

# IIT LAW ON AND AFTER 1<sup>ST</sup> SEPT 2011

## A Summary of the Relevant IIT law for Non-residents Working Temporarily in China

### 非居民临时来华工作个人所得税相关摘要

On 2011, the Standing Committee of the National People's Congress and the State Council amended the PRC Individual Income Tax Law (the IIT law) and the Implementation Regulations of the PRC Individual Income Tax Law (the Implementation Regulations).

在 2011 年，人大常委会及国务院对个人所得税法（下称“所得税法”）及个人所得税法实施条例（下称“实施条例”）作出修订。

The amendment of the IIT law took effect on 1<sup>st</sup> Sept 2011, with the following major changes:

- For wages and salaries earned, the progressive income tax rates from 3% to 45% shall be adopted. (item 1, Article 3);
- For wages and salaries earned, an amount of RMB3,500 shall be deducted from the gross income to arrive at the taxable income (item 1, paragraph 1, Article 6);
- For tax payment, the deadline is changed from 7 days to 15 days. The tax withholding agent or the taxpayer shall pay the amount of tax within 15 days after the end of each month, and submit the tax declaration form to the tax bureau (Article 9).

新所得税法在 2011 年 9 月 1 日起生效，主要修订内容如下：

- 第三条第一项修改为：“工资、薪金所得，适用超额累进税率，税率为百分之三至百分之四十五。”
- 第六条第一款第一项修改为：“工资、薪金所得，以每月收入额减除费用三千五百元后的余额，为应纳税所得额。”
- 第九条中的“七日内”修改为“十五日内”。修订后为“扣缴义务人每月所扣的税款，自行申报纳税人每月应纳的税款，都应当在次月十五日内缴入国库，并向税务机关报送纳税申报表。”

The amendment of the Implementation Regulations took effect on 1<sup>st</sup> Sept 2011, with the following major changes:

- The additional deduction as provided under paragraph 3 in Article 6 of the IIT law is the amount that is stipulated under Article 29 of the Implementation Regulations (Article 27, IR);
- The addition deduction as provided under paragraph 3 in Article 6 of the IIT law is RMB1,300 (Article 29, IR).

修订的实施条例在 2011 年 9 月 1 日起生效，主要的修订如下：

- 第二十七条修改为：“税法第六条第三款所说的附加减除费用，是指每月在减除 3500 元费用的基础上，再减除本条例第二十九条规定数额的费用。”
- 第二十九条修改为：“税法第六条第三款所说的附加减除费用标准为 1300 元。”

In order to give effect to the implementation of the IIT rules, the SAT issued an administrative order (2011) No. 46, setting out the tax rates, income brackets, quick deductions for income including tax and income excluding tax respectively.

#### **Tax rate table (Applicable to wages and salaries income\_**

Level	Monthly taxable income		Tax rate (%)	Quick deduction
	Income bracket including tax	Income bracket excluding tax		
1	Not exceeding 1,500	Not exceeding 1,455	3	0
2	From 1,501 to 4,500	From 1,456 to 4,155	10	105
3	From 4,501 to 9,000	From 4,156 to 7,755	20	555
4	From 9,001 to 35,000	From 7,756 to 27,255	25	1005
5	From 35,001 to 55,000	From 27,256 to 41,255	30	2755
6	From 55,001 to 80,000	From 41,256 to 57,505	35	5505
7	Over 80,000	Over 57,505	45	13505

Note 1: the income brackets, whether including tax or excluding tax, are the taxable income after statutory deductions.

Note 2: Income brackets including tax shall apply where the employee pays the tax on wages and salaries. Income brackets excluding tax shall apply where the employer pays the tax on wages and salaries for the employee.

