**（中英文对照版）境外投资者以分配利润直接投资**

**暂不征收预提所得税政策问答**

1. 什么是境外投资者以分配利润直接投资暂不征收预提所得税政策？

What is the policy on temporarily deferring withholding taxon profits distributed to foreign investors used for direct investment?

现行企业所得税法对非居民企业取得来源于中国境内的股息、红利等权益性投资收益，减按10%的税率或按税收协定优惠税率征收预提所得税，税收协定和安排另有规定的除外。

According to the Corporate Income Tax Law of People's Republic of China (PRC) an Implementation Regulations for the Corporate Income Tax Law of PRC, foreign investors need to pay withholding taxes on their dividend income from the foreign invested enterprises, as well as their other income from China. Under current regulations and practices, foreign investors' dividend incomes are generally subject to a 10% withholding tax, unless there are applicable any other discounted rates under bilateral taxation treaties between China and the foreign investors home jurisdiction.

为了鼓励境外投资者持续扩大在华投资，为外资企业长期发展创造更好环境，我国出台了“再投资递延纳税”税收政策。

In order to encourage foreign investors to expand investment in China and to improve the business environment for foreign invested enterprises, tax policy was issued to encourage foreign investors to reinvest the dividend income portion from their foreign invested enterprises.

境外投资者以分配利润直接投资暂不征收预提所得税政策，是指对境外投资者从中国境内居民企业分配的利润，用于境内直接投资，凡符合规定条件的，暂不征收预提所得税。为了叙述方便，该政策也常被简称为“再投资递延纳税”、“再投资暂不征税”等。

Foreign investors who have re-invested directly in investment projects in compliance with certain other conditions using dividend income from distributed profits paid by resident enterprises in China on or after January 1, 2017, may apply for the deferred tax policy to temporarily suspend the withholding income tax.

1. 暂不征税政策的相关文件是什么？

 What are the pertinent documents on temporarily deferring withholding tax?

 《关于境外投资者以分配利润直接投资暂不征收预提所得税政策问题的通知》（财税〔2017〕88号，以下简称“88号文”）和《关于境外投资者以分配利润直接投资暂不征收预提所得税政策有关执行问题的公告》（国家税务总局公告2018年第3号，以下简称“3号公告”）；

 境外投资者自2017年1月1日（含当日）至2017年12月31日（含当日）间，从中国境内居民企业分配的利润，直接投资于鼓励类投资项目，凡符合规定条件的，暂不征收预提所得税，具体情形按照88号文和3号公告的规定处理。

Circular on Policy on Temporarily Deferring Withholding Tax for Direct Investment with Distributed Profits by Foreign Investors (Cai Shui [2017] No.88, hereinafter referred to as "Circular 88").

Announcement on the Implementation of Policy on Temporarily Deferring Withholding Tax for Direct Investment with Distributed Profits by Foreign Investors (Announcement of State Taxation Administration (STA) [2018] No. 3, hereinafter referred to as "Announcement 3"), which contains the implementation guidance for Circular 88.

Foreign investors’ dividend income from distributed profits paid by resident enterprises in China from January 1, 2017 to December 31,2017 which are used for direct reinvestment in encouraged projects that complied with certain other conditions, may apply to "Circular 88" and "Announcement 3" and benefit from the deferred tax policy, the withholding income tax may be temporarily suspended.

 《关于扩大境外投资者以分配利润直接投资暂不征收预提所得税政策适用范围的通知》（财税〔2018〕102号，以下简称“102号文”）和《关于境外投资者以分配利润直接投资暂不征收预提所得税政策适用范围有关问题的公告》（国家税务总局公告2018年第53号，以下简称“53号公告”）。

境外投资者自2018年1月1日（含当日）起，从中国境内居民企业分配的利润，直接投资于所有非禁止外商投资的项目和领域，凡符合规定条件的，暂不征收预提所得税，具体情形按照102号文和53号公告的规定处理。

Circular on Extending the Application Scope of Temporarily Deferring Withholding Tax for Direct Investment with Distributed Profits by Foreign Investors (Cai Shui [2018] No.102, hereinafter referred to as "Circular 102").

