



# Employment Tax and Obligations

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# Agenda

- **New Zealand Tax Residency and Employment Income Tax**
  - Overview of tax residence/breaking residence
  - Taxable and exempt remuneration
- **Overview of the Chinese Individual Income Tax Rules**
  - Overview of 183-day and 5-year Rule
  - Taxable/Non-taxable Income and Calculation of IIT
  - Tax Planning Opportunities Available to Foreign Individuals

# New Zealand Tax Residency and Employment Income Tax



# New Zealand Residence

## NZ Residents

- Permanent Place of Abode – what is it?
  - Enduring ties to NZ
  - Available property
  - Social and economic ties
  - IRD views
  
- Ceasing residence
  - Ceasing to have a PPOA
  - Absent 325 days in a 12 month period
  
- Pros and cons of ceasing residence?
  - Remove NZ taxation on foreign sourced income
  - Simplify tax return and employment tax compliance/reporting
  - Exposure to higher or lower taxes?
  - Double Tax Agreement

# Taxable and Exempt Remuneration

## Accommodation Payments

- Current IRD approach
  - Taxable if associated with a relocation
  - Tax free up to 2 years if a temporary change of workplace
  
- Relocation payments
  - Prescribed list of exempt items

# Overview of the Chinese Individual Income Tax Rules



# Taxable/Non-taxable Income & Calculation of IIT

## Tax Rate Table

Monthly Taxable Income Including Tax (RMB) (i.e. PRC IIT borne by employee) (A)	Applicable IIT rate	Quick deduction (RMB)
0 – 500	5%	0
501 - 2,000	10%	25
2,001- 5,000	15%	125
5,001- 20,000	20%	375
20,001 – 40,000	25%	1,375
40,001 – 60,000	30%	3,375
60,001 – 80,000	35%	6,375
80,001 -100,000	40%	10,375
100,000 and up	45%	15,375

- Be aware of social security type of employer contributions (pension, health and unemployment etc) which could add up to around 40% of an employee's base salary.

# Overview of 183-day and 5-year Rule



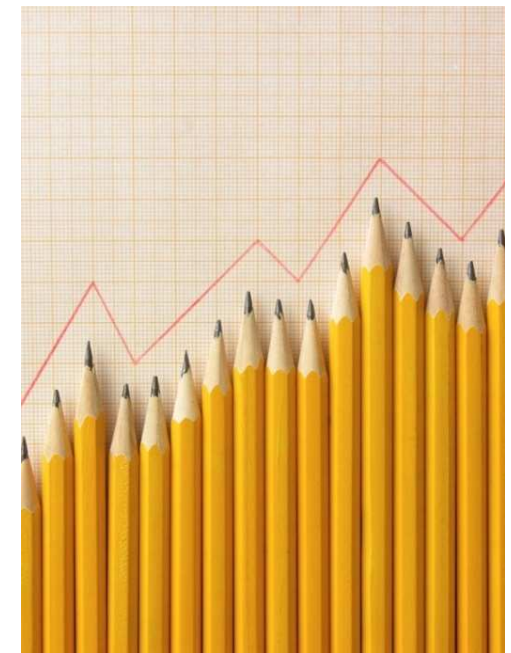


# Overview of 183-day and 5-year Rule

## When are Assignees Liable to Individual Income Tax (“IIT”)?

Three criteria to ascertain whether an expatriate is subject to PRC IIT:

- China-sourced income or non-China-sourced income
- How long is the expatriate physically present in the PRC during a calendar year?
- Who bears the expatriate’s compensation? A PRC entity or non-PRC entity or a PE in China?



# Overview of 183-day and 5-year Rule

## Physical Stay in China $\leq 90/183$ Days – Exempt If

1

Compensation is not paid by, or behalf of, an employer who is a China entity; and

2

Compensation is not re-charged or borne by a China entity/ a permanent establishment of the employer in China

- **If not exempted,**  
China assignment related compensation (paid or borne by China entity) should be subject to China IIT
- **Exception**  
Works for a representative office / projects constitute a permanent establishment in China

# Overview of 183-day and 5-year Rule

## 90/183 Days < Physical Stay in China < 1 Full Year

1

Total China assignment related compensation (paid or borne by China entity and overseas entity) should be subject to China IIT

- New Zealand tax residency and PAYE obligations (special rate certificate)
- Permanent Establishment in China

# Overview of 183-day and 5-year Rule

## 1 Full Year $\leq$ Physical Stay in China $<$ 5 Years

1

Taxable on China sourced income; and

2

Overseas sourced income paid/borne by Chinese entity

- New Zealand tax residency and PAYE

# Overview of 183-day and 5-year Rule

## Physical Stay in China $\geq$ 5 Year

- If the individual has resided in “China” for five full consecutive years, the individual would be subject to IIT on worldwide income for each full year lived in Mainland China starting from the sixth year.
- New Zealand tax residency

