



漢坤律師事務所  
HAN KUN LAW OFFICES

# Newsletter

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## Insights & Ideas

### **Sixth Amended China Individual Income Tax Law Taking Effect This September (Author: Bing XUE; Jiaxin LIU)**

On April 25, 2011, the Standing Committee of the National People's Congress (the "NPC") released the draft amendment to the China Individual Income Tax Law (the "IIT Law") on the official website of NPC to solicit public opinion. In the course of the solicitation, over 230,000 pieces of public opinion were collected by the NPC. On June 30, 2011, the twenty-first meeting of the Standing Committee of the 11th NPC approved the sixth amendment to the PRC Individual Income Tax Law (the "New IIT Law"). This is the sixth revision to the IIT Law since it took effect in 1980. The New IIT Law will become effective on September 1, 2011. We summarize below the key changes under the New IIT Law:

#### **Increase of the Monthly Standard Deduction**

Pursuant to the New IIT Law, the monthly standard deduction for income of salaries and wages will increase from RMB2,000/month to RMB3,500/month. As the increase of monthly standard deduction will result in the adjustment of the taxable income threshold, the New IIT Law will bring substantial benefits to the low-wage earners. However, it is still uncertain whether the total monthly standard deduction for expatriate employees would be increased by the same extent. We expect this uncertainty will be clarified in the revision to the Implementation Regulations of the New IIT Law which shall be announced by the State Council later.

#### **Revision to the Tax Rates and Tax Brackets**

Pursuant to the New IIT Law, the income tax rates applicable to income of salaries and wages will change from the current nine-bracket progressive rates to seven-bracket progressive rates; the lowest rate will reduce from 5% to 3%; the income tax rates of 15% and 40% will be eliminated and the income level applicable to each tax rate will be adjusted accordingly. The new tax rate applicable to income of salaries and wages are as follows:

<b>Bracket</b>	<b>Monthly Taxable Income</b>	<b>Tax rate (%)</b>
1	Income of RMB 1,500 or less	3
2	The part of income in excess of RMB 1,500 to 4,500	10
3	The part of income between RMB 4,500 and 9,000	20
4	The part of income between RMB 9,000 and 35,000	25
5	The part of income between RMB 35,000 and 55,000	30
6	The part of income between RMB 55,000 to 80,000	35
7	The part of income in excess of RMB 80,000	45

## Extension of the Tax Filing Deadline

The deadline for monthly individual income tax filing and payment will be extended from the 7th day to the 15th day of the following month. This makes the filing deadlines for individual income tax consistent with that of other taxes such as Enterprise Income Tax, Value-Added Tax and Business Tax.

## Adjustment on Tax Policies Applicable to Self-Employed Industrial and Commercial Households

The individual income tax rate table applicable to income earned by self-employed industrial and commercial households from production or business operation and income gained by enterprises and institutions from contracted or leased operation has also been modified as follows:

Bracket	Annual Taxable Income	Tax rate (%)
1	Income of RMB 15,000 or less	5
2	The part of income between RMB 15,000 and 30,000	10
3	The part of income between RMB 30,000 and 60,000	20
4	The part of income between RMB 60,000 to 100,000	30
5	The part of income in excess of RMB 100,000	35

### Han Kun Note:

We believe that the approval of the New IIT Law serves as a significant measure to implement the national strategy of reasonably adjusting income-distribution relationship, accelerating the reform of fiscal and taxation systems as set out in China's "12th Five-Year Plan". It is anticipated that the PRC tax authorities will take more actions to strengthen the individual income tax collection and more additional amendments could be brought into the next round of the individual income tax reform.

## Legal Updates

### 1. **Brief of Certain Provisions on the Implementation of the Social Insurance Law of the People's Republic of China (Author: Ying ZHOU; Yuchun TANG)**

*The Social Insurance Law of the People's Republic of China* (the “**Social Insurance Law**”), which has gone through four deliberations, was finally adopted on October 28, 2010, and came into force on July 1, 2011. To ensure the implementation of the Social Insurance Law, Ministry of Human Resources and Social Security has promulgated *Certain Provisions on the Implementation of the Social Insurance Law of the People's Republic of China* (“**Certain Provisions**”) on June 29, 2011, which came into force simultaneously with the Social Insurance Law. Certain Provisions has mainly specified the following:

