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People's Republic of China - New Rules for Determining Foreign Worker Residency

On 14 March 2019, the Ministry of Finance and the State Administration of Taxation of the People's Republic of China ("PRC" or "China") jointly issued standards for determining the length of residence of non-PRC-domiciled individuals, Announcement No.34, which is retroactively effective from 1 January 2019.[1]

WHY THIS MATTERS

It is important for taxpayers – and their tax service providers – to keep track of their days spent in the PRC for purposes of determining:

- residence;
- their liability under the Individual Income Tax ("IIT") law, and
- proper compliance.

The new rules could impact the tax treatment, under the IIT, of a taxpayer's foreign-sourced income. Announcement No. 34 introduces new rules that are more relaxed in comparison with rules under the old regime, and may be more beneficial for residents of Hong Kong and Macao Special Administration Regions who frequently travel to Mainland China.

The new six-year rule relaxes the conditions that non-domiciled individuals must satisfy to claim the PRC IIT exemption for their foreign-sourced income, which reflects the intent of the central government to attract foreign talent.

Salient Points

According to the implementation rules for the PRC Individual Income Tax (IIT) Law, individuals not domiciled in China ("non-domiciled individuals") who have not resided in China for 183 days or more in a calendar year for a period of six consecutive years, may be exempt from PRC IIT on their foreign-sourced income by complying with the tax authorities' "put-on-record" filing system.[2] When a non-domiciled individual is away from China for more than 30 continuous days in a given tax year, the count for the six-year period 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 qualifying for the IIT exemption for foreign-sourced income.

Counting Days of Residence in China

Announcement No.34 provides:

- If an individual is physically present in China for 24 hours, that calendar day should be counted as a day of residence in China;

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

Six-Year Rule

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 has been adopted. Specifically, a non-domiciled individual is subject to worldwide taxation in China, if during the six consecutive year period immediately preceding the year of assessment, the individual:

- 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 new six-year rule applies from 1 January 2019. This 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 six-consecutive-year period, and was not away from China for more than 30 consecutive days in any years during the six-year period commencing from 2019, the individual could still reset the six-year period and qualify for tax exemption on foreign-sourced income in later years, provided certain conditions are satisfied.

KPMG NOTE

It is anticipated that the authorities may place greater scrutiny on the assessment of PRC domicile in the near future.

Companies employing foreign individuals (including residents of Hong Kong SAR, Macao SAR and Taiwan) are encouraged to review the implications of Announcement No.34. Companies should assess the potential implications, devise appropriate internal monitoring systems, and revise employment arrangements as necessary to maintain employee exemption eligibility.

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

FOOTNOTES:

1 Announcement on the Standards for Determining the Length of Residence of Non-PRC-domiciled Individuals (Announcement [2019] No.34).

2 Article 4 of the Implementation Rules for the Individual Income Tax Law of the People's Republic of China (Order No. 707 of the State Council).

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RELATED ARTICLE

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