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Impact of PRC Tax Changes 內地個人所得稅改革的影響

Business owners and people working in the Mainland should prepare for broadening of income tax laws and greater scrutiny

面對內地所得稅範圍擴大和更嚴格的審查，企業經營者和在內地工作的僱員應及早做好準備

On 19 June, Liu Kun, the Minister of Finance of the People's Republic of China, outlined draft legislation to reform the PRC's individual income tax (PRC IIT). The full text was released on 29 June. These changes have the potential to be far reaching – impacting foreigners living or working in Mainland China, employers' tax obligations, and holding structures for businesses and investments.

This article looks at the implications that the proposed measures may have on Hong Kong businesses and entrepreneurs operating in Mainland China.

Highlights of the reforms

The most significant elements of the PRC IIT reforms are changes to tax residence, new itemized deductions for all employees, and the extension of anti-avoidance measures to individuals.

The legislation introduces the broad concepts with the main changes taking effect from 1 January. Implementation guidance is expected to follow, but businesses need to consider the implications of the law changes and to start planning their responses now.

Without detailed implementation rules, it is necessary to make some informed speculation about how the rules may be implemented. However, the guiding principles for the reforms include the stated intention of bringing the PRC IIT rules in line with “international norms.” This and the existing corporate income tax rules offer a reasonable road map for what to expect.

Residence

New tax residence rules will impact foreigners (including individuals from Hong Kong, Macao and Taiwan) based in Mainland China, and very frequent travelers and commuters. Currently it is common for foreigners based in Mainland China to limit their exposure to PRC IIT to income sourced from the Mainland – keeping foreign assets outside of the PRC tax net. This is possible because a non-PRC domiciled taxpayer only becomes subject to tax on worldwide income after they

have been resident in PRC for five full years. This five-year period can be broken, and the clock restarted, by taking a 30-day “tax break” outside of Mainland China.

From 1 January, a new tax residence test will take effect. This makes an individual tax resident in PRC if they are present in Mainland China for 183 days or more in a calendar year. It is not clear at this stage whether the five-year concession will continue.

Looking at what the “international norm” might be, it is possible to make a case either way. Most jurisdictions have a days-count test for tax residence; many rely solely on this, others relax the position allowing concessions that exclude foreign investment income for taxation for a period of time.

Regardless of whether PRC IIT retains a five-year concession, it is unlikely that any such period will be able to be refreshed as easily. The 183-day residence test would mean that resetting the concession period would require 183 days out of Mainland China to break the period of continuous residence.

So foreigners based in Mainland China and business owners operating there need to prepare for the likely future state where they become taxable on worldwide income – including PRC IIT being imposed on investment income and business holdings outside of Mainland China.

CFC rule

Becoming a tax resident of PRC means that the new controlled foreign corporation (CFC) rule for individuals will also apply. Assuming that the CFC rule for individuals will be consistent with the current corporate income tax rules, an offshore company is a CFC if it is majority owned (more than 50%) by PRC tax residents. If a CFC does not distribute its earnings without reasonable commercial reason, any shareholder with at least a 10% interest can have their share of those undistributed profits attributed to them personally.

The corporate tax implementation of the CFC rule also provides that a CFC can exist, even if the over

50% shareholding threshold is not met. A company is deemed to be a CFC if the PRC resident has effective control over the company in terms of shareholding, capital, operation, sales and purchase decisions, etc.

There are not rules to address the personal aspects, such as whether non-resident relatives' shareholdings should be considered. The stated desire to align with international norms may give an indication of how the rules might be implemented. In other locations, CFC rules typically include provision for individuals' shareholding to be aggregated if they are closely related, for example parents and siblings. It can be expected that a similar approach will be taken to prevent shareholding being fragmented between relatives.

Case study

Looking at a practical example, consider a business established in Hong Kong with significant operations in Mainland China. The majority shareholder lives with his family in Hong Kong, and also owns a separate business with operations in Vietnam and Malaysia, and property interests in Hong Kong, the U.K. and U.S. The business plan for the PRC business is to expand operations, so the owner needs to commute to factories in Shenzhen

and travel to Shanghai frequently. In total, he spends more than 183 days in Mainland China.

As a consequence, the owner becomes tax resident in PRC, subject to tax on worldwide income and subject to the CFC rule. This means that not only are the profits derived from the PRC operations taxable in PRC but potentially the income and gains derived from the Vietnam and Malaysia businesses, and the Hong Kong, U.S. and U.K. property interests. All could become exposed to PRC IIT, unless relief is available under a double tax agreement.

