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Australia:
Australian Taxation Office updated guidance on STP reporting for employees under mirror or shadow payroll arrangements

Overview

The reporting framework known as Single Touch Payroll (STP) was enacted as of 1 July 2018, with the majority of employers commencing to report certain payroll information via Standard Business Reporting (SBR) during the 2018/19 tax year. Previously, employers reported total salary payments and remitted taxes to the Australian Taxation Office (ATO) on a "group" basis and only reported the allocations between employees at year-end. Under STP, employers must report to the ATO not merely the total salary, Pay-As-You-Go (PAYG) withholding, and superannuation contributions for their employees for the reporting period, but also report an essentially "real-time" allocation of those amounts to specific employees.

The ATO has recognised the complexities and challenges employers faced under STP with respect to their mobile employees. As a temporary measure, the ATO granted an exemption through 30 June 2019, for STP reporting for employers of foreign employees where they are maintained via a shadow payroll arrangement and meet certain requirements (as detailed on the ATO website.

However, legislation passed in February 2019 that extends STP reporting obligations to all employers from 1 July 2019. Previously, only "substantial" employers (*i.e.*, those with 20 or more employees) were required to commence reporting under STP reporting from 1 July 2018.

Announcement

Deloitte and other taxation advisers have been involved in an ATO consultative group to work with the ATO to determine the best way forward with tackling STP as it would apply to employers with employees under mirror/shadow payroll arrangements, given the unique challenges employers face in reporting the details with respect to these types of employees on a real-time basis. The ATO has not yet finalised the requirements for STP reporting regarding employees under a mirror/shadow payroll arrangements as of 1 July 2019. However, certain themes have emerged from the consultation process:

- Under the Tax Administration Act, the Commissioner has a discretion to defer the due date for reporting to the ATO under the STP rules. The Commissioner is expected to exercise that discretion and allow for a deferral of submission of STP reporting for those employees who are maintained through shadow/mirror payroll arrangements, through to the end of the following calendar month. For example, under this STP deferral, payments made on 10 August 2019, would need to be reported to the ATO under STP by 30 September 2019.
- Furthermore, it is expected that the Commissioner will also exercise his or her discretion with respect to these employees to allow for additional time to their employers to file the year end finalisation declaration by 14 August following year-end, representing an additional calendar month for finalisation of STP reporting for these employees for the relevant tax year.
- It is unclear at this stage as to whether it would be acceptable to submit "reasonable estimates" under STP throughout the year, with a "true-up" or reconciliation to occur before year-end (or periodically through the year). For example, applying a "standard" foreign-exchange rate to home-country salary payments each month, with a "true-up" each quarter or at year-end, to apply the actual exchange rate to each payment. Therefore, it is advised that employers should review their existing systems and processes to ensure that they are ready and capable of collating the relevant data and preparing the relevant calculations in order to make accurate submissions within the proposed deferral timeframe.
- The ATO has also indicated that it may provide for a stepped or phased approach to STP reporting for mirror/shadow payroll employees. For example, it may allow for a longer deferral (*e.g.*, two months rather than one) initially whilst employers come on board with STP reporting for shadow/mirror payroll employees. This has not yet been confirmed and is still under consideration by the ATO.
- The ATO has confirmed that it will accept applications for extensions of time to lodge STP reporting. However, it has also indicated that any request for additional time will need to include supporting materials to demonstrate the reasons for the request, and that a request based solely on timing (*i.e.*, an employer's inability to gather and action the relevant information in the required timeframe) is unlikely to be successful.

Deloitte's view

Deloitte welcomes the approach the ATO has taken to consult with industry members regarding the practicalities of applying the STP reporting requirements to employers of mirror/shadow payroll employees. Deloitte has urged the ATO to grant an across-the-board deferral of time for employers to report the relevant amounts for shadow/mirror payroll under STP reporting, given the complexities associated with collation and analysis of the relevant data, and also in the context of manual or outside-of-payroll processes that are currently in place in order to calculate these figures.

