



American Chamber of Commerce in China
Submission to the Ministry of Finance and the State Administration of Taxation on the Draft Implementation Rules on the
Revised PRC Individual Income Tax law

November, 2018

General Comments:

On October 20, 2018, the Ministry of Finance and the State Administration of Taxation released the Draft PRC Individual Income Tax (IIT) Implementation Rules for public comment. The American Chamber of Commerce in China (AmCham China) appreciates the opportunity to provide comments on this draft.

AmCham China would like to thank MOF and SAT for the thoughtful revisions to earlier drafts of the Individual Income Tax policies, which have been positively received by the business community. While we appreciate your work towards refining the related implementation rules and administrative measures, we want to highlight a few recommendations that we feel are imperative to reduce compliance risks, including by resetting the “5-year rule” clock to zero, clarifying the regulations on prepayment and final settlement, and canceling the verification obligations of withholding agents. We also recommend that some of the existing preferential tax measures that currently significantly reduce the tax burden for individuals remain in place.

Our organization represents a wide range of foreign companies doing business globally, and many of them have extensive experiences on tax-related matters. In that spirit, we would like to be helpful and recommend for your consideration a few additional suggestions.

Article-specific Comments:

Article No.	Current Article Wording	Suggestion	Reasoning / Questions
Article 4	<p>Individuals who do not have a domicile in China but have lived in China for a total of 183 days for less than five years consecutively, or for five years in full but have a single departure for more than 30 days, may only pay individual income tax on the part paid by enterprises, public institutions, other economic organizations or individual residents in China for the income obtained from overseas upon filing with the competent taxation authorities. Individuals who have lived in China for a total of 183 days in a row for five consecutive years, or for five years in full without a single departure for more than 30 days, if have lived in China for a total of 183 days on the 6th year, shall pay income tax on all income derived from outside China.</p>	<p>we suggest that MOF and SAT strongly consider that starting January 1st, 2019, the 5-year rule clock for all foreigners be set back to zero, with full compliance with the 5 year and 30 days out rule be mandatory thereafter.</p> <p>We also suggest that MOF and SAT include the situation of single absence of more than 30 consecutive days cross two tax calendar years in the situation of “five years in full but have a single departure for more than 30 days” and may only pay individual income tax on the part paid by enterprises, public institutions, other economic organizations or individual residents in China.</p>	<p>The calculation method for the Chinese tax resident in this draft is quite different from the existing regulations. Reset the clock for all the foreigners stay in china to zero will reduce entrepreneurs’ compliance cost and risk.</p> <p>Additionally, the Ministry of Public Security should have the entry and exit records of foreign taxpayers in their system. We suggest SAT acquire the entry and exit records from MPS regularly. Otherwise, the filing process will increase the workload for both taxpayers and tax authorities.</p>
Article 37	<p>If it is not certain that the taxpayer is a resident individual or a non-resident individual, the tax shall be paid in accordance with the non-</p>	<p>We suggest MOF and SAT clarify the specific implementation measures on prepayment and final settlement and implement them nationwide.</p>	<p>For individuals who have worked in China but do not have a residence within China, if they have no resignation plan at the</p>

	<p>resident individual. If the taxpayer is determined to be a resident individual at the end of the year, the settlement shall be made according to the regulations.</p>		<p>beginning of the year and have already prepaid their tax as tax residents, but somehow leave their companies within 183 days which make them non-tax residents, it has yet to be clarified how companies should apply for a tax return.</p>
<p>Article 40</p>	<p>Where a taxpayer finds that the personal information, income, withholding tax, etc. provided or declared by the withholding agent are inconsistent with the actual situation, it has the right to request the withholding agent to amend it. If the withholding agent refuses to modify, the taxpayer may report to the taxation authorities, and the taxation authorities shall promptly handle it.</p> <p>If a withholding agent finds that the information provided by a taxpayer is inconsistent with the actual situation, the taxpayer may be required to modify it. If the taxpayer refuses to do so, the withholding agent shall report to the taxation authorities, and the taxation authorities shall promptly handle it.</p>	<p>We suggest MOF and SAT remove the withholdings' obligations to verify the authenticity and accuracy of the information provided by the taxpayers in Article 40, "If a withholding agent finds that the information provided by a taxpayer is inconsistent with the actual situation, the taxpayer may be required to modify it. If the taxpayer refuses to do so, the withholding agent shall report to the taxation authorities, and the taxation authorities shall promptly handle it."</p>	<p>As withholding agents, it is hard for enterprises to verify the authenticity and accuracy of the information provided by the taxpayers. If this draft take effect, enterprises will serve additional role as tax supervision institute, which will bring a great burden to enterprises. Thus, we recommend that the obligations and responsibilities to verify taxpayers' information shall be removed.</p>

Suggested New Article		<p>We suggest MOF and SAT maintain the existing preferential tax measures on one-time annual bonus and add “<i>The Circular of the State Administration of Taxation on Adjusting Calculation Method of Collecting Individual Income Taxes on Individual One-Time Annual Bonus [Guoshuifa (2005) No. 9]</i> is still valid and will continue to be implemented.”</p>	<p>The purpose of the IIT reform is to reduce the tax burden for residents. The tax preferential measures on one-time annual bonus plays a vital role to reduce the tax burden for individual tax payers. Removing these preferential measures will increase the tax burden on employees.</p> <p>Secondly, the measures would positively impact enterprises’ reward incentives mechanism and lower operation costs.</p> <p>Additionally, the retaining of this measure will show the fairness for the high-income earners so that everyone can benefit from the tax reform.</p>
Suggested New Article		<p>We suggest MOF and SAT maintain the existing preferential tax measures for individuals on obtaining economic compensation for termination of labor contracts, and add “<i>The Notice of the State Administration of Taxation on the Issue of Individual Income Tax on Obtaining Economic Compensation for Termination of Labor Contracts</i>”</p>	<p>The purpose of the IIT reform is to reduce the tax burden for residents. The tax preferential measures for individuals on obtaining economic compensation for termination of labor contracts plays a vital role to reduce the tax burden for individual tax payers.</p>

		<p><i>[Guoshuifa (1999) No. 178] and the Notice of the Ministry of Finance and the State Administration of Taxation on the Exemption of Individual Income Tax on Obtaining Economic Compensation for Termination of Labor Contracts [Caishui (2001) No. 157] is still valid and will continue to be implemented.</i></p>	
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