A non-domiciled individual who has lived in China for one full year but not more than five years is subject to tax on employment income derived during his or her working period within China from a Chinese enterprise or employer or from an overseas enterprise or employer. If employment income is derived from a period of work during a "temporary absence" from China (see below), individual income tax is payable only on the portion of the income which is paid by Chinese enterprises or Chinese individual employers. For more on the categories of income subject to individual income tax and "China-sourced income", refer to ¶3-001 and following.

Once a non-domiciled individual has lived in China continuously for more than five years he or she must pay individual income tax on his or her worldwide income, ie all income derived from within and from outside China, for every full year spent in China, beginning in the sixth year.

One-year residence test

Individuals who have resided in China for 365 days in a calendar year are deemed to have lived in China for one full year. Temporary absences from China for no more than 30 days per single trip, or for no more than 90 days cumulatively during the calendar year, are disregarded for the purpose of calculating the days of residence. See ¶2-008 for more on the calculation of time spent in China.

> ***Example***
>
> Mr G who is a US citizen was assigned as a technical engineer working in ABC China joint venture from 1 January 2002. He stayed in China for 310 days in 2005. He took 25 days home leave in total in April and December 2005 to the US; he also travelled to Hong Kong and Japan to provide technical support services for ABC's Hong Kong and Japan companies. He travelled to Hong Kong from 1 March to 21 March and travelled to Japan from 1 October to 11 October.
>
> Two scenarios:
>
> 1. Mr G was paid by the US headoffice without any charge back to ABC China joint venture;
> 2. Mr G was paid by the US headoffice and his compensation cost was charged back to ABC China joint venture.
>
> As mentioned above, for an individual who is employed by an enterprise or institution within China, his or her "actual working period within China" includes days spent during the period working in China which are official public holidays, annual leave spent inside or outside China, or training days. Hence, Mr G's actual working days in China for 2005 is 335 days (ie 310 + 25). His temporary absence from China for no more than 90 days cumulatively during a calendar year is disregarded for the purpose of the one year test. Hence, the 30 days Mr G spent in Japan and Hong Kong during 2005 is disregarded for the calculation of Mr G's residence in China. As a result, in year 2005, he stayed in China for one full year.
>
> *Under scenario 1*: He should be subject to PRC Individual Income Tax on employment income derived from his actual working days in China, ie 335 days. His income derived from his temporary absence for services rendered outside China should not be subject to PRC Individual Income Tax.

> *Under scenario 2*: He is subject to PRC Individual Income Tax on his full employment income, ie income derived from actual working period within China and temporary absence.

Individuals resident for more than five years

Individuals who have lived in China for a continuous five-year period (beginning 1 January 1994) are thereafter subject to individual income tax on their worldwide income for every full year spent in China.

The five-year rule is stated in the *Individual Income Tax Law* issued in 1994. However, the first date on which anyone was affected was 1 January 1999 (five years from the effective date of the law). The Ministry of Finance and the State Administration of Taxation issued a notice in 1995 to clarify the five-year rule as follows:

- for individual income tax purposes, a non-domiciled individual is considered to have lived in China continuously for five years if he or she has been present in China consecutively for a full year in each of the past five years, excluding temporary absences of less than 30 days on a single trip or an aggregate period of less than 90 days in a calendar year;
- once the five-year residence is established, a non-domiciled individual will be subject to individual income tax on his or her income from sources within and outside China from the sixth year onwards for every full year spent in China;
- the individual will, however, be subject to individual income tax only on his or her China-sourced income in any particular year thereafter if he or she does not reside in China for a full year in that year. Again, temporary absence is not counted;
- the individual can break the five-year residence after it is established only if he or she resides in China for less than 90 days in any one year after the sixth year; and
- the calculation of the five-year residence period starts from 1 January 1994.

¶2-004 Expatriates living in China for more than 90 days but less than one year

An individual who is not a usual resident of China (ie domiciled in China), and has resided in China for a consecutive period or an aggregate period of more than 90 days (or 183 days for a tax resident of a double tax treaty country) but less than one year (or the treaty prescribed period if tax treaty is applicable), is subject to individual income tax only on his or her income derived from sources within China, regardless of whether the income is borne by any PRC entity or individual.

Wages and salaries received by an individual during his or her "actual working period" within China are regarded as being derived from sources within China regardless of whether the enterprise or individual employer making the payments is situated inside or outside China.

- *Reimbursement of relocation allowances upon commencement and cessation of China assignment*. Reasonable relocation allowances paid on a reimbursement basis in relation to the commencement and cessation of an employment assignment in China should be non-taxable for individual income tax purposes. Taxpayers should submit relevant documentary evidence to the authorised tax bureau to obtain approval for the amount to be non-taxable. However, if the relocation allowance is paid by a foreign investment enterprise or foreign company in China on a monthly or fixed-period basis, arguably, the true nature of the allowance is not a relocation allowance. In such circumstances, the so-called "relocation allowance" is a taxable item for individual income tax purposes.
- *Reasonable business trip and home leave allowance*. Reasonable business trip allowances inside and outside China, and home leave allowances, should be non-taxable for individual income tax purposes. With regard to business trip allowances, taxpayers should submit copies of their travel expense receipts and business trip plans (prepared by their employers) to the authorised tax bureau to obtain approval for the amount to be non-taxable. Home leave allowances for the assignee him/herself transportation expenses from China to the location of the taxpayer's home (including homes of spouse and parents) for up to two trips per calendar year are considered reasonable. Once again, official receipts should be retained for such expense reimbursements in order to support non-taxable treatment.
- *Language training and child education allowance*. Reasonable allowances paid in relation to language training and child education in China should be non-taxable for individual income tax purposes. Taxpayers should provide documentary evidence to the authorised tax bureau to establish their training attendance and their children's education inside China. Subject to the approval of the competent tax authorities, for such individuals (ie foreign national) living in Hong Kong or Macau but working in the mainland, the exemption will also be extended to include educational institutions in Hong Kong or Macau.

If it is clearly stipulated in the tax laws, regulations, and circulars that the individual income tax reduction or exemption is subject to the approval of the competent tax authorities or the taxpayer cannot identify whether the income received can be individual income tax exempt, an approval on individual income tax reduction or exemption must be obtained before the taxpayer takes an individual income tax reduction or exemption position.

¶4-005 Income derived by foreign experts working under development or exchange programmes

Salary income derived by foreign experts working in China for projects aimed at providing aid or funding to assist China's development may be exempt from individual income tax. These exemptions are generally restricted to salaries and wages derived by foreign experts working on World Bank or United Nations projects or government exchange programs and may be subject to specific conditions.

Specifically, exemption from individual income tax are provided for wages and salaries derived by:

- foreign experts sent to work in China by the World Bank pursuant to loan agreements entered into by the World Bank;
- experts sent to work in China by the United Nations;
- experts working in China in connection with various aid programmes of the United Nations;
- experts sent from aid-giving countries to work in China in connection with aid programmes;
- experts in culture and education sent to work in China under cultural exchange programmes between China and a foreign government (this exemption applies only to salaries and wages paid by a foreign government during a working period of two years);
- experts in culture and education sent to work in China under cultural exchange programmes of tertiary education institutions in China (this exemption applies only to salaries and wages paid by a foreign government during a working period of two years); and
- experts sent to work in China under scientific programmes of non-governmental bodies (this exemption applies only to salaries and wages paid by a foreign government).

¶4-006 Dividend income received by foreigners

Income derived by a foreign individual from a foreign investment enterprise in the form of dividend is exempt from tax.