Deloitte welcomes the ATO's consideration of a possible deferral from 1 July 2019; however, even an additional two months may not be sufficient given the complexities involved in determining the correct figures to report mirror/shadow payroll arrangements. Employers should review their systems and processes to ensure that they are ready and capable of collating the relevant data and preparing the relevant calculations in order to make submissions as per the timeframes suggested by the ATO.

People's Republic of China:
IIT Reform: Guidance for non-domiciled individuals

Overview

On March 16 and 17, 2019, China's Ministry of Finance and the State Taxation Administration issued two bulletins (Bulletins 34 and 35) that contain guidance on the individual income tax (IIT) treatment of non-domiciled individuals under the new IIT law. Specifically, the guidance provides that non-domiciled individuals who have not resided in China for 183 days or more in a calendar year for a six-year consecutive period may be exempt from Chinese IIT on their foreign-source income if certain requirements are met. Additionally, if the non-domiciled individual is outside China for more than 30 continuous days in a particular tax year, the counting period for purposes of the six years will start to run anew. Both bulletins apply retroactively as from January 1, 2019.

According to the IIT law, a domiciled individual is defined as an individual who habitually resides in China due to his or her household registration status, family ties, and/or economic interests. Foreign nationals usually are considered non-domiciled individuals.

Counting days of presence in China

The IIT law provides that a non-domiciled individual will become a Chinese tax resident if he or she stays in China for 183 days or more in a calendar year. Bulletin 34 provides that, in determining the number of days in China, if an individual is physically present in China for less than 24 hours, that day will not be counted as a day of residence in China.

Comments

Bulletin 34 provides lenient rules for counting the days spent in China. Non-domiciled individuals who frequently travel between China and other countries are expected to benefit most from the rules. However, it will be interesting to see whether the same rule will be adopted in applying the 183 day test to determine a service permanent establishment under an applicable tax treaty.

Six-year rule

The new IIT law replaces the old five-year lookback period rule with a six-year rule to adapt to the new "resident" definition, which uses the 183 day test. Bulletin 34 provides detailed guidance on whether a non-domiciled individual who becomes a Chinese tax resident is eligible to have his or her foreign-source income be exempt from Chinese IIT.

A non-domiciled individual will be subject to Chinese tax on his or her worldwide income derived in a calendar year in which the individual stays in China for 183 days or more, if in each of the preceding six consecutive years the individual has stayed in China for 183 days or more and was not outside China for a single trip of 30 days or more. If either of these requirements is not met, the individual's foreign-source income derived in that calendar year is exempt from Chinese IIT to the extent the foreign-source income is paid by a foreign party.

The six-year clock begins to run as from 2019, irrespective of how many years a non-domiciled individual stayed in China before 2019.

Comments

The new six-year rule signals the government's intention to attract foreign talent. The refresh of the running of the six-year clock from 2019 effectively provides exemptions to all non-domiciled individuals on their foreign-source income (if paid by foreign parties) until 2024.

Tax treatment of comprehensive income

Tax assessment (Nonresidents):

- **Regular salaries and wages:** If a non-domiciled individual is a nonresident, the IIT on his or her salaries and wages normally is assessed on a monthly basis. Taxable income is computed by deducting the standard monthly deduction of RMB 5,000 from the taxable gross salaries and wages income. However, since the tax bracket or rate table for comprehensive income under the new IIT law is designed on an annual basis, a modified monthly tax bracket or rate table will be used to compute the tax.

  An apportionment may be allowed to compute the taxable gross salaries and wages income.

- **Bonuses relating to multiple months:** For a non-domiciled individual who is a nonresident, a preferential taxing method (able to be used only once for each nonresident individual in a calendar year) may be granted to bonuses received by the individual during one month if the tax is assessed separately from the tax on other salaries and wages derived in the same month. The preferential tax on bonus income will be computed using the following formula:

  Tax payable = (Taxable gross bonus income / 6 x applicable tax rate – quick deduction) x 6

  It is worth noting that no items may be deducted from the taxable gross bonus income when applying the formula, and the modified monthly tax bracket or rate table will be used.

  An apportionment may be allowed to compute the taxable gross bonus income.

