

JUNHE SPECIAL REPORT



January 28, 2023

Tax Supervision on Individual Equity Transfers

1. Introduction

The *Circular on Further Improving the Inspection Service Regarding Individual Income Tax Payment Certificates for the Registration of Equity Transfers* (“《关于进一步做好股权变更登记个人所得税完税凭证查验服务工作的通告》” in Chinese, Circular [2022] No. 3, the “**Circular**”) was jointly issued by the Shanghai Tax Bureau of the State Taxation Administration (the “**STA**”) and the Shanghai Administration for Market Regulation (the “**AMR**”) and became effective on December 20, 2022. The Circular stipulated that “if an individual applies for a shareholder change registration of the equity transfer, before the change registration with the AMR authority (the “**AMR Registration**”), the withholding agent or the taxpayer shall file a tax declaration with the in-charge tax authority of the Invested Enterprise (hereinafter referred to as the “**Tax Filing Before AMR Registration Regime**”). The Circular also stipulates that the tax authorities and the AMR authorities shall implement an automatic information exchange mechanism on the individual equity transfer, and the AMR authorities in Shanghai shall process the AMR Registration of the equity transfer according to the *Statement of Tax Payment Status of Individual Shareholder during the Change of Equity* (“《自然人股东股权变更完税情况表》” in Chinese) issued by the tax authority.

Will the implementation of the Circular trigger a new challenge between parties of individual equity transfer transactions? Does the Circular signal

increasingly strengthened tax supervision on individual equity transfers? This Article will discuss these issues to assist enterprises and individuals mitigate risks during individual equity transfer transactions.

2. Background

According to the *Administrative Measures for Individual Income Tax on Income from Equity Transfer (Trial Implementation)* (“《股权转让所得个人所得税管理办法(试行)》” in Chinese, the STA Bulletin [2014] No. 67, “**Bulletin 67**”), an individual equity transfer refers to the transfer of equity or shares in an enterprise or organization incorporated in the People’s Republic of China (“**PRC**”) (collectively referred to as the “**Invested Enterprise**”, excluding sole proprietorship enterprises and partnership enterprises) by an individual shareholder (the “**Transferor**”) to another individual or entity (the “**Transferee**”). The Transferor shall be subject to individual income tax (the “**IIT**”) on the gains derived from the equity transfer, which shall be treated as “income from the transfer of property”, and the taxable income shall be equivalent to the transfer price minus the original cost of the equity and other reasonable expenses (*i.e.*, the relevant statutory taxes to be paid at the time of the equity transfer). The Transferee shall be the withholding agent.

Bulletin 67 explains the timetable for tax filing for individual equity transfers. The withholding agent and the taxpayer shall make a tax filing to the competent tax authorities within the first 15 days of the following month under any of the following

circumstances:

- (1) The transferee has made a full or partial payment of the equity transfer;
- (2) The equity transfer agreement has been executed and has come into effect;
- (3) The transferee has fulfilled the shareholder's obligations or has received the shareholder's equity interests;
- (4) The judgment, registration or announcement of the relevant national authorities has come into effect;
- (5) An action stipulated in item (4) to item (7) of Article 3 of Bulletin 67 has been completed¹; or
- (6) Other circumstances where the tax authorities deem that there is evidence to prove that the equity has been transferred.

It could be concluded from the circumstances set forth in Bulletin 67 above that the timing when “the equity has been transferred” is one of the key timelines to trigger the tax filing obligation. But how can we confirm when “the equity has been transferred”? Under the *PRC Civil Code* (“《中华人民共和国民法典》” in Chinese), the *PRC Company Law* (“《中华人民共和国公司法》” in Chinese), the *PRC Administrative Regulation on the Registration of Market Entities* (“《中华人民共和国市场主体登记管理条例》” in Chinese) and other PRC laws and regulations, it is not clear that the AMR Registration is a prerequisite to confirm that “the equity has been transferred”. However,

according to the relevant judicial interpretations, it is certain that after the equity transfer, the Transferee may claim that it actually holds the equity and may enjoy the corresponding shareholder's rights; the validity of the equity transfer will not be affected even if the AMR Registration has not been completed, except that the Transferee may not defend against a bona fide third party². Thus, among the various circumstances requiring the tax declaration set forth in Bulletin 67, the AMR Registration is not the only circumstance triggering the tax filing.

Although Bulletin 67 provides tax authorities with relatively broad discretion in interpreting the timing for the tax filing, tax authorities in practice primarily rely on public information, such as that from the AMR Registration and self-disclosed by enterprises themselves to identify and collect the potentially unpaid IIT on income derived from the individual equity transfer. In light that the payment of the transfer price and the execution of the equity transfer agreement are not publicly available information, and it is difficult for tax authorities to identify that “the equity has been transferred” if the parties of the transaction do not disclose more details of the transaction except in certain public transactions. In fact, the STA specified that the completion of the AMR Registration of an equity transfer is an important signal in confirming that “the equity has been transferred” in its reply to the Sichuan Tax Bureau (i.e., the *Reply on Issues Concerning the Collection of the Individual Income Tax on the Repurchase of the Transferred Equity by the Taxpayer* (Guo Shui Han [2005] No. 130, “《关于纳税人收回转让的股权征收个人所得税问题的批复》” in Chinese)³ in 2005.

¹ The actions under item (4) to item (7) of Article 3 of Bulletin 67 include mandatory equity transfers enforced by the judicial or administrative authorities, the use of equity for external investment or any other non-monetary transactions, the debt and equity swap, and any other actions of equity transfer.

² According to Article 8 of the Notice of the Supreme People's Court on Issuing the Minutes of the National Court Work Conference for Civil and Commercial Trials (“《最高人民法院关于印发<全国法院民商事审判工作会议纪要>的通知》” in Chinese), where the parties transfer their

equity in a limited liability company among each other, and the transferee claims that it has obtained the equity on the grounds that its company name has been recorded in the register of shareholders, the People's Court shall uphold such claim, unless the equity transfer shall be effective upon approval as prescribed by laws and administrative regulations. Without a change of registration with the local company registry authorities, the transferee cannot defend against any bona fide third party.

