

ThinkBridge Newsletter 2018 4th Quarter

思倍捷咨询 2018 年四季度期刊

《中华人民共和国公司法》有新的修改

New Amendment on Company Law of the People's Republic of China

《全国人民代表大会常务委员会关于修改〈中华人民共和国公司法〉的决定》已由中华人民共和国第十三届全国人民代表大会常务委员会第六次会议于2018年10月26日通过，现予公布，自公布之日起施行。

将第一百四十二条修改为：“公司不得收购本公司股份。但是，有下列情形之一的除外：

- (一) 减少公司注册资本；
- (二) 与持有本公司股份的其他公司合并；
- (三) 将股份用于员工持股计划或者股权激励；
- (四) 股东因对股东大会作出的公司合并、分立决议持异议，要求公司收购其股份；
- (五) 将股份用于转换上市公司发行的可转换为股票的公司债券；
- (六) 上市公司为维护公司价值及股东权益所必需。

公司因前款第（一）项、第（二）项规定的情形收购本公司股份的，应当经股东大会决议；公司因前款第（三）项、第（五）项、第（六）项规定的情形收购本公司股份的，可以依照公司章程的规定或者股东大会的授权，经三分之二以上董事出席的董事会会议决议。

“公司依照本条第一款规定收购本公司股份后，属于第（一）项情形的，应当自收购之日起十日内注销；属于第（二）项、第（四）项情形的，应当在六个月内转让或者注销；属于第（三）项、第（五）项、第（六）项情形的，公司合计持有的本公司股份数不得超过本公司已发行股份总额的百分之十，并应当在三年内转让或者注销。

“上市公司收购本公司股份的，应当依照《中华人民共和国证券法》的规定履行信息披露义务。上市公司因本条第一款第（三）项、第（五）项、第（六）项规定的情形收购本公司股份的，应当通过公开的集中交易方式进行。 “公司不得接受本公司的股票作为质押权的标的。”

The Decision of the Standing Committee of the National People's Congress on the Amendment of the Company Law of the People's Republic of China was adopted by the Standing Committee of the 13th National People's Congress of the People's Republic of China at its 6th meeting on October 26, 2018, and is hereby promulgated for implementation from the date of promulgation.

Article 142 of the Company Law of the PRC is amended as follows:

"A company may not purchase its own shares except in any of the following circumstances:

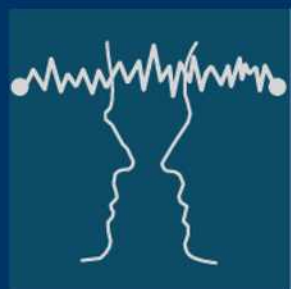
- (I) to reduce the registered capital of the company;
- (II) to merge with another company (companies) that hold(s) its shares;
- (III) to use the share for employee stock ownership plans or equity incentives;
- (IV) a shareholder requests the company to purchase the shares held by him since he objects to a resolution of the general meeting on the merger or division of the company;
- (V) to use shares for the conversion of corporate bonds issued by a listed company that can be converted into stocks;
- (VI) to use shares by a listed company to maintain the company's value and shareholders' rights when necessary.

Where a company purchases its own shares for reasons specified in Items (I) to (II) of the preceding paragraph, a resolution of the general meeting shall be adopted. Where a company purchases its own shares for reasons specified in Item (III), Item (V) and Item (VI) of the preceding paragraph, a resolution of the board of directors shall be adopted at the meeting of the board of directors present by more than two-thirds of the directors in accordance with the articles of association or the authorization of the general meeting.

Where a company purchases its own shares in accordance with Paragraph I of this article, shares shall be cancelled within 10 days of the date of purchase if the circumstances fall under Item (I), or transferred or cancelled within six months if the circumstances fall under Item (II) or (IV); or transferred or cancelled within three years if the circumstances fall under Item (III), Item (V) or Item (VI) provided that the total shares held by the company shall not exceed 10% of the total issued shares of the company.

A listed company that acquires shares of the company shall perform its information disclosure obligations in accordance with the provisions of the Securities Law of the People's Republic of China. Where a listed company purchases its own shares for reasons specified in Item (III), Item (V) or Item (VI) of the preceding paragraph, the purchase shall be conducted through open and centralized trading.

A company may not accept its own shares as the subject matter of a pledge."



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个税、社保、购物..... 明年起这些领域有大变化

IIT, Social Insurance, Online Shopping... What's New In Coming Year

新个税法全面实施，工资收入将享个税专项扣除

2019年1月1日起，中国实施新的个人所得税法，《个人所得税专项附加扣除暂行办法》同步实施。

纳税人计算个税应纳税所得额时，在每月5000元基本减除费用扣除和“三险一金”等专项扣除外，还可享受专项附加扣除。

The special expense deduction items are related to children's education, adult reeducation, treatment of serious diseases, the livelihood of elder people, housing loan interest and home rent.