- **Stock incentive income:** For a non-domiciled individual who is a nonresident, a similar preferential taxing method may be granted for stock incentive income, if the tax is assessed separately from the tax on other salaries and wages. The preferential tax on bonus income will be computed using the following formula:

  Tax payable for the month in which the stock incentive income is derived = [(Accumulated taxable stock incentive income derived within the calendar year / 6) x the applicable tax rate – quick deductions] x 6 – tax already paid on stock incentive income during the calendar year

  Stock incentive income includes income derived from stock options, restricted stock, stock appreciation rights, share awards, and any other discounts or subsidies offered by employers under stock purchase plans.

  Similar to the treatment on bonuses relating to multiple months, no items may be deducted from taxable stock incentive income when applying the formula, and the modified monthly tax bracket or rate table will be used.

  An apportionment may be allowed to compute taxable gross stock incentive income (see below in section 3(e)).

- **Income for independent services, author's remuneration, and royalties:** The tax is assessed on a monthly or transactional basis, using the modified monthly tax bracket or rate table.

Tax assessment (Residents): According to the new IIT law, if a non-domiciled individual becomes a resident in a calendar year, the IIT on his or her income for independent services, author's remuneration, and royalties for that year is assessed on an annual basis based on the following formula:

Tax payable = (Annual salaries and wages + annual income for independent services + annual author's remuneration + annual income from royalties – standard deductions – itemized deduction – additional itemized deduction – other deductions) x applicable tax rate – quick deduction

"Annual salaries and wages" is the sum of the taxable gross salaries and wages income in each month in the calendar year. An apportionment may be allowed to compute the monthly taxable gross salaries and wages income.

"Income for independent services + author's remuneration + income from royalties" is the sum of the taxable income on each related transaction in the calendar year under relevant income categories.

Before 1 January 2022, if the non-domiciled individual is a foreign national and opts to enjoy nontaxable benefits-in-kind (*i.e.*, housing, children's education expenses), no additional itemized deductions are allowed.

Taxable gross salaries and wages income for non-domiciled individuals (non-senior executives): For a non-domiciled individual who does not hold a senior executive position at a Chinese resident company, the individual's salaries and wages attributable to the non-China working days are considered foreign-source income and, therefore, may be exempt from Chinese IIT if certain conditions are fulfilled. To obtain the exemption, the total salaries and wages may have to be apportioned according to the relevant factors (*e.g.*, the ratio of the number of working days in China in a month to the number of total days in the month) for IIT purposes.

The following table summarizes the principles used to compute the taxable gross salaries and wages income of non-domiciled individuals under different scenarios:

Tax Residence Status	**Physical Stay in China During a Calendar Year**	**Taxable Gross Salaries and Wages Income (*i.e.*, portion of salaries and wages taxable in China)**
Nonresident (non-senior executive)	No more than 90 days	Salaries and wages attributable to domestic working days and paid or borne by a domestic employer (*i.e.*, Formula 1 in Bulletin 35)
	More than 90 days, but less than 183 days	Salaries and wages attributable to domestic working days (*i.e.*, Formula 2 in Bulletin 35)
Resident (non-senior executive)	183 days or more (and in any year of the preceding six consecutive years, the individual stayed in China for less than 183 days or was outside China on a single trip for more than 30 days)	All salaries and wages, except those attributable to foreign working days and paid by a foreign employer (*i.e.*, Formula 3 in Bulletin 35)
	183 days or more (and for each year of the preceding six consecutive years, the individual stayed in China for 183 days or more, and was *not* outside China on a single trip for more than 30 days)	All salaries and wages

If a non-domiciled individual holds a foreign position and applies for an apportionment of the salaries for IIT based on the number of domestic and foreign working days, then the following rules apply:

- Domestic working days include the actual working days in China, as well as relevant public holidays, personal leave days, and days the individual participated in training both within and outside China;
- If the individual stays in China for less than 24 hours in a day, the day will be counted as a half day to compute the domestic working days;and
- The number of foreign working days is computed by deducting the number of domestic working days from the number of total days in a calendar month.

