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## **China: Guidance issued on 2019 IIT annual filing requirements for comprehensive income**

### **What is the change?**

On 14 and 31 December 2019, China’s Ministry of Finance and the State Taxation Administration issued guidance (Bulletins 94 and 44) on the 2019 individual income tax (IIT) annual filing for comprehensive income.

### **Highlights**

The purpose of an annual filing of comprehensive income is to arrive at the amount of IIT a taxpayer owes (or any refund due) on comprehensive income derived in a tax year.

An example of an IIT calculation for comprehensive income is set forth below.

Total annual comprehensive income:

- Less standard deductions (i.e., RMB 60,000)
- Less itemized deductions (i.e., social insurance and housing funds)
- Less additional itemized deductions (e.g., education, housing)
- Less other deductions (e.g., charitable donations)
  - Total taxable comprehensive income
  - Multiplied by applicable tax rate
  - Less quick deduction
    - Total IIT on comprehensive income for 2019
    - Less total IIT advance payments for 2019
      - Final IIT on comprehensive income owed (or refunded) for 2019

### **Individuals required to file**

Only resident individuals are required to file a 2019 IIT annual declaration for comprehensive income. A resident individual is defined as either an individual domiciled in China or a nondomiciled individual who is in China for 183 days or more in a calendar year. Therefore, a foreign national (who often would be considered a nondomiciled individual in practice) would be exempt from the 2019 IIT annual filing requirement if he or she was in China for less than 183 days in 2019.

A resident individual is exempt from the 2019 IIT annual filing requirement if:

- His or her total comprehensive income for 2019 does not exceed RMB 120,000;
- The final IIT owed for 2019 on comprehensive income does not exceed RMB 400; or
- The IIT for 2019 on comprehensive income does not exceed the total IIT advance payments for 2019, and the individual chooses to forego any overpaid IIT.

### **Types of comprehensive income**

As noted above, comprehensive income consists of four types of income: salaries and wages, remuneration for independent services, income from authors' remuneration, and income from royalties.

Income that is taxed under a category other than comprehensive income is not subject to the comprehensive income annual filing requirement. Such income includes dividends, interest, income from the transfer or leasing of property, and certain incidental income.

Certain salaries and wages (e.g., qualifying annual bonuses, severance pay, income from equity incentive plans by listed companies) may be subject to a special regime so that such income is taxed separately from other comprehensive income. Where income is subject to such special regime, it is not included in the IIT annual filing declaration for comprehensive income.

### **Deductions from comprehensive income**

Normally a taxpayer provides to the withholding agent information related to deductions against income in order for the withholding agent to calculate the advance IIT payments to be withheld. Apart from such claimed deductions, the following deductions may be taken from comprehensive income when the taxpayer files the annual return:

- Qualifying health care expenses for serious illnesses suffered by the individual or his or her spouse or minor children;
- Qualifying charitable donations; and
- Any other deductions the individual is entitled to for 2019 but was not claimed when the advance IIT payments were withheld and remitted by payers.

The tax authorities may disallow any deduction that the taxpayer cannot adequately support to the satisfaction of the tax authorities.

## **When, where, and how to file**

The 2019 IIT filing of comprehensive income must be made between 1 March and 30 June, 2020. However, a nondomiciled resident individual may file earlier if he or she is no longer in China prior to 1 March, 2020.

The new guidance provides the following rules to determine where to file the annual return:

- If a taxpayer files the annual return on his or her own, or engages another party (other than a withholding agent) to do the filing, the return must be filed with the tax authorities at the place where the taxpayer's employer is located;
- If a taxpayer has more than one employer, he or she may elect to file the return in the place where any of the employers is located;
- If a taxpayer is not an employee, the return must be filed in the place where the taxpayer either registers his or her household or habitually resides; and
- If a taxpayer requests that the withholding agent file the declaration, it must be filed in the place where the agent is located.

