

Impact of New Individual Income Tax Regulations on Foreigners in China

Further to the launch of the new Individual Income Tax Law passed by the Standing Committee of China's National People's Congress on 31st August, 2018, the State Council released the Implementation Regulations of the Individual Income Tax Law of the People's Republic of China ("the Implementation Regulations") and the Provisional Measures on the Additional Deductions for Individual Income Tax ("the Measures on Additional Deductions").

Key regulations of the Implementation Regulations and the Measures on Additional Deductions that impact the individual income tax of foreigners in Mainland China are summarized as below:

Differences Between Resident Individuals and Non-Resident Individuals

A resident individual is an individual who has domicile in Mainland China or who does not have domicile in Mainland China but resides in Mainland China for an accumulated 183 days or more within an assessment year. A non-resident individual is an individual who does not have domicile in Mainland China and resides in Mainland China for less than an accumulated 183 days within an assessment year.

For resident individuals, in the calculation of individual income tax, salaries and wages are grouped in comprehensive income with independent service income, author's remuneration and royalties. The taxpayer should pay provisional individual income tax every month and conduct yearly final assessment within March to June of the next year if the final tax payable is different from the provisional tax paid or the taxpayer derived income from more than one source. The yearly assessable income of comprehensive income is yearly comprehensive income minus standard deduction of CNY60,000, special deductions (contributions to social insurances and housing fund), additional deductions and other allowable deductions.

For non-resident individuals, the assessable incomes of salaries and wages, independent service income, author's remuneration and royalties are calculated separately every month. The monthly assessable income of salaries and wages is monthly salaries and wages minus standard deduction of CNY5,000.

Six-Year Rule

If an individual has no domicile in Mainland China and stayed in Mainland China for no more than 6 consecutive years in which the individual stayed in Mainland China for 183 days or more within each assessment year, the individual could be exempted from individual income tax on the income derived from outside Mainland China and paid by overseas entities or individuals. Where the individual has been absent from Mainland China for more than 30 consecutive days in an assessment year, the specified consecutive years will be recounted from the start.

Rules of the Additional Deductions

The criteria for claiming the additional deductions clarified by the Measures on Additional Deductions are summarized as below:

(1) Children education

If a taxpayer has children who are receiving full-time academic education, including from primary school to doctoral educations or who are in the stage of pre-school education (after age three and before the enrollment of primary school), the taxpayer can claim deduction for children education of CNY1,000 per month per child. Deduction would be available for education received in the country or aboard.

The parents may choose to claim the deduction fully by either one spouse, or share the deduction by 50% each.

(2) Continued education

A taxpayer can claim deduction of CNY400 per month during the period he / she receiving academic continued education in Mainland China.

A taxpayer can claim deduction of CNY3,600 in the year he / she obtains the vocational qualifications for receiving qualifying continued education for skilled personnel and professional technicians.

(3) Medical expenses for serious illness

In an assessment year, if the self-paid medical expenses for drugs within the National Drug Reimbursement List for the treatment of serious illness of the taxpayer, the taxpayer's spouse or the taxpayer's under age children exceed CNY15,000, the part of the medical expenses that exceed CNY15,000 can be claimed in the taxpayer's annual filing based on the taxpayer's actual expenditure up to maximum CNY80,000 per year.

Taxpayers are required to maintain record of the original or the copy of the related medical treatment invoices and medical insurance reimbursement invoices.

(4) Home loan interest

For the loan interest expenditure (commercial loans or provident fund loans) on the first residential property of the taxpayer or the spouse of the taxpayer, deduction of CNY1,000 per month could be claimed by the taxpayer or the spouse of the taxpayer during the loan repayment period.

Where the taxpayer and the taxpayer's spouse bought their own first residential property before marriage, they may choose to claim the deduction fully by either one spouse, or share the deduction by 50% each.

(5) Housing rent

If a taxpayer and the taxpayer's spouse do not own a residential property and has home rental expenditure in the place of work, they can claim housing rent deduction of CNY1,500, CNY1,100 or CNY800 per month depending on the size of the city where they work. Deduction on housing rent should be claimed by the lessee who signed the housing rental agreement. Besides, one couple could not claim deduction on housing rent and deduction on home loan interest in the same year of assessment.

(6) Caring for elderly

If a taxpayer supports 60 years old or above parents or grandparents with no alive children, the taxpayer can claim deduction of CNY2,000 per month if the taxpayer is the only child. A taxpayer with siblings should apportion the deduction of CNY2,000 among siblings, and the deduction each taxpayer claim cannot exceed CNY1,000. Furthermore, the deduction will not multiply as the taxpayer supports more than one elderly. The elderly the taxpayer supports is not required to live in Mainland China.

As a transitional policy, foreigner who is a tax resident individual in Mainland China may choose to enjoy the additional deductions policy for individual income tax purpose as stipulated above, or the tax exemption policy of non-cash subsidies such as housing allowances, language training fees and children's education fees, but they may not enjoy both policies at the same time. The policy once chosen may not be changed within a tax year. After 1st January 2022, the tax exemption policy of non-cash subsidies on housing allowances, language training fees and children's education fees would no longer be available.

Should you need further explanation on the above matters, please kindly contact us.

Relevant Link:

Provisional Measures on the Additional Deductions for Individual Income Tax
<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=21603676&flag=1>

Implementation Regulations of the Individual Income Tax Law of the People's Republic of China
<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=21603675&flag=1>

Notice by the Ministry of Finance and the State Administration of Taxation of Issues Concerning the Transition of Preferential Policies after the Individual Income Tax Law Is Amended
<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=21603684&flag=1>

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