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Avoidance of Double Taxation and Prevention of
Fiscal Evasion for the Implementation of the
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PRC Tax Issues on Employment Income

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Foreign nationals, including Hong Kong, Macau and Taiwan residents, who work in the PRC less than 365 days in a year, are classified as non-residents under the PRC individual income tax ("IIT") law. The source rules of employment income for non-residents are as follows:

Foreign nationals, employed by foreign company to exercise employment in the PRC, shall pay IIT subject to the condition for tax exemption being met. Otherwise, the employee shall pay tax in proportion to number of days he/she works in the tax year, irrespective of where the employee receives the income.

A foreign national who enters into an employment contract with an FIE should pay IIT irrespective of how long he/she works in the tax year.

Foreign nationals who are not employed by resident entities but are deemed to have received income from an entity set up in the PRC shall be liable to IIT.

THE 183-DAY EXEMPTION RULE

If an employee stays in the PRC for a period not exceeding 183 days in a calendar year, the employee will not be liable

to income tax subject to the following conditions being satisfied: (a) the salary is not borne by any entity inside the PRC; and (b) the salary is not paid by any entity inside the PRC.

SCOPE FOR APPLICATION OF 183-DAY EXEMPTION RULE

The 183-day rule shall not apply in the following situations: (i) the taxation on salaries of the directors in the FIE and the salaries of the employees in senior position; and (ii) the salaries paid by or charged to the entities set up in the PRC.

DETERMINATION OF TAX OBLIGATION

Example: A Japanese national holding a position as technical manager with a representative office (RO), stayed in the PRC for 180 days in a year. The salary is paid by the head office outside the PRC. The RO is granted exemption from Chinese income tax since it is not engaged in any business activities. What is the tax position of the technical manager?

It is not relevant where the employee receives the salary outside the PRC. The salary is deemed to have borne by

Table 1 – Tax Liability for PRC and Non-PRC Tax Residents

Period of stay	Tax status	PRC-Source		Non-PRC source	
		Paid in PRC	Paid outside	Paid inside	Paid outside
<90 days (or 183 days)	Non-resident	✓	Exempt	✗	✗
≥90 days (or 183 days) but <365 days	Non-resident	✓	✓	✗	✗
1-5 years	Resident	✓	✓	✓	✗
Over 5 years	Resident	✓	✓	✓	✓

(charged to) the entity set up in the PRC if the entity is exempted from Chinese income tax, or taxed on a deemed profit basis. The deeming provision operates whether or not the salaries are recorded in the books of accounts. See document *Guoshuifa* (1994) 148 and refer to Table 1.

HOW TO CALCULATE THE EMPLOYEE'S WORKING DAYS?

The day of arrival and day of departure shall be counted as half day respectively. The scope of application includes non-PRC domiciled individuals who hold positions both in the PRC Company and the overseas company, or who only hold position in the overseas company. See document *Guoshuifa* (2004) 097.

COMPUTATION OF IIT

An employee is assigned to work in Guangzhou. His monthly salary is HK\$25,000 (=RMB26,000, including housing allowance of RMB3,000). The employer pays the salary outside the PRC. The employee rents a flat in Guangzhou, and obtains the tax invoice from the landlord.

(A) The employee bears the IIT

Taxable income = Salary – Standard deduction – tax-exempt income

IIT payable = taxable income x tax rate – quick deduction

Taxable income = RMB26,000 - RMB4,800 - RMB3,000 = RMB18,200

IIT payable = RMB18,200 x 20% - 375 = RMB3,265

(Note: The tax rate of 20% and quick deduction 375 are obtained from Table II.)

(B) The employer bears the IIT

Taxable income = (salary – standard deduction – tax-exempt income – quick deduction) / (1 – tax rate)

IIT payable = Taxable income x tax rate – quick deduction

Taxable income = (RMB26,000 - RMB4,800 - RMB3,000 - 1,375) / (1 - 25%) = RMB22,433.33

IIT payable = RMB22,433.33 x 25% - 1,375 = RMB4,233.33

(Note: The tax rate 25% and quick deduction 1,375 are obtained from Table II.)

The employer and the employee may reach an agreement on how the IIT is to be shared.