为了执行所得税法及实施条例，国家税务总局颁布了(2011) 46 号令，分别说明含税与不含税适用的税率、税距、速算扣除数等信息如下：

税率表（工资、薪金所得适用）

级数	全月应纳税所得额		税率 (%)	速算扣除数
	含税级距	不含税级距		
1	不超过 1500 元的	不超过 1455 元的	3	0
2	超过 1500 元至 4500 元的部分	超过 1455 元至 4155 元的部分	10	105
3	超过 4500 元至 9000 元的部分	超过 4155 元至 7755 元的部分	20	555
4	超过 9000 元至 35000 元的部分	超过 7755 元至 27255 元的部分	25	1005
5	超过 35000 元至 55000 元的部分	超过 27255 元至 41255 元的部分	30	2755
6	超过 55000 元至 80000 元的部分	超过 41255 元至 57505 元的部分	35	5505
7	超过 80000 元的部分	超过 57505 元的部分	45	13505

注 1：本表所列含税级距与不含税级距，均为按照税法规定减除有关费用后的所得额；

注 2：含税级距适用于由纳税人负担税款的工资、薪金所得；不含税级距适用于由他人（单位）代付税款的工资、薪金所得。

The SAT has also announced different methods for IIT computation in accordance with different periods of stay by the employees in China.

Calculation of IIT for Foreign Nationals QD = Quick Deduction			
Time (T) spent in China	Formula	Application	Note
T < 183 days	$[(\text{Total income} - 4,800) \times \text{Tax rate} - \text{QD}] \times (\text{Income in China} / \text{Total income}) \times (\text{Days in China} / \text{Days total})$	PRC source employment income only	[1]
183 days < T ≤ 1 year	$[(\text{Total income} - 4,800) \times \text{Tax rate} - \text{QD}] \times (\text{Days in China} / \text{Days total})$	PRC and non-PRC source employment income	[2]
1 year < T ≤ 5 years	$[(\text{Total income} - 4,800) \times \text{Tax rate} - \text{QD}] \times (1 - (\text{Income outside China} / \text{Total income})) \times (\text{Days in China} / \text{Days total})$	PRC and non-PRC income; a few days spent outside China	[3]

T > 5 years	$[(\text{Total income} - 4,800) \times \text{Tax rate} - \text{QD}]$		
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[1] Article 3(1), SAT Circular Guo Shui Fa [2004] No. 97

[2] Article 3(2), SAT Circular Guo Shui Fa [2004] No. 97

[3] SAT Circular Guo Shui Han Fa [1995] No. 125; and Article 3(3), SAT Circular Guo Shui Fa [2004] No. 97

Note that total income here is defined as: total employment income from inside and outside China – statutory deduction 4,800 – monthly social security contribution – tax exempt items.

根据驻中国境内员工停留时间长短，税务总局颁布了不同的个人所得税计算方法。

外籍员工所得税应纳税额计算方法			
QD = 速算扣除数			
(T) = 在境内停留时间	公式	适用	附注
T < 183 日	$[\text{当月境内外工资薪金应纳税所得额} \times \text{适用税率} - \text{QD}] \times (\text{当月境内支付工资} / \text{当月境内外支付工资总额}) \times (\text{当月境内工作天数} / \text{当月天数})$	境内工资及薪金收入	[1]
183 日 < T ≤ 1 年	$[\text{当月境内外工资薪金应纳税所得额} \times \text{适用税率} - \text{QD}] \times (\text{当月境内工作天数} / \text{当月天数})$	境内境外工资及薪金收入	[2]
1 年 < T ≤ 5 年	$[\text{当月境内外工资薪金应纳税所得额} \times \text{适用税率} - \text{QD}] \times (1 - \text{当月境外支付工资} / \text{当月境内外支付工资总额}) \times (\text{当月境外工作天数} / \text{当月天数})$	境内境外收入；部分时间停留境外	[3]
T > 5 年	$[\text{当月境内外工资薪金应纳税所得额} \times \text{适用税率} - \text{QD}]$		

[1] 国税发[2004]97 号文第三条第一款第一项。

[2] 国税发[2004]97 号文第三条第一款第二项。

[3] 国税发[2004]97 号文第三条第一款第三项。

当月境内外工资薪金应纳税所得额 = 工资薪金收入总额 - 法定扣除额 (4800) - 社会保障供款 - 免税收入项目

### Case

Q: A HK resident who works for a BVI company is assigned to work on a project in China for 3 months. The employee will not get paid in China. What is his/her position for IIT? If there is liability for the IIT, any tax efficient plan can be proposed?

A1: The employee performs his duties in China and the income has a China source irrespective of where he gets paid. If the employee is a HK resident, Article 14 of the HK-China DTA shall apply. If the employee is not a HK resident, he will be subject to IIT in China. The IIT will be computed as per Article 3(1), SAT Circular Guo Shui Fa [2004] No. 97.