¶4-007 Income derived from transfer of family living quarters

Income from the transfer of living quarters which are the only living quarters for the family, and which have been occupied for their own personal use for more than five years, is exempt from tax.

¶4-008 Income derived from share transfers

Income from the transfer of shares listed in Shanghai and Shenzhen Stock Exchanges by an individual is currently tax-exempt with the exception of income from the transfer of restricted shares effective from 1 January 2010.

¶4-009 Monetary awards

Monetary awards given to individuals who report and assist in the investigation of unlawful activity or crimes are exempt from tax.

¶4-010 Withholding tax service fee

Individuals who receive the 2% fee for acting as a withholding agent (see ¶7-002) are not taxed on the amount of the service fee.

The tax payable is calculated using the following formula (assuming that the tax liability of the taxpayer is not borne by his or her employer):

$$\left[\left(\begin{array}{c}\text{Taxable income}\\ \text{for a full month}\end{array} \times \begin{array}{c}\text{Applicable}\\ \text{tax rate}\end{array}\right) - \text{QCD}\right] \times \frac{\begin{array}{c}\text{Number of days resided}\\ \text{in China during month}\end{array}}{\begin{array}{c}\text{Number of days in current}\\ \text{month}\end{array}}$$

If an individual earns a daily wage or salary, the tax payable for the month is calculated according to the above formula after the daily wage or salary has been multiplied by the number of days in the month and converted into a monthly payment.

For expatriate employees who meet the criteria for filing their individual income tax on a time-apportionment basis (see ¶5-004), the taxable income is calculated according to the above formula.

Example

Mr B is an expatriate working in a foreign enterprise's Beijing representative office; he is the chief representative of the office and also general manager of the foreign enterprise. His travel schedule for January 2009 is set out below:

Arrived in China	Depart China
21 January 2009	30 January 2009

His PRC tax liability for January is computed below (he is responsible for his PRC individual income tax, monthly salary is US$15,000):

Tax payable = [(taxable income –monthly allowable deduction) × tax rate – QCD] × no of days resided in China during month/no of days in current month

= [(US$15,000 × 7 – RMB4,800) × 45% – RMB15,375] × 9/31

= RMB8,627

¶5-006 Calculation of tax on annual bonuses

Circular Guoshuifa (2005) No 9 ("Circular 9") issued on 21 January 2005 clarified the tax treatment of annual performance bonuses.

With effect from 1 January 2005, an annual performance bonus qualifies for beneficial tax treatment. The bonus income should be calculated separately from other taxable salary income in the month of receipt. There will be no standard deduction offset against the bonus in ascertaining the taxpayer's individual income tax liability, as the standard deduction should have already been offset against the taxpayer's normal monthly salary. The bonus should be divided by 12 to determine the effective tax rate applicable.

However, if the taxpayer's taxable income for the month in which he receives the bonus does not exceed RMB2,000 (or RMB4,800 for expatriate employees), the deemed one month salary should be offset by the difference between the standard

deduction of RMB2,000 (or RMB4,800 for expatriate employees) and his monthly income before applying the applicable tax rate.

Within a tax year, the method of calculating tax payable on annual bonus mentioned above may be adopted only once for each taxpayer.

An employee's bonus other than the annual performance bonus, such as half-year bonus, quarterly bonus, over-time bonus, advanced employee bonus, work attendance bonus, etc, shall be combined with his other income of wages and salaries in the same month for payment of individual income tax in accordance with the tax laws.

With respect to all the bonuses mentioned above, other than an annual performance bonus, which are obtained by an individual without a domicile, if the individual has no tax payment obligation inside China in the month of receipt, or has worked for less than one month in China in that month due to entry or exit, his bonuses shall still be calculated in accordance with the *Notice of the State Administration of Taxation on the Issue of Levying Taxes on Bonuses Obtained by Individuals without a Domicile inside China* (*Guoshuifa (1996) 183* Promulgated by the SAT) for the purpose of paying taxes.

Circular 9 indicates that the qualifying annual bonus must be a payment for the "performance" of the individual or company.

Step-by-step calculation

Effective 1 January 2005, tax on annual performance bonus must be calculated as follows:

(1) Tax calculation on Gross Bonus

Step 1: Gross Bonus/12 to find applicable tax rate

Step 2: IIT payable = Gross Bonus × the applicable tax rate – quick deduction

(2) Tax calculation on Net Bonus

Step 1: Net Bonus/12 to find applicable tax rate 1 (for net income)

Step 2: Gross Bonus = (Net Bonus – quick deduction)/(1 – tax rate 1)

Step 3: Gross Bonus/12 to find applicable tax rate 2 (for gross income)

Step 4: IIT payable = Gross Bonus × applicable tax rate 2 – quick deduction

Example

Mr G is an expatriate working in China and subject to PRC individual income tax. His monthly salary is US$10,000. He received an annual bonus of US$50,000 for the year 2008 in January 2009. He is responsible for his PRC individual income tax. His PRC individual income tax liability for January 2009 is computed as below:

Tax payable on January salary

= (gross income – monthly allowable deduction) × tax rate – QCD

= (US$10,000 × 7 – RMB4,800) × 35% – RMB6,375

= RMB16,445

- registered capital, total investment and bank account details;
- approved operating period, number of employees and business license number; and
- other related information.

When submitting the tax registration form, the taxpayer may be required to provide documentation including:

- the individual income tax registration form;
- the business licence or tax registration certificate of the entity the expatriate is working for;
- relevant contracts, articles of association and letters of agreement – these may be required in Chinese and may need to include income information;
- bank account number documentation;
- his or her residency permit if applicable;
- copy of his or her passport;
- copy of his or her employment permit if applicable;
- copy of his or her work permit if applicable;
- other legal documentation; and
- any other documents which the taxation authority may require.

The tax authorities are required to issue the tax registration certificate upon examination and verification of documents submitted by the applicant.

If changes are made to a taxpayer's details (eg if the taxpayer's place of residence changes), such changes must be registered with the taxation authorities within 30 days.

If a taxpayer's business licence is revoked, the taxpayer must apply to the taxation authorities for cancellation of tax registration within 15 days of the revocation of its business license.

Withholding agents

Withholding agents who are obliged to withhold, collect and remit taxes on behalf of taxpayers must obtain a tax withholding or tax collection certificate from the tax authorities. For more on the obligations of withholding agents see ¶7-001 and following.

¶6-002 Account books and vouchers

Taxpayers engaging in production or business operations are generally required to establish and maintain "account books" including general ledgers, detailed accounts, journals and other auxiliary account records. However, in the case of an individual industrial or commercial undertaking which has only small production or business operations, and which does not have the ability to keep account books, a registered accountant or accounting personnel recognised by the taxation authority may be appointed to handle accounting.

If an individual industrial or commercial undertaking has genuine difficulty in appointing a registered accountant or recognised taxation personnel, the individual taxpayer may instead be permitted to keep accounts by maintaining a book containing all receipts and expense vouchers and a goods purchase and sale registry. Approval must be obtained from a taxation authority at county level or above to maintain an account book in this manner.

Withholding agents

A withholding agent is required to establish and maintain a tax withholding or tax collection book recording categories of tax withheld and collected. For more on withholding agents see ¶7-001 and following.

Computerised accounts

Taxpayers and withholding agents may keep their accounts in computerised form.

Language

Account books, vouchers and statements must be kept in the Chinese language. They also may be kept in both the Chinese language and a foreign language (*Implementing Rules for Levying and Collection of Taxes*, Art 27).