Announcement on the Application Scope of Temporarily Deferring Withholding Taxon Profits Distributed to Foreign Investors Used for Direct Investment.(Announcement of STA [2018] No.53, hereinafter referred to as "Announcement 53") .

Foreign investors’ dividend income from distributed profits paid by resident enterprises in China on or after January 1, 2018 which are used for direct reinvestment in non-forbidden projects that complied with certain other conditions, may apply to "Circular 102" and "Announcement 53" and benefit from the deferred tax policy, the withholding income tax may be temporarily suspended.

3、暂不征税政策适用于所有境外投资者吗？

Does the deferred tax policy apply to all the foreign investors?

暂不征税政策适用于在中国境内未设立机构、场所，或者虽设立机构、场所但取得的所得与其所设机构、场所没有实际联系的非居民企业（简称“境外投资者”）。个人投资者不适用这一政策。

The deferred tax policy applies to only non-resident enterprises, as defined in the Corporate Income Tax Law of PRC.

This means that if the foreign individuals directly hold the equities of the foreign invested enterprises, they are ineligible for the preferential policy specified under the Circular, which do not apply to foreign individuals.

4、享受暂不征税政策需要同时满足什么条件？

 What other compliance conditions apply to the deferred tax policy?

境外投资者需要同时满足以下四个条件才能享受暂不征税政策：

Profit distributions received by foreign investors from resident enterprises in China that are directly reinvested in encouraged investment projects in China will be eligible for a deferral of the 10% withholding tax on the distribution profits, provided that there is compliance with the following four conditions relating to the form of investment, the source of the profits, the route of the reinvestment and the scope of the reinvestment.

一是，属于直接投资，即境外投资者以分得利润进行的增资、新建、股权收购等权益性投资行为，具体包括：新增或转增中国境内居民企业实收资本或者资本公积；在中国境内投资新建居民企业；从非关联方收购中国境内居民企业股权；

a) The distributed profits must be used in a “direct equity investment” such as the following:

• Increasing the paid-in capital or capital reserves of an existing resident enterprise in China by a new capital injection or by transferring retained earnings to capital;

• Setting up a new resident enterprise in China;

• Acquiring an equity interest in an existing resident enterprise in China by an unrelated party;

• other forms of investment as specified by the Ministry of Finance or State Taxation Administration.

二是，境外投资者分得利润的性质应为股息、红利等权益性投资收益，来源于居民企业已经实现的留存收益，包括以前年度留存尚未分配的收益。

b) The distributed profits (cash or non-cash assets) derived by the foreign investor must be dividends or

other equity investments income arising from the actual distribution of the retained earnings realized by

the resident enterprise in China, including undistributed earnings from previous years.

三是，用于投资的资金（资产）必须直接划转到被投资企业或股权转让方账户，不得中间周转。

c) The funds or non-cash assets used for reinvestment must be transferred directly from the profit distributing enterprise to the invested enterprise or equity tranferor. Foreign investors should take note of this strict requirement, because failure to comply may result in the foreign investor's ineligibility for a tax deferral.

四是，境外投资者从中国境内居民企业分配的利润，用于境内直接投资所有非禁止外商投资的项目和领域。即被投资企业在投资期限内从事符合《外商投资产业指导目录》所列的非禁止外商投资产业目录范围的经营活动。

d) The reinvestment must be a direct investment in non-forbidden investment projects.Further, during the term of the reinvestment, the invested enterprise must not be engaged in business activities that fall within the forbidden scope of foreign investment industries listed in the Catalogue for the Guidance of Foreign Investment Industries (updated edition).

5、境外投资者以分得的利润用于补缴以前已经承诺的注册资本出资份额的，是否可以享受暂不征税优惠待遇？

Do the distributed profits which are made a supplementary payment to the previously promised registered capital by foreign investors qualify for the deferred tax policy?

