China Tax Alert

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New day-count rules for non-PRC-domiciled individuals

Regulation discussed in this issue:

- Announcement of the Ministry of Finance and the State Taxation Administration on the Standards for Determining the Length of Residence of Non-PRC domiciled Individuals (Ministry of Finance and the State Taxation Administration Announcement [2019] No. 34)

On 14 March 2019, the Ministry of Finance ("MOF") and the State Taxation Administration ("STA") jointly issued an Announcement on the Standards for Determining the Length of Residence of Non-PRC-domiciled Individuals (MOF and STA Announcement [2019] No.34, "Announcement No.34"), which is effective retrospectively from 1 January 2019.

Salient Points

According to article 4 of the Implementation Rules for the Individual Income Tax ("IIT") Law of the People's Republic of China (Order No. 707 of the State Council), individuals not domiciled in China (hereafter referred to as "non-domiciled individuals") who have not resided in China for 183 days or more in a calendar year for a consecutive period of six years, may be exempt from PRC IIT on their foreign-sourced income by complying with the put-on-record filing with the tax authorities. Where the non-domiciled individual is away from China for more than 30 continuous days in a given tax year, the count for a consecutive period of six years will reset.

Announcement No.34 provides guidance on the standards to be adopted for determining the length of residence in China for non-domiciled individuals, as well as the relevant conditions for enjoying the IIT exemption on foreign-sourced income.

How to the count the days of residence in China?

Announcement No.34 explicitly defines that, on a given calendar day:

- If the individual is physically present in China for 24 hours, that day should be counted as a day of residence in China;
- If the individual is physically present in China for less than 24 hours, it would not be counted as a day of residence in China.

“Six Year Policy”

In order to determine a non-domiciled individual’s eligibility for claiming Chinese IIT exemption on foreign-sourced income in a particular tax year, a six year look-back rule (hereafter referred to as “Six Year Policy”) is adopted. Specifically, a non-domiciled individual is subject to worldwide taxation in China, if during period a six consecutive years immediately preceding to the year of assessment, he:

- resided in China for 183 days or more in each of the tax years; and
- was not away from China on a single trip for more than 30 consecutive days in any of the tax years.

The count for the new “Six Year Policy” commences from 1 January 2019.

KPMG Observations

Relaxation on day-count rules

The new day-count rules introduced under Announcement No. 34 is more relaxed in comparison with rules under the old regime, and may be practically more beneficially for residents of Hong Kong and Macao Special Administration Regions who frequently travel to Mainland China.

The new “Six Year Policy” relaxes the conditions for which non-domiciled individuals must satisfy to claim Chinese IIT exemption on their foreign-sourced income, which echoes the intent of the central government to attract foreign talents. It is anticipated that the authorities may place greater scrutiny on the assessment of PRC domicile in the near future.

Resetting the “Six Year” Period

The count for the new “Six Year Policy” starts from 1 January 2019, which means foreign-sourced income derived by non-domiciled individuals for tax years up to 2024 (inclusive) could be exempt from Chinese IIT. Furthermore, if a non-domiciled individual resides in China for 183 days or more in a consecutive period of six years, and was not away from China for more than 30 consecutive days in any years during the six-year period commencing from 2019, he could still reset the “six year” period and enjoy tax exemption on his foreign-sourced income in later years, provided certain conditions are satisfied.

Put-on-record Filing

Announcement No.34 does not provide details on the relevant implementation guidance on the put-on-record filing required to claim tax exemption on foreign-sourced income derived by non-domiciled individuals, and further details are expected to be released in due course.

In view of the changes, foreign (including residents of Hong Kong SAR, Macao SAR and Taiwan) individuals and companies employing those individuals are recommended to review the implications of Announcement No.34 on the individuals’ personal tax affairs, and review validity of the current arrangement, in order to make necessary adjustments. Companies should also assess the potential implications, conduct timely communication with relevant employees, and devise internal monitoring system and appropriate employment arrangement.


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