TAXATION ON YEAR-END BONUS

An employee working for an FIE is paid a year-end bonus of RMB52,000. The liability for IIT is computed as below:

Table II: PRC Income Tax Rates and Brackets (in RMB)

	Tax borne by employee	Tax borne by employer	Tax rate	Quick deduction
1	Less than 500	Less than 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	40,001 - 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 100,000	Over 70,375	45%	15,375

Table III: Tax rates and brackets (Independent Services)

Bracket	Including tax (Employee bears tax)	Excluding tax (Company bears tax)	Tax rate	Quick deduction
1	Not exceeding 20,000	Not exceeding 16,000	20%	0
2	Over 20,000 to 50,000	Over 16,000 to 37,000	30%	2,000
3	Over 50,000	Over 37,000	40%	7,000

Dividing the bonus by 12 months, then use the quotient to determine the tax rate and quick deduction. $\text{RMB}52,000 / 12 = \text{RMB}4,333.33$

Taxable income = Year-end bonus (No standard deduction) = $\text{RMB}52,000$

IIT payable = taxable income x tax rate – quick deduction
 = $\text{RMB}52,000 \times 15\% - 125$
 = $\text{RMB}7,675$

(Note: The tax rate 15% and quick deduction 125 are obtained from Table II.)

STATUTORY DEDUCTION & ITEMS EXEMPTED FROM IIT

1. Standard deduction $\text{RMB}1,600$ and addition deduction $\text{RMB}3,200$
2. Social security contributions within prescribed limits (*Guoshuifa* (2006) 10).
3. The following items with supporting tax invoices: housing allowance, meal allowance, language training fees, child education fees, transportation allowance for home trips etc. See SAT document *Guoshuifa* (1997) 54.

TAXATION ON DIRECTORS' FEE

Directors' fee and remuneration of senior staff are subject to tax under the independent service category. See *Guoshuifa* (2004) 097.

Standard deduction

Standard deduction is $\text{RMB}1,600$ for income not exceeding $\text{RMB}4,000$; 20% for income of $\text{RMB}4,000$ or above.

The director of an FIE receives a fee of $\text{RMB}80,000$ in the month.

Taxable income = $\text{RMB}80,000 - (1 - 20\%) = \text{RMB}64,000$

IIT payable : $\text{RMB}64,000 \times 20\% = \text{RMB}12,800$;
 $(50,000 - 20,000) \times 20\% \times 50\% = 3,000$;
 $(64,000 - 50,000) \times 20\% \times 100\% = 2,800$
 $12,800 + 3,000 + 2,800 = 18,600$

Alternatively, the computation can be done by using the quick deduction as follows:

IIT payable = $\text{RMB}64,000 \times 40\% - 7,000 = \text{RMB}18,600$

What if the director stays in the PRC for only a few days each month?

If the director's is paid by the FIE, the director's fee should be taxed in whole. If the director's fee is paid by the holding company and the director receives his salaries outside the PRC, the director's fee is taxed on a time-apportioned basis. See document *Guoshuifa* (1994) 148.CT1

在中国取得工资收入的纳税问题

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在一个公历年度工作不满365天的外籍员工，包括港澳台居民，为个人所得税法所指的非税务居民，其工资收入来源应根据以下情况确定。

受雇于境外机构，并由境外机构派到中国工作的外籍员工，除非依照规定可以免税，否则无论该员工在何处收取工资，需按其工作日数计算缴纳个人所得税。

由三资企业直接聘用的外籍员工，其工资亦需缴纳个人所得税，不论其工作时间的长短。

外籍员工虽然没有签订劳动合同但被视为从境内单位或机构收取工资收入，都需要缴纳个人所得税。

183天的免税规定

如果前往中国大陆境内工作员工的工作天数，在一个公历年度内不超过183天，在满足以下二个条件前提下，该员工无须缴纳个人所得税：第一，其工资并非由境内单位负担；第二，其工资并非由境内单位支付。

183天免税规定适用范围

183天的免税规定不适用于以下情形：(一)外商投资企业的董事薪酬及高级员工的薪金；(二)由境内机构负担或支付的工资。

表一：税务居民与非税务居民的纳税义务

停留期间	纳税身份	中国来源收入		非中国来源收入	
		境内支付	境外支付	境内支付	境外支付
少于90(或183)天	非税务居民	征税	免税	不征税	不征税
等于90天(或183天)但少于365天	非税务居民	征税	征税	不征税	不征税
1至5年	税务居民	征税	征税	征税	不征税
超过5年	税务居民	征税	征税	征税	征税

确定纳税义务

例子：一位日籍员工在代表处担任技术经理，在一个年度内在中国境内工作了180天，其工资由总公司在境外支付，该代表处获得税务机关豁免缴纳所得税，该技术经理是否需要纳税？

