

Client Alert

February 2019

Baker McKenzie FenXun
A Leading Chinese and
International Law Joint Platform

For further information, please contact:

Beijing

Jinghua Liu (Tax and Dispute
Resolution)
+86 10 6535 3816
jinghua.liu@bakermckenziefenxun.com

Jason Wen (Tax)
+86 10 6535 3974
jason.wen@bakermckenzie.com

Shanghai

Brendan Kelly (Tax)
+86 21 6105 5950
brendan.kelly@bakermckenzie.com

Nancy Lai (Tax)
+86 21 6105 5949
nancy.lai@bakermckenzie.com

Hong Kong

Amy Ling (Tax)
+852 2846 2190
amy.ling@bakermckenzie.com

San Francisco

Jon Eichelberger (Tax)
+1 415 984 3857
jon.eichelberger@bakermckenzie.com

New York

Shanwu Yuan (Tax and Transfer Pricing)
+1 212 626 4212
shanwu.yuan@bakermckenzie.com

China releases new rules for its IIT reform

China is continuing to reform its Individual Income Tax (IIT) regime. After recently revising its *Individual Income Tax Law*, China has released several more rules to reshape the IIT regime in China. These rules include the new *Implementing Regulations for Individual Income Tax Law* (the "**Implementing Regulations**"), additional special deduction rules (*Guo Fa [2018] No. 41* and *SAT Bulletin [2018] No. 60*), tax withholding rules (*SAT Bulletin [2018] No. 56* and *SAT Bulletin [2018] No. 61*), self-filing rules (*SAT Bulletin [2018] No. 62*) and transitional rules for IIT incentives (*Cai Shui [2018] No. 164*). These new rules are effective from 1 January 2019.

These new rules:

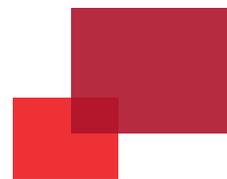
- adjust the "6-year rule" under the tax resident concept making it possible for expatriates working in China who qualify as Chinese tax residents to still avoid PRC IIT on their worldwide income
- introduce for Chinese resident taxpayers a set of additional special deductions, which expatriates working in China can choose to enjoy instead of the currently available tax-exempted allowances for expatriates
- clarify preferential tax treatments for IIT incentives during transition periods to solve uncertainties taxpayers may encounter under the new IIT regime
- introduce the accumulative IIT withholding method for withholding agents to withhold resident taxpayers' salary and wages income
- revise the anti-avoidance rule but high-net-worth individuals still need to pay attention to follow-up rules
- delete the controversial "deemed sales rule" in the draft Implementing Regulations

In this alert, we will introduce the important changes to the old IIT regime and discuss their implications for both employers and employees.

1. Tax resident

Expatriates working in China will qualify as a Chinese tax resident more easily after the IIT reform, potentially exposing them to greater IIT liability. The time presence threshold for a non-domiciliary to become a Chinese tax resident has been reduced from a "full year"¹ to 183 days in a tax year. This change in time presence threshold is important to expatriates working in China because by qualifying as a Chinese tax resident, their worldwide income will become subject to Chinese IIT.

¹ A "full year" means the person is not absent from China for more than 30 consecutive days in a single trip or more than 90 cumulative days across multiple trips during the tax year.



Despite this change in the time presence threshold, expatriates working in China can still prevent their worldwide income from becoming subject to Chinese IIT by carefully planning their travel outside China. A non-domiciliary stays in China for at least 183 days in this year is exempt from taxation on income that is both foreign-sourced and foreign-paid if that person has not stayed in China for at least 183 days in each year during the past consecutive six-year period (inclusive of the current year) or has been absent from China for more than 30 consecutive days in a single trip in one calendar year during that six-year period ("6-year rule").

Thus, while it is easier to become a Chinese tax resident under the new IIT rules, an expatriate working in China can still reduce their Chinese IIT liability by travelling outside China for more than 30 consecutive days in one calendar year every six years.

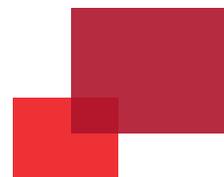
2. Additional special deductions

With the introduction of additional special deductions, both employers and employees will need to evaluate the additional special deductions in terms of their tax planning and their tax responsibilities.

