

### 委托境外研发费用重享加计扣除政策

#### R&D super deductions reinstated for cross-border contract R&D arrangements

2018年6月25日，财政部、国家税务总局、科技部发布财税[2018]64号通知（以下简称“64号通知”），允许企业就委托境外机构进行研发活动发生的研究开发费用享受加计扣除优惠政策。64号通知自2018年1月1日起执行。

#### 新规背景

2008年新企业所得税法实施之后，企业委托境外进行研发活动发生的研发费用一度未被明确排除在可享受加计扣除优惠的研发费用范围之外；但根据2015年发布的财税[2015]119号通知，企业委托境外进行研发活动所发生的费用，自2016年起不得加计扣除。为进一步发挥加计扣除优惠政策对研发创新活动的激励效应，财税部门近年来对该项优惠政策进行了数次完善，扩大可享受加计扣除的研发费用范围，并将科技型中小企业的研发费用加计扣除比例从一般企业的50%上调至75%。今年4月25日，国务院常务会议决定推出七项支持创业创新和小微企业发展的减税措施，“取消企业委托境外研发费用不得加计扣除限制”便在其列，64号通知的发布系对上述会议决定的落实。

#### 费用范围

64号通知废止了财税[2015]119号中“企业委托境外机构或个人进行研发活动所发生的费用，不得加计扣除”的规定，允许企业将委托境外进行研发活动发生的研发费用纳入可加计扣除的研发费用范围。但64号通知明确，上述“委托境外进行研发活动”不包括委托境外个人进行的研发活动。这意味着此次扩大的可加计扣除研发费用仅限于企业委托境外机构进行的研发活动；企业委托境外个人进行研发活动发生的费用仍不得加计扣除。

On 25 June 2018, China's Ministry of Finance, the State Administration of Taxation, and the Ministry of Science and Technology issued guidance (Caishui [2018] No. 64 (Circular 64)) that reinstates research and development (R&D) super deduction policies for certain cross-border contract R&D arrangements. Circular 64 applies retroactively as from 1 January 2018.

#### Background

China's enterprise income tax (EIT) law grants tax super deductions for qualifying expenses incurred in respect of R&D activities. Based on guidance issued in 2015 (Caishui [2015] No. 119), expenses incurred in connection with cross-border contract R&D arrangements are not eligible for the super deduction as from 2016.

To encourage R&D and innovation activities, the government subsequently has enhanced super deduction incentives on several occasions, including expanding the scope of qualifying R&D expenses and increasing the super deduction rate for small and medium-sized tech enterprises from 50% to 75%. On 25 April 2018, the State Council decided to reinstate super deduction policies for cross-border contract R&D expenses, which was one of seven tax reduction measures to support entrepreneurship, innovation and development of small and micro businesses approved at the executive meeting. The publication of Circular 64 gives effect to those measures.

#### Scope of R&D expenses

According to Circular 64, expenses incurred by a domestic enterprise for contract R&D activities entrusted to foreign parties (excluding foreign individuals) are eligible for a super deduction.

#### Deduction cap

Eighty percent of the actual expenses incurred by an enterprise in engaging a foreign organization to carry out cross-border contract R&D may be treated as foreign R&D expenses, eligible for a super deduction for EIT purposes, but the expenses may not exceed two-thirds of the enterprise's "qualifying domestic R&D expenses." Circular 64 does not clarify what constitutes qualifying domestic R&D expenses, but the term generally is interpreted as domestic R&D expenses that are eligible for a super deduction. The method for calculating the deduction cap in Circular 64 appears to be similar to the approach used to calculate qualifying overseas contract R&D expenses for the recognition of high and new technology enterprise status.