根据国税发(1994)148号文件规定：倘若该代表获得中国税务机关批准无须纳税或者以核定利润的方式缴纳所得税，其员工的工资视为由该单位负担或支付，在该单位工作的员工需要纳税，无论会计帐目内是否有记录该员工的工资。请参考表一。

如何计算员工的工作天数？

入境当天及离境当天各按半天计算。以上规定适用于下列人士：在中国境内没有住所但在境内及境外机构同时担任职位，或者只在境外机构担任职位。见国税发(2004)97号。

计算个人所得税

某员工由香港派驻广州工作，每月薪金HK\$25,000 (=RMB26,000，包括房屋津贴RMB3,000)。工资在香港支付，该员工住出租屋，每月向业主取得发票。

(甲)员工自行承担税款

应纳税所得额 = 工资 - 法定扣除 - 免税项目

应纳税额 = 应纳税所得额 × 税率 - 速算扣除数

应纳税所得额 = RMB26,000 - RMB4,800 - RMB3,000 = RMB18,200

应纳税额(每月) = RMB18,200 × 20% - 375 = RMB3,265

(注：可从表二找出20%税率及375适用速算扣除数。)

(乙)公司承担员工税款

应纳税所得额 = (工资收入 - 法定扣除 - 免税项目 - 速算扣除数) / (1 - 税率)

应纳税额 = 应纳税所得额 × 税率 - 速算扣除数

应纳税所得额 = (RMB26,000 - RMB4,800 - RMB3,000 - 1,375) / (1 - 25%) = RMB22,433.33

应纳税额 = RMB22,433.33 × 25% - 1,375 = RMB4,233.33

(注：亦可从表二找出适用税率25%及速算扣除数1,375。)

公司与员工可以达成协议，按比例各自负担个人所得税。

表二：个人所得税税阶及税率(人民币)

	由雇主支付税款	由雇主支付税款	税率	速算扣除数
1	少过 500	少过 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	40,001 - 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	超过 100,000	超过 70,375	45%	15,375

年终花红纳税问题

一位三资企业员工取得年度奖金RMB52,000，个人所得税按以下方式计算：

先将奖金除以12个月，其商数用以确定适用税率和速算扣除数 RMB52,000 / 12 = RMB4,333.33

应纳税所得额 = 年终奖金或花红(无标准扣除费用) = RMB52,000

应纳税额 = 应纳税所得额 × 税率 - 速算扣除数
= RMB52,000 × 15% - 125
= RMB7,675

(注：亦可从表二找出适用税率15%及速算扣除数125。)

法定扣除项目及免税项目

- 一、基本扣减额RMB1,600及附加扣减额RMB3,200
- 二、在限额内的社会保障保险供款额(国税发(2006)10号)
- 三、根据税务总局国税发(1997)54号文件，以下项目免征个人所得税，但要提供发票：房屋津贴、餐费补贴、语言训练费、子女教育费、回国探亲费等。

董事薪金

根据税务总局国税发(2004)97号文件规定，董事的薪金按劳动报酬所得征税。

标准扣除

收入不超过RMB4,000.00，可扣除RMB1,600.00；收入RMB4,000.00元及以上部份，可扣除20%。

表三：税率及税阶(劳务报酬所得适用)

级数	含税级距	不含税级距	税率(%)	速算扣除数
1	不超过20,000元的	不超过16,000元的	20%	0
2	20,000元至50,000元	16,000元至37,000元	30%	2,000
3	超过50,000元的部分	超过37,000元的部分	40%	7,000

外商投资企业一位董事本月份取得酬金RMB80,000，其纳税情况如下：

应纳税所得额 = RMB80,000 - (1 - 20%) = RMB64,000

应纳税额：RMB64,000 × 20% = RMB12,800;

$(50,000 - 20,000) \times 20\% \times 50\% = 3,000$;

$(64,000 - 50,000) \times 20\% \times 100\% = 2,800$

$12,800 + 3,000 + 2,800 = 18,600$

或者按表三的适用税率及速算扣除数计算:

应纳税额 = RMB64,000 × 40% - 7,000 = RMB18,600

如果该董事每月只到境内数天，其纳税情况如何？

凡是由境内机构取得的收入，都要全额纳税；但根据国税发(1994)148号，如果该董事只在境外取得收入，该董事的劳务报酬收入可以根据实际在华停留日数，按比例计算其应纳税所得额。CTI