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Malaysia: Employment Injury Scheme (EIS) coverage extended to foreign workers, including expatriates

Overview

Previously, Malaysia only provided Malaysian citizens or permanent residents with the following benefits through the Social Security Organization (SOCSO):

- **Employment Injury Scheme (EIS):** Protection for employees against accident or occupational disease arising out of or in the course of employment.
- **Invalidity Scheme:** Protection for employees who suffer invalidity or death due to any cause unrelated to employment.

SOCSO contributions for Malaysian citizens or permanent residents consist of two portions: an employer's contribution and an employee's contribution.

Changes to SOCSO benefits

In December 2018, SOCSO announced that effective January 1, 2019, foreign workers are eligible for EIS benefits, including medical benefits, temporary/permanent disablement benefits, constant attendance allowance, dependent's benefits, and rehabilitation benefits, as well as RM 6,500 for repatriation costs, including funeral expenses.

Additionally, the guidelines have been announced, and it is confirmed that "foreign workers" will include expatriates.

However, benefits under the Invalidity Scheme will not be extended to foreign workers.

How does this impact employers?

Effective January 1, 2019, Malaysian employers must register their foreign workers including expatriates who hold valid documents, with SOCSO for EIS benefits and make required contributions to SOCSO. Registration can be completed:

- At any SOCSO office in Malaysia;
- Online via the Automated SOCSO Integrated System; and
- Via submission of the Foreign Worker Registration Form.

Who contributes and how much?

For foreign workers, only employers are required to contribute to SOCSO. The foreign workers themselves are not required to make contributions.

Employers are expected to contribute 1.25 percent of each foreign worker's monthly wage to SOCSO on a monthly basis (subject to the insured wage ceiling of RM 4,000 per month).

Due date for contributions

The SOCSO changes will be effective starting with the January 2019 payroll. Employers' first contributions to SOCSO for foreign workers will be due on February 15, 2019, and on the 15th of each month thereafter. These employer contributions will be mandatory until the foreign workers cease their employment in Malaysia.

Deloitte's view

The Malaysian government's decision to require EIS protection for all foreign workers, including expatriates, is in line with the International Labor Organization's (ILO) Equality of Treatment (Accident Compensation) Convention 1925 (No. 19) and the Conference Committee on the Application of Standards.

With these changes, all foreign workers in Malaysia, including expatriates, will be accorded the same EIS benefits as local employees.

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People's Republic of China: Individual income tax reform – Guidance released on tax withholding under new IIT law

Overview

On December 20, 2018, China's State Administration of Taxation (SAT) published Bulletin 56, which provides guidance on the withholding of taxes under the newly amended individual income tax (IIT) law that became effective on January 1, 2019.

The revised IIT law consolidates four previous categories of income (*i.e.*, salaries and wages, remuneration for independent services, author's remuneration, and income from royalties) into a single category called "comprehensive income." [1] Comprehensive income is subject to progressive tax rates ranging from 3 percent to 45 percent (there are seven tax brackets).

Residents: The IIT on comprehensive income derived by residents is assessed on an annual basis and collected through the withholding of taxes in advance, which are remitted to tax authorities by the payers (*i.e.*, withholding agents) on a monthly or transactional basis, followed by a final reconciliation and settlement by taxpayers at the time they file their annual tax returns.

Nonresidents: The IIT on comprehensive income derived by nonresidents is assessed on a monthly or transactional basis and generally collected through the withholding of taxes, which are remitted to tax authorities by the payers.

The following is an overview of the guidance provided for businesses in Bulletin 56 on how to compute the IIT withheld under the new IIT law.