# ThinkBridge Newsletter 2018 3rd Quarter

## 思倍捷咨询 2018 年三季度期刊

### 费用限额

委托境外进行研发活动所发生的费用，按照费用实际发生额的80%计入委托方的委托境外研发费用。委托境外研发费用不超过境内符合条件的研发费用三分之二的部分，可以按规定在企业所得税前加计扣除。64号通知未对上述“符合条件”作出解释，一般理解此处系指符合加计扣除条件的境内研发费用。值得注意的是，64号通知有关境内外研发费用占比限制的规则与现行高新技术企业认定办法较为接近。

### 程序规则

合同登记：企业委托境外进行研发活动应签订技术开发合同，并由委托方到科技行政主管部门进行登记。资料留存备查：鉴于从2017年度企业所得税汇算清缴起，企业所得税优惠事项已取消备案手续，改由企业自行判别、申报享受，并将相关资料留存备查，64号通知就企业委托境外进行研发活动享受研发费用加计扣除的留存备查资料进行了列举。除委托研发合同、研发支出辅助账等常规资料以外，针对委托境外进行研发活动的特点，其留存备查资料清单新增以下项目：

- 委托境外研发银行支付凭证、受托方开具的收款凭据
- 当年委托研发项目的进展情况

有关银行支付凭证和受托方收款凭据的资料要求，可能会使尚未完成对外支付的委托研发费难以享受加计扣除政策。费用支出明细：与委托境内进行研发活动的要求相同，委托方与受托方存在关联关系的，委托方应向受托方取得研发项目费用支出明细情况。

### 执行时间

64号通知自2018年1月1日起执行。根据现行研发费用加计扣除政策，当年符合条件未享受加计扣除优惠的可以追溯享受，追溯期限最长为3年。

64号通知扩大了企业可加计扣除的研发费用范围，响应国家鼓励创新的政策导向，将促进中国企业利用并集合全球优质的研发资源。随着该项优惠措施的落实，企业在研发模式的安排上可以从全球的角度出发，在综合考虑各项因素的基础上对境内外研发资源进行有效布局，确保研发税收优惠应享尽享，提升研发效率。

### Administrative procedures

**Contract registration:** To qualify for a super deduction, the cross-border contract R&D arrangement must be supported by a written technology development contract between the domestic enterprise and the foreign organization to which cross-border R&D activities were assigned. The domestic enterprise must register the contract with the competent administrative department of science and technology. **Documentation requirements:** Enterprises self-assess their entitlement to EIT benefits, but must maintain relevant documents in the event of a future investigation. Circular 64 lists the documents that must be retained by the enterprise to support super deductions under cross-border contract R&D arrangements, including contracts, ledgers for R&D expenses, bank payment vouchers for the cross-border contract R&D activities, receipts issued by the contractor and evidence of progress of the R&D project during the year. The requirement for bank payment vouchers and receipts may prevent the enterprise from enjoying a super deduction on cross-border contract R&D expenses incurred but not yet paid.

**Statement of expenses:** As for domestic R&D activities, where the enterprise and the foreign contractor are related parties, the latter must provide a breakdown of the expenses incurred to the enterprise.

### Effective date

Circular 64 applies retroactively as from 1 January 2018. Based on the existing rules, if a qualifying enterprise does not apply for an R&D super deduction in the year in which the expenses are incurred, it still may enjoy the benefit retroactively provided an application for the super deduction is made within the following three years.

Circular 64 expands the scope of the R&D super deduction in accordance with China's policy of promoting innovation and should facilitate the utilization and integration of global quality R&D resources by Chinese enterprises. With the implementation of the incentive, enterprises can take a global perspective when planning their R&D activities and manage the allocation of domestic and overseas resources to obtain both the maximum available tax benefits and improved R&D efficiency.

More detailed guidance on specific aspects of the measures is expected from relevant departments. Enterprises conducting or planning to conduct cross-border contract R&D should monitor the issuance of future guidance and consider conducting a feasibility analysis and risk assessment of the super deductions for qualifying R&D expenses, which may include an analysis of the enterprise's R&D expenses and business model, and a review of contract terms.



### 税务总局明确几项增值税事宜

#### SAT clarifies several VAT issues

2018 年 7 月 25 日，国家税务总局发布 2018 年第 42 号公告（简称“42 号公告”），对教育服务、航空运输代理、安装服务、转让限售股等增值税事项进行了明确。42 号公告自发布之日起施行。

#### 中外合作办学的学历教育服务

根据财税[2016]36 号（简称“36 号文”），从事学历教育的学校提供的教育服务免征增值税。但 36 号文未明确境外教育机构与境内学校开展中外合作办学过程中，境外教育机构自境内学校取得的收入，是否可享受增值税免税政策。