2.1 Know what additional special deductions are available

Our [November 2018 Client Alert](#) outlined the additional special deductions available to Chinese tax residents as introduced in the draft Additional Special Deduction Measures. The following table shows the final additional special deductions, with the **bold** material showing the changes from the draft measures to the final measures

Type	Item eligible for deduction	Deduction amount (CNY)
Children's education	Pre-school education fees (from 3 years old) to higher education fees (doctoral)	1,000/month per child
Continuing education	Academic (degree) education fees for education received in China	400/month
	Education fees for professional licences	3,600/year
Housing loan interest	Loan interest on a taxpayer's first house in China purchased for the taxpayer or for the taxpayer's spouse	1,000/month
Housing rental fees	Housing rental fees when the taxpayer or taxpayer's spouse owns no house in the taxpayer's main	800, 1,100 or 1,500 /month depending on the city



	working city		
Caring for the elderly	Expenses related to caring for elderly parents (60 or older) and grandparents (60 or older with no living children)	If the taxpayer is an only child	2,000/month
		If the taxpayer is not an only child	No more than 1,000/month
Medical treatment for serious disease	Medical expenses exceeding CNY 15,000 borne by an individual under the national medical insurance program	Deduct according to actual amount, capped at 80,000/year	

2.2 Choose to enjoy additional special deductions or tax-exempted allowances

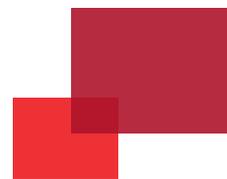
The additional special deductions are only available to Chinese tax residents. An expatriate who qualifies as a Chinese tax resident can choose to either enjoy these newly introduced additional special deductions or enjoy the tax-exempted allowances currently available to all expatriates (please refer to Section 3.1 below for more information on tax-exempted allowances).

2.3 Maintain supporting documents

Both employees and employers have document retention responsibilities for the additional special deductions. Employees, as taxpayers, must maintain supporting documents (rental contracts, medical bills, etc.) for five years after the filing period. Employers, as withholding agents, must maintain the relevant information provided by employees for five years from the withholding year.

Although this document retention requirement will increase employer administrative costs, employers will not be responsible for verifying the accuracy of the information provided by employees. Without the added burden of verifying employee-provided information, employers should find some relief in controlling the overall costs related to administering the additional special deductions.

Nonetheless, if an employer discovers that an employee has submitted false information, the employer may ask the employee to correct the information. If the employee refuses, the employer must notify the tax authority. It seems that the final IIT rules gives employer an option whether to ask the employee to correct the false information. However, it remains to be seen whether the employer will bear any adverse consequences if it chooses not to ask the employee to correct the information when it knows it is false.



3. Preferential IIT treatments

The Ministry of Finance and the State Administration of Taxation jointly released transitional rules² for certain IIT incentives that are typically important for employees in China. In particular, employees will be pleased to see that these transitional rules retain (at least temporarily) popular preferential tax treatments for expatriate allowances, annual bonuses, equity incentive income and severance.

3.1 Tax-exempted allowances for expatriates

Expatriates working in China, regardless of their tax residency status, can enjoy eight tax-exempted allowances. Those eight tax-exempted allowances are for housing, language training, children's education, meals, laundry, relocation costs, home leave, and onshore and offshore business travel.

However, the tax-exempted allowances for housing, language training and children's education will only be available until 31 December 2021. During the next three years, expatriates who qualify as Chinese tax residents can choose whether to enjoy these three tax-exempted allowances or enjoy the additional special deductions instead. Starting from 1 January 2022, expatriates will no longer be able to enjoy these three tax-exempted allowances.

Other allowances will remain tax-exempt for now, but their tax-exempt status could change at any time pending new rules being issued.

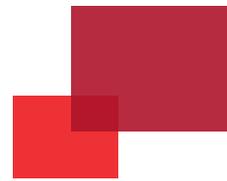
3.2 Annual bonus for resident taxpayers

For employees who are resident taxpayers, the preferential tax treatment on annual bonuses remains unchanged until 31 December 2021, meaning that each resident taxpayer can choose whether to include their annual bonus in their comprehensive income or have it taxed separately. Starting from 1 January 2022, annual bonus compensation must be included in comprehensive income for IIT calculation.

For the next three years, most employees will probably choose to not include their annual bonus in their comprehensive income as the annual bonus may be subject to a lower tax rate if taxed separately. However, some low-salary employees may find it more beneficial to include annual bonus compensation in their comprehensive income if they have large deductions under the comprehensive income category that are not fully utilized by normal salary income. Such low-salary employees can then use these deductions to offset their annual bonus compensation to lower their taxable income and thus reduce their IIT burden on annual bonus income.