A "domestic employer" may refer to a domestic party that employs the individual or a Chinese establishment of the individual's foreign employer. If the domestic employer is subject to Chinese enterprise income tax on a deemed-profit basis or is exempt from Chinese enterprise income tax as a result of zero business revenue, the domestic employer is deemed to have paid or borne the salaries and wages earned by the individual for working for the employer.

Taxable gross salaries and wages income for non-domiciled individuals (senior executives): The remuneration (including relevant bonuses and stock incentive income) derived by a non-domiciled individual who holds a senior executive position at a Chinese resident company is considered Chinese-source income, regardless of the working location. Senior executives include (general) managers, deputy (general) managers, chiefs of various functions, directors, and individuals in other management positions. This guideline is consistent with previous rules.

The following table summarizes the principles used to compute the taxable gross salaries and wages income of such non-domiciled individuals under different scenarios:

Tax Residence Status	**Physical Stay in China During a Calendar Year**	**Taxable Gross Salaries and Wages Income (*i.e.*, portion of salaries and wages taxable in China)**
Nonresident (senior executive)	No more than 90 days	Salaries and wages paid or borne by a domestic employer (*i.e.*, the Chinese resident company in which the individual holds the senior executive position)
	More than 90 days, but less than 183 days	All salaries and wages, except those attributable to foreign working days and paid by a foreign employer (*i.e.*, Formula 3 in Bulletin 35)
Resident (senior executive)	183 days or more (and in any year of the preceding six consecutive years, the individual stayed in China for less than 183 days or was outside China on a single trip for more than 30 days)	Same as that for non-senior executives
	183 days or more (and for each year of the preceding six consecutive years, the individual stayed in China for 183 or more, and was not outside China on a single trip for more than 30 days)	Same as that for non-senior executives

Bonuses relating to multiple months and stock incentive income: The above sourcing rules also apply to bonuses relating to multiple months and stock incentive income, in particular:

- If the bonus or stock incentive income is received by the non-domiciled individual when he or she is performing duties in China, the portion of the income that is attributable to a foreign working period is considered foreign-source income;
- If the bonus or stock incentive income is received by the non-domiciled individual after the individual completes his or her assignment in China (or even after he or she has left China), the portion of the income that is attributable to the China working period is considered Chinese-source income;
- If the bonus or stock incentive income must be time-apportioned to arrive at the Chinese-source income for IIT purposes, the apportionment must be based on a ratio of the number of relevant domestic working days to the total number of days relating to the income; and
- If the individual receives multiple streams of bonuses or stock incentive income in one month, and each income stream relates to different working periods, each income stream must be separately time-apportioned (if necessary) and then added up to reach the total Chinese-source income for that month for IIT purposes.

Comments

Bulletin 35 generally follows and consolidates the previous IIT rules on income sourcing for non-domiciled individuals. However, the bulletin changes the time-apportion approach by apportioning the taxable income rather than the tax. This approach is more consistent with international practice and more beneficial to taxpayers.

Bulletin 35 also provides a favorable tax computation method for nonresidents’ bonuses and stock incentive income by taxing such income separately from other comprehensive income and spreading the income over six months to effectively achieve a lower marginal rate.

Application of tax treaties

If a non-domiciled individual is resident in a treaty partner jurisdiction for the treaty application purposes, Bulletin 35 confirms that the individual has the option to apply the treaty articles to determine the IIT treatment. The following table summarizes the general rules on treaty application:

