

China Business Advisory

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2. Service Highlight

Update on Measures of Employee Economic Compensation

The Ministry of Human Resources and Social Security released Renshebufa [2017] No.87 to announce the invalidation and abolishment of regulations on 24th

November 2017, including Laobufa [1994] No.481 (“Circular No.481”) which had been widely referred and quoted to solve employment compensation issues before its different parts were replaced by other subsequently released laws and regulations. The key changes regarding Circular No.481 are highlighted as follows:

- Economic compensation for inappropriate payment of salary
 - According to the abolished Circular No.481, in addition to the full payment of salary, an extra 25% of total salary should be paid as economic compensation by the employer for any underpayment, delay-payment of salary or nonpayment of overtime wage. Moreover, for any salary lower than the local minimum, an extra 25% of the gap will be imposed on the employer as compensation.

- According to the Labor Contract Law, the employer is required to settle the payment for any underpayment, delay-payment of salary, and nonpayment of overtime wage, and repay the gap for the below-limit salary by a deadline specified by a Court or a Labor Authority. Otherwise, extra 50% to 100% of the payable amount will be imposed on the employer as a penalty.
- Economic compensation for breach and termination of labor contract
 - According to the abolished Circular No.481, economic compensation for the termination of labor contract by mutual consensus was calculated based on the monthly salary multiplying the rounded up number of serving years with an upper limit of 12 years.
 - The above type of economic compensation is now calculated according to similar rules except that any serving periods of less than 6 months will only be entitled to half of the monthly salary, and an additional limit is applied to cap the amount of monthly salary for calculation at triple the local average monthly salary.

The abolishment of Circular No.481 would remove the inconsistencies of economic compensation calculation in different areas and provide more clarity for employment administration for enterprises.

Upcoming Significant Relaxation of Restrictions for Foreign Investment in the Financial Industry

On 10th November 2017, the State Council Information Office of China held a briefing on the major issues discussed during the meetings between the heads of China and US in Beijing. One of the key points discussed is that the restrictions for foreign investments in the financial industry would be relaxed significantly. Below is a summary:

- The maximum proportion of shareholding for single or multiple foreign investors directly or indirectly investing in securities, fund management, and futures companies will be increased from 49% to 51%. The maximum proportion restriction will be abolished entirely after three years of implementation.
- The caps of foreign shareholding, 20% for a single investment and 25% for accumulative investments, in domestic commercial banks and financial asset management companies will be removed.
- The current 50% proportion limit for a single or multiple foreign investors in personal insurance companies will be relaxed to 51% in three years. This restriction on proportion will be removed entirely in another two years.

Further Statutorization of VAT Reform

Following the expansion of VAT Reform to the whole country last year (see China Business Advisory 2016 Issue 3), the State Council issued Order No.691 on 19th November 2017 to announce the abolishment of “Provisional Regulation on Business Tax of China” (State Council Order No.540 in 2008) and further amendments to the “Provisional Regulation on Value-added Tax of China” (State Council Order No.134 in 1993). The aim of the abolishment and amendments is to integrate and formalize the tested rules and regulations. The key points are as follows:

- Expansion of the scope of VAT taxpayers
Companies selling services, intangible assets and real estates are included as VAT taxpayers.
- Cancellation and reduction in VAT rates
On the basis of the cancellation of the 13% VAT rate, the tax rate for selling and importing grain, books, and feed, etc. is reduced from 13% to 11%.

- Adjustment of the disallowed input VAT relating to
 - purchases of goods, labor services, other services, intangible assets and real estates for items under simple tax calculation methods or exempted from VAT, collective welfare or personal consumption;
 - goods purchased suffering from abnormal losses and the related labor service and transportation service;
 - purchased goods (excluding fixed assets) as well as the related labor and transportation services for producing work in progress and/or finished products suffering from abnormal losses;
 - Other items stipulated by the State Council.

Furthermore, according to the Press Conference of the State Council the current transitional implementation policies of VAT reform for certain industries, such as real estate, financial services and so on, will remain valid.

Further Clarification on Scope of Eligible R&D Costs for Super Deduction

On 8th November 2017, State Administration of Taxation (“SAT”) issued SAT Announcement [2017] No.40 on the basis of Caishui [2015] No.119 and SAT Announcement [2015] No.97 to further clarify the scope of eligible research and development (“R&D”) costs for super deduction, which is one of the Corporate Income Tax incentives. The highlights are shown as follows:

- Expansion on the scope to cover labor costs, such as salaries, basic social security and housing fund, of R&D staff and service costs of individuals who are engaged with the company for R&D activities according to a directly signed agreement or via a labor dispatch agent, and temporarily hired researching, technical and auxiliary people

- Clarification that salaries include the deductible share incentive expenditures for R&D personnel
- Simplification of the rules for deduction of depreciation and amortization
- Clarification of the treatments of governmental subsidies, special income derived from waste, defective products and intermediate materials, and the policy for capitalization of R&D costs
- Emphasis that super deduction is also applicable to failed R&D activities

Service Highlight

Gaining a comprehensive understanding of the principle and rationale of the fast changing regulations of China is a must to be compliant and mitigate relevant risks while making the most out of these regulations to yield a positive impact on your business. We have been helping our clients in this direction with our long-time professional experience in China. For any assistance, please feel free to call Ms. Kimme Chan, our Marketing Executive, on +852 3579 8745 or email her at kimmechan@sinobridge-consulting.com.

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