42 号公告明确，境外教育机构取得的上述收入，符合 36 号文的学历教育免税条件的，也可享受增值税免税政策。

#### 航空运输销售代理企业的境内机票代理服务

42 号公告明确，航空运输销售代理企业提供境内机票代理服务，可以适用差额计税政策，即以取得的全部价款和价外费用，扣除向客户收取并支付给航空运输企业或其他航空运输销售代理企业的境内机票净结算款和相关费用后的余额为销售额；公告同时对合法有效的扣除凭证进行了规定。

根据公告，航空运输销售代理企业就取得的全部价款和价外费用，向购买方开具行程单，或开具增值税普通发票。

#### 销售机器设备同时提供安装服务

42 号公告分“自产”和“外购”两类情形对一般纳税人销售机器设备同时提供安装服务的增值税处理进行了规定：

##### 自产机器设备

- 应分别核算机器设备和安装服务的销售额，即各自适用 16% 和 10% 的增值税税率；
- 安装服务可以选择适用简易计税方法，即适用 3% 征收率但不得抵扣进项税。

##### 外购机器设备

- 未分别核算机器设备和安装服务的销售额的，应按混合销售确定其适用税目和税率，即单一适用 16% 或 10% 增值税税率；
- 若已按照兼营的规定分别核算机器设备和安装服务的销售额，安装服务可以选择适用简易计税方法，即适用 3% 征收率但不得抵扣进项税。

公告同时规定，纳税人对安装运行后的机器设备提供的维护保养服务，按照“其他现代服务”缴纳增值税。

On 25 July 2018, China's State Administration of Taxation (SAT) issued guidance (i.e. SAT Bulletin [2018] No. 42 or Bulletin 42) relating to VAT issues that arise for education services, air transport agency services, installation services, the transfer of restricted shares, etc. Bulletin 42 is effective from the date of issuance.

#### Sino-foreign cooperative academic education services

Based on a circular issued in 2016 (Caishui No. 36), academic education services provided by schools and universities are exempt from VAT. However, Circular No. 36 did not clarify whether income obtained in China by foreign education institutions for providing Sino-foreign cooperative education services are eligible for the VAT exemption. Bulletin 42 clarifies that such income is exempt from VAT if the relevant income is qualified academic education income according to Caishui No.36.

#### Domestic air ticket agency services provided by air transport agencies

Bulletin 42 clarifies that domestic air ticket agency services provided by air transport agencies can use the "net base" treatment for the calculation of VAT, under which the taxable base (i.e. sales) is computed by deducting from gross revenue domestic air ticket fees and other related fees collected from customers and paid to air transport companies or agencies. Bulletin 42 also specifies the vouchers that are eligible for deduction.

It should be noted that air transport agencies must issue travel itineraries or general VAT invoices to customers indicating the gross amount.

#### Installation services provided with sale of equipment

Bulletin 42 clarifies the VAT treatment for installation services that are provided with the sale of equipment:

##### Self-manufactured equipment

- A taxpayer must account for the sale of equipment and the provision of installation services separately, at VAT rates of 16% and 10%, respectively;
- A taxpayer can adopt the simplified taxing method for the provision of installation services, i.e. the 3% VAT rate is applied and input VAT may not be deducted.

##### Purchased equipment

- If a taxpayer does not separately account for the sale of equipment and the provision of installation services, it must treat the transaction as a "mixed sale" and apply the 16% or 10% VAT rate, as applicable.
- If a taxpayer has separately accounted for the sale of equipment and the provision of installation services under relevant rules, it can adopt the simplified taxing method for the provision of installation services, i.e. a 3% VAT rate is applied and input VAT may not be deducted.



# ThinkBridge Newsletter 2018 3rd Quarter

## 思倍捷咨询 2018 年三季度期刊

### 个税改革终落地，解读重大变化

IIT REFORM NAILED DOWN QUICK REVIEW OF NEW IIT LAW-English version N/A

2018年8月31日，十三届全国人大常委会第五次会议表决通过了《全国人民代表大会常务委员会关于修改〈中华人民共和国个人所得税法〉的决定》，此次修订后的个人所得税法开启了个税领域分类与综合相结合的新税制，并对税法进行了多方面的完善。这些变化及其影响不仅涉及每一个纳税人，也关系到广大企业等市场主体。同时，我们期待着实施条例以及其他相关法规政策的出台，从而更加全面的了解新税法新税制下，中国个人所得税的完整拼图。

