

China Tax Alert 中国税务快讯

TBS-CTA-201101

NOTICE TO STRENGTHEN THE INDIVIDUAL INCOME TAX ON ENTERPRISE PROMOTION GIFTS

General

Ministry of Finance (the “MOF”) and State Administration of Taxation (the “SAT”) issued a notice, Caishui [2011] No. 50, on 9 September 2011 regards individual income tax (the “IIT”) on receiving valued promotion gifts from enterprise.

It clarified when an enterprise presents promotion gifts to individuals is IIT exempted during sales discount or sales allowance; gifts bundling sales, such as free calls or network application fee waived by telecom enterprises when customer buy a mobile handset, or free mobile handset when certain prepaid amount charged; and rewards when customer spending certain amounts.

It regulated IIT withholding from the enterprise who presents promotion gifts to individuals in the following situations:

- Gifts to outsider randomly in business promotion, advertisement etc. is subject to 20% withholding IIT as “other income”;
- Gifts to outsider during annual dinner, seminar, celebration is subject to 20% withholding IIT as “other income”; and
- Extra lottery draw/valued prize rewarded by the enterprise to customers whom accumulated spending reached certain amount is subject to 20% withholding IIT as “occasional income” .

关于企业促销展业赠送礼品有关个人所得税问题的通知

通知内容

财政部和国家税务总局于 2011 年 6 月 9 日发布财税[2011]50 号，就企业促销展业赠送礼品的相关个人所得税问题作出通知。

通知明确了企业在销售商品(产品)和提供服务过程中向个人赠送礼品不征收个人所得税的情形：企业通过价格折扣、折让方式向个人销售商品(产品)和提供服务；企业在向个人销售商品(产品)和提供服务的同时给予赠品，如通信企业对个人购买手机赠话费、入网费，或者购话费赠手机等；企业对累积消费达到一定额度的个人按消费积分反馈礼品。

通知规定企业向个人赠送礼品，属于以下三种情形的，取得该项所得的个人应依法缴纳个人所得税，税款由赠送礼品的企业代扣代缴。这三种情形分别为：企业在业务宣传、广告等活动中，随机向本单位以外的个人赠送礼品，对个人取得的礼品所得，按照“其他所得”项目，全额适用 20% 的税率缴纳个人所得税。企业在年会、座谈会、庆典以及其他活动中向本单位以外的个人赠送礼品，对个人取得的礼品所得，按照“其他所得”项目，全额适用 20% 的税率缴纳个人所得税。企业对累积消费达到一定额度的顾客，给予额外抽奖机会，个人的获奖所得，按照“偶然所得”项目，全额适用 20% 的税率缴纳个人所得税。

如欲垂询有关本文的资料或其它税务分析及意见，请联络：

For more information or advice on the above subject or analysis of other tax issues, please contact:

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Notice requires the individual's taxable income is identified according to the selling price of products or service in an arm's length if the presented gifts are homemade products or services; the individual's taxable income is identified according to the acquisition price if the presented gifts are purchased outside the enterprise.

Background

Effective from the date of implementation, SAT's Reply concerning Relevant IIT Issue (Guoshuihan [2000] No.57) and SAT's Reply concerning Umpty IIT Policy Issues (Guoshuihan [2002] No.629) Article II are abolished. This notice is considered as the replacement of Guoshuihan [2000] No.57 and Guoshuihan [2002] No.629 and emphasizes the necessity of declaration of IIT from promotion gifts. Furthermore, it elaborates that the rewards from lottery draw and promotion activities should be levied the IIT by the form of notice of MOF and SAT, which has been indicated in Jibianhan [2008] No.115 before.

Argument about the Tax Basis

Notice specified "*the individual's taxable income is identified according to the acquisition price if the presented gifts are purchased from outside the enterprise*".

If the gifts presented by the enterprise was purchased in prior year, and its carrying amount is much lower than its historical cost due to the factor of depreciation etc., or its fair value is much lower than its historical cost due to the technology update, argument is that it is unreasonable to use the historical cost as the tax basis is too high. If the gifts presented by the enterprise with fair value much higher than its historical cost, but the tax basis is still the historical cost in accordance with this notice, argument is that IIT runs off due to low tax basis.

通知要求，企业赠送的礼品是自产产品(服务)的，按该产品(服务)的市场销售价格确定个人的应税所得；是外购商品(服务)的，按该商品(服务)的实际购置价格确定个人的应税所得。

背景

执行本通知之日，《国家税务总局关于个人所得税有关问题的批复》(国税函[2000]57号)、《国家税务总局关于个人所得税若干政策问题的批复》(国税函[2002]629号)第二条同时废止。本通知被认为是代替国税函[2000]57号和国税函[2002]629号强调了礼品缴纳个人所得税的必要性，并将稽便函[2008]115号中抽奖赠送和促销活动赠送的礼品征税等问题以财政部和国家税务总局通知的形式予以明确。

关于税基的争论

通知规定“外购商品(服务)的，按该商品(服务)的实际购置价格确定个人的应税所得”。规定所述“实际购置价格”按照历史成本予以诠释作为税基。

如果用于企业赠送的礼品为以前年度购入并已经由于折旧等因素导致账面价值远远低于其历史成本，或者由于科技技术的更新换代导致其市场价格远远低于其历史成本，用于礼品赠送却需要按照历史成本作为其税基，被认为税基过高不合理。如果用于企业赠送的礼品由于市场价格上升导致市场价格远远高于其历史成本，但是按照该通知仍然按照历史成本作为税基，税基过低被认为是潜在的税负流失。

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Recommendation from Trusture

In accordance with the stipulation of this notice, and continuously strengthened IIT inspection trend in recent years, Trusture recommend the enterprises pay attention to the follows:

1. For enterprises presenting gifts, the operation department should communicate with accounting or human resource department timely to maintain the data base of individuals accepting the gifts from the enterprises, deduct and pay the IIT timely;
2. Concerning the taxable activities for gifts presentation which have occurred, self-examination for their compliance is necessary; and
3. Unclear situation regarding the exemption from IIT and taxable activities should be subject to the instruction from tax authority timely.

瑜泽建议

根据本通知规定，以及近年来不断加强的所得税监管规定，瑜泽建议企业注意如下事项：

1. 对于礼品赠送的企业，业务部门需要及时和财务或人力资源部沟通，保留接受礼品赠送的个人的资料并按及时扣代缴个人所得税；
2. 对于已经发生的促销赠送礼品的应税行为，进行合规性的自查；
3. 涉及不征收个人所得税的情形及需要征收个人所得税的情形判定不明确，应及时向税务机关寻求指导。

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