Advance taxes on the comprehensive income of residents

Tax withholding on salaries and wages: The advance taxes to be withheld on salaries and wages are computed using a cumulative-salaries-based approach. The relevant computation formulas are as follows:

- Advance taxes to be withheld for the current period = $(\text{cumulative taxable income on salary to date} \times \text{advance withholding tax rate} - \text{quick deduction}) - \text{cumulative tax exemptions and reductions} - \text{cumulative advance taxes that have been withheld and remitted to tax authorities}$
- $\text{Cumulative taxable income on salary to date} = \text{cumulative salary to date} - \text{cumulative tax-exempt salary} - \text{cumulative standard deductions} - \text{cumulative itemized deductions} - \text{cumulative additional itemized deductions} - \text{cumulative other deductions}$

Notes:

- The cumulative standard deduction is RMB 5,000/month multiplied by the number of months the individual has worked for the employer in the current year.
- Advance withholding tax rates for salaries and wages derived by residents are set out in Table I.

Examples: For a resident individual who earns a salary of RMB 40,000 per month, makes total monthly personal contributions to social security and the housing fund of RMB 3,000 (which are both itemized deductions), and is entitled to an additional itemized deduction of RMB 2,000:

- Advance taxes to be withheld in January 2019 = $(40,000 - 5,000 - 3,000 - 2,000) \times 3 \text{ percent} = 900$
- Advance taxes to be withheld in February 2019 = $(40,000 \times 2 - 5,000 \times 2 - 3,000 \times 2 - 2,000 \times 2) \times 10 \text{ percent} - 2,520 - 900 = 2,580$

Tax withholding on remunerations for independent services, author’s remunerations, and income from royalties

The advance taxes to be withheld on these three types of comprehensive income are computed on a monthly or transactional basis. The computation formulas are as follows:

- Advance taxes to be withheld on remuneration for independent services = taxable income for advance tax withholding purposes x advance withholding tax rate – quick deduction
- Advance taxes to be withheld on author’s remuneration and income from royalties = taxable income for advance tax withholding purposes x 20 percent
- Taxable income for advance tax withholding purposes for independent services and income from royalties = gross revenue – deductible expenses
- Taxable income for advance tax withholding purposes for author’s remuneration = (gross revenue – deductible expenses) x 70 percent

Notes:

- Deductible expenses are either the higher of RMB 800 or 20 percent of gross revenue.
- Advance withholding tax rates for remunerations for independent services performed by residents are set out in Table II.

Example A: For a resident individual who earns gross independent service remunerations of RMB 40,000:

- Advance taxes to be withheld = $(40,000 - 40,000 \times 20 \text{ percent}) \times 30 \text{ percent} - 2,000 = 7,600$

Example B: For a resident individual who earns gross author’s remuneration of RMB 40,000:

- Advance taxes to be withheld = $(40,000 - 40,000 \times 20 \text{ percent}) \times 70 \text{ percent} \times 20 \text{ percent} = 4,480$

It should be noted that the taxable income computation method and tax rate used for purposes of advance tax withholding are different from those used for the final tax calculation at year-end.

| | Advance Withholding | | Annual Reconciliation | |
|---------------------------------------|---|--|--|---|
| | Taxable Income | Advance Withholding Tax Rates | Taxable Income | Tax Rates |
| Remuneration for independent services | <i>Gross revenue – deductible expenses</i> (determined as either the higher of RMB 800 or 20 percent of gross revenue); an additional 30 percent reduction is allowed for author’s remuneration | Progressive tax rates ranging from 20 percent to 40 percent, with three tax brackets | <i>Gross revenue</i> x 80 percent; an additional 30 percent reduction is allowed for author’s remuneration | Progressive tax rates ranging from 3 percent to 45 percent, with seven tax brackets |
| Income from royalties | | 20 percent | | |
| Author’s remuneration | | 20 percent | | |

Tax withholding on comprehensive income of nonresidents

The tax on comprehensive income of nonresidents is computed on a monthly or transactional basis and withheld by the payer. The computation formula is as follows:

- Taxes to be withheld on comprehensive income = taxable income x tax rate – quick deduction

Notes:

- Taxable income is determined as follows:
 - Gross revenue minus the standard deduction (*i.e.*, RMB 5,000/month) for salaries and wages; and
 - 80 percent of gross revenue on remunerations for independent services, author's remunerations, and income from royalties, with an additional 30 percent reduction allowed for author's remunerations.
- Tax rates for the comprehensive income of nonresidents are set out in Table III.

