

China Business Advisory

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Further Clarification regarding Determination of Length of Residence for Non-PRC-domiciled Individuals

To further clarify the day-count rules for non-PRC domiciled individuals under the new Individual Income Tax (“IIT”) Law in China, on 14th March 2019, the Ministry of Finance (“MOF”) and the State Administration of Taxation (“SAT”) jointly

issued Announcement [2019] No.34 (“the Announcement”) on Determination of length of residence for non-PRC-domiciled individuals. The interpretations in the Announcement are effective from 1st January 2019.

The Announcement provides guidance under the new IIT law of PRC for determining the length of residence in China for non-domiciled individuals.

The main content of the Announcement is as follows:

1. Six Year Rule

In the Announcement, a six year look-back rule (“Six Year Rule”) is adopted to examine a non-domiciled individual’s taxable income in a particular fiscal year in China. According to the Announcement, the non-domiciled individual will be subject to worldwide taxation in China if during the six consecutive years immediately prior to the year of assessment, the

individual:

- resided in China for 183 days or more in each year; and
- did not leave China for more than 30 days in any single trip in each year.

When the number of days of the non-domiciled individual's staying in China does not meet either of the standards above, his/her foreign-sourced income paid by overseas entity or individuals will be exempt from tax in China. The count of the "Six Year" period commences from 1st January 2019.

2. Method for Counting Residence Days in China

The Announcement explicitly specifies that, on a given calendar day:

- If the individual is physically present in China for 24 hours on a day, that day should be counted as a day of residence in China;
- If the individual is physically present in China for less than 24 hours on a day, it would not be counted as a day of residence in China.

The Chinese government now adopt more relaxed day-count and year-count rules in comparison with the old regulations after changing the one-year rule to 183-day rule for tax residence determination.

New Rules on Declaration of Royalties Payments

On 27th March 2019, the General Administration of Customs ("GAC") issue guidelines on tax reporting procedures for royalty payments ("Announcement No. 58").

Announcement No.58 become effective from 1st May 2019 and its main contents are as follows:

1. Completion of "Confirmation of Royalty Payments" in Customs Declaration Form

For dutiable royalties that are related to imported goods, if there are taxable royalty payments, it should be indicated in the Customs Declaration Form notwithstanding whether

the royalty payments are included in the price of the imported goods.

2. Declaration timeline for taxable royalties

- For royalties that were paid before goods importation, enterprises should declare to the Customs at the time of goods importation. Customs duties would be imposed on the royalties based on applicable duty rates and exchange rates on the date when import declaration for the goods is accepted by Customs.
- For royalties that are paid after goods importation, enterprises should declare to the customs and make relevant tax payment **within 30 days after each payment**. Customs duty would be imposed on royalties based on applicable duty rates and exchange rates on the date when declaration of royalties is conducted.

3. Late payment surcharge

- The Customs will levy a late payment surcharge at daily rate of 0.05 percent of underpaid import taxes, if the enterprises failed to declare and make tax payment to the customs within the prescribed period.
- If the underpaid import taxes have been caused by incorrect statement in “Confirmation of Royalty Payments” by the enterprises, the customs will calculate the period of late payment surcharges from the date of tax payment or the date on which the imported goods is released, to the date which the Customs spot the violation.
- Surcharges could be mitigated if the enterprises voluntarily disclose the matter in accordance with voluntary disclosure process stipulated in Customs Audit Regulations.

Enterprises are advised to pay more attention on the following aspects:

1. Pay special attention to the change in requirements for “Confirmation of Royalty Payments” in custom declaration forms;
2. Make sure Customs declaration and tax payment are made within 30 days of royalty payments and;
3. Review past payments of Royalty Payments and rectify underpayment of tax if applicable.

Amendments to China Tax Resident Certification

On 1st April 2019, SAT released guidelines for China Tax Resident Certification ("Announcement No.17").

Announcement No.17 become effective from 1st May 2019 and include the following amendments:

1. Authorities in charge of accepting applications for China Tax Resident Certificates and issuing such certificates are changed to be the county-level tax authorities, while procedures for processing the applications and for filing the applications remain unchanged.

Some matters regarding Certification process are modified including supporting documents requirements.

2. Tax-related documents are simplified and more specific.
3. Formats of the application form and certificate are revised to be consistent with the latest organizational structure of the tax authorities and be in line with international practices.

Service Highlight

China continues to attract investors from all over the world as it is fast emerging as one of the largest markets. While continuous effort is put in to improve and simplify China's domestic regulations and administrative processes, it is important that investors are up to date with the changes and can comply with them accordingly. Sino-Bridge is always well prepared and pleased to help investors to realize their full potential. Our Marketing Executive, Ms. Rika Wong, looks forward to hearing from you at (852) 3579 8745 or rikawong@sinobridge-consulting.com for any assistance and support we could provide you with.

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