Period for which accounts must be kept

Account books, vouchers, statements, proof of tax payment and other relevant tax records must be kept by taxpayers and withholding agents for ten years.

For tax evasion, a fine not less than 50% of the tax evaded, but not more than five times the amount of tax evaded would be imposed. If the tax evasion constitutes a crime, criminal responsibility according to the law would be pursued.

If a withholding agent fails to pay or underpays the amount of tax already withheld or collected by resorting to the means listed above, the tax authority shall seek the remittance of amount of tax not paid or underpaid as well as the fine for delayed payment, and may concurrently impose a fine exceeding 50% but not exceeding five times the amount of tax not paid or underpaid. If the tax evasion constitutes a crime, criminal responsibility according to the law would be pursued.

¶8-008 Tax evasion penalties

The following penalties may be imposed in respect of tax evasions:

- If tax is evaded by transferring or concealing property, the tax authority shall seek payment of the amount of tax unpaid or underpaid as well as the late payment interest, and concurrently impose a fine exceeding 50% of but not exceeding five times the amount of tax evaded.
- Where the percentage of tax evaded is more than 10% of the tax payable and the amount of tax evaded is *significant*, imprisonment or confinement for a maximum term of three years can be imposed in addition to penalties.
- Where the percentage of tax evaded is more than 30%, and the amount of tax evaded is *enormous*, imprisonment for a maximum term of between three and seven years can be imposed in addition to penalties.

However, the quantitative standards to determine whether an amount is *significant /enormous* have not been clarified and may, in practice, be at the judicial authorities' judgement.

Though there are exceptions, where a taxpayer has committed tax evasion and the tax authority has issued a payment notice, if the taxpayer has settled the underpaid tax and late payment interest accordingly, and has been subject to administrative sanctions, the taxpayer is exempt from further criminal charges.

¶8-009 Punishment for tax officials

Tax officials will be investigated for criminal responsibility and can be administratively sanctioned or transferred from their post of tax collection if they:

- collude with taxpayers or withholding agents to assist them to commit a violation of the tax laws including tax evasion or failure to pay tax through concealment;
- engage in malpractice for their personal gain;
- abuse their power;
- retaliate against taxpayers who complain about or report violations; or
- over-assess or under-assess tax deliberately.

¶8-010 Refusing to pay tax using violence or threats

If a taxpayer or withholding agent refuses to pay tax using violence or threats, he or she may be sentenced to imprisonment or confinement for a maximum term of three years and fined. The fine is a minimum of 100% of the tax underpaid and a maximum of five times the amount of the tax evaded. In serious cases the taxpayer or withholding agent may be sentenced to imprisonment for a maximum term of between three and seven years in addition to the fine of five times the amount of tax evaded.

If the violence causes serious injury or death to others, the individual may be punished severely based on the criminal offence of assault or manslaughter as well as being liable for the standard fine.

¶8-011 Recovery of unpaid tax

If a taxpayer engaged in production or business fails or refuses to settle his or her tax payments, the tax authorities, upon approval by the head of a taxation authority (or branch) at the county level or higher, may recover such tax using the following methods:

- **Seizure of bank deposits.** The tax authorities may recover unpaid tax by seizing the tax payments directly from the taxpayer's bank accounts or the taxpayer's accounts with other financial institutions. In such cases, the tax authorities will notify the bank or financial institution with which the taxpayer, withholding agent, or tax payment guarantor has opened an account, to withhold the amount of tax, surcharges and penalties owed by the taxpayer from the taxpayer's accounts.
- **Seizure of goods and property.** The tax authorities may recover unpaid tax by impounding, sealing up, and selling off the taxpayer's, the withholding agent's, or the tax payment guarantor's commodities, goods and other property and valuables. The money earned from selling off such property is used to offset the tax, and any surcharges and penalties owed by the taxpayer.

  When impounding and sealing up a taxpayer's goods, the taxation authorities are required to provide a receipt or a detailed list of such goods.

  Any housing or items which are required for day to day living for the taxpayer and family members are not subject to these enforcement measures.
- **Permission to leave the country.** A taxpayer who has not settled his tax payments may not be able to leave China. The taxation authorities may notify the border control authorities to prevent a taxpayer from departing from China with outstanding tax debts. In such circumstances, the taxpayer can either settle the tax payments or provide the tax authorities with a guarantee for tax payment before leaving the country.
- **Precedence over other claims.** Tax collection in the manners described under these compulsory provisions have precedence over all other claims including the claims of a mortgage, pledge or other encumbrances, unless otherwise provided by law.

The tax exemption accorded to short-term foreign employment income is intended to facilitate international movement of personnel and thus international commerce. For eg consider the situation where a foreign enterprise sells capital equipment to a customer in China. As required under the sales contract, the foreign enterprise is responsible for installing the equipment for the customer in China. If the employees of the foreign enterprise sent to China to install the equipment are not from a treaty country, the employees would very likely be subject to China tax on income they derive from performing services in China. This may indirectly increase the foreign enterprise's costs of doing business with China since the foreign enterprise may have to bear the additional tax costs incurred by the employees as a result of their China assignment. However, if a tax treaty applies and the employees are present in China for no more than the short-term period prescribed in the treaty, such costs can be avoided and it would, accordingly, make doing business with China more agreeable.

Similarly, short term business trips for the purposes of business development, internal training, or numerous other legitimate business purposes should not give rise to any individual income tax exposure provided the dependent personal services article of the treaty can be met.

As noted above, some of the China treaties may have a travel provision based on 183 days out of the calendar year. In these cases, one may conclude that a resident of a treaty country could have back-to-back 183 day years and therefore effectively reside in China for just under one continuous year and still be exempt under the dependent personal services article provided the other two article conditions are met. However, care must be taken to ensure that the employer does not already have, or inadvertently create a permanent establishment in China. For eg an employer with a representative office in China is, by definition, a permanent establishment; the nature of the representative office is analogous to that of a branch company (see further comments on "Representative office" on page 145). Similarly, the services or activities conducted by the employees working temporarily in China may inadvertently create a permanent establishment (see further on "Permanent establishment" in ¶11-010).

International air transportation crew

China's tax treaties generally provide that remuneration derived by international transportation crew in respect of employment exercised aboard a ship or aircraft operated in international traffic is taxable in the contracting state in which the enterprise which operates the vessel is a resident. This is notwithstanding that services may actually be performed in the other contracting state.

Chinese tax authority practice

State Administration of Taxation *Circular 148* clarifies the tax treatment in China of employment income derived by individuals who are not domiciled in China but are residents of treaty countries.

Source of employment income

According to *Circular 148*, employment income derived by a treaty country resident during the period he or she performs services in China is considered to be China-sourced income regardless of whether the income is paid by an employer inside or outside China. As a corollary, employment income earned during the period the individual performs services outside China is regarded as non-China-sourced income, regardless of whether the income is paid by an employer inside or outside China.

Residence in China for 183 days or less

A treaty country resident who resides in China consecutively or cumulatively for not more than 183 days within a calendar year/fiscal year/12-month period (whichever is prescribed in the relevant tax treaty), is exempt from Chinese individual income tax provided that his or her employment income is paid by an employer who is outside China (ie a non-resident employer of China) and is not borne by a China permanent establishment or fixed base (collectively "China permanent establishment"). Where a person is exempt from paying individual income tax, he or she may still have filing requirement to claim the treaty protection in accordance with the Circular No. 124 taking effect from 1 October 2009.