³ According to Guo Shui Han (2005) No. 130, after the completion of

Regardless of whether the Tax Filing Before AMR Registration Regime set forth in the Circular breaks through the definition that “the equity has been transferred” in Bulletin 67 and other PRC civil and commercial laws and regulations, it is certain that the Circular is the implementation rule of Article 15 of the *PRC Individual Income Tax Law* (“《中华人民共和国个人所得税法》” in Chinese, the “IIT Law”). This provides that if an individual completes the change registration of the equity transfer, the competent AMR authorities shall inspect the IIT payment certificates relating to the said equity transfer.

In light of the foregoing, more and more tax authorities at the provincial and municipal levels have issued local policies respectively in connection with the Tax Filing Before AMR Registration Regime. As of the issuance of the Circular in connection with the Tax Filing Before AMR Registration Regime in Shanghai, the top four first-tier cities (*i.e.*, Beijing, Shanghai, Guangzhou and Shenzhen) have explicitly announced tax filing policies regarding the Tax Filing Before AMR Registration Regime (please see the Annex for the summary of more local policies in connection with the Tax Filing Before AMR Registration Regime). To be specific, the Tax Filing Before AMR Registration Regime has been implemented in Beijing since September 1, 2021, in Guangzhou since April 1, 2021, and in Shenzhen since June 18, 2021.

3. Impact of the Circular on the Parties of Equity Transfer Transactions

Based on our practical experience, during some individual equity transfer transactions, the parties

may agree that the AMR Registration shall be one of the closing conditions or post-closing matters. To be specific, the parties may agree that an Invested Enterprise shall complete the AMR Registration within a certain period of time after other closing conditions are satisfied; upon completion of the AMR Registration by the Invested Enterprise, the Transferee shall pay the equity transfer price to the Transferor within a certain period of time, and the Transferor shall fulfill the IIT filing obligation within the first 15 days of the following month after receiving the transfer payment or within the time period otherwise agreed to by the parties.⁴

The issuance of the Circular would undoubtedly affect the above-mentioned transaction arrangements. Meanwhile, the parties will face a new challenge on how to balance the transaction risks of both sides. From the Transferor’s perspective, it is usually difficult for the Transferor, or the Transferor is unwilling, to bear the high tax liabilities before the Transferee actually pays the transfer price. If the transaction is subsequently terminated, it is uncertain whether the paid-in tax could be refunded. From the Transferee’s perspective, if the equity transfer price is paid before the AMR Registration, it is difficult for the Transferee to effectively urge the Transferor to provide assistance during the AMR Registration. It would be costly to enforce against the Transferor for breach of contract at a later stage, particularly if the Transferee is an overseas enterprise or individual.

In practice, some local tax authorities that implement the Tax Filing Before AMR Registration Regime may allow the parties to submit tax filing

the original equity transfer, if the parties of the transaction otherwise execute and perform the equity repurchase agreement, such execution and performance shall be regarded as an independent individual equity transfer. The IIT levied on the original equity transfer is not refundable. As for the meaning of “the equity has been transferred,” the STA interpreted it in Guo Shui Han (2005) No. 130 as “the equity transfer agreement has been performed completely, the change registration of the equity transfer has been completed and the earnings have been realized”.

⁴ In some individual equity transfer transactions, the parties may

agree that the Transferor shall perform the IIT filing obligation by itself. It is common to have such an agreement if the Transferee is an overseas enterprise or individual and cannot withhold the IIT. Please note that in practice, the transaction arrangements of the individual equity transfer may be different from the arrangements exemplified in this article due to different demands of the parties, transaction background, negotiation results, transaction structure and other factors.

materials before the AMR Registration and do not require settlement of the IIT payable in advance. It is worth noting that such arrangements depend on the actual circumstances of the transaction (e.g., in case the consideration for the equity transfer can only be determined after the completion of the AMR Registration) subject to the in-charge tax authority's discretion. Thus, the said arrangement may not be applicable to all individual equity transfer transactions. It would be difficult to draw a conclusion from the Circular that in Shanghai there is no need to pay the IIT at the time of tax filing based on the literal interpretation. It is worth noting that if the Tax Filing Before AMR Registration Regime requires the IIT to be paid before the AMR Registration, it would mean that the provisions of the IIT Law providing that the Transferor shall pay the IIT before June 30 of the following year⁵ if the Transferee fails to fulfill the withholding obligation would be infeasible in practice.

4. Increasingly Strengthened Tax Supervision

As mentioned above, the public information, such as information from the AMR Registration, would be an important source for tax authorities to implement IIT supervision. However, the Tax Filing Before AMR Registration Regime under the Circular not only reflects the mindset of the tax authorities in respect to tax supervision on individual equity transfers transferred from “post-supervision” to “in-progress supervision,” but it also reflects the increasingly strengthened tax supervision on individual equity transfers by Shanghai tax authorities and even by national tax authorities.

In addition, the Circular also points out that the automatic information exchange mechanisms between the tax authorities and the AMR

authorities will strengthen the communication and cooperation between them. Currently, the procedure for exchange and cooperation between these two authorities is that upon completion of the AMR Registration with the competent AMR authorities, the in-charge tax authority will conduct tax supervision once the information regarding the equity transfer has been received.

