

外籍员工来华工作期取得认股权证收入的纳税问题

Taxation of Stock Compensation on Foreign Nationals during PRC Assignment

法律与法规

Part One - Legal references

有关认股权证收入的纳税问题的中国税法、行政法规及部门规章如下：

The PRC legal authority regarding the taxation of stock compensation is set out below

- 中国与其他国家（地区）签订的双边税收协定
- Double Tax Agreement concluded between China and other countries (regions).
- 中华人民共和国个人所得税法 – 全国人大（2006 年）
- The PRC Individual Income Tax Law, promulgated by the National People's Congress and effective as from January 1, 2006
- 中华人民共和国个人所得税法实施条例 – 国务院（2006 年）
- Implementation Regulations of the PRC Individual Income Tax Law, promulgated by the State Council and effective as from March 1, 2008
- 国家税务总局以“国税发”的形式发布的部门规章及操作指引：
- Administrative rules Guo Shui Fa (GSF) made by State Administration of Taxation (SAT), setting out details of the tax laws and regulations: 国税发 GSF (1998) 009, 国税发 GSF (1999) 241, 国税发 GSF (2005) 009, 国税发 GSF (2005) 205
- 国家税务总局以“国税函”的形式应其下级税务机关请求发布的解释：
- Administrative notices Guo Shui Han (GSH) given by State Administration of Taxation (SAT) in reply to the specific cases put forward by a lower level of the tax administration: 国税函 GSH (1990) 345, 国税函 GSH (2000) 190, 国税函 GSH (2005) 130, 国税函 GSH (2005) 482, 国税函 GSH (2006) 866, 国税函 GSH (2006) 902, 国税函 GSH (2007) 1030, 国税函 GSH (2009) 285, 国税函 GSH (2009) 461
- 财政部与国家税务总局以“财税”的形式共同发布的部门规章及操作指引：
- Administrative rules Cai Shui (CS) jointly made by the Ministry of Finance (MOF) and the State Administration of Taxation (SAT): 财税 Cai Shui (2005) 035, 财税 Cai Shui (2005) 102, 财税 Cai Shui (2005) 107, 财税 Cai Shui (2009) 005, 财税 Cai Shui (2009) 040

认股权证纳税问题

Part Two – Taxation on stock options

纳税义务发生时间点

The point of time for the income tax obligation to arise

中国个人所得税法、行政法规及部门规章等规定，倘若股票期权在授权时即约定可以转让，纳税义务发生在授予日当月。倘若股票期权在授权时约定该员工必须要在公司服务一定的期限，之后才可以转让或者行使认股权证，纳税义务发生在行使认股权证当天的月份。

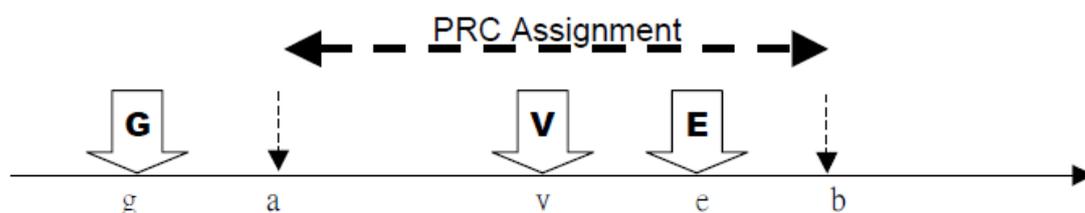
The PRC individual income tax rules provide that if the stock option is granted unconditionally and is vested immediately, then the income tax obligation will arise in the month on which the grant day falls. Where the stock option is granted subject to a vesting period, then the income tax obligation will arise in the month on which the exercise day falls.

答与问

Questions and answers

问(1): 员工在来华之前参加了认股权证计划，来华工作期间取得行使资格并且实施了行使权。该员工如果纳税？

Q(1): The stock option is granted prior to the assignment in China, vested and exercised while the employee is working in China under the assignment contract. How is the employee's tax position?



答(1): 由于在授予日员工未能即时取得换取股票的权利，中国大陆的税务责任发生在行权日。确定行权所得与两个时段相关。第一段时间指来华工作的日数(由 a 点到 e 点)，第二段时间由授予日直到取得行权资格当日(由 g 点到 v 点)。行权应纳税所得额的个人所得税的义务按照来华工作日数与由授予日直到取得行权资格当天期间日数的比例摊分。应纳税所得额 = [行权所得 x 来华工作日数 / 授予日直到取得行权资格当天期间日数]。

A(1): Since the employee cannot exercise the stock option right at the grant day until after the vesting period is over, the obligation for individual income tax arises from the exercise day. The tax liability is computed with reference to two relevant periods.