Non-resident taxpayers cannot enjoy the preferential tax treatment on annual bonus compensation under the current rules. However, it remains to be seen whether China will release new rules to provide similar preferential tax treatment to non-resident taxpayers.

² *Circular of the Ministry of Finance and the State Administration of Taxation on Issues concerning the Connection of Relevant Preferential Policies after the Revision of the Law on Individual Income Tax*, Cai Shui [2018] No. 164, dated 27 December 2018, effective from 1 January 2019.



3.3 Equity incentive income for resident taxpayers

Under the new transitional rules, resident taxpayers working in China will receive a more favorable tax treatment on their PRC equity incentive income when the underlying equity incentive is held for less than 12 months. Previously, all taxpayers, including resident taxpayers, were required to divide the equity incentive income by the actual number of months the taxpayer was working in China and holding the equity incentive (capped at 12 months) to determine the applicable tax rate.³ From 1 January 2019 to 31 December 2021, a resident taxpayer working in China who receives qualified equity incentive income will aggregate all the equity incentive income received within the tax year and then divide that by 12 to determine the applicable tax rate. For example, if the resident taxpayer receives a stock option on 1 January 2019, exercises that stock option on 31 May 2019 and obtains equity incentive income of CNY 120,000, under the old method, the resident taxpayer's equity incentive income would have been divided by 5 to determine the applicable tax rate (i.e., 20%). Under the new method, the resident taxpayer's equity incentive income will be divided by 12 to determine the applicable tax rate (i.e., 10%). Thus, the new tax calculation method is more favorable for a taxpayer who works in China while holding the equity incentive for less than 12 months.

While the tax calculation method on a resident taxpayer's equity incentive income has been changed, the resident taxpayer is still subject to the Circular 35 filing requirements.

Currently, no specific rules address the tax treatment of equity incentive income received by non-resident taxpayers. It remains to be seen whether non-resident taxpayers can receive preferential tax treatment on equity incentive income under the new IIT regime.

3.4 Severance for all taxpayers

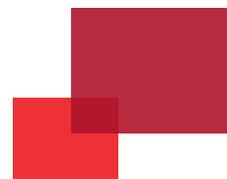
All employees, regardless of their residency status, can enjoy the preferential tax treatment on severance. The portion of severance not exceeding three times the local average salary in the previous year is exempt from IIT, while the portion exceeding three times the local average salary in the previous year is taxed as a separate income stream by applying corresponding annual IIT rates for comprehensive income. Unlike the other rules discussed, this rule is not transitional and will remain in effect indefinitely.

4. Accumulative IIT withholding method

Another significant change in the new IIT regime is the accumulative IIT withholding method⁴ for resident taxpayers' salary and wages. Employers must withhold each resident taxpayer employee's taxes based on the cumulative income the employee has received from the employer during the current tax year. Thus, an employee's after-tax monthly salary and wages might decrease over the course of the year as the employee's cumulative annual income increases over time triggering higher applicable tax rates from one month to the next.

³ *Circular of the Ministry of Finance and the State Administration of Taxation on Issues Concerning the Imposition of Individual Income Tax on Incomes from Individual Stock Options*, Cai Shui [2005] No. 35, dated 28 March 2005, effective from 1 July 2005 ("**Circular 35**").

⁴ The formula for the accumulative IIT withholding method is: accumulated taxable income = accumulated income - accumulated exempted incomes - accumulated legal deduction - accumulated special deductions - accumulated special additional expense deductions - other accumulated legal deductions.



As each employer withholds taxes at the applicable tax rate based on the income paid by that employer only, a taxpayer who changes jobs during the year would likely underpay taxes on the salary and wages earned from the second employer because the second employer would withhold taxes at a rate commensurate only with the income paid by it and not with the combined income paid by both employers. That employee would then need to conduct an annual filing and pay the underpaid taxes. Even though the current law does not require the second employer to ensure the employee conducts the annual filing and pays the underpaid taxes, the tax authority may nonetheless pressure the second employer to recover the underpaid taxes.

Finally, many employment contracts require the employer to pay the employee's monthly after-tax income in a fixed amount. Employers with these employment contracts should exercise care to correctly calculate the withholding taxes for this type of arrangement under the new accumulative IIT withholding method.