个税专项扣除项目涉及子女教育、成人再教育、大病医疗、赡养老人、住房贷款利息和住房租金等。

A new personal income tax app, developed by the State Administration of Taxation, will be up and running to help taxpayers receive additional deductions.

国家税务总局研发的一款新的个人所得税应用将上线投入使用，帮助纳税人进行附加扣除。



首部电商法实施，代购微商需依法纳税

《中华人民共和国电子商务法》将于2019年1月1日起施行。

这是中国电商领域首部综合性法律，涉及电子商务经营主体、经营行为、合同、快递物流、电子支付等方面，对电子商务发展中比较典型的问题做出明确具体的规定。

The e-commerce law, which clarifies e-commerce operators into e-commerce platform operators, merchants on e-commerce platforms, and those doing business on their own websites or via other web services, covers not only famous platforms such as Alibaba's Taobao but also those selling goods via social networks including the popular chatting app WeChat.

电子商务法明确，电子商务经营者包括电子商务平台经营者、平台内经营者以及通过自建网站、其他网络服务销售商品或者提供服务的电子商务经营者，不但包含淘宝等电商平台，通过微信平台卖货的商家也包括在内。

根据新法，今后电子商务经营者会受到严格监管，一旦违规将面临最高200万元罚款。

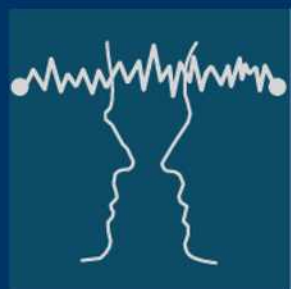
社保将由税务部门统一征收

According to a reform plan for tax collection issued by the general offices of the Communist Party of China Central Committee and the State Council, premiums for pension, medical, unemployment, occupational injury and maternity insurance will be uniformly levied by the taxation authorities from Jan 1, 2019.

按照此前中办、国办印发的《国税地税征管体制改革方案》，从2019年1月1日起，将基本养老保险费、基本医疗保险费、失业保险费、工伤保险费、生育保险费等各项保险费交由税务部门统一征收。

按照高效、便民的原则（under the guidelines of efficiency and convenience），合理确定非税收入征管职责划转到税务部门的范围，整合纳税服务和税收征管等方面业务，优化完善税收和缴费管理信息系统，更好地便利纳税人（taxpayers）和缴费人。





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两部门明确个税法修改后有关优惠政策衔接问题

Two Departments Clarify Connection of Relevant Preferential Policies After Revision of the IIT Law

日前，财政部、国家税务总局联合发出《关于个人所得税法修改后有关优惠政策衔接问题的通知》（下称《通知》），自2019年1月1日起执行。《通知》对“全年一次性奖金、中央企业负责人年度绩效薪金延期兑现收入和任期奖励的政策”、“上市公司股权激励的政策”、“保险营销员、证券经纪人佣金收入的政策”等七类事项作出安排。其中，《通知》规定，居民个人取得全年一次性奖金，符合《国家税务总局关于调整个人取得全年一次性奖金等计算征收个人所得税方法问题的通知》规定的，在2021年12月31日前，不并入当年综合所得，以全年一次性奖金收入除以12个月得到的数额，按照《通知》所附按月换算后的综合所得税率表，确定适用税率和速算扣除数，单独计算纳税。

2018年12月27日晚，财政部、国家税务总局公布财税[2018]164号文件（以下简称“164号文”），对包括全年一次性奖金、上市公司股权激励、外籍个人免税津补贴、领取企业年金、解除劳动关系一次性补偿收入等在内的多项税收优惠新旧法衔接处理事项作出明确。

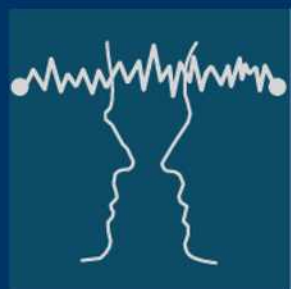
The Ministry of Finance ("MOF") and the State Administration of Taxation ("SAT") have jointly issued the Circular on Matters Concerning Connection of Relevant Preferential Policies After the Revision of the Individual Income Tax Law (the "Circular"), with effect from January 1, 2019. The Circular provides clarity on seven policies, including the "policy for the year-end bonus received on a lump-sum basis and for the income from the deferred encashment of the annual performance remuneration and from the lieutenant reward to persons in charge of central state-owned enterprises", the "policy for equity incentives offered by listed companies" and the "policy for the income from commissions received by insurance salespersons and securities agents". Among others, the Circular reads that, if the lump-sum year-end bonus obtained by a resident individual meets requirements set out in the Circular of the State Administration of Taxation on Adjusting the Method of Calculating and Collecting Individual Income Tax on Annual Lump-sum Bonuses and Other Benefits Obtained by Individuals, it will not be counted into his or her consolidated income of the current year; this preferential policy will remain valid until December 31, 2021, before which, the individual income tax on such bonus will be calculated separately based on the applicable tax rate and the quick calculation deduction set out in the Table of Tax Rates on Monthly-converted Consolidated Income to this Circular, according to the result of dividing the year-end lump-sum bonus received by the resident individual by 12 months.