The declaration can be filed electronically via the tax authorities' website, by mail, or in person at the tax authorities' office.

If a taxpayer requests a withholding agent that pays salaries or continuously pays services remuneration to file the annual declaration on the taxpayer's behalf, the agent must agree to do so or, alternatively, provide training or guidance to help the taxpayer perform the filing. In order to request the withholding agent to file the annual declaration on the taxpayer's behalf, the taxpayer must make the request to the withholding agent in writing by 30 April, 2020, along with providing all relevant information to the agent in a timely manner. The taxpayer is responsible for the authenticity, accuracy, and completeness of such information. The taxpayer and the withholding agent who files the annual declaration on the taxpayer's behalf must retain a copy of the annual declaration and relevant supporting documentation with regard to income, deductions, tax incentives, and advance payments for five years beginning 1 July, 2020.

If a taxpayer engages a professional agent or other third party to file on his or her behalf, the taxpayer and the third party must sign an authorization letter clearly defining the rights, responsibilities, and obligations of each party.

## **Payments and refunds**

Any IIT due may be remitted through online or in-person banking, a point of sale terminal, or through services offered by nonbanking institutions.

To receive a refund, a taxpayer must have a qualifying Chinese bank account. If the total comprehensive income in 2019 does not exceed RMB 60,000 and IIT advance payments have been withheld and remitted properly, a simplified online refund will be available between 1 March and 31 May, 2020.

## **Background**

The new IIT law, which came into effect on 1 January 2019, consolidates four categories of income from the previous system (i.e., salaries and wages, remuneration for services, income from authors' remuneration, and income from royalties) into a single category called "comprehensive income." IIT on the comprehensive income of resident individuals is assessed annually and collected through advance payments withheld and remitted by payers on a monthly or transactional basis, with a final settlement made by the taxpayer at the time the annual declaration is filed. Under the new IIT law, 2019 is the first year for which an annual IIT filing is required for comprehensive income.

## **Deloitte's view**

The two bulletins provide detailed guidance on 2019 IIT annual filing obligations for comprehensive income. Of particular interest, resident individuals may be exempt from the filing requirement if their annual comprehensive income does not exceed RMB 120,000 or if the tax due does not exceed RMB 400. This relief is in accordance with the national policy to mitigate the tax burden of middle- and low-income earners.

## Taxpayers

Taxpayers are responsible for the authenticity, accuracy, and completeness of the information reported to the tax authorities. The Chinese tax authorities have significantly enhanced information sharing among government departments, further enabling the detection of inaccurate information. Moreover, individuals' compliance records in relation to annual filings will be included in the IIT credit system. In cases of serious violations, taxpayers potentially could be subject to a downgrading of the personal credit rating and multidepartmental joint penalties, as well as administrative penalties and late payment surcharges. Therefore, taxpayers should be fully aware of the importance of tax compliance and ensure their declarations are accurate.

The introduction of the annual IIT filing requirement for comprehensive income creates challenges for taxpayers in that filing requires tax technical knowledge and judgement, such as assessing tax residence, determining the relevant income category and deduction eligibility, collecting and managing supporting documents, and calculating taxes. The following taxpayers, in particular, may require professional assistance:

- High-net-worth individuals with diversified income: It may be difficult to determine the nature of the income and the applicable tax categories. Under current rules, different tax categories may be subject to different tax calculation methods and/or tax collection rules. This will increase the complexity of data management and tax calculations.
- Foreign employees in China: Tax residence status could change from year to year, impacting the IIT treatment and annual filing obligations. This also may be linked with IIT compliance in the individuals' home countries.

## Withholding agents

According to the guidance, withholding agents (especially employers) still play an important role in the IIT annual filing of comprehensive income. If taxpayers file on their own, withholding agents must provide them with accurate information about the income paid and IIT withheld. If taxpayers request withholding agents to file the declaration on their behalf, the withholding agents must agree or provide the required training or guidance.