5. Anti-avoidance rule

While it was hoped the Implementing Regulations would define some key IIT anti-avoidance concepts, the newly published version only includes an anti-avoidance rule imposing interest on tax adjustments.

The rule imposing interest on tax adjustments establishes that interest accrues for the period the tax has remained unpaid at a rate defined as the base rate for *Renminbi* loans published by the People's Bank of China on **the last day of the filing period** of the tax year to which the tax is attributable.

As the anti-avoidance rule is an important component of the IIT reform and no detailed rules have been released yet, we expect the SAT will issue a separate set of anti-avoidance rules.

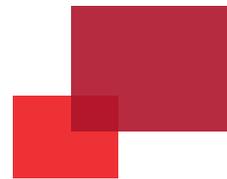
6. Deemed sales rule

The "deemed sales" rule included in the draft Implementing Regulations was controversial (please refer to our [November 2018 Client Alert](#)), so it is no surprise that the newly published Implementing Regulations have deleted the deemed sales rule.

7. Observations and recommendations

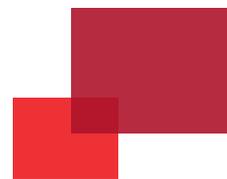
In the past, most expatriates would try to avoid becoming Chinese tax residents. Under the new IIT regime, however, due to new preferential treatments only available to Chinese tax residents, some expatriate employees might consider becoming Chinese tax residents while controlling their length of stay in China to enjoy certain tax benefits. For example, an expatriate employee with high income from annual bonus compensation and from equity incentive income can largely reduce IIT liability by becoming a Chinese tax resident to enjoy preferential tax treatments on the annual bonus and equity incentive income. At the same time, even as a Chinese tax resident, that expatriate employee can still avoid PRC IIT on their non-China-sourced income by arranging travel outside China according to the 6-year rule. Moreover, that expatriate employee can still choose to enjoy the tax-exempted allowances regardless of tax residency status.

Due to the increased burdens on employers under the new IIT regime, it is important for them to clearly define employer and employee's IIT responsibilities and to educate employees on their rights and obligations. For example, employees are responsible for providing accurate information for additional special deductions, whereas employers only need to withhold IIT



based on the information provided by employees and have no responsibility to verify the information. We recommend that employers establish internal guidelines to clarify the rights, obligations and responsibilities of both the employer and the employees.

The new anti-avoidance rules may have significant impact on high-net-worth individuals. As detailed anti-avoidance rules are not included in the published Implementing Regulations, high-net-worth individuals should continue to monitor for developments in this area.



Appendix

Unofficial Translation Prepared by Baker McKenzie

Implementing Regulations for the Individual Income Tax Law of the People's Republic of China

(Promulgated on 28 January 1994 via Order No. 142 of the State Council of the People's Republic of China First Revision made on 19 December 2005 pursuant to the Decision of the State Council on Revision of the "Implementing Regulations for the Individual Income Tax Law of the People's Republic of China"

Second Revision made on 18 February 2008 pursuant to the Decision of the State Council on Revision of the "Implementing Regulations for the Individual Income Tax Law of the People's Republic of China"

Third Revision made on 19 July 2011 pursuant to the Decision of the State Council on Revision of the "Implementing Regulations for the Individual Income Tax Law of the People's Republic of China"

Fourth Revision made on 18 December 2018 pursuant to State Council Order No. 707)

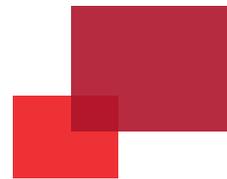
Article 1 These Regulations are formulated pursuant to the *Individual Income Tax Law of the People's Republic of China* (hereinafter referred to as the "IIT Law").

Article 2 "Having a domicile in China" referred to in the IIT Law shall mean a person habitually resides in China due to permanent household registration, family or economic ties; "income derived in China and overseas" referred to in the IIT Law shall mean China-sourced income and foreign-sourced income respectively.

Article 3 Unless otherwise stipulated by the State Council's finance or tax authority, the following income shall be deemed as China-sourced income, regardless of whether the place of payment is outside China:

- (1) Income derived from labor services provided in China due to tenure of office, employment, contract performance, etc.;
- (2) Income derived from lease of property to a lessee for use in China;
- (3) Income derived from licensing rights for use in China;
- (4) Income derived from the transfer of property in China, including immovable property; and
- (5) Income from interest, dividends and bonuses derived from enterprises, institutions, other organizations and resident individuals in China.