It is worth noting that the information system's exchange and cooperation between the tax authorities and the other governmental authorities is a requirement of the tax collection and supervision reform. According to the Opinions on Further Deepening the Reform of Tax Collection and Supervision (“《关于进一步深化税收征管改革的意见》” in Chinese) issued by the General Office of the CPC Central Committee and the PRC General Office of the State Council on March 24, 2021, the following targets are to be achieved by 2025: establish a normalized and institutionalized data sharing and coordination mechanism between the tax authorities and the relevant authorities; secure access to the necessary tax-related and expense-involved information in accordance with the relevant laws and regulations; and building up a smart tax system with deep integration and efficient linkage for the tax enforcement, service, supervision and intelligent application of big data. At the third “One Belt and One Road” Tax Collection and Supervision Cooperation Forum (“‘一带一路’税收征管合作论坛” in Chinese) held in September, 2022, Wang Jun, the chief of the STA, announced that the development of the Golden Tax System (“GTS 4”, smart tax) was expected to be fundamentally completed by the end of 2022. The launch of GTS 4 was expected to realize data co-construction, sharing, collaboration and governance among various tax-related parties including the financial authorities, customs, AMR authorities, police

⁵ According to Article 13 of IIT Law, if a taxpayer receives taxable income but the withholding agent fails to withhold tax, the taxpayer shall pay such tax before June 30 of the following year in which the income is received. Where the tax authorities notify the taxpayer a

deadline for payment, the taxpayer shall pay the tax in accordance with the deadline.

departments, payment platforms, etc., and urges the relevant governmental authorities to provide information regarding tax-related parties based on their statutory tax obligations, to realize digital government and the common governance of taxation⁶. This will help improve the efficiency of tax collection and supervision.

With the launch of GTS 4, the exchange mechanism between the tax authorities and other governmental authorities will make it easier and more transparent for tax authorities to obtain key information in relation to individual equity transfer transactions such as the consideration of the equity transfer and the payment schedule. In this regard, the tax authorities will have a more accurate and timely judgement to determine when “the equity has been transferred.” Therefore, even if the parties of the transaction intend to evade tax obligations by nonperformance of the AMR Registration, or by lowering the transfer price through arrangements such as a “drawer agreement,” they will be exposed to higher tax risks under the supervision system of GTS 4.

5. Our Suggestions

Given that local policies in connection with the Tax Filing Before AMR Registration Regime have a significant impact on individual equity transfer transactions, it is suggested to communicate in advance with the competent tax authority and AMR authority where the Invested Enterprise is located to confirm the local requirements in connection with the Tax Filing Before AMR

Registration Regime, and to avoid the occurrence of the actual tax payment made before the AMR Registration if possible. In addition, it is suggested to communicate with the in-charge tax authority to confirm the feasibility of cancellation for tax filing or the feasibility of tax refunds when a transaction is terminated. For any transaction where the Transferor is required to pay the tax before the AMR Registration, it is suggested to take the following transaction arrangements into account based on the actual circumstances of the transaction and the relevant due diligence results:

- (1) Making a specific agreement regarding the tax payment schedule, the tax refund procedures and each party’s responsibility if the transaction is terminated;
- (2) Setting up a compensation mechanism for breach of contract if the Transferor or the Invested Enterprise fails to cooperate in the completion of the AMR Registration;
- (3) Agreeing on the installment payment arrangement of the transfer price, and only settling the payment equivalent to the tax payable expected to be paid before the AMR Registration for the purpose of pushing through the transaction. Where necessary, the payment schedule could be arranged in accordance with the filing schedule for the AMR Registration; and
- (4) Making the AMR Registration and the completion of the tax payment closing conditions.

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⁶ Zhou Kaijun, *Smart Tax: Past, Present and Future*, China Taxation News (“中国税务报” in Chinese), last reviewed on January 1, 2023, available at

<http://xiamen.chinatax.gov.cn/xmswcmcs/mobile/content/S44520.html>.

Annex - Summary of Local Policies Relating to Tax Filing Before the AMR Registration Regime

No.	Area	Regulation	Content	Effective Date
1.	Sichuan Province and Chongqing Municipality	Circular on Matters Related to the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall process the AMR Registration after confirming that the tax payment (tax filing) has been completed on the individual equity transfer.	January 1, 2022
2.	Anhui Province	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall process the AMR Registration after confirming that the tax payment (tax filing) has been completed on the individual equity transfer.	December 1, 2021
	Hefei City	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities at all levels in Hefei City shall process the AMR Registration for the Invested Enterprises by verifying the information in connection with the IIT filing for such equity transfer via an online (paperless) system.	Since July 1, 2021, the pilot areas including Shushan District, Chaohu City, and Xinzhan Development Zone implemented this filing regime; since August 1, 2021, the whole city implemented this filing regime.
	Huangshan City	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities at all levels in Huangshan City shall process the AMR Registration for the Invested Enterprises by verifying the information in connection with the IIT filing for such equity transfer via an online (paperless) system.	Since September 1, 2021, the pilot areas including Tunxi District and Huangshan High-tech Industrial Development Zone implemented this filing regime; since October 1, 2021, the whole city implemented this filing regime.

No.	Area	Regulation	Content	Effective Date
3.	Hubei Province	Circular on Matters Related to the Further Administration of the Individual Equity Transfer	The AMR authorities shall verify the IIT payment certificates when processing the AMR Registration.	October 1, 2021
4.	Beijing Municipality	Circular on Matters Related to the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall process the AMR Registration after confirming that the tax payment (tax filing) has been completed.	September 1, 2021
5.	Guangdong Province	Circular on Matters Related to the Individual Equity Transfer	When an individual shareholder applies for AMR Registration, the AMR authorities shall verify the relevant IIT payment certificates for the equity transfer and process the AMR Registration by law.	July 1, 2021
	Guangzhou City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	The AMR authorities shall process the AMR Registration in accordance with the <i>Statement of Tax Payment of the Change of Equity for Individual Shareholder</i> (“《自然人股东股权变更完税情况表》” in Chinese) (tax payment certificate) shared by the tax authorities.	April 1, 2021
	Foshan City	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities at all levels in Foshan City shall process the AMR Registration for the Invested Enterprises by verifying the information in connection with the IIT filing for such equity transfer via an online (paperless) system.	April 19, 2021
	Shanwei City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	The AMR authorities shall verify the electronic IIT payment certificates for individual equity transfer via an online system and shall not accept an application for the AMR Registration if the applicant fails to obtain the tax payment certificates.	October 10, 2020

