

Human resource & Tax alert

China Releases Implementation Rules of New Individual Income Tax Law

Executive summary

Recently, the State Council promulgated the final implementation rules of the new Individual Income Tax (IIT) law (hereinafter referred to as the "the Implementation Rules"), which will be implemented simultaneously with the new IIT Law from 1 January 2019.

This is the final version of draft implementation rules of the IIT Law (hereinafter referred to as the "the Draft Implementation Rule") published on 20 October 2018. This alert aims to elaborate on the key changes brought about by the Implementation Rules by reference to the tax alert released on 23 October 2018 regarding the Draft Implementation Rule.

Key changes

1. Based on the new IIT Law, the definition of China tax residents for non-domiciled individuals (usually referred to as foreign nationals and Hong Kong, Macau and Taiwan residents, hereby referred to "Non-Chinese nationals") changed from having resided in mainland China for one full year to for 183 days or more within a tax year. The Implementation Rules stipulated that non-domiciled individuals may be exempt from China tax on non-China sourced income paid by foreign companies or individuals if they are China tax residents for no more than six consecutive years and a registration is performed with tax authorities. When an individual stays outside of China for more than 30 consecutive days in any tax year during which he or she stays in China for 183 days or more, the consecutive years in which the individual resides in China for 183 days or more will be re-counted again.
2. The Implementation Rules provide that if an individual receives operating income but no consolidated income, he or she shall deduct RMB60,000 as deductible expenses, special deductions, specific additional tax deductions and other deductions as stipulated by laws and regulations. The individual shall claim the specific additional tax deductions in the annual reconciliation.
3. Compared with the previous Draft Implementation Rules, the following main clauses were removed:

Removed clauses	Part 1 of key content in the tax alert regarding Draft Implementation Rule issued on 23 October 2018
Amendment of income source for operating income, author's remuneration and occasional income	Clause 2
Provisions for the transfer of property	Clause 3, Term (1)
Calculation method of eligible foreign tax credit on China-sourced income	Calculation formula in Clause 3, Term (3)
Restrictions on the taxation method for individual business, sole proprietorship enterprise and partnership enterprise	Clause 3, Term (4)
Detailed provisions of anti-tax avoidance	Clause 4, Paragraph 1 to 6
Tentative IIT calculation method when the tax residency cannot be determined	Clause 5, Term (3), Point 4
Situations where the tax refund will not be offered by the tax authorities	Clause 5, Term (5)
Filing requirements when resident individuals cancel household registration in China due to migration aboard	Clause 5, Term (6)

Attention needs to be paid whether the relevant removed clauses will be issued in subsequent tax regulations or circulars.

Next Steps

Companies and taxpayers need to become familiar with the contents of the implementation rules. If in doubt, please consult the local tax authorities. You are also welcome to contact EY professionals.

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