For people living in Hong Kong and travelling to work in the Mainland, it will be important to determine how the double tax agreement will apply. In particular, people in this situation need to plan ahead and determine whether they will be able to demonstrate that they are dual resident (Hong Kong and Mainland China) and that the tiebreaker rules should resolve this dual residence in favour of residence in Hong Kong.

Increased compliance in the future

Looking at these reforms in conjunction with recent events in the tax arena leaves a clear impression of a future of tighter rules and greater enforcement of tax



中華人民共和國財政部部長劉昆於6月19日闡述改革內地個人所得稅制度的立法草案，修正案（草案）全文於6月29日公布。稅法改革（稅改）將影響在中國內地居住或工作的外籍人員、僱主的稅務責任，以及企業和投資的控股結構。

本文將探討建議措施對在中國內地經營的香港企業可能產生的影響。

改革重點

中國個人所得稅改革的主要重點包括修改稅務居民定義、為所有僱員增加專項附加扣除，以及擴大針對個人的反避稅條款。

新稅法為上述改革引入了較為廣泛的概念，相關變更將於明年1月1日起生效。實施指引估計將於隨後公布。企業現需考慮新稅法的潛在影響，並提前進行稅務規劃。

在具體實施規則公布前，我們可在現有資料的基礎上預測新稅法將如何實施。稅改的指導原則是把內地個人所得稅法與「國際慣例」接軌。這點和現有的企業所得稅法為內地稅改的未來發展提供合理的期望。

稅務居民定義

稅務居民的新定義將影響在中國內地工作的外籍人員（包括香港、澳門和台灣居民）、商務旅客和通勤員工。目前，外籍人員把其納稅義務局限於從中國內地所得收入的做法十分普遍，他們的國外資產則保留在內地稅網範圍之外。非在中國有住所的居民只有在中國內地住滿五年的情況下才須就其全球收入納稅，惟當他們在此期間離開中國內地達30天或以上，居住年期便會重新計算。

從1月1日起，稅務居民的新定義將會生效。任何人於一年內在中國內地逗留183天或以上將被界定為中國稅務居民。對於全球收入納稅的五年寬限期在新稅法下是否繼續適用，在現階段仍未確定。

就中國個人所得稅法與「國際慣例」接軌這一議題，我們可以其他國家的現行規定作為參考指標。大多數司法管轄區都採用天數計算的方式來定義稅務居民，其中一些國家則提供寬免措施，允許在一段時間內的國外投資收入不計入納稅範圍。

在中國個人所得稅新稅法下，不論是否繼續賦予五年的全球收入納稅寬限期，寬限要求將進一步收緊。新的稅務居民定義意味外籍人員須在此期間離開中國內地達183天或以上，其逗留年期方可重新計算。

因此，新稅法實施後，在中國內地工作的外籍人員和企業經營者可能須就其全球收入納稅，包括中國內地境外的投資收入和商業股份。

受控外國公司規則

一旦成為中國稅務居民，意味受控外國公司的新規則也將適用。假設新規則與現行企業所得稅規定一致，任何離岸公司的多數股權（超過50%）由中國稅務居民持有，則被視為受控外國公司。如果受控外國公司在沒有合理商業原因的情況下不分配其收益，則任何擁有至少10%權益的股東會獲分配其相應份額的未分配利潤。

就企業稅而言，受控外國公司規則規定，即使股權未達50%多數權益，若其在股權、資本、營運和銷售採購決策等方面對外國公司具有有效控制，則該等公司會被界定為受控外國公司。

然而，有關規則並未針對其他個人因素，例如非中國居民親屬的股權是否應被考慮。參考全球其他地方，受控外國公司規則一般規定，對於關係密切的若干人士，例如父母和兄弟姊妹，他們的股權須合併計算。預料當局將採取相同做法。

個案研究

舉例來說，假設一家企業在香港成立，而在中國內地有廣泛業務，企業的大股東與家人居住於香港，其經營

的另一家獨立企業在越南和馬來西亞擁有業務，並在香港、英國和美國擁有物業權益。為了在中國內地擴展業務，大股東需要經常前往深圳和上海，在中國內地逗留合共超過183天。

因此，該企業的大股東在新稅法下被定義為中國稅務居民，須就其全球收入納稅，並受新的受控外國公司規則約束。這意味除非在雙重課稅協議下有相關寬免，否則大股東不僅須就其在中國內地經營所得的利潤納稅，還可能須就其在越南和馬來西亞經營所得的收入，以及其在香港、英國和美國擁有的物業收益繳納中國個人所得稅。

在香港居住而需要前往中國內地工作的人士，應注意如何應用雙重課稅協議。在此情況下，應提前進行稅務規劃，考慮是否能證明其雙重居民身分（香港和中國內地），並根據稅收協定證明其稅務居民身分歸屬香港。