No.	Area	Regulation	Content	Effective Date
	Huizhou City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	The AMR authorities shall verify the IIT payment certificates for individual equity transfer via an online system and shall not accept an application for the AMR Registration if the applicant fails to obtain the tax payment certificates.	May 1, 2020
	Dongguan City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	The AMR authorities shall verify the IIT payment certificates for individual equity transfer via an online system and shall not accept an application for the AMR Registration if the applicant fails to complete the IIT filing.	December 1, 2019
	Yangjiang City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	The AMR authorities shall verify the IIT payment certificates for the relevant individual equity transfer and shall not accept an application for the AMR Registration if the applicant fails to provide the tax payment certificates.	August 1, 2020
	Zhongshan City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	The AMR authorities have started the verification procedure. Individuals who apply for the AMR Registration are requested to first complete the IIT payment with the competent tax authorities, and then apply for AMR Registration with the AMR authorities after obtaining the tax payment certificates. The AMR authorities shall not accept an application for the AMR Registration if the individual applicant fails to obtain the tax payment certificates or the tax payment certificates are not authentic.	July 28, 2020
	Shantou City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	When an individual shareholder applies for AMR Registration, the AMR authorities shall verify the relevant IIT payment certificates for the equity transfer transaction and process the AMR Registration by law.	July 1, 2021

No.	Area	Regulation	Content	Effective Date
	Yunfu City	Circular on Verification on Individual Equity Transfer	The taxpayers of the equity transfer shall first complete the IIT filing, pay the IIT payable and obtain the tax payment certificates, and then apply for AMR Registration with the AMR authorities. The AMR authorities may accept such application upon completion of the verification of the tax payment certificates. The AMR authorities shall not accept the application for the AMR Registration if the applicant fails to provide the tax payment certificates.	January 1, 2021
	Hengqin New Area, Zhuhai	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	The AMR authorities in Hengqin New Area will verify the IIT payment certificates for the individual equity transfer before processing the AMR Registration. If the tax payment certificates are verified and meet the requirements, the AMR Registration will proceed. The AMR authorities shall not accept an application for the AMR Registration if the applicant fails to complete the relevant tax filing.	November 16, 2020
	Qingyuan City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	An individual applicant for AMR Registration shall first complete IIT payment and other tax related matters with the competent tax authorities, and then apply for the AMR Registration with the AMR authorities upon obtaining the tax payment certificates. The AMR authorities shall not accept the application for the AMR Registration if the applicant fails to provide the tax payment certificates.	November 1, 2020
	Shenzhen City	Circular on Further Regulating the AMR Registration for the Individual Equity Transfer	The AMR authorities shall process the AMR Registration for the Invested Enterprises after confirming that the applicant has completed the tax filing for the individual equity transfer.	June 18, 2021

No.	Area	Regulation	Content	Effective Date
6.	Hunan Province	Circular on Strengthening the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall verify the status of the tax payment (<i>Individual Equity Transfer Information Form</i> (个人股东股权转让信息表 in Chinese)) provided by the tax authorities when processing the AMR Registration for the individual equity transfer.	July 1, 2021
	Yueyang City	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall process the AMR Registration for the Invested Enterprises after confirming that the applicant has completed the tax filing for the individual equity transfer.	January 1, 2021
	Zhangjiajie City	Circular on the Requirement for Verification of Tax Payment Certificates during the AMR Registration for Individual Equity Transfer	The AMR authorities shall process the AMR Registration for the Invested Enterprises after confirming that the applicant has completed the tax filing for the individual equity transfer and shall not accept the application for the AMR Registration if the applicant fails to obtain the <i>Individual Income Tax Payment Record</i> (“《个人所得税纳税记录》” in Chinese) or the tax payment certificates have been proven inauthentic.	September 11, 2020
7.	Guangxi Zhuang Autonomous Region	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall process the AMR Registration after verifying the IIT payment certificates for the individual equity transfer.	June 1, 2021
8.	Tianjin Municipality	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall process the AMR Registration for the Invested Enterprises after confirming that the applicant has completed the tax filing for the individual equity transfer.	May 11, 2020
9.	Shandong Province	Circular on Matters Related to the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall verify the IIT payment certificates in connection with the AMR Registration of the equity transfer. The AMR authorities shall process the AMR Registration after confirming that the applicant has fulfilled their tax obligation.	July 1, 2022

No.	Area	Regulation	Content	Effective Date
	Qingdao City	Circular on Further Improving the Administration of Tax Collection for Equity Transfer	The enterprise registry authorities shall process the AMR Registration of the equity transfer, the transferee of which is an individual in accordance with the <i>Registration Form of Tax Collection Supervision of Individual Shareholder's Equity Transfer</i> (“《自然人股东股权变更税源监控登记表》” in Chinese) (tax payment certificates) issued by the tax authorities.	December 26, 2018
	Zibo City	Circular on Matters Related to the Administration of Individual Income Tax on Equity Transfer	When an individual shareholder applies for AMR Registration, the AMR authorities shall verify the relevant IIT payment certificates for the equity transfer and process the AMR Registration by law.	September 29, 2021
	Tai'an City	Circular on Matters Related to the Administration of Individual Income Tax on Equity Transfer	When an individual applies for the AMR Registration, the AMR authorities shall verify the IIT payment certificates for the equity transfer. The AMR authorities shall process the AMR Registration after confirming that the applicant has fulfilled their tax filing obligations.	July 1, 2022
10.	Shangrao City, Jiangxi Province	Circular on Matters Related to the Individual Equity Transfer	The AMR authorities shall process the AMR Registration by law if the individual shareholder has completed the tax payment (tax filing) for the equity transfer.	November 1, 2021
11.	Hulunbuir City, Inner Mongolia Autonomous Region	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall process the AMR Registration for the Invested Enterprises after confirming that the applicant has completed filing for the individual equity transfer.	June 30, 2021
12.	Shanghai Municipality	Circular on Further Improving the Inspection Service of Individual Income Tax Payment Certificate for Registration of Equity Transfer	If an individual applies for AMR Registration, the withholding agent or the taxpayer shall file a tax declaration with the competent tax authority where the Invested Enterprise is located.	December 20, 2022