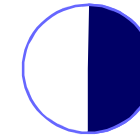
# Overview of 183-day and 5-year Rule

## PRC Days Counting

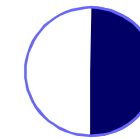
PRC days counting for **the 90/183-day** purpose

PRC day counting for **IIT calculation** purpose

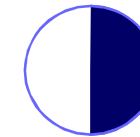
*Day of entry*



*Day of departure*



*Same day in and out*



● 1 Day ○ 0.5 Day

# Taxable/Non-taxable Income & Calculation of IIT



# Taxable/Non-taxable Income & Calculation of IIT

## Taxable Income

Wages and salaries include:

- Basic salary
- Bonuses\*
- Commission
- Allowances/subsidies
- Tax paid by employer
- Severance pay \*
- Stock-based incentive plan related income\*
- Any other income related to the individual's employment

\* Special rules apply





# Taxable/Non-taxable Income & Calculation of IIT

## Non-Taxable Benefits-in-kind

- Housing accommodation
- Meal and laundry expenses
- Language training expense
- Children education expenses
- Relocation expenses
- Home leave (twice per year, for employee only)

***ALL SHOULD BE OF REASONABLE AMOUNT AND SUPPORTED BY  
“FA PIAO” (invoices)***

# Tax Planning Opportunities Available to Foreign Employees



# Tax Planning Opportunities to Foreign Employees

## Challenges of Operating in China

- The acceptability of any tax planning idea depends to a large extent on the opinion of the local tax bureau; what is deemed to work in one location may be deemed unacceptable in another.
- All of the tax planning ideas in the following slides should work under national tax laws, however the interpretation of these laws sometimes varies between different local tax authorities.
- Any planning should be supported by actual facts and circumstances.
- The changing enforcement environment and recent circulars indicate a trend towards greater enforcement.

# Tax Planning Opportunities to Foreign Employees

## IIT Planning Ideas for Foreign Employees

- Tax exempt benefits-in-kind
- Bonus structuring
- Dual contracts arrangement
- 5 year monitoring

# Tax Planning Opportunities to Foreign Employees

## Tax-Exempt Benefits-in-kind

- What is it?
  - Meal and laundry expenses in the PRC
  - Housing accommodation in the PRC
  - Home leave expenses
  - Language training expenses and children's education costs incurred in the PRC
  - Relocation and moving expenses
  
- What are the benefits?
  - Utilize the payment of benefits and enjoy the tax-free treatment
  
- How does it work?
  - Part of salary or cash allowances are paid as the above benefits made on reimbursement basis
  - Care should be taken to degree of "reasonableness" and supporting documents

# Tax Planning Opportunities to Foreign Employees

## Bonus Structuring

- What is it?
  - This is an annual bonus (i.e. not a sign-on, monthly or quarterly bonus)
  - Must be performance-based
  
- What are the benefits?
  - Minimize employee tax costs (if tax is borne by individual employee)
  - For expatriate employees under tax equalization or protection, this could reduce the assignment cost for the employer
  
- How does it work?
  - Pay an annual bonus
  - Structure the timing of bonus payment

# Tax Planning Opportunities to Foreign Employees

## Case Study:

	Scenario I RMB	Scenario II RMB
Total annual package	720,000	600,000
Restructured to include:		
Bonus	-	120,000
Housing	-	(100,000)
Children education	-	(80,000)
Home leave	-	(60,000)
	<hr/> 720,000	<hr/> 480,000

# Tax Planning Opportunities to Foreign Employees

## Dual Employment Contracts Arrangement

- What is it?
  - Having dual job duties both inside and outside China and utilizing time-apportionment method to calculate IIT payable
  
- What are the benefits?
  - Individual income tax saving from time-apportionment
  - Potential to arbitrage marginal tax rates in each country
  
- How does it work?
  - The expatriate should have two employment contracts with two different employers, one PRC employer and the other Non-PRC employer
  - The expatriate's remuneration for the contract outside of the PRC must NOT be borne by any entity in the PRC
  - The expatriate should retain his travel schedules and related documentation to substantiate any time apportionment claims
  - Need to carefully manage tax residency



# Tax Planning Opportunities to Foreign Employees

## 5-year Monitoring

- What is it?
  - Monitor five-year residence in China and take appropriate action to break five-year residence
  
- What are the benefits?
  - Helps expatriates avoid a worldwide tax exposure

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