境外投资者以分得的利润用于补缴其作为境内居民企业股东认缴的出资额的，属于88号文和102号文规定的“新增或转增中国境内居民企业实收资本或者资本公积”的情形，且符合上述文件规定的其他条件的，可以按规定享受暂不征收预提所得税的政策。

The distributed profits which are made as supplementary payment to the previously promised registered capital by foreign investors belong to the new capital injection,c.f.Transferring retained earnings to capital in “Circular 88” and “Circular 102”.If all conditions are complied with, a deferral of the withholding tax on the distributed profits can be applied.

1. 符合条件的境外投资者如何享受暂不征税优惠？

What are the procedures for application of tax deferral?

为享受递延纳税的优惠，境外投资者、利润分配企业及其主管税务机关应当分别履行以下程序：

To benefit from the tax deferral, foreign investors, Chinese profit-distributing enterprises and the tax authorities in charge of the profit-distributing enterprise must follow certain procedures:

（1）境外投资者

 填写《非居民企业递延缴纳预提所得税信息报告表》（以下简称《递延纳税报告表》）中应由境外投资者填报的信息，并提交给利润分配企业；

 关于是否符合要求的投资范围的证明资料，境外投资者应在收回享受暂不征税待遇的投资前或申报补缴税款时，向利润分配企业主管税务机关提供被投资企业在境外投资者投资期限内从事鼓励类投资项目的交易证据、财务会计核算数据等资料；

a)Foreign investor

 The foreign investor must complete his part of the form “Information Reporting Form for Non-resident

Enterprises Deferring Withholding Tax ”(hereinafter referred to as the “WHT deferral form”) and submit the form to the profit distributing enterprise.

In terms of the evidence showing that the reinvestment falls within the scope of the above catalogues during the term of the reinvestment, the foreign investor must submit the evidence to the tax authorities in charge of the profit-distributing entity either before it exits the reinvestment or when it actually pays the deferred tax.

Such evidence can be in the form of transaction documentation,financial accounting data, etc.

（2）利润分配企业

 审核境外投资者提交的资料信息，并确认以下结果：境外投资者填报的信息完整，没有缺项；利润实际支付过程与境外投资者填报信息吻合；境外投资者填报信息涉及利润分配企业的内容真实、准确。

 填写《递延纳税报告表》中应由利润分配企业填报的信息，如股息的支付方式等。

 在实际支付利润之日起 7 日内，向主管税务机关提交以下资料备案：

 由利润分配企业填写的《中华人民共和国扣缴企业所得税报告表》（以下简称《扣缴企业所得税报告表》）；

 由境外投资者提交并经利润分配企业补填信息后的《递延纳税报告表》。

b) Profit-distributing enterprise

 The profit-distributing enterprise must review the WHT deferral form provided by the foreign investor and verify the following information:

 That the information provided by the foreign investor in the WHT deferral form is accurate and complete;That the actual payment process relating to the profits is in line with the information provided by the foreign investor; and That the information about the profit-distributing enterprise as described by the foreign investor is accurate.

 The profit-distributing enterprise must complete the relevant sections in the WHT deferral form that apply to it(e.g. whether the dividends were distributed in cash or in kind). Within seven days from the date the profits were distributed, the profit-distributing enterprise must submit theWHT deferral form, as well as a completed enterprise income tax withholding form to the tax authorities.

7.境外投资者什么时候需要补缴递延的税款？

When must the deferred tax be paid?

（1）实际收回投资的时候：

 境外投资者通过股权转让、回购、清算等方式实际收回享受暂不征收预提所得税政策待遇的直接投资，应在实际收取相应款项后 7 日内申报补缴税款；被投资企业重组，进行特殊性税务处理的，境外投资者可以继续享受递延纳税优惠；

 境外投资者部分处置一项同时包含已享受和未享受暂不征税政策的投资，视为先行处置已享受暂不征税政策的投资。

 a）The foreign investor exits from the reinvestment

 If a foreign investor exits from a reinvestment that has benefited from the deferral of withholding tax, either by an equity transfer, share repurchase, liquidation or otherwise, it will be required to pay the deferred withholding tax within seven days from the date it receives the relevant payment.