No.	Area	Regulation	Content	Effective Date
13.	Lanzhou City, Gansu Province	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities at all levels in Lanzhou City shall process the AMR Registration of the equity transfer after confirming that the applicant has completed tax payment (tax filing) for the equity transfer.	December 1, 2021
14.	Hainan Province	Circular on Improving the Service of Individual Income Tax Services for AMR Registration of Equity Transfer	Before June 30, 2023, the withholding agent and the taxpayer shall first make the tax filing and obtain the <i>Information Form of Tax Payment for Individual Equity Transfer</i> (“《个人转让股权完税个人转让股权完税信息表》” in Chinese), and then apply for AMR Registration with the AMR authorities and submit the <i>Information Form of the Tax Payment for Individual Equity Transfer</i> for the AMR authorities’ verification. From July 1, 2023, the Hainan Tax Bureau of the STA, and the Hainan AMR will implement the online information verification mechanism in respect of the tax payment for individual equity transfer. The Hainan AMR shall process the AMR Registration upon verification of the tax payment information via an online system.	December 1, 2022
15.	Zhumadian City, Henan Province	Circular on Regulating the Administration of Individual Income Tax on Equity Transfer	The AMR authorities shall verify the tax filing status of the individual equity transfer when an individual applies for AMR Registration and shall process the AMR Registration by law.	December 1, 2022

浅谈个人股权转让的税务监管趋势

一、前言

2022 年 12 月 20 日，由国家税务总局上海市税务局和上海市市场监督管理局联合发布的 2022 年第 3 号通告《关于进一步做好股权变更登记个人所得税完税凭证查验服务工作的通告》（以下简称“《通告》”）正式实施。通告明确规定，“个人转让股权办理股东变更登记的，在向市场监督管理部门办理变更登记（以下简称“工商变更登记”）前，扣缴义务人、纳税人应依法在被投资企业所在地主管税务机关办理纳税申报”（以下简称“先税后证”）。

《通告》还规定了两部门实行个人股权转让（以下简称“个人股转”）信息自动交互机制，市场主体登记机关根据税务机关提供的《自然人股东股权变更完税情况表》办理股权变更登记。

《通告》的生效实施是否会掀起个人股转交易中交易双方新的博弈？是否标志着个人股转交易的税务监管日趋严格？本文将以《通告》为出发点，结合我们的实践经验，对前述问题进行浅析，以抛砖引玉，帮助企业和个人在进行个人股转交易时有效地规避风险。

二、《通告》出台的背景

根据 2015 年 1 月 1 日正式施行的《股权转让所得个人所得税管理办法（试行）》（国家税务总局

公告 2014 年第 67 号，以下简称“67 号文”），个人股转系指自然人股东（以下简称“转让方”）将其持有的于境内成立的企业或组织（以下合称“被投资企业”，不包括个人独资企业和合伙企业）的股权或股份转让给其他个人或法人（以下合称“受让方”）的行为。转让方应以股权转让收入减除股权原值和合理费用（即股权转让时按照规定支付的有关税费）后的余额为应纳税所得额，按“财产转让所得”缴纳个人所得税。受让人为扣缴义务人。

67 号文对于个人股转所得的纳税申报时点作出了原则性的规定。根据 67 号文的规定，扣缴义务人、纳税人应当在发生如下情形的次月 15 日内向主管税务机关申报纳税：

- （一）受让方已支付或部分支付股权转让价款的；
- （二）股权转让协议已签订生效的；
- （三）受让方已经实际履行股东职责或者享受股东权益的；
- （四）国家有关部门判决、登记或公告生效的；
- （五）67 号文第三条第四至第七项行为已完成的¹；
- （六）税务机关认定的其他有证据表明股权已

¹ 67 号文第三条第四项至第七项行为包括：股权被司法或行政机关强制过户、以股权对外投资或进行其他非货币性交易、以股权抵偿债务内部文件，注意保密

以及其他股权转移行为。

发生转移的情形。

从上述 67 号文列举的需要进行申报纳税的情形中，可以初步得出“股权已发生转移”是触发申报纳税义务的关键时点之一。但何为“股权已发生转移”？《中华人民共和国民法典》、《中华人民共和国公司法》、《中华人民共和国市场主体登记管理条例》等法律法规均未明确“股权已发生转移”以工商变更登记为条件，但根据相关司法解释，可以肯定的是股权发生转移后，受让方可主张其实际持有股权并享受相应的股东权利，即使尚未进行工商变更登记，也不影响股权转让的效力，仅不可对抗善意第三人²。可见，67 号文列举的种种需要进行申报纳税的情形中，工商变更登记不是唯一情形。

尽管 67 号文的规定给税务机关在解读纳税时点时提供了较为宽泛的裁量权，但税务机关在实际征管中仍主要借助工商变更登记和企业自主披露等对外公示信息来稽查和追征可能流失的个人股转所得税税款，因为无论是支付股权价款还是签订股权转让协议都不属于公开信息，除公开交易的情形，税务机关在交易双方未披露更多交易细节的情形很难追查到“股权已发生转移”的事实。事实上，早在 2005 年，国家税务总局回复四川省地方税务局《关于纳税人收回转让的股权征收个人所得税问题的批复》（国税函(2005)130 号）中就已明确，“股权转让已作变更登记”系“股权转让行为完成”的标志之一³。

