2019 (No. 4 issue)
June 2019

China clarifies IIT policies for non-domiciled individuals

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In brief

» China has issued two tax announcements to further clarify the individual income tax ("IIT") policies for non-domiciled individuals, covering:

- Determination of China residence time
- Definition of China-sourced income
- Calculation of taxable wages and IIT
- Tax treaty application
- Administration

» The two announcements are retroactively effective from 1 January 2019.

Feedback

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In Detail

Further to the new IIT Law (effective from 1 January 2019), China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued Announcement [2019] No. 34 and No. 35 to further clarify the IIT policies for non-domiciled individuals on 14 March 2019. The two announcements mainly cover the following aspects:

1. Determintation of China residence time

» The new six-year rule starts its counting from 2019 and afterwards. Whoever meeting the new six-year residence rule will have their global income taxed by China.

» The entrance dates to China and the departure dates from China are treated as days outside China.

2. Definition of China-sourced income

» Employment income (wages and salaries, multiple-month bonus and stock incentive income): Their China-sourced income refers to the income attributed to the working period (days) in China. The Chinese working days include the public holidays or leave taken during this period. For the individuals who have a domestic and an overseas position or only an overseas position, their China-sourced income is determined by the ratio of their Chinese working days to the total number of days of the period.

» Remuneration received by directors, supervisors and senior management personnel: Their China-sourced income refers to all the remunerations (including director fee, supervisor fee, wages and salaries, bonus and stock incentive income, etc.) paid or borne by a Chinese company.

» Authorship remuneration: China-sourced income refers to the authorship remuneration paid or borne by a Chinese company or other Chinese organizations.

3. Calculation of taxable wages and IIT

» For those who have both a domestic and an overseas position or only an overseas position, their taxable wages can be determined with reference to their presence days in China and the extent of salary paid / borne in China. We have summarized the formulas as below:

a) Non-managerial staff:

Tax residency	Presence in China	Calculation for monthly taxable wages
Non-tax residents	~ 90 days	Total monthly wages × [(monthly wages paid / borne by the Chinese company ÷ total monthly wages) × (Chinese working days of the month ÷ total days of the month)]
	90 days ~ 183 days	Total monthly wages × (Chinese working days of the month ÷ total days of the month)
Tax residents	Under 6 years (each year's accumulative presence in China is 183 days or above)	Total monthly wages × [1 - (monthly wages paid by the overseas company ÷ total monthly wages) × (overseas working days of the month ÷ total days of the month)]
	Over 6 years (each year's accumulative presence in China is 183 days or above, without leaving China for more than 30 days in any single trip each year)	Total monthly wages

b) Managerial staff:

Tax residency	Presence in China	Calculation for monthly taxable wages
Non-tax residents	~ 90 days	Monthly wages paid / borne by the Chinese company
	90 days ~ 183 days	Total monthly wages × [1 - (monthly wages paid by the overseas company ÷ total monthly wages) × (overseas working days of the month ÷ total days of the month)]
Tax residents	Under 6 years (each year's accumulative presence in China is 183 days or above)	
	Over 6 years (each year's accumulative presence in China is 183 days or above, without leaving China for more than 30 days in any single trip each year)	Total monthly wages

» For non-tax residents, their multiple-month bonus and stock incentive income are allowed to be separated from the other income items received in the current month and spread out to six months for taxation. No deduction is allowed, and monthly income brackets should be applied to the tax calculations. Such a treatment can be used only once for a non-tax resident's bonus in a calendar year. The stock incentive income received in one calendar year should be aggregated.

4. Tax treaty application

» Individuals receiving employment income, personal service income, and royalties, if qualified for relevant benefits of a tax treaty, can choose to enjoy the tax treaty benefits.

5. Administration

» When starting the initial filing during a calendar year, individuals need to estimate upfront their total presence days in China in the year in order to determine their tax residency and monthly IIT calculation method. If their actual presence in China turns out to be different from their estimate, a tax adjustment will be required.

» If a China-sourced income is paid by an overseas company rather than by a domestic company, the individual can file IIT by himself / herself, or have it withheld by the domestic company.

WTS observation

» Setting 2019 as the first year for the new six-year rule is good news to non-domiciled individuals, especially to those who could have stayed in China over five years prior to 1 January 2019. The new law allows them a fresh start from 2019.

» It is technically easier now than before for non-domiciled individuals to exclude their worldwide income from the China IIT under the new six-year rule, by staying outside China more than 30 days straight in a calendar year. A new six-year period will be recounted, regardless of their stay in China in the previous years.

» When there is a conflict between a tax treaty and the domestic law, the tax treaty should prevail. Therefore, the non-domiciled individuals who meet the criteria can select to enjoy the tax treaty benefits.

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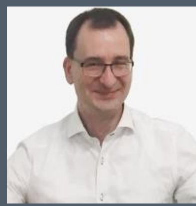

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