Article 4 If an individual does not have a domicile in China and resides in China for at least 183 days cumulatively in each tax year for less than six consecutive tax years, that individual's foreign-sourced income paid by any overseas organization or individual shall be exempted from individual income tax upon filing with the tax authority in charge; if the individual leaves China

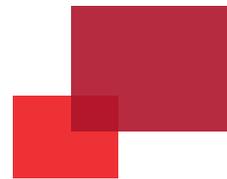


for more than 30 consecutive days in a single trip in any year in which the individual resides in China for at least 183 days cumulatively, the computation of consecutive number of years for which the individual resides in China for 183 days or more cumulatively shall restart.

Article 5 If an individual does not have a domicile in China and resides in China for no more than 90 days cumulatively in a tax year, the individual's China-sourced income that is paid by the individual's overseas employer rather than the employer's organization or workplace in China shall be exempted from individual income tax.

Article 6 The various types of individual income items as stipulated in the IIT Law are defined as follows:

- (1) "Income from wages and salaries" shall mean wages, salaries, bonuses, year-end salary raise, profit sharing, allowances and subsidies derived by an individual from the individual's job or employment, as well as other income related to the individual's job or employment.
- (2) "Income from labor remuneration" shall mean income derived by an individual engaging in design, renovation, installation, drafting, laboratory testing, testing, medical, legal, accounting, consultancy, lecturing, translation, proofreading, painting and calligraphy, sculpting, video, audio recording, video recording, performance, advertising, exhibition, technical services, introduction services, brokerage services, agency services and other labor services;
- (3) "Income from author's remuneration" shall mean income derived by an individual from publication of the individual's works in the form of books, newspapers, etc.;
- (4) "Income from royalties" shall mean income derived by an individual from provision of patents, trademark rights, copyrights, non-patented technology and the right to use other licensing rights; "income derived from provision of the right to use copyrights" does not include income from author's remuneration;
- (5) "Income from business operation" shall mean:
 - (a) Income derived by an individually-owned business or by an investor in a sole-proprietorship enterprise registered in China or an individual partner in a partnership enterprise registered in China from production and operation;
 - (b) Income derived by an individual from engaging in school, medical, consulting and other paid services pursuant to the law;
 - (c) Income derived by an individual from operation and contracted operation of enterprises or institutions as well as from sub-contracting and sublet operation; and
 - (d) Income derived by an individual from other production and operation.
- (6) "Income from interest, dividends and bonuses" shall mean income derived by an individual from interest, dividends and bonuses in relation to possession of creditor's rights and equity.



- (7) "Income from lease of property" shall mean income derived by an individual from leasing immovable property, machinery and equipment, vehicles and vessels, and other properties.
- (8) "Income from transfer of property" shall mean income derived by an individual from transfer of priced securities, equity, property shares in partnership enterprises, immovable property, machinery and equipment, vehicles and vessels, and other properties.
- (9) "Contingent income" shall mean income derived by an individual from awards, prizes, lottery and other income of contingent nature.

The taxable income category for difficult-to-categorize income derived by individuals shall be determined by the State Council's tax department.

Article 7 The measures for levying individual income tax on share transfer income shall be separately stipulated by the State Council and recorded with the Standing Committee of the National People's Congress.

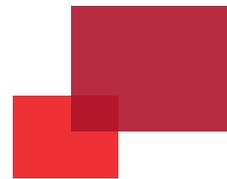
Article 8 Income derived by individuals shall include cash, in-kind forms, priced securities and economic interests in other forms. For in-kind income, the taxable income amount shall be computed based on the price stated on the voucher obtained. If there is no voucher or the price stated on the voucher is obviously low, the taxable income amount shall be determined with reference to the market value. For income from priced securities, the taxable income amount shall be determined based on the par value of the voucher and the market value. For income in other forms, the taxable income amount shall be determined with reference to the market value.

Article 9 "Interest on treasury bonds" referred to in item (2) of the first paragraph of Article 4 of the IIT Law shall mean interest derived by an individual holding bonds issued by the Ministry of Finance of the People's Republic of China; "interest on financial debentures issued by the State" shall mean interest derived by an individual holding financial debentures issued with the approval of the State Council.