#### **Improve the measures for treatment for participants who have paid the basic pension insurance premiums for less than 15 years at the statutory retirement age and measures for inter-regional transfer and continuity of basic pension insurance relations**

The Social Insurance Law has stipulated to establish a national coordination basic pension insurance system and realize the inter-regional transfer of basic pension insurance. With respect to participants who have paid the basic pension insurance premiums for less than 15 years at the statutory retirement age, Certain Provisions specifies that (1) such participants may continue to pay the premiums until the cumulative premium payment period reaches 15 years in the original insurance district; (2) such participants who have participated in the employees' basic pension insurance scheme and have moved to other provinces to work, may continue to pay the premiums until the cumulative premium payment period reaches 15 years after the places to collect the insurance benefits have been determined according to the provisions of the Notice of the General Office of the State Council on Forwarding the Interim Measures for Transfer and Continuity of Basic Endowment Insurance Relationship of Employees of Urban Enterprises Promulgated by the Ministry of Human Resources and Social Security and the Ministry of Finance (Guo Ban Fa [2009] No. 66); (3) such participants may apply for transferring the premium to the new type pension fund for rural residents or the pension fund for urban residents at the place of their registered permanent residence and enjoy corresponding benefits; and (4) such participants who are not transferring the premium to the new type pension fund for rural residents or the pension fund for urban residents at the place of their registered permanent residence, may apply to terminate the employees' basic pension insurance scheme in writing, and apply for the withdrawal of all the funds deposited in their individual account. To protect the interests of the applicants, Certain Provisions stipulates that the social insurance agencies which have received the written application, shall, in written form, inform the applicants of their rights to transfer the premium to the new type pension fund for rural residents or the pension fund for urban residents and the

consequences of termination of the employees' basic pension insurance scheme. The employees' basic pension insurance scheme shall not be terminated unless confirmed by the insurance applicants in writing.

In accordance with Certain Provisions, participants who have paid the basic pension insurance for less than 15 years at the statutory retirement age and participated in the insurance scheme before the implementation of the Social Insurance Law and whose accumulative payment period is still less than 15 years after a 5-year extension, may pay a lump sum premium to realize the 15-year cumulative premium payment period requirement. Those who have participated in the employees' basic pension insurance scheme and have moved to other places to work, shall have their pension calculated based on different segments of the period and collectively paid after reaching the statutory retirement age.

**Grant access to treatment in non-contracted medical institutions during the process of emergency and rescue; and expand to an appropriate extent of the scope of medicine for rescuing**

For the purpose of caring to the social insurance participants, Certain Provisions stipulates that in the case of emergency and rescue, the social insurance participants can get access to treatment in non-contracted medical institutions, and the scope of medicine for rescuing may be expanded to an appropriate extent.

**Specify the work-related injury insurance premium payment method in the case of employees who work concurrently for two or more employers and clarify the criterions of alcohol intoxication and some work-related insurance benefits**

Certain Provisions specifies that where an employee (including part-time employee) who works concurrently for two or more employers, each employer shall respectively pay the work-related injury insurance premium for such employee and the employer where the employee works when the injury occurs shall undertake the due liability for work-related insurance benefits.

The Social Insurance Law excludes the injury arising out of the alcohol intoxication from work-related injury, however, it doesn't specify the criterion of alcohol intoxication. According to Certain Provisions, the criterion for judging alcohol intoxication shall be subject to *the National Standard (GB19522-2004), the Threshold and Test of Alcohol Concentration in the Blood and Expiration of Vehicle Drivers*. The test results, diagnose proof and the like from the traffic control department of the public security organ, medical institutions and other sources may serve as evidence for such judgment.

Certain Provisions also specifies that the one-off subsidy criterion for work-related death is 20

times the per capita disposable annual income in urban areas of the year before the occurrence of the injury.

### **Specify the circumstances of “unintentional terminations of employment” and encourage re-employment of the unemployed**

According to the Social Insurance Law, “unintentional terminations of employment” is one of the conditions for the unemployed to enjoy unemployment insurance benefits from the unemployment insurance fund. To link up with the Labor Contract Law, Certain Provisions stipulates that termination of labor contract due to employers’ causes constitute the circumstances of unintentional terminations of employment, for instance, the circumstances where the employers terminate the labor contracts initiatively or due to the change of its economic conditions, or the employees terminate the labor contracts due to the illegal acts of employers and so on.