#### 详细内容

此次个税税法修订涉及了全部主要条款，我们将修订内容总结如下：

- 引入“183天”概念，作为居民个人/非居民个人身份的重要判定标准；
- 修订个人所得项目体系，推行工资薪金、劳务报酬、稿酬和特许权使用费（即综合所得）综合征税，初步迈向综合与分类相结合的税制；
- 优化税率结构，调整税率级距，为取得综合所得和经营所得的劳动者，特别是中低收入劳动者，减税降负；
- 初步建立综合性扣除机制，提高基本减除费用标准，增加针对子女教育、继续教育、大病医疗、住房和赡养老人等支出的专项附加扣除；
- 引入反避税规则，独立交易原则、受控（个人）外国企业规则和一般反避税条款纳入个税税法；
- 变革个税征管制度，纳税人识别号“一人一号”、多部门信息互通共享、居民纳税人综合所得年度汇算清缴、扣缴义务人责任多元化，个税征管从法人管理走向自然人管理。

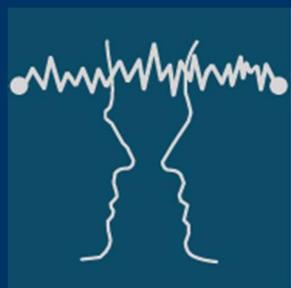
#### 新的个人所得项目体系11项变9项，

取消“其他所得”修订后的新个税税法中，应税个人所得项目的构成从原来的11项减至9项，其中工资薪金、劳务报酬、稿酬和特许权使用费4项所得作为综合所得，在计税时予以合并，综合计税（适用于居民个人）。值得注意的是，除了之前草案已经取消的“对企事业单位的承包经营、承租经营所得”，在新税法中，“经国务院财政部门确定征税的其他所得”也不再保留。中国个税税法一向采用正列举方式确定应税所得的范围。在过去多年的实践中，对于一些被认定为应税但不易明确所得性质、划归所得项目的收入，财税部门通常会通过政策文件形式明确将其作为“其他所得”项目计税征税。例如，企业业务宣传或年会庆典等活动中向本单位以外的个人赠送的礼品、个人为他人提供担保获得的报酬、投保税延型商业养老保险的个人达到规定条件时领取的商业养老金的应税部分等。这次“其他所得”项目的取消对于未来个人所得性质的确定可能带来一定的不确定性，尤其是在科技发展引领经济生活急速变化，新观念新业态不断涌现的情况下，比如：

- 原有按照“其他所得”项目课税的收入如何处理；
- 应税所得范围未明确列举的收入是否即可认定为不征税所得；
- 对于未来可能出现的所得性质不易确认的收入，纳税人、扣缴义务人和税务机关应如何应对。

#### 调整综合所得收入额的确定方法

之前草案中，除了稿酬所得的收入额给予30%的减计，劳务报酬和特许权使用费均按照收入全额作为收入额，没有保留原税法针对上述三项所得在计税时给予的费用减除。



### 个税改革终落地，解读重大变化(续)

IIT REFORM NAILED DOWN QUICK REVIEW OF NEW IIT LAW (con't)-English version N/A

我们看到，新个税法调整了劳务报酬、稿酬和特许权使用费收入额的确定方法，为这三项所得提供了20%的费用减除，也就是说按照收入全额打8折后计税。其中，稿酬所得收入额还可以在此基础上再享受30%的减计，实际相当于按收入全额的5.6折计税。新的收入额确定方法对于劳动性所得来源渠道多样或以稿酬、劳务报酬及特许权使用费等收入为主的纳税人来说是利好消息，将很大程度上减轻这部分纳税人可能面临的因综合征税导致的税负增加的影响。

#### 新的综合扣除机制

新个税法同时标志着个税综合扣除机制的初步建立。这一综合扣除机制由基本减除费用、专项扣除、专项附加扣除和依法确定的其他扣除四类扣除构成。除了一直处于热议中的基本减除费用和专项附加扣除，专项扣除是指强制性社会保险缴费和住房公积金缴款；其他扣除则包括相关法律法规确定的税前扣除项目，比如税优型商业健康保险缴费、企业年金个人缴费、税延型商业养老保险缴费等。对比之前的草案，我们关注到以下几点：