Other guidance

Bulletin 56 confirms that resident individuals must make final reconciliations and settlements at the time they file their annual tax returns between March 1 and June 30 of the year following the tax year, if the total IIT withheld is different from the final tax due. Bulletin 56 also contains the relevant reporting form with filing instructions.

Tax rate tables

Table I. Advance Withholding Tax Rates for Salaries and Wages Derived by Residents

| Tax Brackets | Cumulative Taxable Income of Salaries to Date (RMB) | Advance Withholding Tax Rate (%) | Quick Deduction |
|--------------|---|----------------------------------|-----------------|
| 1 | 36,000 or less | 3 | 0 |
| 2 | Over 36,000 up to 144,000 | 10 | 2,520 |
| 3 | Over 144,000 up to 300,000 | 20 | 16,920 |
| 4 | Over 300,000 up to 420,000 | 25 | 31,920 |
| 5 | Over 420,000 up to 660,000 | 30 | 52,920 |
| 6 | Over 660,000 up to 960,000 | 35 | 85,920 |
| 7 | Over 960,000 | 45 | 181,920 |

Table II. Advance Withholding Tax Rates for Remunerations for Independent Services Performed by Residents

| Tax Brackets | Taxable Income (RMB) | Advance Withholding Tax Rate (%) | Quick Deduction |
|--------------|--------------------------|----------------------------------|-----------------|
| 1 | 20,000 or less | 20 | 0 |
| 2 | Over 20,000 up to 50,000 | 30 | 2,000 |
| 3 | Over 50,000 | 40 | 7,000 |

Table III. Withholding Tax Rates for Comprehensive Income Derived by Nonresidents

| Tax Brackets | Taxable Income (RMB) | Withholding Tax Rate (%) | Quick Deduction |
|--------------|--------------------------|--------------------------|-----------------|
| 1 | 3,000 or less | 3 | 0 |
| 2 | Over 3,000 up to 12,000 | 10 | 210 |
| 3 | Over 12,000 up to 25,000 | 20 | 1,410 |
| 4 | Over 25,000 up to 35,000 | 25 | 2,660 |
| 5 | Over 35,000 up to 55,000 | 30 | 4,410 |
| 6 | Over 55,000 up to 80,000 | 35 | 7,160 |
| 7 | Over 80,000 | 45 | 15,160 |

Deloitte's view

Bulletin 56 provides timely guidance to help IIT withholding agents understand how to compute the amount of taxes to withhold and remit to tax authorities.

The introduction of a cumulative-salaries-based approach to compute advance taxes to be withheld on salaries and wages earned by resident individuals is designed to minimize potential differences between advance tax payments and the final taxes due from the taxpayer at year-end.

If a resident individual earns salaries and wages from only one source and derives no other comprehensive income during the tax year, the use of this method could result in the taxpayer not owing any additional taxes at the time he or she files an annual tax return or not having to request a refund of tax overpaid.

For other types of comprehensive income derived by resident individuals, the computation of advanced taxes to be withheld is basically the same as that under the previous IIT rules, so withholding agents will be familiar with the process.

Recommendations

Withholding agents (employers):

- In view of the significant changes to the computation of monthly IIT withholding on salaries and wages (particularly that the relevant data of previous months must be taken into account to determine the amount of taxes to be withheld for residents), employers should consider updating their financial and payroll systems and providing training to relevant personnel to correctly compute the IIT taxes to be withheld under the new IIT law.
- Withholding agents should proactively communicate with employees and other relevant personnel about the implications of the new IIT law and help them understand the new IIT collection mechanism (*i.e.*, advance withholding plus annual reconciliation). It is worth noting that the monthly take-home salary pay may fluctuate due to the new computation method, so employers should make employees aware of the situation and remind them to submit information related to additional itemized deductions (*e.g.*, for children's education expenses, housing mortgage interest, etc.) in a timely manner.
- Resident employees may provide information on additional itemized deductions to their employers so that these items are deducted when computing the advance taxes to be withheld. The information could be provided in such a flexible way that employees may claim deductions in relation to previous months (within the same calendar year) in the current month to compute the advance taxes. Therefore, employers with large employee populations may need to consider technological solutions to automate the collection and processing of such information to improve efficiency and accuracy.
- Since residents and nonresidents are subject to different withholding tax rules, employers with large populations of foreign employees should pay close attention to the employees' tax residence status to apply the correct tax treatments. The government has not clarified how to deal with a situation in which residence status cannot be determined at the beginning of a year. Employers should keep monitoring the relevant regulatory developments and seek guidance from tax authorities or professionals if necessary.