Employment income earned by a treaty country resident while performing services in China which is either received from a China employer (individual or enterprise) or borne by a China permanent establishment is subject to individual income tax.

If a treaty country resident has a position or employment with a China enterprise or a China permanent establishment, the income earned by the employee while performing services in China in connection with his or her position or employment may be considered as being "paid" or "borne" by the China enterprise or China permanent establishment. It is interesting to note that *Circular 148*, in this context, does not refer to a "China employer", which would include an individual employer. The inclusion of this term would have complemented the entities of China enterprise and China establishment and thus completed the class of entities or persons in China that can hire employees. Notwithstanding this omission, the intent of the law should be construed to include individual China employers.

Where a China enterprise or China permanent establishment adopts the deemed profit method to calculate its Chinese enterprise income tax or is free from the Chinese enterprise income tax because it does not have any business receipts, the income received by a treaty resident individual will be deemed to have been paid by the China enterprise or borne by the China permanent establishment, regardless of whether the employment income is recorded in the books of the China enterprise or the China permanent establishment.

Residence in China for more than 183 days but less than a year

If a treaty resident individual resides in China for less than a year but more than 183 days within a calendar year/fiscal year/12-month period (whichever is prescribed by the relevant tax treaty), either consecutively or cumulatively, he or she will be subject to individual income tax on employment income received while performing services in

Under the exemption method, a contracting state simply does not tax income that, according to the tax treaty, may be taxed in the other contracting state.

However, as mentioned in ¶13-001, most countries that adopt the exemption method also apply the credit method to eliminate double taxation of investment income such as dividends, interest and royalties. In addition, these countries apply the credit method, to a certain extent, to eliminate double taxation of directors' fees, income derived by entertainers and athletes, etc. For eg under the *China/Norway* treaty, it is clear that the exemption method is the primary method adopted by Norway to eliminate double taxation. However, as far as dividends, interest, royalties, directors' fees, items of income not dealt with in the treaty and offshore activities are concerned, Norway applies the credit method to eliminate double taxation. Another example is the *China/Spain* treaty.

¶13-004 Elimination of double taxation of dividends, interest and royalties

As mentioned in ¶13-001 and ¶13-003, regardless of whether a country adopts the tax credit or tax exemption method as its predominant method to eliminate double taxation of income, it would generally employ the credit method to eliminate double taxation of investment income such as dividends, interest and royalties.

In the treaty context, the tax rate imposed by a contracting state on investment income derived by a resident of the other contracting state from sources within the first contracting state is generally lower than the tax rate that would otherwise apply under the domestic tax laws of the first contracting state. However, from the income recipient's perspective, the preferential treatment accorded under the treaty is not really preferential since the country of which the recipient is a resident retains the right to tax the income, and would only allow a credit to the extent of the tax the recipient actually paid to the other contracting state. Accordingly, the tax savings the recipient obtains under the treaty would merely be converted into tax revenues to the contracting state of which the recipient is a resident.

Therefore, to encourage foreign investment, China has always tried to negotiate for the so-called "fixed rate tax credit method" to be included in its treaties. Under this method, a fixed tax rate is provided in the treaty for purposes of eliminating double taxation of investment income, regardless of the amount of tax actually paid by the income recipient, whether pursuant to Chinese domestic laws or the preferential rate provided in the treaty. In other words, no matter how much tax the income recipient of a contracting state actually paid to China, the contracting state of which the recipient is a resident will deem the recipient as having paid the tax at the fixed rate provided in the treaty.

> ***Example***
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> In the *China/Japan* treaty, it is provided that the withholding rate on royalties derived by a Japanese resident from China sources cannot exceed 10%, ie a treaty preferential rate. However, the fixed rate credit method is also adopted in the *China/Japan* treaty whereby Chinese tax at a fixed rate of 20% is considered to have been paid by the Japanese resident on the China-source royalties for purposes of the Japanese resident claiming a tax credit in Japan. In other words, regardless of whether China taxed the Japanese resident pursuant to Chinese domestic law or the preferential rate accorded under the *China/Japan* treaty, Japan will allow the Japanese resident a credit for 20% of Chinese tax "deemed" paid.

The fixed rate credit method can be unilateral or bilateral. Under the unilateral method, only the contracting state with which China enters into a treaty would allow a credit to its residents under the fixed rate credit method and China would not reciprocate as far as Chinese residents are concerned. Under the bilateral method, both China and the other contracting state would allow tax credits under the fixed rate credit method to their respective residents.

Treaties that have adopted the unilateral method include the *China/Japan, China/Denmark, China/Finland, China/Canada, China/Netherlands, China/France, China/Belgium, China/Germany, China/Norway, China/Sweden, China/Poland, China/Australia, China/Kuwait, China/Switzerland, China/Spain, China/Hungary, China/Austria, China/United Arab Emirates, China/Luxembourg* and *China/Iceland* treaties.

Treaties that contain the bilateral method include the *China/Italy, China/Pakistan, China/Cyprus, China/former Czechoslovakia, China/Slovenia, China/Malta, China/Bangladesh, China/Korea, China/Vietnam, China/Jamaica and China/United Arab Emirates* and *China/Papua New Guinea* treaties.

Treaties that do not allow the fixed rate credit method include the *China/United States, China/Thailand, China/Bulgaria, China/Malaysia, China/former Yugoslavia, China/the United Kingdom, China/Brazil, China/Romania, China/Mongolia, China/Russia, China/India, China/Mauritius, China/Belarus, China/Croatia, China/Israel, China/Slovenia, China/Turkey, China/Ukraine, China/Armenia, China/Lithuania, China/Latvia, China/Uzbekistan and China/New Zealand, China/Venezuela, China/Seychelles China/Nepal, China/Albania, China/Cuba, China/Georgia, China/Indonesia, China/Iran, China/Kazakhstan, China/Kyrgyzstan, China/Sri Lanka, China/Singapore* and *China/Venezuela* treaties and *Mainland/Macau* arrangement.

¶13-005 Mainland/Hong Kong double taxation arrangement

In order to minimise double taxation of cross-border activities between Mainland China and the Hong Kong Special Administrative Region, *Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income* (hereafter, the "Old Mainland/Hong Kong Arrangement") was entered into between China and Hong Kong in February 1998.

¶16-006 Individual income tax treatment for Chinese nationals working abroad

Along with China economic reforms and the opening-up of its domestic market, more and more Chinese nationals are assigned to work abroad by domestic companies and foreign investment enterprises.

According to many double tax treaties and the relevant tax law of the various countries, Chinese nationals are generally subject to foreign tax if certain criteria (usually regarding residency and source of income) are met. However, being a Chinese national, the individual's worldwide income is generally subject to PRC individual income tax. Under the PRC individual income tax law, there is a mechanism to avoid the double taxation of non-China-sourced income earned by a Chinese national. For income earned by Chinese nationals outside China, the amount of foreign tax paid outside China is allowed for credit against the amount of tax payable computed in accordance with the applicable PRC individual income tax law. The amount to be credited, however, shall not exceed the amount of tax payable on the overseas income calculated according to the provisions of the PRC individual income tax law.

The term "foreign taxes paid" means the amount of income tax actually paid on the income derived by the individual from sources outside China, pursuant to the regulations of the country or region from which that income was generated.

If the actual amount of foreign taxes paid in a country or region is less than the limit of the credit for that country or region, the balance should be payable in China. If the actual amount of foreign taxes paid exceeds the limit for that country or region, the excess amount is not creditable from the amount of individual income tax payable in that tax year. However, the excess amount may be carried forward and is subtracted from any surplus of deduction for the country or region in subsequent years, up to a maximum of five years.