Article 10 "Subsidies and allowances issued in accordance with the unified provisions of the State" referred to in item (3) of the first paragraph of Article 4 of the IIT Law shall mean special government allowances and veteran academician allowances granted in accordance with the provisions of the State Council, as well as other subsidies and allowances that are exempted from individual income tax in accordance with the provisions of the State Council.

Article 11 "Welfare benefits" referred to in item (4) of the first paragraph of Article 4 of the IIT Law shall mean living subsidies paid to an individual out of welfare funds or union funds appropriated by enterprises, institutions, State organs or social groups in accordance with the relevant provisions of the State; "relief funds" shall mean subsidies paid by civil administration authorities of the people's governments at all levels to an individual with living difficulties.

Article 12 "Income derived by diplomatic agents and consular officers and other personnel of all embassies and consulates in China who should be exempted from tax in accordance with the provisions of the relevant laws of China" referred to in item (8) of the first paragraph of Article 4 of the IIT Law shall mean income exempted from tax in accordance with the provisions of the Regulations of the People's Republic of China on Diplomatic Privileges



and Immunities and the Regulations of the People's Republic of China on Consular Privileges and Immunities.

Article 13 "Other deductions determined pursuant to the law" referred to in item (1) of the first paragraph of Article 6 of the IIT Law shall include payments by an individual for enterprise annuity and occupational annuity that comply with State provisions, expenditures by an individual for purchase of commercial health insurance and tax-deferred commercial pension insurance that comply with State provisions, and individuals' other deductible items by an individual as stipulated by the State Council.

The special deductions, additional special deductions and other deductions determined pursuant to the law shall be capped at the taxable income amount of a resident individual in a tax year; excess amount for a tax year shall not be carried forward to subsequent years for deduction.

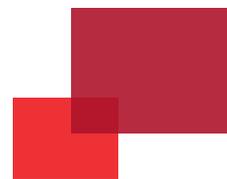
Article 14 "Each income item" referred to in item (2), item (4) and item (6) of Article 6 of the IIT Law shall be determined in accordance with the following methods:

- (1) For income from labor remuneration, income from author's remuneration or income from royalties that is one-off income, "each income item" shall mean each instance of deriving such income; for income from labor remuneration, income from author's remuneration or income from royalties that is consecutive income from the same project, "each income item" shall mean the income derived within one month.
- (2) For income from the lease of property, "each income item" shall mean the income derived within one month.
- (3) For income from interest, dividends and bonuses, "each income item" shall mean the income derived at the time of each payment of interest, dividends and bonuses.
- (4) For contingent income, "each income item" shall mean each instance of deriving such income.

Article 15 "Costs and expenses" referred to in item (3) of the first paragraph of Article 6 of the IIT Law shall mean: all direct expenses incurred in production and business operations; indirect expenses which are allocated as costs; and sales expenses, administrative expenses and financial expenses. "Losses" referred to in item (3) of the first paragraph of Article 6 of the IIT Law shall mean: losses, damages and scrap loss of fixed assets and inventories incurred in production and business operations; losses from transfer of property; bad debt loss; losses due to force majeure factors such as natural disaster; and other losses.

If an individual who derives income from business operations does not have comprehensive income, the tax authority shall deduct CNY 60,000 in expenses, special deductions, additional special deductions and other deductions as determined pursuant to the law when computing the individual's taxable income for the tax year. Additional special deductions shall be deducted when the individual is conducting annual filing.

Where an individual engaging in production and business activities is unable to provide complete and accurate tax payment materials and cannot compute the taxable income amount correctly, the tax authority in charge shall assess the taxable income amount or the tax payable amount.



Article 16 "Original value of the property" referred to in item (5) of the first paragraph of Article 6 of the IIT Law shall be determined in accordance with the following methods:

- (1) In the case of priced securities: the purchase price and the relevant expenses paid pursuant to regulations at the time of purchase;
- (2) In the case of buildings: the construction expenses or the purchase price and other relevant expenses;
- (3) In the case of land use rights: the amount paid to acquire the land use rights, land development expenses and other relevant expenses; and
- (4) In the case of machinery and equipment, vehicles and vessels: the purchase price, transportation expenses, installation expenses and other relevant expenses.

In the case of other properties, the original value shall be determined with reference to the preceding methods.

Where a taxpayer fails to provide complete and accurate vouchers for the original value of the property and is unable to accurately compute the original value of the property in accordance with the methods stipulated in the first paragraph of this Article, the original value of the property shall be determined by the tax authorities in charge.

