Short-term Business Travelers to Mainland China

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Short-term Business Travel to Mainland China

Short-term business travelers (STBTs), who are foreign nationals coming to Mainland China, might trigger PRC Individual Income Tax ("IIT") issues, e.g., tax filing obligation and/or unexpected tax exposures to different extents, mainly depending on their length of stay in Mainland China. Such travelers are generally employees of foreign employers working in Mainland China for a short period of time who will not become PRC domiciled individuals but continue to maintain tax residency in their home jurisdiction, where they hold strong ties. However, the filing and withholding obligations may place significant administrative and tax burdens on multinational companies that may be unaware of their exposure to penalties and other regulatory risks. To minimize the costs associated with conducting business in Mainland China, it is imperative that employers and employees shall be aware of the tax implications associated with working in Mainland China.

Resident Individual

China resident individuals are generally subject to tax on their China-source and non-China-source income, whilst nonresident individuals are subject to tax on their China-source income only.

In accordance to the new PRC IIT law effective from 1 January 2019, individuals shall be regarded as China resident individuals if:

- Individuals have their domicile in China; or
- Individuals who do not have their domicile in China, but reside in China for 183 days or more within a calendar year.

Documents Retention

The employer shall maintain documents related to STBT. These documents normally include: assignment letter or employment contract, salary letter and monthly payments, visas, working permits, residence permits, traveling records, filing records and tax payment receipts. All documents may be used to authenticate tax payments and tax computation methods.

Immigration

Immigration to mainland China includes visa application, working permit application and residence permit application. All documents must be in place for one STBT to work and live legally in China

For employment income, *non-China-domiciled individuals* who are China resident individuals for no more than six consecutive years are subject to IIT on income earned from services rendered in China and income earned from services rendered outside China but paid or borne by the individual's China employer.

China-domiciled individuals are subject to China IIT on their worldwide income. Non-China-domiciled individuals who have been a China resident for more than six consecutive years and who had no absence from China for more than 30 consecutive days in any of the six consecutive years are subject to China IIT on their worldwide income, regardless of the payer of payment and place of payment of the income. However, STBTs normally would not stay that long in China or will at least break the above clock for their stay in China.

Employment Income

The taxation of various types of income that are common STBT is described below.

Employment income. In any forms of taxable compensation obtained in relation to employment shall be regarded as employment income, including but not limited to, wages and salaries, hardship allowances, cost of living and automobile allowances, tax reimbursements, bonuses and equity compensation.

Nontaxable compensation for expatriate employees includes housing rental, home leave (limited to twice a year for employee only), relocation or moving, meals and laundry, language training and children's education in China, provided such items are paid directly or reimbursed by the employer on the presentation of official tax invoices. However, such preferential treatment is effective till 31 December 2021, while remains unclear after that.

The *annual bonus* can be treated as a separate one-month salary for tax purposes, which can be used by each individual only once in a calendar year. For China residents, bonuses other than the annual bonus must be treated as a part of monthly salary income and are taxed based on the aggregated amount of monthly income. For China residents, the favorable tax treatment on the annual bonus will not be available from January 2022 unless further regulations are promulgated.

For *stock related income derived*, taxable income is recognized on the date an employee exercises an employer-provided stock option. For foreign nationals, stock option income attributable to China employment is considered China-source income. For stock options of publicly listed companies, the taxable income may be reported in the month of exercise as stand-alone employment-related income as favorable tax treatment when certain conditions are met, and certain formalities are conformed to. Again, it remains unclear whether the favorable treatment would be extended after January 2022.

Individual Income Tax

Effective from 1 January 2019, employment income is accumulated for purposes of calculating monthly tax liabilities for China residents. Income tax for resident individuals is computed on a monthly basis by applying the progressive annual tax rates from 3% to 45% to employment income under a cumulative pre-withholding method. Income tax for nonresident individuals is computed on a monthly basis by applying the same progressive monthly tax rates.

Double Tax Relief and Tax Treaties

An individual who is resident of jurisdictions which entered into double tax treaties may claim a tax credit if he or she has paid tax in China.

China has entered into double tax treaties with the following jurisdictions.

