



CHINA BRIEFING

A Monthly Advisory Service From Dezan Shira & Associates Ltd

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THIS ISSUE: FOREIGNERS INDIVIDUAL INCOME TAX IN CHINA

Tax! A horrible word in any language but unfortunately a necessary part of the lexicon and vocabulary. As China steers towards entering the WTO, it will seek to ensure that its tax collection from the one taxable area it has reasonably strong influence over – foreign investors – fall into line and begin to pay taxes that the law demands. China does need to expand its tax base to finance its development, and this will include a tightening of collection over its own nationals and companies, but an easier target is the fewer Foreign entities in the country. China actually is a low tax country compared to elsewhere, but there are laws in place and the days of foreigners coming in and working on tourist and business visas almost on a permanent basis are starting to come to an end.

This issue of China Briefing then outlines the circumstances, liabilities and procedures for registering for Individual Income Tax (IIT), explains the rationale and hopes to take some of the pain away from being a tax payer in the PRC.

Tracking Liabilities

Up until recently, China has only been able to effectively track potential tax abuse by inspecting foreigners passports and cross-checking with the tax bureau over whether or not registration had been completed. In practice such inter-Government bureau co-operation never really transpired, with the Immigration and Tax bureau worlds apart.

This has changed. A few months ago, China introduced on a national basis new blue and yellow Entry / Exit forms. These are computerized with the compiled data then being made available to the tax bureau who now at a glance can ascertain visa types, length of stay, numbers of entries / exits, from January 2001 onwards. This means that the Chinese authorities can track properly movements of aliens through the country and retrieve data pertinent to tax assessments, as is routinely common in most Western nations.

Who Has To Pay?

China has a multi-tiered system of tax liabilities for foreigners, which has led to some confusion, particularly over the so-called “90 day rule”. We identify specific likely scenarios and the tax liabilities as follows:

Staff Working For Legal Enterprises in China

Be this a Representative Office, Chinese Limited Company, Wholly Foreign Owned Enterprise or a Joint Venture anywhere in China, you are subject to IIT from the first day you commence work. Get down to the tax bureau and get registered!

Staff Holding Concurrent Posts Both in China and Elsewhere

Are you a Chief Representative, Legally Responsible Person or other employee, but spend your time between your China entity and your parent company? Firstly, you should be arriving in China on a business visa, and are subject to IIT based on the number of physical days you are in China. This is assessed upon the salary you are claiming from your parent company overseas – the Chinese tax bureau may want to see proof of earnings from your parent (tax slip, payment voucher etc) to support your case. At the end of each month, your China office should take copies of your passport, together with the entry/exit stamps for that month, and file and pay for taxes based upon the number of days spent in the PRC. The tax bureau will issue a receipt showing this has been paid, this can be credited against the tax paid in your resident location (ie: you won't have to pay tax both in China and your resident location for the time spent in China).

Staff Based Elsewhere But Occasionally Visiting Their Companies China Entity

If you are physically employed outside China but sometimes visit on business trips every now and then, you can be in China for up to 90 days in any twelve month period and enjoy the tax free policy granted to foreigners. But if you intend to, or have been in China for longer than this, you need to file your IIT based upon the earnings you obtained during the whole period.

Project Staff Working On Contracts

Assuming you are in China to satisfy a contract between your foreign parent and China entity, and your parent has no legal presence in China, then you are permitted to work for up to 90 days in any twelve month period, as described above. Longer than this and you need to declare your income back dated to your original date of entry (ie: you lose the 90 day exemption).

Work Registration Procedures

If you are based in China and working, you should register for the following:

- Work Visa
- Work Permit
- Residents Card

Significant fines (up to RMB50,000 for the company, and RMB1,000 per individual just for not having a residents card!), plus late payment penalties of up to five times the tax owed can be levied for non-compliance – ouch ! Time to dot the i's and cross the t's...."It'll never happen to me!" Yeah, right. If you can't afford to pay to the Chinese Government the taxes that are rightfully theirs, then you're either in the wrong business, or wrong country and should, quite frankly, look at finding employment elsewhere.

Tax Rates & Liabilities

The first RMB4,000 of your earnings in China are tax free. That does not mean you can rush out and declare salaries of RMB4,500! The tax bureau are wise to this and will demand to see concrete proof of your earnings elsewhere. If you can't provide this they may refuse to register you, effectively immediately making your presence in China illegal. China however is quite fair on taxes, and allows, via a stepped system of rates, a quick calculation system, being a further deduction against salary. The table below demonstrates salary brackets and tax rates, plus the quick tax deduction system.

Your Total Liability can be calculated as follows:
Salary x Tax Rate, less Quick Deduction Figure = IIT Tax Bill

Salary	Tax Rate	Quick Calculation Deduction
To RMB24,000	20%	RMB375
RMB24,001- 44,000	25%	RMB1,375

RMB44,001- 64,000	30%	RMB3,375
RMB64,001 – 84,000	35%	RMB6,375
RMB84,001 – 104,000	40%	RMB10,375
In excess of RMB104,000	45%	RMB15,375

Deductible Allowances

China is also pretty reasonable as regards non-taxable elements as part of an expat package, however some attention may need to be paid to the structuring of the inclusive package with certain items needing to be properly defined in the employees contract: Here is a basic summary of what allowances may be taxable:

Benefit	Taxable as part of Overall Package
Hardship Allowance	Yes
Housing at Cost	No
Fixed Housing Allowance	Yes
Free Use of Vehicle	No
Fixed Expenses paid in cash	Yes
Reasonable Expenses reimbursed	No
Reasonable Home Leave Allowance	No
Reasonable Education for Dependents	No

Take note though that you should appear to be reasonable, a paid family holiday in Phuket may not be considered as home leave! General expenses will be taxed if provided for as a fixed monthly amount, but not if re-claimed supported by official *fa piao* (receipts). If in doubt take professional advise over the structuring of employee benefits packages.

Employee Bonuses Paid Overseas

If staff are also paid other bonuses, such as profit sharing, year-end bonuses and other types of income external from China, then again, attention needs to be paid to detail here if these are not to be considered as taxable income derived from employment in China. The PRC makes distinctions here between the status of the individual, and this is key when determining whether or not such bonuses are taxable or not. Firstly, is the bonus PRC or non-PRC sourced income, and secondly, is the individual a China resident or non-resident employee. An employee resident in China should have just his PRC-sourced income assessed for tax, being described as

payments made for a function or work carried out in China. Other income remains out of reach of the PRC authorities, although this changes if the employee resides in China for more than five years, whereupon he is then taxable on his worldwide income. Non-resident employees will have to pay tax on PRC derived income if resident in China for more than 90 days in any twelve month period as previously discussed. For China resident employees being given year-end bonuses then, this is taxable income. For non-residents who are part of the time in China, the bonus is taxable on a basis of the number of days spent in China – the bonus being divided by 365 then calculated up by the time spent in China being the taxable element.

Summary

Individual Income Tax calculations for standard salaries are fairly easy to assess, but get more intricate according to the complexity of the expatriates salary package. It makes sense to take professional advise when structuring expatriate salary packages to ensure liabilities can be planned, and catered for in the most tax-efficient manner. Dezan Shira & Associates handle tax planning for individuals and expatriates working in China, please contact any of our Regional offices for advise on tax planning for foreign personnel.

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