Taxpayers

- For resident individuals who receive salaries and wages from two or more sources, or receive both salaries and other types of comprehensive income, it is likely that their final taxes on annual comprehensive income will be different from the total advance taxes withheld during the year, so an annual reconciliation will be required. These taxpayers should become familiar with the annual reconciliation and filing procedures.
- For resident individuals who do not derive salary income but only other types of comprehensive income, their additional itemized deductions can be deducted only at the time they file their annual tax returns. These taxpayers should properly collect and maintain the relevant supporting documents during the tax year to claim the relevant deductions via the annual reconciliation.
- Relevant individuals should self-assess their personal tax residence status appropriately and have the status confirmed with withholding agents so that the correct withholding rules can be applied.
- Taxpayers should seek professional assistance for complex situations.

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People's Republic of China: Individual income tax reform – Final implementation regulations for IIT law released

Overview

On December 22, 2018, China's State Council released the final implementation regulations for the amended individual income tax (IIT) law (Decree of the State Council No. 707). Like the new IIT law, the regulations came into effect January 1, 2019.

Draft implementation regulations were released for consultation by the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) on October 20, 2018. This newsletter looks at the changes made to the draft regulations.

Recap of salient points of the draft regulations

The draft regulations proposed the following key clarifications to the IIT law (see Deloitte Tax Analysis of October 2018[1]):

- Changes would be made to the "five-year rule" to adapt the rules to the new definition of a tax resident under the IIT law (the IIT law contains the standard "183-day rule" to determine residence);
- Sourcing rules would be added for business income, income from the transfer of equity interests, author's remuneration, and occasional income;
- Guidance would be provided on the scope of taxable income for business income and income from the transfer of property;
- A deemed sale rule would be introduced;
- The foreign tax credit rules would be adapted to the adjusted taxable income categories under the new IIT law;
- Guidance would be provided on the new anti-avoidance rules;
- The tax authorities would be allowed to designate a withholding agent in certain situations;
- Individuals would be required to provide a tax ID when filing a tax return;
- The situations where annual filing and final tax settlement is required would be clarified, as would cases where the tax authorities would be allowed to reject a tax refund request;
- Taxpayers would be required to settle all IIT obligations before emigrating;
- Guidance would be provided on the new "additional itemized deductions;" and
- Government agencies would be required to cooperate with the tax authorities to verify relevant information relating to additional itemized deductions.

New measures in the final version of the regulations

"Five-year rule" to "Six-year rule": The final regulations replace the "five-year rule" with a "six-year rule." As a result, subject to a filing requirement, a non-China-domiciled individual would generally be exempt from Chinese IIT on foreign-source income that is not paid by a Chinese domestic entity or resident individual, unless the non-China-domiciled individual has stayed in China for 183 days or more in each calendar year of a six-consecutive-calendar-year period. (In practice, a foreign individual or an individual from Hong Kong, Macau, or Taiwan usually is considered a

non-China-domiciled individual.) The six-year clock could run anew if the non-China-domiciled individual stays outside of China for more than 30 days in a single trip in a calendar year in which the individual stays in China for 183 days or more.

The six-year rule appears to be more favorable to nondomiciled individuals than the five-year rule, which should help to encourage more foreign individuals to work in China.

Additional itemized deductions for business income: The new IIT law allows resident individuals to claim six types of additional itemized deductions^[2] against their comprehensive income^[3] to compute IIT. The final implementation regulations confirm that the additional itemized deductions may be taken when computing IIT on business income to the extent the individual does not have any comprehensive income.