A2: The employee only stays in China for a period not exceeding 183 days, and the

employee does not receive any salaries from China. The income can be exempted under Article 14 of the DTA between HK and China. It will be more tax efficient if the employment is to be changed from that with the BVI Company to a Hong Kong Company.

A3: One can look at this from a corporate income tax perspective. Although the Hong Kong employee stays in China for less than 183 days, Article 7 of the China-Hong Kong DTA provides that the presence of the employee by the Hong Kong Company does not constitute a permanent establishment in China. Therefore, the HK Company is not liable for the corporate income tax on income arising from the project.

### 案例

问：一位受聘于英属处女岛公司的香港居民，被公司派遣到中国为一项目工作，为期三个月。该员工的薪金不需要由境内公司支付。问题：该员工是否要交纳个人所得税？如果要的话，有何建议降低税务成本？

答一：由于该员工在中国境内履行职务，无论薪金支付地在何处，其获得的收入来源于中国。如果该员工是香港居民的，可以根据中港避免双重征税安排第 14 条规定办理。倘若该员工不是香港居民，该员工所得需要根据国税发[2004]97 号文第三条第一款第一项规定，交纳个人所得税。

答二：该员工在中国停留时间不超过 183 日，也没有从中国境内公司获得收入。根据中港两地的避免双重征税税收安排第 14 条规定，该笔薪金收入可以在中国内地申请享受免税。所以，如果该员工转为受聘于香港公司，该员工可以无需交纳个人所得税。

答三：从公司方面看，依据中港避免双重征税安排第 7 条规定，香港公司员工在中国工作时间少于 183 日，不构成常驻机构。就该项目所得，香港公司无论在中国交纳企业所得税。

The IIT obligations for tax residents and non-tax residents are set out in the table below (applicable to treaty countries):

Period of stay	Tax status	PRC-Source income		Non-PRC source income	
		Paid in PRC	Paid outside PRC	Paid in PRC	Paid outside PRC
<90 days (183 days under DTA)	Non-resident	Taxable ✓	<b>Exempt +</b>	Not taxable ✗	Not taxable ✗
=>90 days (183 days under DTA) but <365 days	Non-resident	Taxable ✓	Taxable ✓	Not taxable ✗	Not taxable ✗
1 to 5 years	Resident	Taxable ✓	Taxable ✓	Taxable ✓	Not taxable ✗
Over 5 years	Resident	Taxable ✓	Taxable ✓	Taxable ✓	Taxable ✓

+ This would have been taxable under the IIT law but for the exemption under HK-China DTA.

稅務居民與非稅務居民的所得稅納稅義務摘要如下表（適用稅收協定國）：

停留期間	納稅身份	中國來源收入		非中國來源收入	
		境內支付	境外支付	境內支付	境外支付
少於 90(或協定 183)天	非稅務居民	徵稅 ✓	免稅+	不徵稅 ✗	不徵稅 ✗
達 90 天(或協定 183 天)但少於 365 天	非稅務居民	徵稅 ✓	徵稅 ✓	不徵稅 ✗	不徵稅 ✗
達 1 年但少於 5 年	稅務居民	徵稅 ✓	徵稅 ✓	徵稅 ✓	不徵稅 ✗
超過 5 年	稅務居民	徵稅 ✓	徵稅 ✓	徵稅 ✓	徵稅 ✓

+ 倘若沒有中港稅收安排中免稅規定，境外薪金收入也需要繳納個人所得稅。

Q: How is the corporate income tax (CIT) liability for the BVI Company ascertained if it sends the employee to work in China?

A. The taxable income for the BVI company will be computed as per SAT circular (2010) 19, as per formula: taxable income = contract sum x deemed profit rate. The deemed profit rate shall be in the ranged (i) between 15% and 30% for construction and related projects, (ii) between 30% and 50% for management services projects, and (iii) at a rate no less than 15% for projects not falling under (i) and (ii).

問：如果由英屬處女島派遣員工到內地工作，公司所得稅應該如何計算？

答：根據文件國稅發（2010）19 號，英屬處女島公司應納稅所得稅需要按照以下公式計算：應納稅所得額 = 合同金額 x 核定利潤率。從事承包工程作業、設計和諮詢勞務的，利潤率為 15%-30%；從事管理服務的，利潤率為 30%-50%；從事其他勞務或勞務以外經營活動的，利潤率不低於 15%。

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