"Reasonable expenses" referred to in item (5) of the first paragraph of Article 6 of the IIT Law shall mean the relevant expenses paid pursuant to relevant provisions at the time of the sale of the property.

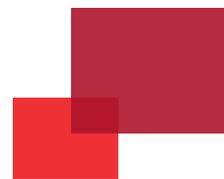
Article 17 For income from transfer of property, tax shall be calculated after deducting the original value of the property and reasonable expenses from the income amount for each transfer of property.

Article 18 For income jointly derived by two or more individuals for the same income item, tax shall be calculated and paid individually on the income derived by each individual in accordance with the provisions of IIT Law.

Article 19 "An individual donating their income to public welfare and charitable causes such as education and poverty alleviation" referred to in the third paragraph of Article 6 of the IIT Law shall mean a donation made by an individual through public welfare social groups and state organs in China to public welfare and charitable causes such as education and poverty alleviation; the "taxable income amount" referred to shall mean the taxable income amount prior to calculating the deductible donation amount.

Article 20 For comprehensive income and business operation income derived by a resident individual from China and overseas, the tax payable amount shall be aggregated and calculated separately; for other income derived from China and overseas, the tax payable amount shall be calculated separately.

Article 21 "Individual income tax paid overseas" referred to in Article 7 of the IIT Law shall mean tax payable that should be and has been actually paid by a resident individual on income derived outside China in accordance with the laws of the country (region) where the income is sourced from.



"The tax payable amount calculated pursuant to the provisions of this Law for the taxpayer's overseas income" referred to in Article 7 of the IIT Law shall mean the tax credit ceiling for the income tax amount paid overseas by a resident individual on comprehensive income, income from business operation and other income (hereinafter referred to as the "**tax credit limit**"). Unless otherwise stipulated by the finance authority and the tax authority of the State Council, the sum of the tax credit limit for comprehensive income sourced from an overseas country (region), the tax credit limit for income from business operation sourced from an overseas country (region) and the tax credit limit for other income sourced from an overseas country (region) shall be the tax credit limit for income sourced from the country (region).

Where the individual income tax actually paid by a resident individual in an overseas country (region) is less than the tax credit limit for the country (region) calculated in accordance with the provisions of the preceding paragraph, the difference in tax amount shall be paid in China; where the individual income tax actually paid by a taxpayer in an overseas country (region) exceeds the tax credit limit for the country (region), the excess shall not be deducted from the tax payable amount of the current tax year but may be carried forward to the tax credit limit for the country (region) in subsequent tax years. The carry forward period shall not exceed five years.

Article 22 A resident individual who claims a credit for individual income tax paid overseas shall provide the original tax payment receipt issued by the foreign tax authorities for the year in which the tax is attributable.

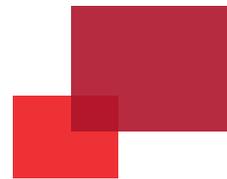
Article 23 "Interest" referred to in the second paragraph of Article 8 of the IIT Law shall be charged in accordance with the benchmark interest rate of a *Renminbi* loan for the same period as the period for settling underpaid tax, which is announced by the People's Bank of China on the last day of the tax declaration period to which the tax is attributable, and accrues daily from the day following the expiry of the tax declaration period to the deadline for settling underpaid tax. If the taxpayer settles the underpaid tax before the deadline for settling underpaid tax, the interest shall accrue up to the date on which the underpaid tax is settled.

Article 24 When a withholding agent makes a taxable payment to an individual, the withholding agent shall withhold tax in accordance with the provisions of the IIT Law, transfer the withheld tax to the treasury promptly and maintain specific records for future inspection.

The payment referred to in the preceding paragraph shall include: cash payments; remittances; fund transfers; and payments in priced securities, in-kind forms and other forms.

Article 25 A taxpayer must conduct annual filing for comprehensive income in the following circumstances:

- (1) the taxpayer derives comprehensive income from two or more payors and the taxpayer's comprehensive income exceeds CNY 60,000 after deducting special deductions;
- (2) the taxpayer derives one or more income items of labor remuneration, author's remuneration or royalties, and the individual's comprehensive income exceeds CNY 60,000 after deducting special deductions;
- (3) the taxpayer's tax withholding amount within a tax year is less than the tax payable amount; and



(4) the taxpayer applies for a tax refund.

A taxpayer applying for a tax refund shall provide their bank account information for a bank account opened in China and apply for the tax refund at the locality where annual filing is conducted.