Treaty Articles	Affected Items of Comprehensive Income	Treaty Benefits
Employment Income	Salaries and wages	If a non-domiciled individual is resident in a treaty partner jurisdiction for the purposes of treaty application, the individual’s qualifying salaries and wages may be exempt from Chinese IIT under the treaty. The exemption is achieved by apportioning the income (under Formula 1 or 2 in Bulletin 35) for IIT purposes. If the individual is a nonresident of China, treaty benefits may be claimed when the income is derived. If the individual is a resident of China under Chinese domestic law (but still a resident of the treaty partner jurisdiction under the treaty), treaty benefits may be claimed either when the monthly advance IIT withholding tax return is filed or when the annual tax return is filed.
Independent Personal Services and Business Profits	Income for independent services and author’s remuneration	If a non-domiciled individual is resident in a treaty partner jurisdiction for the purposes of treaty application, the individual’s qualifying income for independent services or author’s remuneration may be exempt from Chinese IIT under the treaty. If the individual is a nonresident of China, treaty benefits may be claimed when the income is derived. If the individual is a resident of China under Chinese domestic law (but still a resident of the treaty partner jurisdiction under the treaty), treaty benefits may be claimed either when the advance IIT withholding tax return is filed or the annual tax return is filed.
Directors’ Fees	Salaries and wages, plus income for independent services	If a non-domiciled individual is resident in a treaty partner jurisdiction for the purposes of treaty application and holds a senior executive position at a Chinese company, the special income sourcing rules for senior executives (see section 3(d)) under domestic law may not be applied if: • The treaty does not contain an article on director’s fees • The treaty has a director’s fees article, but it cannot be applied (notably, if a senior executive’s employment income is not covered by the article)

Treaty Articles	Affected Items of Comprehensive Income	Treaty Benefits
Royalties and Fees for Technical Services	Royalties, income for independent services, and author's remuneration	If a non-domiciled individual is resident in a treaty partner jurisdiction for the purposes of treaty application, the Chinese IIT on the individual's qualifying income may be subject to limitations on taxable income or tax rate as required by the treaty. If the individual is a resident of China under Chinese domestic law (but still a resident of the treaty partner jurisdiction under the treaty), treaty benefits may be claimed at the time the monthly advance IIT withholding tax return is filed. When the individual files an annual tax return, the income may be separately taxed from other comprehensive income, subject to limitations on taxable income or tax rate under the treaty.

Comments

Bulletin 35 explains the application of the relevant tax treaty articles to comprehensive income derived by non-domiciled individuals and clarifies that non-domiciled individuals may choose whether to enjoy treaty benefits (if eligible). In other words, if the tax treatment under domestic law is more favorable, a taxpayer may opt to give up the treaty benefits.

Bulletin 35 does not mention the relevant procedural requirements to obtain benefits under a tax treaty. We understand that the existing rules on the documentation and information reporting requirements should be followed to claim benefits. Taxpayers (and their agents) that wish to claim treaty benefits should familiarize themselves with the requirements and ensure they are in compliance.

Administration

Estimation of length of stay in China: Residence status and the tax treatment of a non-domiciled individual depends on the number of days the individual stays in China in a tax year. Therefore, when a tax return is filed midyear, it generally will be necessary to estimate the non-domiciled individual's length of stay in China for the full year and determine the filing basis, followed by a retroactive adjustment to the filing basis and relevant returns if the actual situation differs from the estimation.

Bulletin 35 provides the following rules:

- If a non-domiciled individual is estimated to be a nonresident, but subsequently he or she becomes a resident for a tax year (*i.e.*, the actual stay period is longer than the estimation), the filing basis for advance IIT withholding will remain unchanged. Additionally, the individual will be required to make a retroactive adjustment and settle the overpaid or underpaid tax when filing his or her annual tax return for that year. If the individual leaves China midyear and does not expect to return in the same year, he or she may opt to make the adjustment and settle the tax before departing China.
- If a non-domiciled individual is estimated to be a resident individual, but subsequently he or she becomes a nonresident for a tax year (*i.e.*, the actual stay period is shorter than the estimation), tax authorities must be notified within 15 days from the end of the relevant year, and the retroactive adjustment and tax settlement must be made at that time. If the adjustment and tax settlement are made within the stipulated timeframe and the adjustment results in an underpayment of IIT for the previous months of that year, no late payment surcharges will be imposed on the collection of underpaid tax.
- If a non-domiciled individual is estimated to stay in China for less than 90 days in a tax year (or 183 days in a stipulated period under an applicable tax treaty), but the individual's actual length of stay reaches 90 days in that year (or 183 days in a stipulated period under an applicable treaty), tax authorities must be notified within 15 days from the end of the month in which the 90 day (or 183 day) threshold is reached, and the retroactive adjustment and tax settlement must be made at that time. If the adjustment and tax settlement are made within the stipulated timeframe and the adjustment results in an underpayment of IIT for the previous months of that year, no late payment surcharges will be imposed on the collection of underpaid tax.