ALBANIA	GREECE	POLAND
ALGERIA	HUNGARY	PORTUGAL
ANGOLA*	ICELAND	ROMANIA
ARGENTINA*	INDIA	RUSSIA
ARMENIA	INDONESIA	SAUDI ARABIA
AUSTRALIA	IRAN	SEYCHELLES
AUSTRIA	IRELAND	SINGAPORE
AZERBAIJAN	ISRAEL	SLOVENIA
BAHRAIN	ITALY	SOUTH AFRICA
BANGLADESH	JAMAICA	SPAIN
BARBADOS	JAPAN	SRILANKA
BELARUS	KATAR	SUDAN
BELGIUM	KAZAKHSTAN	SWEDEN
BELGIUM	KENYA*	SWITZERLAND
BOTSWANA	KOREA (SOUTH)	SYRIA
BRAZIL	KUWAIT	TAJIKISTAN
BRUNEI	KYRGYZSTAN	THAILAND
BULGARIA	LAOS	THE REPUBLIC OF CONGO*
CAMBODIA	LATVIA	THE NETHERLANDS
CANADA	LITHUANIA	TRINIDAD AND TOBAGO
CHILE	LUXEMBOURG	TUNIS
CROATIA	MACEDONIA	TURKEY
CUBA	MALAYSIA	TURKMENISTAN
CYPRUS	MALTA	U.K.
CZECH	MAURITIUS	U.S.A.
CZECHOSLOVAKIA	MEXICO	UGANDA*
DENMARK	MOLDOVA	UKRAINE
ECUADOR	MONGOLIA	UNITED ARAB EMIRATES
EGYPT	MOROCCO	UZBEKISTAN
ESTONIA	NEPAL	VENEZUELA
ETHIOPIA	NEW ZEALAND	VIETNAM
FINLAND	NIGERIA	ZAMBIA
FRANCE	NORWAY	ZIMBABWE
GABON*	OMAN	BOSNIA AND HERZEGOVINA
GEORGIA	PAKISTAN	SERBIA AND MONTENEGRO
GERMANY	PAPUA NEW GUINEA	

*At the time of writing, the double tax treaties with these jurisdictions have not yet entered into force.

STBT who do not have their domicile in China and who stay in China for less than 183 days in a calendar year are considered nonresidents and are subject to IIT under different rules, as described below.

Resident for 90 days or less. STBT who reside in China continuously or intermittently for not more than 90 days during a calendar year are treated in the following manner:

- The STBT is exempt from IIT if the salary is paid and borne by an overseas employer;
- Employment income paid or borne by the employer's establishment in China is subject to IIT to the extent that the income is attributable to services actually performed in China. For these purposes, an establishment includes a representative office and a permanent establishment that a foreign entity has or constitutes in China.

Residents for more than 90 days but less than 183 days. STBT who reside in China for more than 90 days, but less than 183 days in a year, are treated in the following manner:

- The STBT is subject to IIT on employment income derived from services actually performed in China.
- Employment income attributable to services performed outside China is exempt from IIT. Normally, the employment income is apportioned to China and non-China services in accordance with the actual number of days the expatriate resides in China.

Notwithstanding the above, special treatment may be available for a foreign individual who serves in the senior management of a Chinese entity or for an individual who is a resident of a jurisdiction that has signed a tax treaty with China.

Filling and Payments

The tax year is the calendar year. Spouses are taxed separately, not jointly, on all types of income. STBT who is subject to PRC IIT may need to complete a tax registration form and provide an employer's certification stating the amount of their compensation, along with copies of relevant passport pages to verify their date of arrival.

STBTs shall be the taxpayer, but the IIT shall be withheld by the employer if there is, which refers to the employer's establishment in China. The withholding agent must submit information in the month following the month of payment of taxable income. The withholding agent must also notify the tax authorities of any subsequent changes. If the withholding agent fails to withhold the tax and file the monthly tax returns with its governing tax bureau for its employees and income recipients, the tax authorities may impose a penalty of 50% to 300% of the tax due on the withholding agent.

The withholding agent and the taxpayers who is not covered with a withholding agent must file monthly income tax returns and pay to the in-charge tax bureau. The returns must be filed within 15 days after month-end (with certain change of days in several months). Chinese residents with foreign-source income must file annual reconciliation tax returns and pay tax due between 1 March to 30 June of the following year. Foreign taxes paid on this income are allowed as a tax credit, up to the amount of China IIT levied on the same income.

Checklist for Managing Risks of Noncompliance

Payroll nature: Payroll of the STBT must be set compliance before the assignment. The entity to pay the salary and the entity to bear the salary are different from PRC IIT perspective. Meanwhile the time of the payment may also influence the filing procedure.