不论《通告》中先税后证的规定是否突破了 67 号文和民商法意义上对于“股权已发生转移”的界定，可以肯定的是，《通告》是对《中华人民共和国

个人所得税法》（以下简称“个税法”）第 15 条“个人转让股权办理变更登记的，市场主体登记机关应当查验与该股权交易相关的个人所得税的完税凭证”规定的落实。

鉴于此，越来越多省市的税务机关先后出台了有关先税后证的地方政策。截至本次上海市出台关于先税后证的《通告》时，“北上广深”四座一线城市（另外三座分别为北京市（自 2021 年 9 月 1 日起）、广州市（自 2021 年 4 月 1 日起）以及深圳市（自 2021 年 6 月 18 日起））均明确了先税后证的个人股转纳税申报口径（更多先税后证的地方政策详见附件）。

三、《通告》对交易双方的影响

基于我们的项目经验，在一些个人股转交易中，交易双方将工商变更登记约定为交割条件之一或交割后事项。具体而言，交易双方约定在其他交割条件满足后被投资企业应在一定期限内办理完毕工商变更登记手续；被投资企业完成工商变更登记之后，受让方应在一定期限内向转让方支付股权转让价款，而转让方则应当在取得转让价款后的次月 15 日内或双方另行约定的期限内履行个税申报义务⁴。

《通告》的出台无疑会使上述交易安排受到影响，同时交易双方将面临如何平衡双方交易风险的新博弈。从转让方的角度，在受让方没有实际支付股转对价前，通常很难或不愿意承担高昂的税款，而且后续交易如果中止，已缴纳的税款能否予以退回也存在不确定性；从受让方的角度，若在工商变更登记前支付股转价款，难以对转让方配合履行工

² 根据《最高人民法院关于印发〈全国法院民商事审判工作会议纪要〉的通知》第 8 条，当事人之间转让有限责任公司股权，受让人以其姓名或者名称已记载于股东名册为由主张其已经取得股权的，人民法院依法予以支持，但法律、行政法规规定应当办理批准手续生效的股权转让除外。未向公司登记机关办理股权变更登记的，不得对抗善意相对人。

³ 根据国税函(2005)130 号，股权转让行为结束后双方另行签订并执行股权退回的协议，系独立的个人股转行为，对前次转让行为征收的个人所得税不予以退还。就何为“股权转让行为完成”，国家税务总局在

国税函(2005)130 号中的解读为“股权转让合同履行完毕、股权已作变更登记，且所得已经实现”。

⁴ 在有些个人股转交易中，交易双方约定由转让方个人履行自行申报个税的义务。当受让方为境外企业或自然人而无法实际代扣代缴个税的情况下，该约定尤为常见。提请读者注意，实践中，个人股转交易可能会由于交易双方的不同诉求、交易背景、谈判结果、交易架构等因素使得交易安排与本文列举的交易安排有所不同。

商变更登记手续形成有效的制约，特别是在受让方是境外企业或个人的情况下，后续追究转让方的违约责任的成本较大。

实务中，我们注意到在实施先税后证的省市中，有的税务机关允许交易双方在工商变更登记前仅提交申报资料，而无需实际支付税款。需要注意的是，该等安排取决于具体主管税务机关的实操口径以及交易本身的实际情况（如股转对价需待工商变更登记后方能确定等），故该等安排并不意味着具有普适性。至少，从《通告》的字面意思上来看，我们很难得出在纳税申报时无须一并缴纳税款的结论。值得一提的是，先税后证的规定如果是要求先缴纳税款再办理工商变更登记的话，意味着个税法中允许转让方在受让方未履行扣缴义务的情况下可以于次年6月30日前完税的规定⁵很难在实务中具有操作性。

四、税务监管日趋严格

承前所述，工商变更登记等对外公示信息一直是税务机关实施个税税源监管的重要信息来源。而此次《通告》将纳税申报置于工商变更登记之前的要求不仅反映出税务机关对于个人股转从“事后监管”变更为“事中监管”监管思路的转变，也侧面反映出上海市乃至国家税务机关对于个人所得税的监管力度正在趋严。

此外，《通告》也明确了税务机关与市场监督管理部门之间的自动交互机制将加强两部门之间的互通合作。目前，两部门之间的互动合作程序为市场主体在上海市主管市场监督管理部门完成工商变更登记后，税务机关收到相关变更信息后进行税务监管。

值得一提的是，税务机关与国家其他部门信息

系统的交换与合作是税收征管改革的要求。根据中共中央办公厅和国务院办公厅于2021年3月24日颁布的《关于进一步深化税收征管改革的意见》，2025年建成税务部门与相关部门常态化、制度化数据共享协调机制，并依法保障涉税涉费必要信息获取；实现税务执法、服务、监管与大数据智能化应用深度融合、高效联动的智慧税务体系。国家税务总局局长王军在2022年9月举行的第三届“一带一路”税收征管合作论坛上介绍称金税四期（智慧税务）预计于2022年年底基本开发完成。金税四期的上线，将有望实现金融、海关、市场监管、公安、支付平台等其他涉税方数据共建、数据共享、数据协同、数据治理，推动相关政府部门基于税收法定义务提供涉税方信息，实现数字政府和税收共治⁶。这有助于提升税务机关税收征管的效率。

金税四期建成后，税务机关和国家其他部门之间的互联互通机制将使得个人股转交易的转让对价、价款支付时间等关键信息较为便捷且透明地被税务机关捕获，从而税务机关对“股权已发生转移”的时点有更为准确、及时的判断。因此，即使交易双方拟通过不进行工商变更登记的方式，或试图通过“抽屉协议”做低股权转让价款的方式规避纳税义务，在金税四期的监管体系下也将面临着较高的税务风险。

