请，经批准可以延期提供，但是最长不得超过 30 日。主管税务机关应当自收到企业延期申请之日起 15 日内书面回复。逾期未回复的，视同税务机关同意企业的延期申请。

Where an enterprise is unable to provide the relevant information within the stipulated time period due to special reasons, it may submit a written extension application to the in-charge tax authority. Upon approval, the enterprise may provide the information at a later date. However, the maximum extension shall be no longer than 30 days. The in-charge tax authority shall issue a written reply to the enterprise within 15 days from the receipt of the extension application. The extension application is deemed to be approved by the tax authority if no reply is issued within the stipulated period.

第十二条 企业拒绝提供资料的，主管税务机关可以按照税收征管法第三十五条的规定进行核定。

Article 12 Where an enterprise refuses to provide the materials, the in-charge tax authority may deem the tax pursuant to article 35 of the Tax Administration Law.

第十三条 主管税务机关实施一般反避税调查时，可以要求为企业筹划安排的单位或者个人（以下简称筹划方）提供有关资料及证明材料。

Article 13 When the in-charge tax authority carries out the GAAR examination, it may request the entity or individual who advised the enterprise on the arrangement (the advisor) to provide the relevant information and evidences.

第十四条 一般反避税调查涉及向筹划方、关联方以及与关联业务调查有关的其他企业调查取证的，主管税务机关应当送达《税务事项通知书》。

Article 14 Where a GAAR examination involves investigating and collecting evidences from advisors, related parties and any other enterprises that are related to the examination of related party transactions, the in-charge tax authority shall send a "Tax Matter Notice" to such parties.

第十五条 主管税务机关审核企业、筹划方、关联方以及与关联业务调查有关的其他企业提供的资料，可以采用现场调查、发函协查和查阅公开信息等方式核实。需取得境外有关资料的，可以按有关规定启动税收情报交换程序，或者通过我驻外机构调查收集有关信息。涉及境外关联方相关资料的，主管税务机关也可以要求企业提供公证机构的证明。

Article 15 In reviewing the information provided by the enterprise, advisor, related parties and any other enterprises that are related to the examination of related party transactions, the in-charge tax authority may validate the information via field examination, requesting for joint examination with other in-charge tax authorities with formal written requests, or reviewing publicly available information etc. Where there is a need to obtain the relevant information from overseas, the in-charge tax authority may initiate the exchange of tax information procedures pursuant to the relevant provisions, or investigate and collect the relevant information through Chinese organizations stationed overseas. The in-charge tax authority may also request the enterprise to provide certification from a notarization institution if relevant information of overseas related parties is involved.

第四章 结案

Chapter IV Case Conclusion

第十六条 主管税务机关根据调查过程中获得的相关资料，自税务总局同意立案之日起9个月内进行审核，综合判断企业是否存在避税安排，形成案件不予调整或者初步调整方案的意见和理由，层报省税务机关复核同意后，报税务总局申请结案。

Article 16 Within nine months after SAT's approval to initiate the case, the in-charge tax authority shall, based on the information obtained from the examination, evaluate and assess the case, determine in totality whether the enterprise is involved in a tax avoidance arrangement, and form opinions on whether the case should be subject to adjustment or not, together with the preliminary proposal of the adjustment (if applicable) as well as the underlying reasons, then, subject to the provincial-level tax authorities' review and consensus, report upwards to the SAT to close the case.

第十七条 主管税务机关应当根据税务总局形成的结案申请审核意见，分别以下情况进行处理：

Article 17 The in-charge tax authority shall take the following actions based on the SAT's opinions on the case conclusion:

(一) 同意不予调整的，向被调查企业下发《特别纳税调查结论通知书》；

(1) if the SAT agree not to make adjustment, issue a "Special Tax Examination Conclusion Notice" to the enterprise being examined;

(二) 同意初步调整方案的，向被调查企业下发《特别纳税调查初步调整通知书》；

(2) if the SAT agree on the preliminary proposal of the adjustment, issue a "Special Tax Examination Preliminary Adjustment Notice" to the enterprise being examined;

(三) 税务总局有不同意见的，按照税务总局的意见修改后再次层报审核。

(3) if the SAT hold a different view, resubmit the case to the SAT for review after revising the case based on the SAT's opinions.