This rule should ensure fairness by allowing the deduction of living costs for both comprehensive income and business income purposes. However, the rule seems to imply that the deduction may not be taken with respect to business income if a taxpayer also earns comprehensive income. This being the case, the additional itemized deductions may not be fully utilized if a taxpayer has both types of income, but the amount of comprehensive income is relatively small.

Foreign-source taxable income and foreign tax credit: Under the draft regulations, domestic and foreign-source income would be aggregated for the assessment of resident individuals' IIT liability. The final regulations retain this rule, but they remove the rule that would have disallowed the offsetting of losses incurred by foreign business branches against domestic business profits.

The "per-country" basis is retained for purposes of the foreign tax credit rules, but the credit limitation computation formulas in the draft regulations have been removed.

The IIT treatment of foreign-source income has been a challenging area where scant guidance is available, so more guidance from the tax authorities is likely.

Anti-avoidance rules: The final version of the implementing regulations removes most of the proposed guidance relating to the anti-avoidance rules (*e.g.*, definition of the arm's length principle, related parties, reasonable business purpose, as well as definitions of the terms "control" and "significantly lower tax rate" in the controlled foreign company).

The only anti-avoidance provision that remains in the final regulations is the calculation rule for interest arising from tax adjustments relating to anti-avoidance activities. Under the draft regulations, interest would have been imposed on such adjustments, with the applicable rate being the basic interest rate for RMB loans published by the People's Bank of China, plus 5 percent (the 5 percent would have been waived if the individual provided relevant information or documents). The final regulations provide that the interest rate will be the basic interest rate for RMB loans, but eliminate the additional 5 percent.

Although most of the anti-avoidance guidance in the draft regulations has been removed, it is expected that the tax authorities would develop and issue separate anti-avoidance rules. Affected individuals should monitor developments in this area.

Miscellaneous: The following measures that were in the draft regulations have been removed in the final regulations:

- Gains derived from the transfer of equity investments in Chinese domestic enterprises and other economic organizations in China would be deemed to be China-source income.
- An individual generally would be considered to sell nonmonetary property and derive gains (or incur losses) for IIT purposes if the individual uses the property in exchange for other property or for purposes of a donation, the repayment of a debt, sponsorship, investment, etc., unless otherwise stipulated (deemed sale rule).
- The competent tax authorities of the State Council may designate an entity to act as an IIT withholding agent where the entity possesses the relevant income information on a taxpayer, as well as the right to control the process through which a taxpayer derives the income.

The following rules were included in the draft regulations but are removed in the final regulations and instead have been substantially incorporated into tax circulars:

- Tax ID rules (SAT Bulletin [2018] No. 59);
- Tax clearance requirement upon emigration (SAT Bulletin [2018] No. 62); and
- Government agencies' responsibility to cooperate with the tax authorities to verify information relating to additional itemized deductions (Circular Guofa [2018] No. 41).

Deloitte's view

The final regulations retain the major changes proposed by the draft rules, but include refinements based on comments from stakeholders. More guidance is likely to be issued, but, in the meantime, IIT withholding agents and taxpayers should familiarize themselves with the new regulations and consider taking the following actions:

Employer (withholding agents): The introduction of additional itemized deductions and related rules will significantly increase employer obligations as withholding agents. To ensure compliance, employers should review existing internal HR management and risk control systems, as well as the compensation and benefit policy against the compliance requirements under the new IIT law and make any needed adjustments.

Foreign individuals in China: The new six-year rule is a positive change to attract foreign talent to work in China. It is worth noting that, for taxpayers who wish to apply this rule to have their qualifying foreign-source income be exempt from IIT in China, they must comply with the filing requirement. Such individuals should monitor the issuance of future guidance on the filing requirements and related issues such as how the first year of the six-year cycle will be determined for individuals who came to China before 2019.

High-net-worth individuals: Because the detailed guidance on the anti-avoidance rules in the amended IIT law was eliminated in the final regulations, it is unclear how the rules will be applied. Affected taxpayers should examine current arrangements and investment structures to ensure they are in compliance with the rules, and monitor future developments.

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