Although withholding agents may be provided with filing software by the tax authorities to facilitate centralized filing for their employees, companies should have systems in place to manage their IIT withholding data. Companies also should relay information to management teams and other employees about the IIT annual filing requirements and determine which employees have requested filing on their behalf and ensure that the written authorizations are in place.

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## Germany: New 2020 filing obligations for nonresident employees

### What is the change?

Up until 2020, the income tax liability for a full-year, nonresident employee was generally settled (i.e., finalized) with wage tax withholdings, and no income tax return needed to be filed. In fact, the filing of an income tax return with a corresponding income tax assessment was only required or possible in exceptional cases.

As part of the Annual Tax Law 2019, a new mandatory filing requirement was introduced for nonresident employees. The mandatory filing requirement is effective for 2020 if the employer applied the so-called "One-Fifth Rule" within the wage tax withholding procedure. The "One-Fifth Rule" is a beneficial tax calculation that applies to income for multiple years (e.g., applies to income from long-term incentive plans) or termination payments, if certain conditions are met.

In addition to the increased administrative effort, in many cases, the change in law will also result in a significant increase in the taxes payable by the nonresident employee because foreign income received during the year will be included for progression purposes within the income tax assessment procedure. The following example illustrates the progression impact on a nonresident employee's tax liability:

- An employee who is exclusively a resident of the United States for the entire calendar year exercises stock options that result in German-sourced income of EUR 45,000 (i.e., income for multiple years). Additionally, the employee receives other foreign income in the amount of EUR 300,000 that is not subject to German taxation.
- In this example, the application of the "One-Fifth Rule" results in a wage tax liability of EUR 0. Until and including 2019, the employee's income tax liability was settled with wage tax withholdings, and the employee's final taxes payable remained EUR 0.
- Due to the change in law, the employee is now obliged to file an income tax return for nonresidents for any year in which the "One-Fifth Rule" applies to any income. On this tax return, the employee must also declare his or her worldwide nontaxable income for progression purposes.
- As a result, in the example, the employee's previously nontaxable income of EUR 300,000 would significantly increase his or her average combined tax rate (i.e., from 0 percent to approximately 42 percent) and, consequently, the employee would be assessed an additional tax liability of approximately EUR 18,800 following the filing of the annual income tax return.

### Deloitte's view

The introduction of the new filing requirement may lead to significantly higher tax burdens for nonresident employees. Although this may be reasonable from a fiscal policy and systematic tax perspective, it increases the administrative burden not only on the taxpayer and employer, but also on tax authorities who must analyze an increasing number of income tax returns. This increased administrative burden is not in line with efforts to cut bureaucracy and ease compliance with German tax law.

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## India: 2020 Budget proposals on personal taxation

### What is the change?

The 2020 union budget, presented by India's finance minister on 1 February 2020, aims to simplify the tax structure in addition to making compliance easier. It also intends to reduce litigations.

## What does the change mean?

**Simplified personal tax regime:** Taxpayers now have an option to select the simplified tax regime that has been proposed, which offers lower tax rates subject to the taxpayer satisfying certain conditions. However, the regime comes with a rider that the taxpayer has to forego certain deductions/exemptions, specified losses, etc., to be able to opt for this regime.

A comparison of tax rates under proposed simplified regime and old regime is summarized below.

Income slabs (in INR)	Rate of tax (percent) (under proposed simplified regime)	Rate of tax (percent) (under the old regime)
Up to 250,000	NIL	NIL
250,001 to 500,000	5	5
500,001 to 750,000	10	20
750,001 to 1,000,000	15	20
1,000,001 to 1,250,000	20	30
1,250,001 to 1,500,000	25	30
More than 1,500,000	30	30

Individuals with no business income can exercise this option every year at the time of filing a return in the prescribed manner.