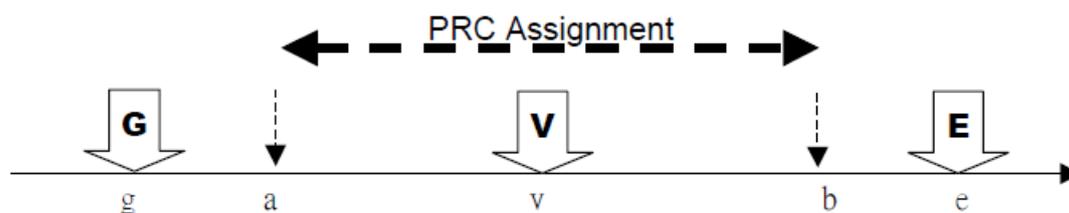
The first period is from the day of the commencement of the PRC assignment to the day the employee exercises the option (from point a to point e). The second period is from the day of the grant to the day the stock is vested to the employee (from point g to point v). The amount of taxable income is ascertained by reference to the gain from the stock option as adjusted as per the ratio between the number of days in the 1st period and the total number of days in 2nd period (from the grant day to the vest day). That is, taxable income = [gain from stock option x number of days worked in China / total number of day in the period from the grant day to the vest day].

由于纳税义务于行权日产生，纳税人尚未能将其所得套现，而面临流动资金周转问题。根据 2009 年财税 40 号文件规定，倘若纳税人获得行政审批，可由行权日当天起的不超过 6 个月期限内分期缴纳税款。

Note that the obligation for individual income tax arises from the exercise day. That is a tax on an unrealized gain. Therefore, to ease the employee's liquidation problem, the PRC IIT law provides that subject to the approval by the in-charge tax bureau, the employee can pay the tax by installments over a period not exceeding 6 months commencing from the exercise day. See article 2 in the document Cai Shui (2009) 040 jointly issued by the PRC SAT and the Ministry of Finance.

问(2): 员工在来华工作期之前参加了认股权证计划，来华工作期间取得行权资格，在来华工作期满回国后实施了行使权。

Q(2): The stock option is granted prior to the assignment in China, and is vested while the employee is working in China, but is not exercised until after the employee leaves China;



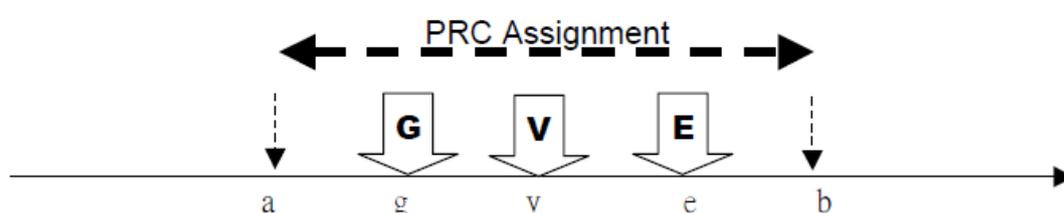
A(2): 倘若该员工在来华工作期满回国后行权，在确定纳税义务问题的时候要考虑该员工的薪金是否由境内机构支付或者负担。如果是由境内机构支付或者负担的，行权所得属于来源于中国的收入，需要在中国纳税，应纳税所得额参照在开始来华工作至行权日的日数(由 a 点到 b 点)与授予日至取得行权资格总日数(由 g 点到 v 点)的比例调整；如果不是由境内机构支付或者负担的，无须纳税。

A(2): If the employee exercises the option until after the PRC assignment, then the answer to this question depends on whether the employee's salary is paid or borne by an entity in China. If it is paid or borne by an entity in China, the gain from the stock

option has a PRC source and is taxable in proportion to ratio the number of days the employee works in China (from a to b) to the total number of days of the vesting period (from g to v). If not, then the gain from stock option is exempted from individual income tax in China.

问(3): 如果员工在来华工作期间参加了认股权证计划, 取得行权资格, 并且实施了行使权, 如何纳税?

Q(3): The stock option is granted, vested, and is exercised while the employee is working in China under the PRC assignment contract. How is the employee's tax position?