Example

Mr W, a Chinese national is assigned to work in country A, his annual salary derived from country A is US$50,000, which is paid evenly in 12-month installments. According to the related tax regulation of country A, Mr W has paid US$7,500 in tax in country A. (US$1=RMB7)

Creditable limit = [(US$50,000 × 7/12 – 4,800*) × 25% – RMB1,375] × 12/7
= US$8,086

As the tax paid in country A is less than the PRC IIT estimated, all the US$7,500 can be credited and Mr Wang is also required to pay the difference of US$586 (ie 8,086–7,500) to the Chinese tax authority.

**When we calculate the individual income tax liability for local Chinese taxpayers who are resident in China but derive wages and salaries from sources outside China, an additional fixed monthly deduction of RMB 2,800 should be granted to them. In other words, they are entitled to claim RMB4,800 as monthly deduction*

When claiming a tax credit, a taxpayer must provide the original tax payment receipt issued by the overseas taxation authorities.

The Chinese company is the withholding agent and required to withhold and report individual income tax from the salaries paid in China to the expatriate Chinese nationals on a monthly basis.

Expatriate Chinese nationals are required to file an annual tax settlement return with the local tax authorities based on their total employment income derived in both China and host country, within 30 days after the end of a tax year. For expatriate Chinese nationals who should self-report their overseas income (eg where no withholding agent exists), if they return to China before the end of a tax year, they are required to report to the local tax authorities and file a tax settlement return within seven days of the following month after their return date.

The State Administration of Taxation issued a circular in middle 1998 requiring the China employer to provide the overseas secondment details to the local tax authorities with 30 days after the calendar year end. Theoretically, China employer has the obligation to notify the tax authority of the secondment of their expatriate Chinese nationals. In practice, as far as we are aware, enforcement of this tax circular is not stringent.

The PRC individual income tax law and its implementing rules provide very limited information or guidance regarding the individual income tax compliance requirements for Chinese nationals working overseas. For example, most local tax bureaus do not publish instructions for assessing the taxability on various allowances paid to Chinese nationals, eg housing, relocation allowances and overseas social securities etc.

In view of the above uncertainties, it is important that taxpayers communicate with their tax advisors and local tax authorities regarding compliance matters so that practical procedures for filing returns and paying taxes can be worked out.

¶16-007 Permanent Establishments arising from the secondment of foreign employees to China

On 1 September 2010, the Chinese State Administration of Taxation (SAT) publicly released the first detailed interpretation of the provisions in China's tax treaties since the new Enterprise Income Tax Law took effect on 1 January 2008. The guidance was issued in the context of an interpretation of the 2007 tax treaty and protocol between China and Singapore ("*Interpretation of the Agreement between the Government of the People's Republic of China and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol to the Agreement*," *Guoshuifa (2010) No 75* ("Circular 75")), but also applies to any similar provisions in China's other tax treaties/arrangements, and supersedes any previous interpretations that are inconsistent with *Circular 75*. *Circular 75* therefore should be regarded as general guidance on tax treaty issues in practice.

Circular 75 addresses most of the articles in the China-Singapore Treaty. It provides detailed guidance on important concepts, such as "person," "resident" and "permanent establishment" (PE), as well as guidance on the application of the dividend,

cumulatively lived within the territory of China for a period not exceeding 183 days within a time period stipulated in the tax agreements:

In accordance with the provisions of paragraph 2 of Article 1 of the Tax Law and Article 7 of the Detailed Implementing Rules and the relevant provisions of the tax agreements, individuals without residence within the territory of China who have continuously or cumulatively lived within the territory of China for a period not exceeding 90 days in a tax year, or who have continuously or cumulatively lived within the territory of China for a period not exceeding 183 days within a time period stipulated in the tax agreements, will be exempt from declaration and payment of individual income tax on that portion of income derived from wages and salaries paid by overseas employers where those payments are not borne by the employer's office within the territory of China.

The individuals referred to above will only declare and pay individual income tax on that portion of income derived, during their actual working period within the territory of China, from wages and salaries paid by Chinese domestic enterprises or individual employers or wages and salaries borne by offices in China. Where the Chinese domestic enterprise or office in China is one which calculates and is subject to enterprise income tax according to the authorised profit method or is one which is not subject to enterprise income tax because it has no business income, wages and salaries derived by an individual during his or her actual working period within the territory of China where that individual holds a post in or who is employed by that Chinese domestic enterprise or office in China, will be regarded as wages and salaries paid by that Chinese domestic enterprise or borne by that office in China. This will be so regardless of whether or not such payments were recorded in the account book of that Chinese domestic enterprise or office in China.

The monthly individual income tax payable by the individuals referred to must be declared and paid within the time limit prescribed by the Tax Law.

3. Determination of the tax obligation for individuals without residence within the territory of China who have continuously or cumulatively lived within the territory of China for a period exceeding 90 days in a tax year or who have continuously or cumulatively lived within the territory of China for a period exceeding 183 days but less than one (1) year within a time period stipulated in the tax agreements:

In accordance with the provisions of paragraph 2 of Article 1 of the Tax Law and the relevant provisions of the tax agreements, an individual without residence in the territory of China who has continuously or cumulatively lived within the territory of China for a period exceeding 90 days in a tax year or who has continuously or cumulatively lived within the territory of China for a period exceeding 183 days but less than one (1) year within a time period stipulated in the tax agreements must declare and pay individual income tax on income derived, during his or her actual working period within the territory of China, from wages and salaries paid by both the Chinese domestic enterprise or individual employer and the overseas enterprise or individual employer. Income from wages and salaries derived during a period of work outside the territory of China will not be subject to individual income tax, except in the circumstances stipulated in Article 5 of the Notice.

The monthly individual income tax payable by the individuals referred to above must be declared and paid within the time limit prescribed by the Tax Law. Where an individual derives wages and salaries paid by the overseas employer and not borne by the overseas employer's office in China, the monthly individual income tax payable must be declared and paid within the time limit prescribed by the Tax Law if it has been arranged in advance that the taxpayer will live within the territory of China continuously or cumulatively for a period exceeding 90 days in a tax year or 183 days within a time period stipulated in the tax agreements. Where it cannot be arranged in advance that the taxpayer will live within the territory of China continuously or cumulatively for a period exceeding 90 days in a tax year or exceeding 183 days within a time period stipulated in the tax agreements, the individual income tax payable for the previous months may be declared and paid in a lump sum within seven (7) days of the month following that 90 or 183 day period.

4. Determination of the tax obligation for individuals without residence within the territory of China but who have lived in China for not less than one (1) full year:

In accordance with the provisions of paragraph 1 of Article 1 of the Tax Law and Article 6 of the Detailed Implementing Rules, an individual without residence within the territory of China but who has lived in China for not less than one (1) full year and not more than five (5) years must declare and pay individual income tax on his or her income derived, during his or her working period within the territory of China, from wages and salaries paid by the Chinese domestic enterprise or individual employer and the overseas enterprise or individual employer. In relation to income from wages and salaries derived from a period of work during a temporary absence from China as mentioned in Article 3 of the Detailed Implementing Rules, the individual concerned will pay individual income tax only on that portion of his or her income derived from wages and salaries paid by the Chinese domestic enterprise or individual employer. If the Chinese domestic enterprise or office in China is one which calculates and is subject to enterprise income tax in accordance with the authorised profit method or is one which is not subject to enterprise income tax because it has no business income, wages and salaries derived by an individual who holds a post in or who is employed by that Chinese domestic enterprise or office in China will be regarded as payments made by that Chinese domestic enterprise or office in China, regardless of whether such payments are recorded in the account book of that Chinese domestic enterprise or office in China.