五、我们的建议

鉴于各地先税后证的政策对于个人股转交易有着不小的影响，我们建议交易双方提前与被投资企业的主管税务机关和市场监督管理部门进行沟通，确认先税后证政策的具体要求，尽可能避免产生先实际缴纳税款再进行工商变更登记后果，并与主管税务机关沟通确认在交易终止时撤销纳税申报或退税的可行性。对于确实需要在工商变更登

⁵ 根据个税法第13条，纳税人取得应税所得，扣缴义务人未扣缴税款的，纳税人应当在取得所得的次年6月30日前，缴纳税款；税务机关通知限期缴纳的，纳税人应当按照期限缴纳税款。

⁶ 周开君，《智慧税务：从前、现在与未来》，中国税务报，

<http://xiamen.chinatax.gov.cn/xmswcmcs/mobile/content/S44520.html>，2023年1月1日访问。

记前完税的交易，我们建议交易双方结合实际情况与尽调结果，考虑实施如下交易安排：

1. 对税款缴纳、交易终止时的退税流程和各方的义务进行明确约定；
2. 设置转让方或被投资企业未能配合完成工商变更登记的违约赔偿机制；
3. 约定分段支付股转价款的付款安排，在工商变更登记之前仅支付与预计税费等值的价款，以推进交易的进行；必要时，可以设置与工商变更登记时点相勾稽的付款安排；
4. 将工商变更登记与完税列为交割的先决条件。

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附件 个人股权转让先税后证汇总表

序号	地区	法规名称	具体法律规定	实施时间
1.	四川省和重庆市	《关于股权转让个人所得税管理有关事项的通告》	市场主体登记机关在确认个人股权转让已完成税款缴纳（纳税申报）后，依法办理股权变更登记。	2022 年 1 月 1 日
2.	安徽省	《关于规范股权转让所得个人所得税管理工作的通告》	经查验已完成税款缴纳（纳税申报）的，市场监督管理部门依法为其办理股权变更登记。	2021 年 12 月 1 日
	合肥市	《关于规范股权转让个人所得税管理的通告》	合肥市各级市场监督管理部门通过网络“无纸化”查验与该股权转让相关的个人所得税纳税申报信息后，依照有关规定为被投资企业办理股东变更登记。	2021 年 7 月 1 日起，在蜀山区、巢湖市、新站开发区局开展试运行工作；2021 年 8 月 1 日起，在全市范围内全面施行
	黄山市	《关于规范股权转让个人所得税管理的通告》	黄山市各级市场监督管理部门通过网络“无纸化”查验与该股权转让相关的个人所得税纳税申报信息后，依照有关规定为被投资企业办理股东变更登记。	2021 年 9 月 1 日起，在屯溪区、高新区开展试运行工作；2021 年 10 月 1 日起，在全市范围内全面施行
3.	湖北省	《关于进一步规范个人转让股权有关事项的通告》	市场主体登记机关应当在办理股权变更登记中查验相关个人所得税完税凭证。	2021 年 10 月 1 日
4.	北京市	《关于股权转让所得个人所得税管理有关工作的通告》	经查验已完成税款缴纳（纳税申报）的，市场主体登记机关依法为其办理股权变更登记	2021 年 9 月 1 日
5.	广东省	《关于个人转让股权有关事项的通告》	企业自然人股东转让股权办理变更登记时，市场主体登记机关应当查验与该股权交易相关的个人所得税完税凭证，并依法办理变更登记。	2021 年 7 月 1 日
	广州市	《关于个人股权变更登记需查验完税凭证的通告》	市场主体登记机关根据税务机关共享的《自然人股东股权变更完税情况表》（完税凭证）办理股权变更登记。	2021 年 4 月 1 日
	佛山市	《关于规范股权转让个人所得税管理的通告》	佛山市各级市场监督管理部门通过网络“无纸化”查验股权转让相关个人所得税完税信息后，依照有关规定为被投资企业办理股东变更登记。	2021 年 4 月 19 日
	汕尾市	《关于个人转让股权办理变更登记需查验完税凭证的通告》	市场监督管理部门将通过网络电子查验个人转让股权的所得税完税凭证，未取得完税凭证的不予受理股权变更登记。	2020 年 10 月 10 日

序号	地区	法规名称	具体法律规定	实施时间
	惠州市	《关于个人股权变更登记需查验完税凭证的通告》	市场监督管理部门将通过网络查验个人转让股权完税凭证，未取得完税凭证的不予受理股权变更登记。	2020年5月1日
	东莞市	《关于个人股权变更登记需查验完税凭证的通告》	市场监督管理部门将通过网络查验个人转让股权完税凭证，未进行个人所得税申报的不予受理股权变更登记。	2019年12月1日
	阳江市	《关于个人股权变更登记需查验完税凭证的通告》	市场监督管理部门将查验个人转让股权相关的个人所得税完税凭证，对未提供完税凭证的不予受理股权变更登记。	2020年8月1日
	中山市	《关于个人股权变更登记需查验完税凭证的通告》	市场监督管理部门已依法开展相关查验工作，请申请办理股权变更登记的自然人，先前往税务部门办理个人所得税的完税事宜，获取完税凭证后，再到市场监督管理部门申请办理股权变更登记，未取得完税凭证或经查验不实的不予办理相关登记。	2020年7月28日
	汕头市	《关于个人股权变更登记需查验完税凭证的通告》	企业自然人股东转让股权办理变更登记时，市场主体登记机关应当查验与该股权交易相关的个人所得税完税凭证，并依法办理变更登记。	2021年7月1日
	云浮市	《关于开展个人转让股权变更登记查验工作的公告》	发生个人股权转让业务的纳税人，应先到主管税务机关办理纳税申报，缴纳应纳税费，取得完税凭证后，再向市场监督管理部门申请办理股权变更的注册登记，市场监督管理部门应先查验完税凭证后方可受理业务申请，未能提供完税凭证的，市场监督管理部门将不予受理股权转让的业务申请。	2021年1月1日
	珠海横琴新区	《关于个人股权变更登记需查验完税凭证的通告》	办理涉及个人股权转让的公司变更登记业务时，横琴新区工商局将查验个人转让股权相关的个人所得税完税凭证，查验符合要求的，予以办理公司股权变更登记。对未依法完成相关纳税申报，查验不符合要求的，横琴新区工商局不予办理公司股权变更登记。	2020年11月16日
	清远市	关于个人股权变更登记需查验完税凭证的通告	请申请办理股权变更登记的自然人，先前往税务部门办理个人所得税的完税事宜，获取完税凭证后，再到市场监督管理部门申请办理股权变更登记，未取得完税凭证或经查验不实的不予办理相关登记。	2020年11月1日
	深圳市	《关于进一步规范个人转让股权办理变更登记工作的通告》	市场监督管理部门确认个人转让股权行为已完成纳税申报后，依照相关规定为被投资企业办理股权变更登记。	2021年6月18日

