

Q&A relating to Individual Income Tax for Foreign Individuals

Description

I. What kinds of foreign individuals shall pay Individual Income Tax (“IIT”) in China?

Pursuant to the PRC IIT Law and its Detailed Implementation Rules:

- 1.Foreigners, residents of the regions of Hong Kong, Macau and Taiwan (hereinafter referred to as “**Foreign Individuals**”) who derive income from working or employment with enterprises or organizations within the territory of the PRC;
- 2.Foreign individuals who derive income from providing independent labor services (including design, performance, contest, etc) within the territory of the PRC;
- 3.Foreign individuals who derive incomes from manuscripts, royalties, interest, dividend, profit, leasing of property, transfer of property, incidental income and other incomes within the territory of the PRC.

All the above incomes derived by foreign individuals would be subject to IIT in China.

II. For those foreign individuals who derive wages and salaries from their employment in the PRC, would they be subject to IIT for their wages and salaries received outside the PRC?

Individual who is domiciled in the PRC, or who is not domiciled in the PRC but has resided in the PRC for a full year or more, shall report and pay IIT on his incomes sourced both inside and outside the PRC. Individual who is not domiciled in the PRC and has not resided in the PRC for a full year, shall pay IIT only on his income sourced from PRC.

If the expat's home country has a tax treaty with China, generally speaking, upon satisfaction of all the following three conditions, the expat shall not be subject to IIT tax liability in China:

- (a) the recipient resides in China for a period or periods not exceeding 183 days in the calendar year concerned;
- (b) the salaries, wages or other forms of remuneration is paid by, or on behalf of, an employer who is not a resident of China; and
- (c) the remuneration is not borne by a permanent establishment (“PE”) or a fixed base which the employer has in China.

III. Would the wages and salaries paid by the enterprises outside the PRC be regarded as income sourced inside the PRC?

For the wages and salaries derived by the expat individuals, the location of payment is not relevant in determining the income source, but the place of rendering of services counts. This is the same either perceived from China domestic law or from tax treaties to which China is a party.

Wages and salaries derived by the foreign individual from his days of stay for work in the PRC will be considered as PRC source income, regardless of whether they are paid by employers inside or outside the PRC.

Wages and salaries derived by a foreign individual from his days of stay for work outside the PRC will be considered as income sourced outside the PRC, regardless of whether they are paid by employers inside or outside the PRC.

IV. How to determine the income source for incomes other than wages and salaries derived by foreign individuals?

The following types of income shall be considered as PRC source income regardless of whether the payment is made inside or outside the PRC:

1. Income derived from the lease of property to a lessee for the use in the PRC;
2. Income derived from the transfer of property, such as buildings, land use rights, etc. located in the PRC or from the transfer of other property in the PRC;
3. Income derived from the franchising in the PRC;
4. Interest, dividend and bonus incomes derived from the companies, enterprises and other economic organizations or individuals in the PRC.

V. How to calculate the amount of taxable income for foreign individuals?

1. Wages and salaries: Taxable income = Monthly Income - RMB4,800

2. Income derived from provision of labor services, manuscripts, royalties, income from transfer of property:

If income is less than RMB4,000 per payment:

Taxable Income = Income per payment - RMB800

If income is more than RMB 4,000 per payment:

Taxable Income = Income per payment × (1-20%)

3. Income from transfer of property:

Taxable Income = Income from Transfer of Property - Original Value of property - Reasonable Expenses

4. Interest, dividend, bonus, incidental income and other incomes:

Taxable Income = Income per payment

VI. How to calculate the amount of tax payable?

1. Wages and salaries:

$\text{Tax Payable} = (\text{Taxable Income} - \text{Quick Deduction}) \times \text{Applicable Tax Rate}$

Please refer to the PRC IIT Law for the applicable Tax Rate and Quick Deduction.