 If the invested enterprise undergoes a special reorganization that qualifies for tax deferral, the foreign investor can continue to benefit from the deferral policy.

 If the foreign investor disposes of an investment that has partially deferred the withholding tax **,** the foreign investor will be deemed to dispose of the investment that has deferred the withholding tax first.

（2）已享受优惠，经税务部门后续核实不符合规定条件的：

由利润分配企业的原因（未按规定确认境外投资者提交的资料信息）导致：追究利润分配企业应扣未扣税款的责任，并向境外投资者追缴税款；

 由境外投资者的原因（如填报信息有误）导致：视为境外投资者未按照规定申报缴纳企业所得税，税款延迟缴纳期限自相关利润支付之日起计算。

b) The tax authorities determine that a foreign

investor that deferred the withholding tax has not satisfied all the relevant conditions in follow-up inspections：

If the situation is caused by the profit-distributing

enterprise (e.g. failure to verify the information provided by the foreign investor in the WHT deferral form), the tax authorities will hold that enterprise liable for failure to withhold tax and then demand recovery of the withholding tax from the foreign investor.

If the situation is caused by the foreign investor (e.g. Providing incorrect information), the foreign investor will be deemed to have not filed or paid tax due, and an overdue period for tax payment will be counted beginning from the date of the profit distribution.

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8、境外投资者在境内再投资，需要进行对外支付税务备案吗？

 Should foreign investors file the profits distributed for direct investment with the tax authority for outbound payment?

按照《国家税务总局国家外汇管理局关于服务贸易等项目对外支付税务备案有关问题的公告》（国家税务总局国家外汇管理局公告 2013年第40号），外国投资者以境内直接投资合法所得在境内再投资单笔5万美元以上的，应按照规定进行税务备案。

According to the Announcement on Tax Filing Concerning Outbound Payment under Service and Trade (Announcement issued by State Administration of Exchange Control and STA [2013] No. 40.), foreign investors should file the relevant documents with the tax authority for future reference.

1. 递延纳税政策是否可以追补享受？

May foreign investors’ already-paid withholding tax on distributed profits apply to the deferral policy?

 境外投资者可以享受暂不征收预提所得税政策而未实际享受的，可在实际缴纳税款之日起三年内申请追补享受该政策，退还税款。

Foreign investors that qualify for the deferral, but that already have paid withholding tax on distributed profits may apply for the deferraland request a refund of the tax paid within three years from the date the tax was paid.

 追补享受时，应向利润分配企业主管税务机关提交《递延纳税报告表》以及相关合同、支付凭证、与鼓励类投资项目活动相关的资料以及省税务机关规定要求报送的其他资料。

Foreign investors applying for a retroactive application of the withholding tax deferral must submit to the tax authorities in charge of the profit-distributing enterprise the WHT deferral form, the relevant contract, the payment certificate, information related to the encouraged investment project activities, and any other information required by the provincial tax authorities.

10、境外投资者在享受暂不征税待遇后补缴递延税款时，可否享受税收协定待遇？

May foreign investors paying the deferred withholding tax apply for tax treaty benefits?

境外投资者补缴递延的预提所得税时可以适用税收协定，并且应适用相关利润支付时有效的税收协定，除非后续税收协定另有规定。按照规定享受协定待遇的境外投资者应在办理纳税申报时，自行报送《非居民纳税人享受协定待遇管理办法》（国家税务总局公告2019年第35号）规定的报告表，并按规定归集和留存相关资料备查。

Foreign investors paying the deferred withholding taxmay apply for tax treaty benefits. The applicable tax treaty in such cases will be the treaty in effect at the time the relevant dividends were paid unless provided otherwise in a subsequently concluded treaty.

According to the Announcement on Measures for Non-resident Taxpayers to Apply for Tax Treaty Benefits, (Announcement of STA [2019] No.35),foreign investors should file the relevant documents for future reference.