An individual referred to above who, in one (1) month, has derived wages and salaries during his or her working period within the territory of China as well as wages and salaries paid by the domestic enterprise or individual employer during a period of work in a temporary absence from China, must combine these when calculating the individual income tax payable for the current month and declare and pay the tax within the time limit prescribed by the Tax Law.

5. Determination of the tax obligation for the directors and senior management personnel of Chinese domestic enterprises:

The provisions of Articles 2 and 3 of this Notice will not apply to directors' fees or wages and salaries paid by Chinese domestic enterprises to individuals who hold the post of director or to senior management personnel in such Chinese domestic enterprises. An individual must declare and pay individual income tax during the period

4. In the case of income from the leasing of property, the income derived during one month;
5. In the case of interest, dividend and special dividend income, the income derived each time interest, dividends or special dividends are paid; and
6. In the case of casual income, each instance in which such income is received.

Article 22. Tax payable on income from the assignment of property shall be calculated on the basis of the proceeds received from a single assignment of property less the original value of the property and reasonable expenses.

Article 23. Where the same item of income is derived by two or more individuals, tax thereon shall be calculated and paid separately on the income derived by each individual after expenses have been deducted in accordance with the Tax Law.

Article 24. For the purposes of the second paragraph of Article 6 of the Tax Law, the term "income that individuals donate to educational and other public welfare undertakings" refers to the donation by individuals of their income to educational and other public welfare undertakings, and to areas suffering from serious natural disasters or poverty, through social organizations in the People's Republic of China or state authorities.

That part of the amount of donations which does not exceed 30% of the taxable income declared by a taxpayer may be deducted from his taxable income.

Article 25. Basic pension insurance premiums, basic medical insurance premiums, unemployment insurance premiums and housing common reserves paid by work units for individuals and by individuals shall be deducted from the taxable income of taxpayers in accordance with state regulations.

Article 26. For the purposes of the third paragraph of Article 6 of the Tax Law, the term "wage and salary income derived from sources outside the People's Republic of China" shall mean income from wages and salaries derived from the holding of any office or employment outside the People's Republic of China.

Article 27. For the purposes of the third paragraph of Article 6 of the Tax Law, the term "additional deductions for expenses" shall refer to a monthly deduction for expenses in the amount specified in Article 29 hereof over and above the deduction for expenses of RMB 2000.

Article 28. For the purposes of the third paragraph of Article 6 of the Tax Law, the term "the applicable scope of such additional deductions for expenses" shall mean expenses incurred for:

1. Foreign nationals working in foreign-invested enterprises and foreign enterprises in the People's Republic of China;
2. Foreign experts hired to work in enterprises, institutions, social organizations and state authorities in the People's Republic of China;
3. Individuals who are domiciled in the People's Republic of China and derive wage and salary income by virtue of their holding any office or employment outside the People's Republic of China; and

4. Other personnel as determined by the competent finance authority or tax authority of the State Council.

Article 29. The additional deduction for expenses stipulated in the third paragraph of Article 6 of the Tax Law shall be RMB 2800.

Article 30. Overseas Chinese and Hong Kong, Macao and Taiwan compatriots shall be treated by reference to Articles 27, 28 and 29 hereof.

Article 31. Individuals who are domiciled in the People's Republic of China, or who are not domiciled but have resided in the People's Republic of China for no less than one year shall calculate the amounts of tax payable for income derived from sources inside and outside the People's Republic of China separately.

Article 32. For the purposes of Article 7 of the Tax Law, the term "the amount of individual income tax paid outside the People's Republic of China" shall mean the amount of income tax payable, and actually paid, on income derived by a taxpayer from sources outside the People's Republic of China in accordance with the laws of the country or region from which that income was derived.

Article 33. For the purposes of Article 7 of the Tax Law, the term "the amount of tax payable calculated in accordance with the provisions of the Tax Law" shall mean the amount of tax payable on income derived by a taxpayer from sources outside the People's Republic of China, calculated separately for each different country or region and for each different tax category, in accordance with the standards for the deduction of expenses and the applicable tax rate stipulated in the Tax Law. The sum of the amounts of tax payable in the different tax categories within the same country or region shall be the maximum amount claimed as a deduction for that country or region.

Where the actual amount of individual income tax paid by a taxpayer in a country or region outside the People's Republic of China is less than the maximum amount that can be claimed for deductions for that country or region as calculated in accordance with the provisions of the preceding paragraph, the balance shall be liable to taxation in the People's Republic of China. Where the amount exceeds the maximum amount that can be claimed as a deduction for that country or region, the excess portion may not be deducted from the amount of tax payable for that tax year; however, such excess portion may be deducted retroactively from any unused portion of the maximum amount that can be claimed as a deduction for that country or region in subsequent tax years, up to a maximum period of five years.

Article 34. When a taxpayer applies for approval to deduct any amount of individual income tax paid outside the People's Republic of China in accordance with Article 7 of the Tax Law, he shall provide the original tax payment receipt issued by the tax authority outside the People's Republic of China.

Article 35. When withholding agents make taxable payments to individuals, they shall withhold tax in accordance with the Tax Law, pay the tax over to the treasury in a timely manner, and keep special records for future inspection.

For the purposes of the preceding paragraph, the term "payments" shall include payments made in cash, payments by remittance, payments by account transfer, and payments in the form of negotiable securities, physical objects and other forms.

Circular of the State Administration of Taxation on Issues Concerning the Implementation of Several Policies on Individual Income Tax

Guoshuifa (2009) No 121

17 August 2009

To the local taxation bureaus of all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan and to the state taxation bureaus of Xizang, Ningxia, and Qinghai provinces (autonomous regions):

Recently, some areas have reported that the implementation standards for some policies on individual income tax are not specific enough. For the purpose of levying tax fairly and strengthening tax administration, in accordance with the *Individual Income Tax Law of the People's Republic of China* and its implementing rules and other relevant provisions, the implementation standards for some policies on individual income tax are hereby set out as follows:

Article 1. The tax calculation method for "double pay" specified in article 1 of the *Official Reply of the State Administration of Taxation to Issues Concerning Some Policies on Individual Income Tax* (*Guoshuihan (2002) No 629*) shall cease to be effective.

Article 2. Issue concerning tax on director's fees

1. The method to levy tax on director's fees as remunerations of personal services specified in article 8 of the *Circular of the State Administration of Taxation on Printing and Distributing the Rules on Some Issues Concerning the Levying of Individual Income Tax* (*Guoshuifa (1994) No 89*) shall only apply to an individual who is a director or supervisor of a company but does not hold a post or is not hired by the company.
2. Where an individual holds a post or is hired by a company (or its affiliated company) and is concurrently its director or supervisor, his director's fees or supervisor's fees shall be incorporated into its personal income to be subject to individual income tax as salary and other remuneration.
3. Article 1 of the *Circular of the State Administration of Taxation on Issues Concerning Levying Individual Income Tax on Directors of Foreign-invested Enterprises Who Are Direct Management Personnel* shall cease to be effective.

