China’s New Individual Income Tax (IIT) Regime and Implications for Global Business

"Preparing for Upcoming Changes to China's Individual Income Tax Law" – September 27, 2018

Overview

The amendment to China's existing IIT Law, the draft of which received tens of thousands of public comments, was enacted in early October and will take full effect on January 1, 2019. These reforms reflect China’s policymakers’ desires to spur growth in one of the largest world economies amidst the ongoing trade disputes with the US. In addition to Chinese citizens, the revised tax deductions will also impact more than half a million expats living in China (and their employers) as the threshold to be classified as a China tax resident has been lowered.

FAQ

What does the new amendment entail?

- **Tightened criteria for tax residency status:** from one full year to 183 days spent in China (Article 1)
- **Changed tax rates and taxable income categories:** for example, the bracket for those taxed at 25% has been narrowed while those for 3%, 10%, and 20% have been extended (Article 3)
- **Increased standard basic deductions:** from RMB 3,500 per month to RMB 5,000 per month (Article 6)
Added new tax deductions such as education, housing expense, elderly support, and charity deductions (Article 6)

Added an Anti-avoidance rule that allows information-sharing between government agencies and enhances tax authorities’ regulatory power (Article 8)

**Are you tax-liable in China as an expat under the new amendments?**

It depends on your source of income, work duration in China, and whether income is obtained within China. You are required to pay tax in China if (1) you have a domicile in China; or (2) have resided in China for 183 days or more cumulatively within a tax year.

Since most expats meet the second requirement, here is the breakdown by years:

<table>
<thead>
<tr>
<th>Length of Stay in China</th>
<th>Income Sourced within China</th>
<th>Sourced Overseas from a Foreign Employer</th>
<th>Sourced Overseas from a Chinese Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 183 days (90 days without tax treaty)</td>
<td>✓</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>More than 183 days (90 days without tax treaty) but fewer than one year</td>
<td>✓</td>
<td>X</td>
<td>X (unless you hold a senior position at a Chinese business)</td>
</tr>
<tr>
<td>Between one and five years</td>
<td>✓</td>
<td>X</td>
<td>✓</td>
</tr>
<tr>
<td>More than five years</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

**Moving Forward**

The 2018 IIT Law amendment is a major step by the Chinese government to be more consistent with international practice (e.g. concept of resident and non-resident for tax purposes). However, some details remain ambiguous. For example, the State Administration of Taxation (SAT) has yet to determine the specific scope and criteria of additional tax deductions.

It also remains unclear whether annual bonuses will be exempted and whether the popular “five-year-rule” (wherein expats who are not China tax residents for more than five full consecutive years are exempt from paying tax in China on their non-China-sourced income) will be maintained for expats. On September 30, the State Administration of Taxation (SAT) announced that it will consider special tax plans for foreign employees (including those from Hong Kong, Macau, and Taiwan).
For Expats

❖ Consult with your employer and tax specialist to determine whether your tax status in China has been affected by the IIT law amendments and get prepared.
❖ Consider breaking the “five-year-rule” (by staying outside of mainland China for more than 30 consecutive days) this year if you are a tax resident approaching your fifth year in China.
❖ Revisit your investment plan and make necessary arrangements to cope with the changes.

For Employers

❖ Watch out for potential compliance issues such as how frequently IIT will now be calculated (annual basis for tax residents and monthly or transactional basis for non-tax residents).
❖ Keep track of the upcoming new Implementation Rules and revisions to the IIT law as more details are expected to be rolled out in the coming months.
❖ Revisit and assess current HR and payroll procedures and policies.

If you have questions about the event and or would like to join AmCham China’s Tax Forum, please contact Baojian Sui.

For inquiries on Insights, please contact Chloe Ma.

If you have any concerns or comments on the IIT Law, please contact policyteam@amchamchina.org and stay tuned for further advocacy and informational efforts on the issue.