Comments

Many non-domiciled individuals and their IIT withholding agents are concerned about whether to treat them as residents or nonresidents for tax computation purposes, particularly when their residency status for a tax year is pending and late payment surcharges may be imposed if retroactive adjustments result in an underpayment for previous months. Bulletin 35 provides a practical approach to this issue. However, affected parties still must fulfill reporting obligations and make any retroactive adjustments within the stipulated timeframe to avoid late payment surcharges or penalties.

Salaries and wages paid by overseas-related parties of domestic employers: Where a non-domiciled individual earns salaries and wages from employment in China, and the salaries and wages are paid in whole or in part by the overseas-related party of the domestic employer, the individual may file the tax return and pay the tax on his or her own or request that the domestic employer pay the tax on the individual's behalf. If the domestic employer is not asked to pay the tax on the individual's behalf, the employer must report the individual's salary information to tax authorities within 15 days from the end of the month in which the income is paid. The information to be reported includes details relating to the individual's work arrangement, overseas payments, contact information, etc.

Comments

If salary income from domestic employment is paid by an overseas-related party, instead of requiring the domestic employer to pay IIT in all cases (as under the previous rules), Bulletin 35 allows the individual to choose whether to pay the tax or ask the domestic employer to pay and file a tax return. Although the new rules appear more flexible and practical, domestic employers still are required to report the relevant salary information, even if they do not have to file a return and pay IIT on the individual's behalf.

Deloitte's view

To encourage foreign talent to live and work in China, the two new bulletins introduce favorable treatment for non-domiciled individuals (*e.g.*, a lenient day-counting rule, the fresh start of the six-year clock from 2019, and apportionment at the income level (rather than tax level)).

Nevertheless, Chinese IIT for non-domiciled individuals continues to be one of the most difficult areas in Chinese taxation. Both employers and individuals should handle Chinese IIT affairs with due care, in particular:

- Foreign nationals should understand the new day-counting rule, carefully plan their travel schedules, and keep proper travel records.
- Both employers and non-domiciled employees should familiarize themselves with the Chinese IIT sourcing rules and apply the correct apportionment formula to exclude nontaxable salaries and wages from taxable income subject to Chinese IIT.
- Employees who hold positions in both China and another jurisdiction and thus use an apportionment formula should ensure that sufficient and proper documentation is prepared to support the income apportionment. The documentation generally should include the employment or assignment contract, a description of job responsibilities for both the foreign and Chinese positions, travel records, etc.
- Employers and non-domiciled employees should understand the taxation rules for nonroutine salaries (notably, bonuses relating to multiple months and stock incentive income). For income derived after January 1, 2019, for which the tax return was filed and tax paid according to the old rules, affected parties should file a (timely) claim for a refund of any overpaid tax.
- For complex employment and salary payment arrangements, Chinese employers should be aware of their compliance obligations, particularly if foreign affiliates pay the relevant salaries to the individual. If necessary, employers may wish to seek support from tax professionals.
- In addition to the Chinese IIT issues, companies sending non-domiciled individuals to China should consider the corporate tax implications arising from any assignment arrangement and any requirements under the new IIT law and make any needed adjustments.

— Tony Jasper (Hong Kong)
Partner
Deloitte People's Republic of China
tojasper@deloitte.com.hk

Irene Yu (Shanghai)
Partner
Deloitte People's Republic of China
iryu@deloitte.com.cn

Frank Tang (Chongqing)
Partner
Deloitte People's Republic of China
ftang@deloitte.com.cn

Huan Wang (Beijing)
Partner
Deloitte People's Republic of China
huawang@deloitte.com.cn

Fei Li (Shenzhen)
Director
Deloitte People's Republic of China
ffli@deloitte.com.cn