序号	地区	法规名称	具体法律规定	实施时间
6.	湖南省	《关于加强股权转让个人所得税管理工作的通告》	个人转让股权办理变更登记的，市场主体登记机关应当查验由税务机关提供的与该股权交易相关的完税情况（个人股东股权转让信息表）。	2021 年 7 月 1 日
	岳阳市	《关于规范股权转让所得个人所得税管理工作的通告》	市场监督管理部门在确认个人股权转让行为已经进行纳税申报后，依照相关规定为被投资企业办理股权变更登记。	2021 年 1 月 1 日
	张家界市	《关于个人股权变更登记需查验完税凭证的通告》	市场监督管理部门在确认个人股权转让行为已经进行纳税申报后，依照相关规定为被投资企业办理股权变更登记，对于未取得《个人所得税纳税记录》或经查验不实的不予办理相关登记。	2020 年 9 月 11 日
7.	广西壮族自治区	《关于规范股权转让个人所得税管理工作的通告》	个人转让股权办理变更登记的，市场主体登记机关应当在查验与该股权交易相关的个人所得税完税凭证后即时办理变更登记手续。	2021 年 6 月 1 日
8.	天津市	《关于规范股权转让所得个人所得税管理工作的通告》	市场监督管理部门在确认个人股权转让行为已经进行纳税申报后，依照相关规定为被投资企业办理股权变更登记。	2020 年 5 月 11 日
9.	山东省	《关于股权转让个人所得税管理有关事项的通告》	个人办理股权转让变更登记时，市场主体登记机关应当查验与该股权交易相关的个人所得税的完税凭证；经查验已经履行申报缴纳义务的，市场主体登记机关依法为其办理股权变更登记。	2022 年 7 月 1 日
	青岛市	《关于进一步完善股东股权变更税源管理工作的通知》	企业登记机关对转让方为自然人股东的股权变更，应依据税务部门开具的《自然人股东股权变更税源监控登记表》（完税凭证）即时办理登记手续。	2018 年 12 月 26 日
	淄博市	《关于股权转让个人所得税管理有关事项的通告》	企业自然人股东转让股权办理变更登记时，市场主体登记机关应当查验与该股权交易相关的个人所得税的完税凭证，并依法办理变更登记。	2021 年 9 月 29 日
	泰安市	《关于股权转让个人所得税管理有关事项的通告》	个人办理股权转让变更登记时，市场主体登记机关应当查验与该股权交易相关的个人所得税的完税凭证；经查验已经履行申报缴纳义务的，市场主体登记机关依法为其办理股权变更登记。	2022 年 7 月 1 日
10.	江西省上饶市	《关于个人转让股权有关事项的通告》	自然人股东转让股权已完成税款缴纳（纳税申报）的，市场主体登记机关依法为其办理股权变更登记。	2021 年 11 月 1 日
11.	内蒙古自治区呼伦贝尔市	《关于规范股权转让个人所得税管理工作的通告》	市场监督管理部门在确认个人股权转让行为已经进行纳税申报后，依照相关规定为被投资企业办理股权变更登记。	2021 年 6 月 30 日

序号	地区	法规名称	具体法律规定	实施时间
12.	上海市	《关于进一步做好股权变更登记个人所得税完税凭证查验服务工作的通告》	个人转让股权办理股东变更登记的，在向市场监督管理部门办理变更登记前，扣缴义务人、纳税人应依法在被投资企业所在地主管税务机关办理纳税申报。	2022 年 12 月 20 日
13.	甘肃省兰州市	《关于规范股权转让所得个人所得税管理工作的通告》	各级市场监督管理部门在办理变更登记时，经查验与该项股权转让相关的税款缴纳（纳税申报）已完成的，市场主体登记机关依法为其办理股权变更登记。	2021 年 12 月 1 日
14.	海南省	《关于做好股权变更登记个人所得税服务工作的通告》	2023 年 6 月 30 日前，扣缴义务人、纳税人办理申报取得税务机关发放的《个人转让股权完税个人转让股权完税信息表》（见附件）后，再向省市场监督管理部门申请办理股权变更登记，并提交《个人转让股权完税信息表》供省级市场监督管理部门查验。2023 年 7 月 1 日起，国家税务总局海南省税务局和海南省市场监督管理局实行个人转让股权完税信息线上查验机制，经线上查验通过的，省级市场监督管理部门依法办理变更登记。	2022 年 12 月 1 日
15.	河南省驻马店市	《关于规范股权转让所得个人所得税管理工作的通告》	个人转让股权办理变更登记时，市场监督管理部门将依法查验个人股权转让行为纳税申报情况，依照相关规定办理股权变更登记。	2022 年 12 月 1 日