Article 3. Issue concerning the definition of overseas Chinese and the application of surcharge deduction

1. The definition of overseas Chinese

   In accordance with the provisions of the *Circular of the Overseas Chinese Affairs Office of the State Council on Printing and Distributing the Rules on Defining the Identity of Overseas Chinese, Expatriate Chinese and their Family Members Who Return to China* (*Guoqiaofa (2009) No 5*), overseas Chinese shall refer to Chinese citizens who reside abroad. The specific definition is as follows:

   (1) "Reside" shall mean a Chinese citizen has obtained the right to live in the state of his residence for a long time or permanently, and has lived consecutively in such state for two years, which in two years shall be no less than 18 months accumulatively.

   (2) A Chinese citizen who has not obtained the right to live in the state of his residence for a long time or permanently but has obtained the lawful qualification to reside in such state consecutively for more than 5 years (inclusive), which in 5 years shall live in such state for no less than 30 months accumulatively, shall be deemed as an overseas Chinese.

   (3) A Chinese citizen who studies abroad (including state-funded and self-funded) or travels abroad on business (including dispatched labourers), during such period, shall not be deemed as an overseas Chinese.

2. Issue concerning the application of surcharge deduction on overseas Chinese

   In respect of salary and other remuneration obtained by an person who satisfies the requirements specified in document *Guoqiaofa (2009) No 5* during the time he works in China, the tax authority may, pursuant to the evidential materials provided by the taxpayer which prove his identity as an overseas Chinese, apply the provision on surcharge deduction in accordance with article 30 of the *Implementing Regulations on Individual Income Tax Law of the People's Republic of China* when it calculates and levies individual income tax.

Article 4. Issue concerning levying taxes on transfer of real estate under division because of divorce

1. Separation of real estate by way of property division because of divorce is the disposal of common properties by the married couple. Transfer of real estate because of divorce shall not be subject to individual income tax.
2. The balance of income obtained by an individual from transfer of real estate under division because of divorce less the original value of the real estate and reasonable expenses shall be subject to individual income tax at an applicable tax rate. The original value of the real estate shall be the amount derived from by multiplying the sum of the total value of the real estate when it is first purchased and relevant taxes and expenses by the proportion of transferor's ownership of the real estate.
3. Income obtained by an individual from transfer of real estate under division because of divorce, in case the real estate is the sole house for household living for more than 5 years, may be exempted from individual income tax upon application. The time of purchase of such real estate shall be determined in accordance with the *Circular of the State Administration of Taxation on Some Specific Issues Concerning the Implementation of Real Estate Tax Policies* (*Guoshuifa (2005) No 172*).

intellectual properties ascertained by texts and information in industry, commerce and scientific experiments. Whether these rights have been or need to be registered with relevant departments is of no substance. It also needs to be noted that this definition also includes payments in other permissible situations such as the compensations paid due to the infringement of rights.

(2) Royalties shall also include the income derived from the use of or the right to use industrial, commercial and scientific equipment, ie equipment rents. However, the interests included in the payments in the relevant financed lease agreement for which the ownership of the equipment will be transferred to the users shall not be included. The income derived from the use of immovable property is also not included. Article 6 shall apply for such income.

(3) Royalties shall also include the income derived from the use of or the right to use information obtained from industrial, commercial and scientific experience. The experience shall be understood as proprietary technologies. These technologies are usually required in the production of goods or the replication of work procedures and have not been disclosed and are proprietary in their technical nature. For royalties related to proprietary technologies, they usually involve the technology licensor agreeing to transfer the license to use the undisclosed technologies to another party and such party can use the technologies freely. In normal circumstances, the technology licensor does not participate in the actual application of the technology by the licensee and the outcome of implementation is not guaranteed. The technologies being licensed usually have already existed but they may be further developed and used at the request of licensee. In the contract, there is usually a clause related to the confidentiality of the use of such technologies.

(4) In a service contract, if the service provider uses some specialised knowledge and technologies in its service provision process and the use of these technologies has not been licensed, these services are not within the scope of royalties. If the outcome of the service provision by the service provider is within the scope of royalties defined above and the service provider still owns the outcome and the service recipient only has the right to use regarding this income, the income derived from such services shall be within the scope of royalties.

(5) In the process of transferring or licensing the proprietary technologies, if the technology licensor sends personnel to provide support and guidance services and service fees are charged, then no matter whether such fees are collected separately or included in the technical price list, they shall be regarded as royalties and this Article shall apply. If the service of the above-mentioned personnel has also constituted a permanent establishment, for the income derived from the service of permanent establishment, Article 7 of this Agreement regarding business profits shall apply. For personnel who provide services, Article 15 regarding non-independent employment services shall apply. For income which does not constitute as permanent establishment or is not attributed to permanent establishment, such service income shall still be treated as royalties.

(6) For remuneration derived from after-sale services under pure trade in goods, the remuneration derived from the services provided by the seller to the buyer during the product guarantee period, the income derived from the relevant professional

services individuals or organisations provide such as engineering, management and consultancy, they shall not be regarded as royalties. Instead, they shall be considered as service activities and Article 7 regarding business profits shall apply.

IV. The fourth paragraph stipulates that when the royalties beneficiaries are the residents of One Side of the signatories, set up permanent establishments in the Other Side or engage in independent employment services on fixed bases and the royalties paying rights form part of the assets of the permanent establishments or fixed bases or have other actual relationship with the establishments or fixed bases, then the source country may include the royalties as part of the profits of the permanent establishments and tax such royalties.

It should be noted that only when the relevant business activities in which the dividends are derived are carried out in permanent establishments and the share ownership has the above-mentioned actual relationship with the permanent establishments shall this Article be applicable. If the country in which the permanent establishments are located have preferential tax treatment provisions for the dividends obtained by such establishments, and if the dividend beneficiaries transfer the shares to the permanent establishments just to misuse this Agreement, the provisions in this Article shall not be applicable.

V. The sixth paragraph stipulates the principle that the country in which the interest payer is a resident is the source country of the royalties. However, there is one exception to this provision. When royalty payers have permanent establishments or fixed bases in One Side of the signatories and the royalties paid are usually borne by such establishments or bases, then no matter the royalties payers are the residents of which Side of the signatories, the source of royalties shall be the signatory in which the permanent establishments or fixed bases are situated. For example, when the permanent establishment set up by a third country in China pays royalties to Singaporean residents and such royalties have actual relationship with the establishment, the royalties shall be considered as originated from China and China shall have the preferential right to tax in accordance with the China-Singapore Agreement. For example, if Singaporean residents are the beneficiaries of the royalties, they shall enjoy the treatments in this Agreement.

VI. The sixth paragraph is a provision related to how the clause of preferential treatment in this Agreement shall be applicable to associated transactions. When there are certain special relationship between payers and beneficiaries or between them and other persons and these have led to over-payment of royalties, the amount in excess of that calculated using fair market price shall not enjoy the preferential treatment stated in this Agreement.

VII. The seventh paragraph is an anti-misuse provision. The preferential treatment related to dividends in this Agreement shall not apply to the transactions or arrangements which are carried out mainly to obtain the preferential tax treatment status. When taxpayers enjoy the preferential tax treatments in this Agreement in an inappropriate manner due to these transactions and arrangements, the administration authorities reserve the rights to make adjustments.