2. Incomes other than wages and salaries:

$\text{Tax Payable} = \text{Taxable Income} \times \text{Applicable Tax Rate}$

Applicable tax rate is 20% (for income derived from provision of labour services, an additional liability of 50% and 100% of the normal tax payable shall be levied on the taxable income exceeding RMB20,000 and RMB50,000 respectively. For income derived from manuscripts, the IIT should be levied with a reduction of 30% of the tax payable.)

VII. Which types of income derived by the foreign individuals can be exempt from IIT?

The following types of income earned by foreign individuals can be exempt from IIT:

1. Dividend and bonus paid by Foreign Investment Enterprises;
2. Housing allowance, meal allowance, relocation and laundry expenses obtained not in form of cash or on an actual reimbursement basis.
3. Reasonable traveling allowance for business trips within or outside of the PRC.
4. The portion of home-leave expenses, language training expenses, education expenses for children which are approved by local tax authorities as reasonable.
5. Experts who are seconded to work in the PRC under the international exchange agreements or by the United Nations.
6. Wages and salaries received by people of foreign embassies and consulates in the PRC.

VIII. What are the methods of reporting and paying IIT for foreign individuals?

There are 2 methods of reporting and paying IIT for foreign individuals:

1. The paying enterprise and individual will act as the withholding agent and withhold the IIT upon the payment of income (taxpayers do not need to file a tax return).
2. Taxpayers who derive wages and salaries from two or more locations, or from overseas should file the tax returns and pay IIT to the tax authorities by themselves.

Foreign individuals can appoint tax agent to handle their IIT filing.

IX. How to determine the timing of IIT payment for foreign individuals?

1. Wages and salaries shall be subject to IIT on a monthly basis. IIT should be withheld by the withholding agent or paid by the self-reporting taxpayers to the State Treasury within seven days of the following month, and the IIT return or withholding IIT return should be filed with the tax authorities.

2. For incomes derived from the provision of labour services, manuscripts, royalties, interest, dividend, bonus, lease of property, and transfer of property, incidental income and other incomes, IIT shall be reported and paid with 7 days upon receipt of the income.

3. Taxpayers who earn incomes outside the PRC shall pay IIT to the State Treasury and file the IIT return with the tax authority within 30 days after the end of each year.

X. How to determine the location of tax payment for foreign individuals?

For IIT to be withheld and paid by the withholding agent, the IIT shall be paid to the local tax authority which administers the withholding agent. The self-reporting taxpayer shall submit the tax return and pay IIT to the local tax authority of the location where the income is derived. If income is derived from two or more places in the PRC, the taxpayer shall select one place to file the tax return and pay IIT.

XI. How to file the tax return and pay IIT for foreign currency income earned by the foreign individuals?

Foreign individuals shall file the tax returns with and pay IIT to the tax authorities in RMB. Income in foreign currency shall be converted into RMB according to the exchange rate published by the People's Bank of China on the last day of the previous month before the tax payment receipt is issued.

XII. What is the penalty if foreign individuals do not file and pay IIT according to the regulations?

1. If the taxpayer fails to file his IIT return within the stipulated period or a tax withholding agent fails to file the IIT withholding return to the tax authorities within the stipulated period, the tax authorities may prescribe a period for rectification and impose a fine up to RMB2, 000. If rectification is not undertaken within the prescribed period, they may impose a fine between RMB2, 000, and RMB10, 000.

If the taxpayer fails to pay the tax due or the tax withholding agent fails to remit tax payments before due date, the tax authorities may prescribe a period for rectification and impose a late filing surcharge at the daily rate of 0.05% on the amount of the tax overdue commencing on the day of default.

2. If the foreign individual uses different means to under-report or not report his taxable income, the tax authorities may charge the IIT on a deemed basis and impose a penalty between 0.5 time and 5 times of the amount of the underpaid tax.

3. If a taxpayer with overdue tax needs to leave the PRC, the outstanding tax must be settled in full or a guarantee must be provided before leaving. If the outstanding tax is not settled in full nor a guarantee is provided, the tax authorities may notify the border control authority to prevent the taxpayer from leaving the PRC.

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