On the evening of December 27, 2018, the Ministry of Finance and the State Administration of Taxation promulgated Fiscal and Taxation Document No. 164 (hereinafter referred to as "No. 164") to clarify the linkages between the new and old tax laws, including one-time bonuses of fiscal year, equity incentives for listed companies, tax exemption allowances for foreign individuals, enterprise annuities, and one-time compensation income for the termination of labor relations. This issue of Express will focus on a number of issues of widespread concern.

个人所得税法六年规则- IIT Laws Six Year Rules

个人所得税法修改后第四条规定在中国境内无住所的个人，在中国境内居住累计满183天的年度连续不满六年的，经向主管税务机关备案，其来源于中国境外且由境外单位或者个人支付的所得，免予缴纳个人所得税；在中国境内居住累计满183天的任一年度中有一次离境超过30天的，其在中国境内居住累计满183天的年度的连续年限重新起算。第五条规定在中国境内无住所的个人，在一个纳税年度内在中国境内居住累计不超过90天的，其来源于中国境内的所得，由境外雇主支付并且不由该雇主在中国境内的机构、场所负担的部分，免予缴纳个人所得税。

与之前的意见稿作比较，“任一年度中有一次离境超过30天”的重启机制仍然保留，而且连续计算的“五年规则”升级为“六年规则”，这对吸引并鼓励境外人士长期在中国工作具有深远积极的意义。



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两部门明确个税法修改后有关优惠政策衔接问题（续）

Two Departments Clarify Connection of Relevant Preferential Policies After Revision of the IIT Law (con't)

After the Revision of the Individual Income Tax Law, Article 4 specifies Individuals without residence in China who have lived in China for 183 consecutive days for less than six consecutive years shall be exempted from individual income tax upon filing with the competent tax authorities. Income derived from outside China and paid by units or individuals outside China shall be exempted from individual income tax. In any year with residence in China for 183 consecutive days, an individual who has left China for more than 30 days at one time shall be in the territory of China. The consecutive years of the year for which 183 days of residence have been accumulated are restarted. Article 5 specifies Individuals who have no residence in China and have resided in China for no more than 90 days in a tax year shall be exempted from personal income tax if their income originating in China is paid by an overseas employer and not borne by the employer's institutions or places in China.

Compared with previous draft opinions, the reset mechanism of "one departure for more than 30 days in any year" is still retained, and the continuous calculation of "five-year rule" has been upgraded to "six-year rule", which is far-reaching and positive encouragement in attracting foreigners to work in China.

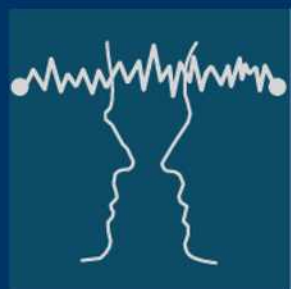
外籍个人免税津补贴- Tax-free allowance for foreign individuals

- 2019 年 1 月 1 日至 2021 年 12 月 31 日期间，外籍个人符合居民个人条件的，可以选择享受个人所得税专项附加扣除，也可以选择按照相关规定，享受住房补贴、语言训练费、子女教育费津补贴免税优惠政策，但不得同时享受。外籍个人一经选择，在一个纳税年度内不得变更。
- 自 2022 年 1 月 1 日起，外籍个人不再享受住房补贴、语言训练费、子女教育费津补贴免税优惠政策，应按规定享受专项附加扣除。

在现行税法下，外籍个人以非现金形式或实报实销形式取得的搬迁、住房、伙食、洗衣补贴，探亲费、语言培训费及子女教育费等补贴，在合理范围内的部分可免征个人所得税。该项免税政策是否会在新税法下得以延续一直备受在华工作的外籍人士关注。164 号文的上述规定基本平移自专项附加扣除暂行办法征求意见稿中的相关条款（注：该条款曾被写入暂行办法征求意见稿，但并未出现在终稿中）。至此，有关外籍个人免税补贴的衔接规定基本得以明确；在推行国民待遇的同时，三年过渡期的设定体现了确保平稳过渡的理念。鉴于以上变化，对于拥有大量外籍雇员的企业，建议尽早审视新规定对其现行薪酬福利政策可能带来的影响，及时和外籍员工进行有效沟通，并相应地制定和调整短期和中长期的规划安排。

- During the period from January 1, 2019 to December 31, 2021, foreign individuals who meet the criteria of residents may choose to enjoy the special additional deduction of personal income tax or the preferential tax-free policies of subsidies such as housing allowance, language training fee and children's education fee according to relevant provisions, but they may not enjoy them at the same time. Once a foreign individual has chosen to do so, he may not change it within a tax year.
- Since January 1, 2022, foreign individuals no longer enjoy the preferential tax-free policies of housing allowance, language training allowance and children's education allowance. They should enjoy special additional deductions as stipulated.