However, individuals with business income, upon exercising the option of the new regime, will have to continue with the new regime for all subsequent years. They can withdraw the option exercised and return to old regime only once. Pursuant to that, they will become ineligible to use the new regime option for any future year (unless they cease to have business income).

One of the prerequisites to using this option is to file the tax return within the specified due date.

**Change in residency rule:** The stay-in-India threshold for triggering tax residency for an Indian citizen or person of Indian origin who is visiting India has been reduced from 182 days to 120 days.

Likewise, the conditions for qualifying to be a "not ordinarily resident" (NOR) have also been modified. As per the proposal, a resident will be a NOR for India tax purposes if he or she has been a nonresident in India for seven out of the 10 previous years. This replaces the conditions provided in the statute currently and listed below.

- The individual has been a nonresident in India for nine out of the 10 previous years, or
- Has been in India for 729 days or less in the seven previous years

Further, Indian citizens not liable to tax in any other jurisdiction (by reason of their domicile or residence) shall be deemed to be residents in India. The government has issued a press release to clarify that this change only affects cases in which the income is derived from a business or profession in India.

Employer contribution to retirals: Currently, employer contributions to following retirals are liable to tax only if:

- The provident fund contribution is in excess of 12% of the salary.
- The national pension scheme contribution is in excess of 14% of the salary for central government employees and 10% of the salary in any other case.
- The superannuation fund contribution is in excess of INR 150,000.

Additionally, accruals on such contributions are currently not taxable except in certain situations.

It is proposed to introduce an aggregate monetary limit of INR 750,000 with respect to an employer contribution to the above-mentioned schemes. Any contribution in excess of such monetary limit would be taxable as a perquisite. Further, the annual accretion pertaining to such a taxable contribution would be taxable in the hands of the individual.

**Miscellaneous tax reliefs:** To continue promoting *affordable housing*, the period of sanctioning of loans by the financial institution is proposed to be extended by one year, to 31 March 2021, subject to the satisfaction of prescribed conditions.

- Currently, tax on specified security and sweat equity shares is payable at the time of exercise. To ease the tax burden of employees of eligible start-ups, it is proposed to *defer the payment of tax* to the earlier of the following three events:
  - Expiry of 48 months from the end of the relevant assessment year (five years from the end of the financial year), or
  - Sale of shares by the employee, or
  - An employee's resignation
- To reduce the pending litigation, a *dispute resolution scheme* is proposed where tax payers opting for the scheme would get a waiver of interest and penalty if taxes are paid by 31 March 2020. Those availing this scheme after 31 March 2020 will have to pay some additional amount.
- Currently, Indian companies are required to pay dividend distribution tax (DDT) on any dividends declared. Further, such dividends in excess of INR 10 lakh is taxable in the hands of the tax payers at 10% plus applicable surcharge and a cess of 4%. It is proposed to *abolish the DDT*. Dividends are now proposed to be taxed in the hands of the shareholders at their applicable rate of tax. Therefore, for employees liable to tax in two jurisdictions, foreign tax credit can be claimed.

### **Deloitte's view**

The simplified tax regime is a step toward easing the tax burden for individual taxpayers. However, given the need to forego deductions/exemptions, taxpayers will have to analyse their specific situation and select the option most suited.

The change in the residency provisions could have significant impact both from a taxation and reporting perspective, and individuals must ensure that they track their stay patterns and determine their residency correctly to ensure compliance.

The proposed change to tax employer contribution to retirals above the threshold and accretion on them will increase the tax impact of high-salary earners. Employers with tax-equalised employees should take a closer look at these costs.

Deferring the tax on stock benefits of start-up employees is a welcome move and could address the cash flow issue. However, start-ups will need to address the challenge of tracking the tax-triggering event, to ensure tax withholding compliance.

The budget measures still must be approved by both houses of parliament and receive the assent of the president of India. Once approved, the provisions would apply from the India tax year 2020 to 2021 (1 April 2020 to 31 March 2021), unless otherwise stated.

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