VISA risks: It is the most important that STBTs adhere to immigration laws globally. STBTs to China must hold the applicable types of visas prior to their traveling.

Work permit risks: All STBTs coming to China must hold valid working permits. The work permits are applied by employer with relative supporting documents. If there is a change of work arrangement, the work permit must be altered accordingly.

Residence permit risks: All STBTs who hold working visas shall obtain residence permits within 30 days after entry in China, whose work permit is the required document at the time of applying residence permits.

Tax filing risks: There are strict timeline for IIT monthly filing and annual reconciliation. Any individual who failed to file the tax return at certain time shall be subject to late payment surcharges, and sometimes penalties.

Social Security

Foreign nationals working in China must also participate in the China social security system under the China Social Security Law. Under the interim measures, which took effect on 15 October 2011, foreigners who have obtained a China Permanent Residence Certificate, Work Permit, Foreign Expert Certificate or Certificate of Permanent Foreign Correspondent are required to contribute to Chinese social security schemes. They must participate in basic pension schemes, basic medical insurance, work-related injury insurance, maternity insurance and unemployment insurance. Hong Kong SAR, Macau SAR and Taiwan residents working in China are allowed to participate in the China housing provident fund, effective from 28 November 2017. Chinese employers are required to perform social security registration for foreign employees within 30 days after the employees obtain a work permit and withhold the required contributions on a monthly basis. Despite of the above, as the practice of social security in different locations of China may vary, it is suggested to check with relevant local authorities for confirmation.

The STBTs who are resident from certain countries or territories shall apply to special rules listed in totalization agreements, e.g. The Republic of Korea, Canada, Japan, Germany and etc. The rules include the exemption of contribution in China or the alternation to China pension instead of home countries' pension. Social security rates vary among cities and the base changes every July. Employers and employees are subject to social security at an average rate of 25% and 11% of gross income, respectively. Meanwhile, the maximum of gross income is capped at three times the average salary in the city for the preceding year as published by the local government, while the minimum is 60% of the average salary.

How can RSM help?

The Individual Income Tax regulations for STBT is quite complicated especially under the changeable environment nowadays. In the meanwhile, noncompliance with local requirements may lead to financial and reputational risks and exposures that could put business objectives and projects at risk if international jurisdictions refuse an employee's entry. Failing to meet local requirements may hinder expansion to new markets, lead to monetary penalties and expose the organization to legal challenges from employees and authorities.

The reporting obligations described above need to be carefully managed to ensure that all requirements are met and that tax liabilities are minimized. Organizations may want to establish a compliance checklist in connection with their short-term business travelers.

RSM offers a senior professional-led service that can advise on the data collation, recordkeeping and risk management surrounding your STBTs to mainland China.

We utilize bespoke software to manage large populations of visitors and proactively advise on thresholds. We utilize more practical reporting methods with clients who only need to manage a handful of globally mobile employees. We also advise how to arrange the cross-border business travel in a more tax efficient way. Our international experts will provide clarity regarding the complex tax compliance and advisory requirements that your business travelers face globally.

Other Jurisdictions

While this document focuses on travelers to mainland China, RSM has the international presence and expertise to provide clarity on the complex tax requirements involved with business travelers around the world.

Permanent Establishment ("PE")

According to the current regulations in China, for countries or jurisdictions which have entered into tax treaties, if an enterprise of one Contracting State conducts activities in the other party through its agent, and the agent has the right and habitually exercises the authority to conclude contracts in the name of this enterprise, the enterprise would create a PE in China. When determining the term "habitually", it is usually judged by the contract nature, business nature and the frequency of the agent's related activities.

If a foreign company has a China PE, the company will be taxed on the profits that are generated through the activities in mainland China. This creates a potential exposure to tax audits focused on determining the revenues associated with the activities conducted in said jurisdiction. The individual under the PE would also be subject to PRC IIT regardless his own length of stay in China.

While treaties may provide relief where the employee's activities do not constitute a PE, companies must check the facts and circumstances of each situation against local laws, and employers should develop a mitigation or compliance strategy as appropriate.

Other consideration

For expatriates who expect to work in China for more than 3 months, please note that working visa would be required instead of business visa. Normally, only qualified companies in China could sponsor working visa for such expatriates. Foreign employees working in China for long-term may also trigger the above-mentioned PE risk.

In light of the above, headquarters sometimes would have to consider setting up a subsidiary in China to house such expatriates as well as to facilitate long-term expansion in China.

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