Under the current tax law, the allowances for relocation, housing, meals, laundry, family visits, language training and education for children obtained by foreign individuals in the form of non-cash or actual reimbursement are exempted from personal income tax in a reasonable range. Whether the tax exemption policy will continue under the new tax law has always been a concern of foreigners working in China. The above provisions in document No.164 are basically translated from the relevant provisions in the draft of the special additional deduction Interim Measures for solicitation of comments (Note: This provision was written into the draft of the Interim Measures for solicitation of comments, but did not appear in the final draft). So far, the provisions of tax-free subsidy for foreign individuals have been basically clear; while promoting national treatment, the setting of the three-year transition period reflects the idea of ensuring a smooth transition. In view of the above changes, for enterprises with a large number of foreign employees, it is suggested that the impact of the new regulations on their current salary and welfare policies should be examined as soon as possible, effective communication with foreign employees should be conducted in a timely manner, and short-term and medium-term planning arrangements should be formulated and adjusted accordingly.



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Two Departments Clarify Connection of Relevant Preferential Policies After Revision of the IIT Law (con't)

全年一次性奖金 - One-time bonus for the whole year

- 居民个人取得符合规定的全年一次性奖金，在 2021 年 12 月 31 日 前，不并入当年综合所得，以全年一次性奖金收入除以 12 个月得到的数额，按照按月换算后的综合所得税率表（以下简称月度税率表），确定适用税率和速算扣除数，单独计算纳税。
- 居民个人取得上述全年一次性奖金，也可以选择并入当年综合所得计 算纳税。
- 自 2022 年 1 月 1 日起，居民个人取得全年一次性奖金，应并入当年综合所得计算缴纳个人所得税。
- 国税发[2005]9 号中关于原全年一次性奖金计税方法条款从 2019 年起废止

根据上述规定，在 2019 年至 2021 年的过渡期间，居民个人可选择将其取得的全年一次性奖金单独适用优惠算法计算纳税，或者并入当年综合所得计算纳税。需注意这两种计税方法针对不同收入人群可能会产生不同的影响。对于除奖金以外的年综合所得收入额大于其可以享受的年度扣除额的居民个人，奖金单独计算纳税可能有助于降低个人税负；反之，若除奖金以外的年综合所得收入额尚未超过各项扣除额，则把奖金并入当年综合所得计税可能更有利于个人充分享受各项扣除额度而降低个人税负。164 号文中的该项过渡政策仅适用于居民个人，对于非居民个人取得的奖金，能否参照居民个人适用优惠算法，尚待政策的进一步明确。

- Individual residents who obtain a one-time bonus in accordance with the regulations shall not be incorporated into the current year's comprehensive income until December 31, 2021, and shall divide the annual one-time bonus income by the amount received in 12 months, and determine the applicable tax rate and the quick deduction amount according to the monthly converted comprehensive income tax rate table (hereinafter referred to as the monthly tax rate table) and calculate the tax separately.
- Individuals who receive the above annual one-time bonus can also choose to incorporate the current year's comprehensive income into the calculation of tax payment.
- Since January 1, 2022, when a resident obtains a one-time bonus for the whole year, he or she shall be incorporated into the current year's comprehensive income to calculate and pay his or her personal income tax.
- The original one-time bonus tax method clause in National Taxation [2005] No.9 has been abolished since 2019.

According to the above provisions, during the transitional period from 2019 to 2021, individual residents may choose to apply the preferential algorithm to calculate their annual one-time bonuses separately, or incorporate them into the current year's comprehensive income to calculate tax. It should be noted that these two taxation methods may have different impacts on different income groups. For residents whose annual income is larger than the annual deduction except bonus, tax payment on bonus alone may help to reduce personal tax burden. On the contrary, if the annual income other than bonus does not exceed the deduction amount, incorporating bonus into the annual income tax may be more conducive to the full enjoyment of individual deduction amount to lower personal tax burden. The transition policy in document 164 only applies to individual residents. Whether the preferential algorithm can be applied to the bonuses obtained by non-resident individuals according to individual residents remains to be further clarified.

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