- - 基本减除费用标准没有进一步调整，仍保持为6万元/年（5,000元/月）；
- - 明确了住房支出专项附加扣除为住房贷款利息或者住房租金，二者扣一；
- - 专项附加扣除增加了赡养老人支出，这将为众多“上有老下有小”的家庭支柱进一步减负。

随着综合扣除机制框架及项目的确定，之后的关注重点就是新增各专项附加扣除项目的具体范围、标准、凭证、时点要求等落地细节。此外，新增的五类专项附加扣除是同步实施，还是分步骤陆续推进也是值得关注的。此次综合扣除机制的建立也为个税改革的进一步深入打下了基础。未来专项附加扣除项目种类及扣除标准的更新完善和灵活调整也值得期待。

#### 体现税收法定原则

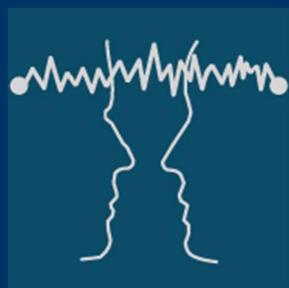
我们注意到，个税法中的多处修订都涉及行政法规制定的授权。原有税法下，大多数行政法规的另行制定直接授权给了国务院财税部门，此做法已经不符合《立法法》的要求。按照《立法法》规定，新个税法将相关行政法规的制定权仅授予国务院，并要求国务院将来报人大常委会备案。这就体现了税收法定原则。

#### 其他要点

除了上述内容，新个税法中还有不少其他要点也值得注意，例如：

- 综合所得及经营所得适用的税率表没有变化，综合所得最高税率仍然维持在45%；
- 公益慈善事业捐赠的税前扣除比例上升至法律层面；
- 除了综合所得及经营所得，对其他四项应税所得的扣缴及纳税申报要求也进行了明确；
- 增加了扣缴义务人向纳税人提供相关所得和税款扣缴信息的要求；
- 新个税法实施两步走的计划没有变化，减税红利将首先体现在工薪族2018年10月实发工资数额的增加。

根据修订后的个税法，我们将各所得项目应纳税额的计算方法以及扣缴义务人和居民纳税人的主要义务进行了总结，请见附表。



# ThinkBridge Newsletter 2018 3rd Quarter

## 思倍捷咨询 2018 年三季度期刊

附表：各所得项目应纳税额的计算方法以及扣缴义务人和居民纳税人的主要义务

		综合所得				经营所得	利息股息红利	财产租赁所得	财产转让	偶然
		工资 劳务报酬 薪金	稿酬 特许权 使用费							
应纳税额的计算	收入额	全额	全额-20%费用	(全额-20%费用)*70%	全额-20%费用	全额	全额	全额	全额	全额
	扣除项目	基本减除费用：60,000 元/年				成本、费用和损失		800 元/20%费用	财产原值和合理费用	
		专项扣除：社保及住房公积金								
		专项附加扣除：子女教育/继续教育/大病医疗/住房/赡养老人								
适用税率	其他扣除：特定商业健康、养老保险/企业年金等				3%-45% (超额累进税率)	5%-35% (超额累进税率)	20%	20%	20%	20%
扣缴义务人 主要义务	<ul style="list-style-type: none"> <li>■ 按月/按次预扣预缴（包括纳税人提供的专项附加扣除）</li> <li>■ 全员全额扣缴申报</li> <li>■ 向纳税人提供所得及税款扣缴信息</li> </ul>					不适用	<ul style="list-style-type: none"> <li><input type="checkbox"/> 按月/按次扣缴</li> <li><input type="checkbox"/> 全员全额扣缴申报</li> <li><input type="checkbox"/> 向纳税人提供所得及税款扣缴信息</li> </ul>			
纳税人 主要义务	<ul style="list-style-type: none"> <li>■ 年度汇算清缴（如需要）</li> </ul>					<ul style="list-style-type: none"> <li>■ 按月/按季预缴</li> <li>■ 年度汇算清缴</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 无扣缴义务人/扣缴义务人未扣缴税款的，自行依规申报纳税</li> </ul>			

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