第八十一条 税务人员利用职务上的便利，收受或者索取纳税人、扣缴义务人财物或者谋取其他不正当利益，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

第八十二条 税务人员徇私舞弊或者玩忽职守，不征或者少征应征税款，致使国家税收遭受重大损失，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

税务人员滥用职权，故意刁难纳税人、扣缴义务人的，调离税收工作岗位，并依法给予行政处分。

税务人员对控告、检举税收违法违纪行为的纳税人、扣缴义务人以及其他检举人进行打击报复的，依法给予行政处分；构成犯罪的，依法追究刑事责任。

税务人员违反法律、行政法规的规定，故意高估或者低估农业税计税产量，致使多征或者少征税款，侵犯农民合法权益或者损害国家利益，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

第八十三条 违反法律、行政法规的规定提前征收、延缓征收或者摊派税款的，由其上级机关或者行政监察机关责令改正，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

第八十四条 违反法律、行政法规的规定，擅自作出税收的开征、停征或者减税、免税、退税、补税以及其他同税收法律、行政法规相抵触的决定的，除依照本法规定撤销其擅自作出的决定外，补征应征未征税款，退还不应征收而征收的税款，并由上级机关追究直接负责的主管人员和其他直接责任人员的行政责任；构成犯罪的，依法追究刑事责任。

第八十五条 税务人员在征收税款或者查处税收违法案件时，未按照本法规定进行回避的，对直接负责的主管人员和其他直接责任人员，依法给予行政处分。

第八十六条 违反税收法律、行政法规应当给予行政处罚的行为，在五年内未被发现的，不再给予行政处罚。

第八十七条 未按照本法规定为纳税人、扣缴义务人、检举人保密的，对直接负责的主管人员和其他直接责任人员，由所在单位或者有关单位依法给予行政处分。

第八十八条 纳税人、扣缴义务人、纳税担保人同税务机关在纳税上发生争议时，必须先依照税务机关的纳税决定缴纳或者解缴税款及滞纳金或者提供相应的担保，然后可以依法申请行政复议；对行政复议决定不服的，可以依法向人民法院起诉。

当事人对税务机关的处罚决定、强制执行措施或者税收保全措施不服的，可以依法申请行政复议，也可以依法向人民法院起诉。

当事人对税务机关的处罚决定逾期不申请行政复议也不向人民法院起诉、又不履行的，作出处罚决定的税务机关可以采取本法第四十条规定的强制执行措施，或者申请人民法院强制执行。

第六章 附则

第八十九条 纳税人、扣缴义务人可以委托税务代理人代为办理税务事宜。

第九十条 耕地占用税、契税、农业税、牧业税征收管理的具体办法，由国务院另行制定。

二、该公司雇员以非上市公司股票期权形式取得的工资薪金所得，在计算缴纳个人所得税时，因一次收入较多，可比照《国家税务总局关于调整个人取得全年一次性奖金等计算征收个人所得税方法问题的通知》（国税发〔2005〕9号）规定的全年一次性奖金的征税办法，计算征收个人所得税。

三、该公司雇员以非上市股票期权形式取得所得的纳税义务发生时间，按雇员的实际购买日确定，其所得额为其从公司取得非上市股票的实际购买价低于购买日该股票价值的差额。

由于非上市公司股票没有可参考的市场价格，为便于操作，除存在实际或约定的交易价格，或存在与该非上市股票具有可比性的相同或类似股票的实际交易价格情形外，购买日股票价值可暂按其境外非上市母公司上一年度经中介机构审计的会计报告中每股净资产数额来确定。

国家税务总局关于个人取得房屋拍卖收入征收个人所得税问题的批复

国税函〔2007〕1145号

二〇〇七年十一月二十日

广东省地方税务局:

你局《关于个人取得房屋拍卖收入适用个人所得税征收率问题的请示》（粤地税发〔2007〕131号）收悉。经研究，批复如下:

根据《国家税务总局关于加强和规范个人取得拍卖收入征收个人所得税有关问题的通知》（国税发〔2007〕38号）和《国家税务总局关于个人住房转让所得征收个人所得税有关问题的通知》（国税发〔2007〕108号）规定精神，个人通过拍卖市场取得的房屋拍卖收入在计征个人所得税时，其房屋原值应按照纳税人提供的合法、完整、准确的凭证予以扣除；不能提供完整、准确的房屋原值凭证，不能正确计算房屋原值和应纳税额的，统一按转让收入全额的3%计算缴纳个人所得税。

为方便纳税人依法履行纳税义务和税务机关加强税收征管，纳税人应比照国税发〔2006〕108号文件第四条的有关规定，在房屋拍卖后缴纳营业税、契税、土地增值税等税收的同时，一并申报缴纳个人所得税。

定，从事与该信息相关的证券、期货交易活动，或者明示、暗示他人从事相关交易活动，情节严重的，依照第一款的规定处罚。”

三、将刑法第二百零一条修改为：“纳税人采取欺骗、隐瞒手段进行虚假纳税申报或者不申报，逃避缴纳税款数额较大并且占应纳税额百分之十以上的，处三年以下有期徒刑或者拘役，并处罚金；数额巨大并且占应纳税额百分之三十以上的，处三年以上七年以下有期徒刑，并处罚金。

“扣缴义务人采取前款所列手段，不缴或者少缴已扣、已收税款，数额较大的，依照前款的规定处罚。

“对多次实施前两款行为，未经处理的，按照累计数额计算。

“有第一款行为，经税务机关依法下达追缴通知后，补缴应纳税款，缴纳滞纳金，已受行政处罚的，不予追究刑事责任；但是，五年内因逃避缴纳税款受过刑事处罚或者被税务机关给予二次以上行政处罚的除外。”

四、在刑法第二百二十四条后增加一条，作为第二百二十四条之一：“组织、领导以推销商品、提供服务等经营活动为名，要求参加者以缴纳费用或者购买商品、服务等方式获得加入资格，并按照一定顺序组成层级，直接或者间接以发展人员的数量作为计酬或者返利依据，引诱、胁迫参加者继续发展他人参加，骗取财物，扰乱经济社会秩序的传销活动的，处五年以下有期徒刑或者拘役，并处罚金；情节严重的，处五年以上有期徒刑，并处罚金。”

五、将刑法第二百二十五条第三项修改为：“未经国家有关主管部门批准非法经营证券、期货、保险业务的，或者非法从事资金支付结算业务的；”

六、将刑法第二百三十九条修改为：“以勒索财物为目的绑架他人的，或者绑架他人作为人质的，处十年以上有期徒刑或者无期徒刑，并处罚金或者没收财产；情节较轻的，处五年以上十年以下有期徒刑，并处罚金。

“犯前款罪，致使被绑架人死亡或者杀害被绑架人的，处死刑，并处没收财产。

“以勒索财物为目的偷盗婴幼儿的，依照前两款的规定处罚。”

七、在刑法第二百五十三条后增加一条，作为第二百五十三条之一：“国家机关或者金融、电信、交通、教育、医疗等单位的工作人员，违反国家规定，将本单位在履行职责或者提供服务过程中获得的公民个人信息，出售或者非法提供给他人，情节严重的，处三年以下有期徒刑或者拘役，并处或者单处罚金。

“窃取或者以其他方法非法获取上述信息，情节严重的，依照前款的规定处罚。

“单位犯前两款罪的，对单位判处罚金，并对其直接负责的主管人员和其他直接责任人员，依照各该款的规定处罚。”

八、在刑法第二百六十二条之一后增加一条，作为第二百六十二条之二：“组织未成年人进行盗窃、诈骗、抢夺、敲诈勒索等违反治安管理活动的，处三年以下有期徒刑或者拘役，并处罚金；情节严重的，处三年以上七年以下有期徒刑，并处罚金。”

九、在刑法第二百八十五条中增加两款作为第二款、第三款：“违反国家规定，侵入前款规定以外的计算机信息系统或者采用其他技术手段，获取该计算机信息系统中存储、处理或者传输的