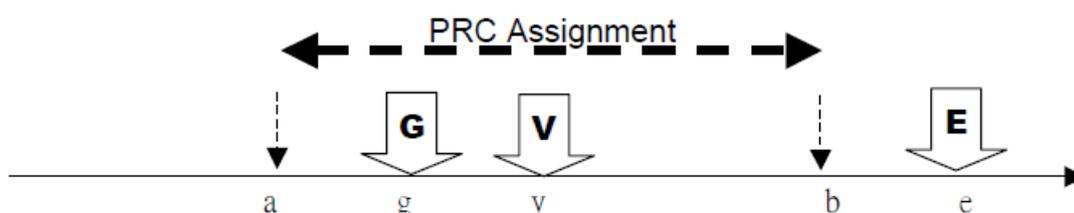


答(3): 如果员工在来华工作期间参加了认股权证计划, 取得行权资格, 并且实施了行使权, 其所得全数在中国纳税。纳税义务发生在行权日的当月。

A(3): If the stock option is granted, vested and is exercised while the employee is working in China, then the gain is wholly taxable in China. The income tax obligation arises in the month on which the exercise day falls.

问(4): 员工在来华工作期间参加了认股权证计划并取得行权资格, 来华工作期满离开中国之后实施了行使权。如何纳税?

Q(4): The stock option is granted and vested while the employee is working in China, but is not exercised until after the employee leaves China. How is his tax position?



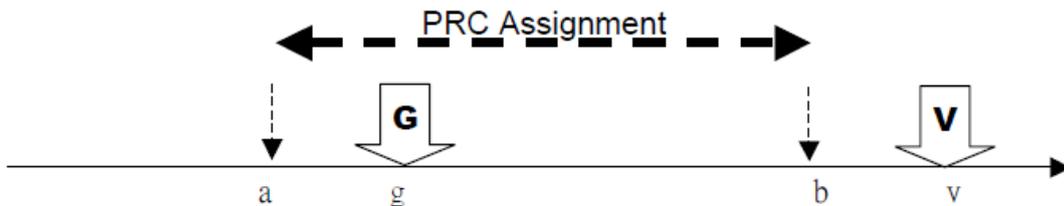
答(4): 倘若员工在来华工作期满离开中国之后行使认股权证, 是否纳税要视乎该员工的薪金是否由中国境内的公司或者分支机构承担。薪金由境内公司或者分

支机构承担的，收入来源于中国，要在中国纳税；薪金不是由境内公司或者分支机构承担的，无须在中国纳税。

A(4): If the employee exercises the option until after the PRC assignment, then the answer to this question depends on whether the employee's salary is paid or borne by an entity in China. If it is, then the gain is considered to have a PRC source and is taxable in China. If not, then it is exempted from individual income tax in China.

问(5): 员工在来华工作期间参加了认股权证计划，来华工作期满离开中国之后取得行权资格。如何纳税？

Q(5): The stock is granted while the employee is in China and vested after the employee departs from China. How is the tax position?



答(5): 除非属于在授予日即时可以转让认股权证外，员工在来华工作期间参加了认股权证计划，不会发生纳税义务。中国税收法律规定，纳税义务发生日期为转让股票认购期权或者行使认股权证的当日。

A(5): Except that the stock option right is granted unconditionally and vested immediately upon the grant day, the stock option granting does not give rise to PRC individual income tax liability for the employee. The PRC individual income tax law only imposes tax on the employee on the day when he exercises the option right either to assign the right or to acquire the stock.

股票增值权的纳税问题

Part Three – Taxation on stock appreciation rights

从认股权证计划角度来说，行使了认股权证之后，员工可以在市场出售股票。由市场其他投资者支付员工，但是认股权证摊薄了公司的原有股东的权益。从股票增值权计划角度来说，原有股东的权益不变。但是公司要用现金支付员工，导致现金减少。

In respect of the stock option plan, after the employee exercising the stock option

right and having acquired the stock, the employee can realize the value of the stock by selling the stock in the market. The investors in the market pay the employee if he/she sells the stock but the stock option plan will result in a dilution of the equity interest of the original stockholders. In respect of the stock appreciation right plan, the plan will not dilute the equity interests. However the Company needs to pay the employee if the employee wishes to realize the gain from the SAR by exercising the rights. The company will have less cash after paying the employee.