合規要求將逐步加強

隨着稅改即將落實，觀乎近期的稅務發展，中國內地未來將進一步收緊規則和加強納稅義務的執法。值得注意的是，這次中國個人所得稅改革將為稅務機關提供有利條件，以向居住在內地的中國公民和非中國公民進行全球徵稅。在經合組織共同匯報標準下金融資產訊息的自動交換，將有助進行審計和調查等活動。

與世界各地其他司法管轄區一樣，有跡象顯示，近年稅務逐漸成為中國內地官方和公眾審查的議題。例如，英國最近立法，對未有適當申報離岸收入稅項的人士執行更嚴厲的懲罰。

中國公民離岸投資

這次稅改將對中國公民的離岸投資構成重大影響。離岸投資的控股結構普遍利用現行中國個人所得稅法未列明反避稅規則的缺口，因而無須在中國內地繳納有關稅費。在受控外國公司新規則和一般反避稅條款實施後，投資人士有必要重新評估情況。

很多在以往符合法規的結構在新稅法下將難以符合反避稅條款，加上稅法範圍擴大及共同匯報標準下透明度提高，投資者將要面對更嚴格的審查。

在明年1月新稅法實施前，應檢視投資控股結構，以確保符合新規定。未能合規的投資結構須進行重組，否則將產生重大財務影響。

下一步

若企業聘請了外國公民在中國內地工作，須考慮稅務居民規則變更的潛在影響，外籍人員相關的稅務優惠可能會被取消。技術上來說，新增的稅務支出由僱員承擔，但僱主亦須考慮人力資源和人員流動政策方面的影響，以及如何吸引和留住海外人才。

至於在中國內地逗留的企業經營者和投資者，若在新稅法下屬於或將會成為中國內地稅務居民，須考慮對其自身、投資和商業權益的潛在影響。

儘管現階段仍未公布新規則的具體細節，經營者和投資者應根據已掌握的資料，提前進行稅務規劃。

obligations in Mainland China. Most significantly, the PRC IIT reforms introduce rules that put new tools into the tax authorities' tool kits to impose worldwide tax on Chinese nationals and non-Chinese nationals living in Mainland China. Also, the automatic exchange of financial asset information under the OECD's common reporting standard will provide the information to support audit and enquiry activities.

There are also other indications that tax is becoming a topic of official and public scrutiny in PRC as it has in other jurisdictions in recent years. For example, the U.K. recently introduced legislation that increases the penalties for people who have not properly declared tax on their offshore income.

Chinese nationals' offshore investments

For Chinese nationals, these reforms will also likely have a significant impact on offshore investments. Common holding structures for offshore investments rely on the gaps in the current PRC IIT rules that allow assets to be held without PRC tax being imposed because of the absence of anti-avoidance rules. With the introduction of CFC rules and a general anti-avoidance provision, it is necessary to reevaluate those positions.

Many structures that have been compliant with the letter of the law in the past will no longer have that shield. Combine the broadening of the tax laws with increased transparency through CRS, and greater scrutiny can be expected.

Between now and January, investment holdings should be reviewed for compliance with these expanded rules. Structures that are not compliant will need to be revisited and, if they cannot be restructured to be compliant, the financial implications of the law changes determined.

Next steps

Every business with foreign nationals working in Mainland China needs to consider the implications of the changes to residence rules and potential loss of expatriate concessions for allowances. Although the cost technically falls to the employee, employers need to consider the implications on HR and mobility policies, and the ability to attract and retain foreign talent.

Business owners and investors with a personal presence in Mainland China need to consider the implications for themselves, their investments and their business interests if they are or become tax resident in Mainland China.

Although the details of the rules remain unclear, time is short if any changes are needed. It is necessary to make plans now, albeit with imperfect information.

工傷呈報你要知!
Employer should report work injury!

《僱員補償條例》規定如工傷意外導致僱員喪失工作能力，僱主必須於14天內向勞工處呈報（死亡個案則須於7天內呈報）。

The Employees' Compensation Ordinance stipulates that if a work injury results in incapacity of the employee, the employer should report the work injury to the Labour Department within 14 days (or 7 days for fatal cases).

僱主如沒有合理原因而逾期或未有向勞工處處長呈報僱員工傷事件，或提供虛假或具誤導性的資料，即屬違例，最高可被判罰款五萬元。

Any employer who, without reasonable excuse, fails to give notice of an accident or makes or furnishes any false or misleading statement to the Commissioner for Labour commits an offence and is liable to a maximum fine of \$50,000.

勞工處 Labour Department