The detailed measures for annual filing shall be formulated by the tax authority of the State Council.

Article 26 "Declaration and withholding of full amount for all staff" referred to in the second paragraph of Article 10 of the IIT Law shall mean submission by a withholding agent of the information of all individuals whose income is withheld, the amount of income paid, deductible items and amounts, specific amounts and total amounts of tax withheld, as well as other relevant tax information, to the tax authorities in charge within the first 15 days of the month following the tax withholding.

Article 27 The detailed measures on venue of tax declaration and payment by taxpayers and other related matters shall be formulated by the tax authority of the State Council.

Article 28 At the time of obtaining income from wages and salaries, a resident individual may provide information relating to additional special deductions to the withholding agent so that the withholding agent can deduct the additional special deductions when making tax withholding.

The same additional special deduction deducted by a withholding agent may only be deducted from one payor in a tax year where a taxpayer derives income from wages and salaries concurrently from two or more payors.

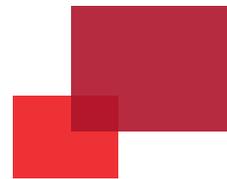
A resident individual deriving income from labor remuneration, author's remuneration and royalties shall provide the relevant information to the tax authorities at the time of annual filing in order to achieve the additional special deduction.

Article 29 A taxpayer may entrust the withholding agent or another organization or individual to complete annual filing.

Article 30 The withholding agent shall compute and declare withholdings based on the information provided by the taxpayer and shall not arbitrarily change information provided by the taxpayer.

Where the taxpayer discovers any discrepancy between the facts and the personal information, income, tax withheld information, etc. provided or declared by the withholding agent, the taxpayer shall have the right to require the withholding agent to amend the discrepancy. Where the withholding agent refuses to amend the discrepancy, the taxpayer shall report the situation to the tax authorities. The tax authorities shall promptly handle the situation.

The taxpayer and the withholding agent shall, pursuant to regulations, retain materials relating to additional special deductions. The tax authorities may conduct random inspections of additional special deduction information provided by a taxpayer. The specific measures on such inspection shall be separately stipulated by the tax authority of the State Council. Where the tax authorities discover that a taxpayer has provided false information, the tax authorities shall order the taxpayer to correct the information and notify the withholding agent of the false information; in serious cases, the relevant



authorities shall handle the situation pursuant to the law including adding the information of the taxpayer in the creditworthiness information system and implementing joint punishment against the taxpayer.

Article 31 Where there is an error in the annual filing information provided by a taxpayer applying for tax refund, the tax authorities shall notify the taxpayer to correct the information. Where the taxpayer makes the correction, the tax authorities shall promptly process tax refund.

The taxpayer's application for tax refund pursuant to the relevant regulations shall not be affected by if the withholding agent fails to transfer the withheld tax to the treasury. The tax authorities shall process the tax refund based on the relevant materials provided by the taxpayer.

Article 32 Where income is derived in a currency other than *Renminbi*, the taxable income amount shall be computed by converting the income amount to *Renminbi* in accordance with the *Renminbi* central parity rate on the last day of the month preceding the tax declaration or withholding declaration. For annual filing handled at the end of a year, reconversion is not required for income in non-*Renminbi* currency for which tax is withheld on a monthly basis, quarterly basis or for each income item. For income on which underpaid tax is to be settled, the taxable income amount shall be calculated by converting the income amount to *Renminbi* in accordance with the *Renminbi* central parity rate on the last day of the last tax year.

Article 33 The tax authority shall issue an income refund letter to the withholding agent at the time the tax authority pays handling fees to a withholding agent pursuant to the provisions of Article 17 of the IIT Law; the withholding agent shall complete withdrawal formalities pursuant to the relevant provisions on treasury administration based on the income refund letter.

Article 34 The tax authority of the State Council shall uniformly formulate formats of the individual income tax declaration form, the report on withholding of individual income tax and the individual income tax payment receipt.

Article 35 Matters relating to levying and collecting individual income tax on and from military personnel shall be implemented pursuant to the relevant provisions.

Article 36 These Regulations shall be implemented with effect from 1 January 2019.

www.bakermckenziefenxun.com
www.bakermckenzie.com
www.fenxunlaw.com

Baker McKenzie FenXun (FTZ)
Joint Operation Office
Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121, PRC

Tel: +86 21 6105 8558
Fax: +86 21 5047 0020