被调查企业在收到《特别纳税调查初步调整通知书》之日起7日内未提出异议的，主管税务机关应当下发《特别纳税调查调整通知书》。

Where the enterprise being examined does not raise an objection within 7 days upon receiving the "Special Tax Examination Preliminary Adjustment Notice", the in-charge tax authority shall issue a "Special Tax Examination Adjustment Notice".

被调查企业在收到《特别纳税调查初步调整通知书》之日起7日内提出异议，但是主管税务机关经审核后认为不应采纳的，应将被调查企业的异议及不应采纳的意见和理由层报省税务机关复核同意后，报税务总局再次申请结案。

Where the enterprise being examined raises an objection within 7 days upon receiving the "Special Tax Examination Preliminary Adjustment Notice", but the objection is rejected by the in-charge tax authority after review, the in-charge tax authority shall report the objection raised by the enterprise and the tax authority's opinions and reasons for rejection to the provincial-level tax authorities for review and consensus, and then re-report to the SAT to close the case.

被调查企业在收到《特别纳税调查初步调整通知书》之日起7日内提出异议，主管税务机关经审核后认为确需对调整方案进行修改的，应当将被调查企业的异议及修改后的调整方案层报省税务机关复核同意后，报税务总局再次申请结案。

Where the enterprise being examined raises an objection within 7 days upon receiving the "Special Tax Examination Preliminary Adjustment Notice" and the in-charge tax authority determines after review that it is necessary to revise the adjustment proposal, the in-charge tax authority shall report the objection by the enterprise and the revised adjustment proposal to the provincial-level tax authorities for review and consensus, and then re-report to the SAT to close the case.

第十八条 主管税务机关应当根据税务总局考虑企业异议形成的结案申请审核意见，分别以下情况进行处理：

Article 18 The in-charge tax authority shall take the following actions based on the SAT's opinions on the resubmitted case after the SAT's taking into account of the enterprise's objection:

(一) 同意不应采纳企业所提异议的，向被调查企业下发《特别纳税调查调整通知书》；

(1) if the SAT agree to reject the objection made by the enterprise, issue a "Special Tax Examination Adjustment Notice" to the enterprise being examined;

(二) 同意修改后调整方案的，向被调查企业下发《特别纳税调查调整通知书》；

(2) if the SAT agree on the revised adjustment proposal, issue a "Special Tax Examination Adjustment Notice" to the enterprise being examined;

(三) 税务总局有不同意见的，按照税务总局的意见修改后再次层报审核。

(3) if the SAT hold a different view, resubmit the case to the SAT for review after revising the case based on the SAT's opinions.

第五章 争议处理

Chapter V Dispute Resolutions

第十九条 被调查企业对主管税务机关作出的一般反避税调整决定不服的，可以按照有关法律法规的规定申请法律救济。

Article 19 Where the enterprise being examined disagrees with the GAAR assessment made by the in-charge tax authorities, it may apply for legal relief in accordance with the relevant laws and regulations.

第二十条 主管税务机关作出的一般反避税调整方案导致国内双重征税的，由税务总局统一组织协调解决。

Article 20 Where the GAAR adjustment made by the in-charge tax authorities has led to domestic double taxation, it shall be coordinated and resolved by the SAT.

第二十一条 被调查企业认为我国税务机关作出的一般反避税调整，导致国际双重征税或者不符合税收协定规定征税的，可以按照税收协定及其相关规定申请启动相互协商程序。

Article 21 Where the enterprise being examined regards the GAAR adjustment made by Chinese tax authorities having led to international double taxation or incompliant with the relevant tax treaties, it may apply to initiate a mutual agreement procedure pursuant to the relevant tax treaties and other regulations.

第六章 附则

Chapter VI Supplementary Provisions

第二十二条 本办法自 2015 年 2 月 1 日起施行。2015 年 2 月 1 日前税务机关尚未结案处理的避税安排适用本办法。

Article 22 These Measures are effective as of 1 February 2015. The tax avoidance cases which have not been closed by tax authorities by 1 February 2015 shall apply these Measures.

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