对于来华工作的外籍员工，股票增值权的纳税义务发生的时间点与行使认股权证一样。

To the PRC assignment, the time for the PRC income tax obligation arising from the exercise of SAR falls on the same day as that for the exercises of the stock option rights.

认股权证的税收征收实践

Part Four - Tax treatment of stock related income

行使认股权证纳税计算案例

(1) An illustrative example of taxation on stock option

一名已经来华工作 24 个月的外资企业员工，参加了认股权证计划，获得了行权资格，决定行使认股权证。因约定行权价低于施权日当天的市价，取得帐面收益 52,000 人民币。该员工的个人所得税的纳税义务如下：

An employee who already works with a wholly foreign owned enterprise on an international assignment for 24 months is granted stock option right and gets vested unconditionally. He later exercises the stock option right. Due to the fact that the agreed upon acquisition price for the stock at the grant day is lower than the market price at the exercise day, the paper gain from exercising the stock option is RMB52,000. The liability for the PRC Individual Income Tax is computed as below:

首先将所得除以 12，然后将获得的商数对照《个人所得税表》，从表中取得纳税税率及速算扣除数。尽管该员工再行使认股权证的时候，来华工作已经有 24 个月，但法律规定最长的月份数不可以超过 12。

Dividing the value of the gain by 12 months, then the quotient is used to determine the applicable tax rate and quick deduction from the table given below. Note that the maximum number of months is limited to 12 only even if the employee works for 24 months at the time of exercising the option right.

RMB52,000 / 12 = RMB4,333.33

应纳税所得额 = 行使认股权证所得（没有标准扣除额）= RMB52,000

Taxable income = gain from exercising option (No standard deduction) = RMB52,000

应纳税额 = 应纳税所得额 X 税率 - 速算扣除数

IIT payable = taxable income x tax rate - quick deduction

= RMB52,000 x 15% - 125

= RMB7,675

依照国家税务总局国税发（1994）89号文件中附表，如果取得的商数是4333，适用的税率和速算扣除数分别是15%及125。

Note that since the quotient is 4,333,33, the applicable tax rate and quick deduction is 15% and 125 respectively from the table provided under the administrative rule GSF (1994) 089 issued by the State Administration of Taxation.

	Employee bears tax 员工承担税款	Employer bears tax 公司承担税款	Tax rate 税率	Quick deduction 速算扣除数
1	Less than 少于 500	Less than 少于 475	5%	0
2	501 – 2,000	476 – 1,825	10%	25
3	2,001 – 5,000	1,826 – 4,375	15%	125
4	5,001 – 20,000	4,376 – 16,375	20%	375
5	20,001 – 40,000	16,376 – 31,375	25%	1,375
6	40,000 – 60,000	31,376 – 45,375	30%	3,375
7	60,001 – 80,000	48,376 – 58,375	35%	6,375
8	80,001 – 100,000	58,376 – 70,375	40%	10,375
9	Over 超过 100,000	Over 超过 70,375	45%	15,375

- 需要注意，自2011年9月1日开始，9级税阶减小到7级税阶。
- Note that since 1st Sept 2011, the number of income brackets has been reduced from 9 to 7.

转让认股权证行使权的纳税问题

(2) Taxation on assignment of stock option right

因转让认股权证行使权而获得的收益，按工资或者薪金所得纳税。如果该员工在中国工作期间转让其转让认股权证行使权，应纳税所得额按照在授予日至行权日期间，该员工境外与境内的工作天数比例确定。

The income from the assignment of stock option right is taxable in the same way as salary income. For example, where the employee assigns the right while working in

China, the gain shall be ascertained taking into account the respective number of days the employee works in China and the home country during the period between the grant day and the exercise day.

取得股利的纳税问题

(3) Taxation on dividend

除了双边税收协定另有规定以外，股利所得按所得总额的 10% 纳税，不可以扣除任何项目或费用。

Subject to the provisions in the bilateral double tax agreement, dividend income is taxed at a flat rate of 10% on gross income without any deduction.

出售股票的纳税问题

(4) Taxation on gains arising from the disposal of stock

在取得股票后，该员工出售持有的股票获利。出售财产所得的个人所得税率为 10%，出售当天的市场成交价与行权日当天的成交价两者之差为出售财产所得。

Where the employee, after exercising the option right, sells the stock for a profit, the income from the disposal of the stock will be taxed at a flat rate of 10% on the gain.

The gain is ascertained by reference to the difference between the market price at the disposal day and market price at the exercise day.