



Tax Newsflash

China

Deloitte Tohmatsu Tax Co.

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SAT Simplifies Administrative Procedure for Resident Enterprises to Apply Preferential EIT Treatment

On 20 November 2015, China's State Administration of Taxation ("SAT") published a new tax bulletin (Bulletin [2015] No. 76 (Bulletin 76)) on its website that provides guidance on how resident enterprises may claim preferential enterprise income tax ("EIT") treatment following the elimination of many advance approval/registration requirements for claiming preferential treatment in other recent guidance. The guidance introduces a "reporting" mechanism with much simpler documentation requirements for a resident enterprise to apply preferential EIT treatment based on its self-assessment, which should enable taxpayers to enjoy benefits more easily. However, the new procedure also may present a potential risk that the tax authorities subsequently will challenge taxpayers' self-assessments, which could result in the recapture of the tax benefits and the imposition of interest charges. Bulletin 76 generally applies to annual EIT filings for 2015 and subsequent years.

(1) Background

The SAT recently has abolished many administrative approval/registration requirements to implement the work plans of China's State Council, with the purpose of transforming the role of the government, clarifying the rights and

responsibilities of the tax authorities and taxpayers and reducing the administrative burden on enterprises. The SAT also has published a series of circulars in the past two years that eliminated the advance approval requirements to obtain preferential EIT treatment and introduced simple reporting requirements.

(2) Highlights of Bulletin 76

1) Scope of application

A list of the items that are granted preferential EIT treatment is included in the Category of Preferential EIT Treatment Subject to Reporting Requirements ("Category") that is maintained and published by the SAT. The 2015 version of the Category lists 55 items, including tax exemptions, super deductions, accelerated depreciation, tax credits, reduced tax rates, etc.

2) Procedures for reporting

When applying an item of preferential treatment, a resident enterprise generally must file a Reporting Form for Enterprise Income Tax Preferential Treatment ("Reporting Form") with the tax authorities, along with supporting documents, if required. (No supporting documents are required for more than half of the 55 items, and an enterprise may be exempt from filing the Reporting Form if the only items it

claims relate to accelerated depreciation and/or tax benefits granted to small-scale and “thin profit” enterprises.) Where an enterprise enjoys multiple items of preferential treatment, or preferential treatment covering multiple projects that must be accounted for separately, the enterprise must submit multiple Reporting Forms.

Enterprises that submit Reporting Forms are responsible for the authenticity and validity of the information in the form and supporting documents.

When processing the reporting documents, the tax authorities are required to carry out only a formal examination, as opposed to a substantive verification of the authenticity of the information. As long as the Reporting Forms meet the formal requirements and the relevant information/supporting documents are complete, the tax authorities must accept the reporting immediately, or within two business days from the receipt of the relevant electronic materials.

3) Timing for reporting

Enterprises that enjoy a tax holiday for a fixed period of time covering two years or more must submit the Reporting Form no later than filing the annual tax return for the first year of the tax holiday. No additional reporting will be required if no changes occur to the information provided in the form during the tax holiday.

Enterprises that enjoy other types of preferential treatment must submit the Reporting Form no later than filing the annual tax return for the relevant year.

Most items of preferential tax treatment may be applied as early as the time an enterprise files its monthly or quarterly EIT returns, with certain exceptions (e.g. R&D super deductions) where the preferential tax treatment cannot be applied until the enterprise files its annual return for the relevant year. However, if the tax authorities question the application of certain items of preferential treatment reported in monthly or quarterly returns, they may require an enterprise

to submit the Reporting Form in advance.

4) Reporting for enterprises operating in multiple provinces

For enterprises that operate in multiple provinces, the Reporting Forms for some items of preferential treatment that are relevant to the operation of a specific branch (e.g. certain geographical incentives, R&D super deductions, income tax credits arising from purchases of specialized equipment, etc.) must be submitted to the tax authorities in charge of the branch, while other items of preferential treatment must be reported to the tax authorities in charge of the head office. The head office must prepare and submit a summary of all items of preferential tax treatment applied by its branches to the tax authorities in charge of the head office when filing its annual EIT returns.

5) Maintenance of documents

In addition to fulfilling the reporting obligations, enterprises that apply preferential treatment are required to maintain proper documents to respond to any future inspections. The tax authorities may require enterprises to provide these documents within a specified period of time to demonstrate that they are eligible for the preferential treatment. Enterprises are responsible for the authenticity and validity of these documents.

The Category lists the documents to be maintained for each item of preferential treatment. For some items, the tax authorities at the provincial level have the discretion to add more documents to the list.

The relevant documents generally are required to be maintained for 10 years after the enterprise enjoys the preferential treatment. Where preferential treatment covers a period of time and involves a book-to-tax adjustment, the documents must be maintained for 10 years from the end of the period of preferential treatment.

6) Consequences of failure to timely report preferential treatment

Enterprises that enjoy the benefits of preferential treatment but that do not fulfill their reporting obligations within the prescribed time limit (i.e. no later than filing the annual returns) must file the Reporting Form with the tax authorities, along with the documents that must be maintained for the relevant preferential treatment, once they became aware of the noncompliance. If the noncompliance is identified by the tax authorities, the authorities must request the enterprise to file the Reporting Form within a specified period of time, and to provide the documents required to be maintained.

If the tax authorities ultimately conclude that the enterprise is eligible for the preferential treatment, fines will be imposed on the enterprise for failing to fulfill its reporting obligations in a timely manner. Where the tax authorities determine that the criteria for the preferential treatment were not met, any benefits enjoyed will be recaptured and interest charges will be imposed.

7) Effective date

Bulletin 76 generally applies to EIT filings for 2015 and subsequent years. However, under a “grandfathering” provision, a resident enterprise does not need to fulfill the reporting obligation under Bulletin 76 for a tax holiday covering 2015 and subsequent years if it already has obtained an approval or registration of the holiday from the tax authorities.

(3) Deloitte's comments

Bulletin 76 signifies that the administration of preferential EIT treatment has moved away from the traditional advance approval mechanism. In the future, taxpayers need only to provide a small number of documents to apply for preferential treatment and, therefore, should be able to enjoy the convenience of the streamlined procedures. Bulletin 76 also provides clear guidance to taxpayers on what documents need to be maintained to demonstrate their eligibility for

preferential treatment.

However, the change in the administrative approach relating to preferential EIT treatment increases taxpayers' responsibilities in assessing their eligibility for preferential treatment. It also highlights the importance of the documentation requirements for compliance purposes. Compared to the traditional advance approval approach, the new method could present a potential risk of uncertainties for taxpayers. Any difference in opinion between taxpayers and the tax authorities may not surface until after the preferential treatment has been applied, which could result in benefits being recaptured and interest charges being imposed. As the tax authorities shift their focus to post-event inspections, enterprises should actively consider how to ensure their understanding and application of preferential tax policies is correct, as well as how to effectively communicate with the tax authorities in response to any challenges and provide appropriate supporting documentation as proof of eligibility for the benefits claimed.

Given that Bulletin 76 will apply to the annual EIT filings for 2015 (which are due on 31 May 2016), enterprises that are expecting to claim the benefits of preferential EIT treatment in 2015 should consider preparing to fulfill the filing obligations, and to collect, compile and maintain the required documents.

Relevant circular:

[Bulletin of the State Administration of Taxation Issuing the Administrative Measures for Enterprise Income Tax Preferential Policies \(Bulletin of the State Administration of Taxation \[2015\] No. 76\) \(Chinese version\)](#)

[Category of Preferential EIT Treatment Subject to Reporting Requirements \(Chinese version, Word\)](#)

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