To encourage the employment, Certain Provisions specifies that subsidies for the unemployed who accept job recommendation or training shall be paid from the unemployment insurance fund.

### **Clarify the requirements of fund management and agency service**

To protect the social insurance participants’ rights to know, Certain Provisions requires that social insurance agencies shall mail the personal interest record to the social insurance participants at least once a year, In addition, short messages or email, etc., may be also adopted for such delivery. Furthermore, Certain Provisions requests that the social insurance agencies and their employees shall keep confidential the information of employers and individual employees.

### **Protect employees’ social insurance benefits by specifying the obligations and liabilities of employers**

Certain Provisions sets forth that (1) when terminating a labor contract, if an employer refuses to issue the certificate to its employee proving the termination of labor relation, making it impossible for the employee to enjoy the social insurance benefits, the employer shall bear the liabilities for compensation to the employee; (2) employer that fails to withhold or pay the social insurance premium in accordance with the law, it shall not compel its employee to pay the overdue fee which is ordered by the social insurance agency; (3) If an employer is experiencing difficulties in operation due to force majeure, subject to the approval of the administrative department of social insurance at the provincial level, it may suspend the payment within a certain period by providing guarantee and executing delayed payment agreement with the social insurance agency, its employees shall still enjoy the social benefits during the delayed payment period.

## **Specify the scope of responsible parties who illegally dispose or manage the social insurance fund and specify the illegal acts**

Social Insurance Law only stipulates the legal liability of illegally concealing, transferring, embezzling and misappropriating social insurance fund or use the fund for other investment in violation of the relevant provisions, while Certain Provisions specifies the responsible parties which shall include social insurance agency, social insurance premium collection institution, social insurance fund management and investment institution and their employees. Certain Provisions also specify six circumstances of illegal disposal or management of social insurance fund.

In conclusion, Certain Provisions has made some clarifications on the Social Insurance Law; however, some issues of the Social Insurance Law remain to be specified.

## **2. SASAC Issued Two Rules on Administration of Overseas PRC Stated-owned Assets and Property Rights of Central Enterprises (Author: Rong CHEN; Yeting CAI)**

In recent years, the scale of businesses operated by China's central enterprises abroad has been growing rapidly. What's more, their business fields are expanding and their business mode and organization forms become increasingly complex, which makes the administration of the overseas stated-owned assets of central enterprises even more imminent. To further establish and improve the regulations on the administration of state-owned assets, strengthen the supervision over the overseas state-owned assets and property rights of central enterprises, safeguard the rights and interests of overseas state-owned assets, prevent the loss of state assets and regulate the business operation of overseas enterprises, the State-owned Assets Supervision and Administration Commission ("SASAC") promulgated the *Interim Measures on the Supervision and Administration of the Overseas State-owned Assets of Central Enterprises* (the "**Assets Measures**") and the *Interim Measures on the Administration of the Overseas State-owned Property Rights of Central Enterprises* (the "**Property Measures**"). These two measures came into force on July 1, 2011.

### **The Assets Measures consists of seven sections and forty articles, the main contents of which are as follows:**

It clarifies the respective responsibilities and authorities of SASAC and central enterprises in supervising overseas state-owned assets.

It sets forth the following approval and filing requirements regarding the administration of overseas investment: (1) the acquisition and merger of overseas listed companies by central enterprises and its key subsidiaries and their major overseas investment activities shall be reported to SASAC for record or approval according to the laws and regulations; (2) non-monetary overseas investments shall be appraised and filed for recordation or approval pursuant to relevant regulations; (3) where the property rights shall be held by individuals



according to the relevant laws and regulations in the foreign country where the investee company is registered, the competent central enterprise shall make a decision on or approve the holdings of such property rights by relevant individuals, go through legal formalities such as entrusted investment for the purpose of preserving state-owned property rights, and report the same in writing to SASAC; (4) establishment of a new offshore company is subject to approval of the competent and be reported in writing to SASAC; (5) for overseas financial derivatives business, the central enterprise shall specify the decision-making process, the authorization process and operating procedures, set forth an annual trading volume, trading privilege, transaction procedures and other important matters and report the same to SASAC for filing or approval.

It calls for tighter administration over state-owned property rights. It prohibits non-financial overseas enterprises from conducting any form of financing for, lending money or providing guarantees to any enterprises or individuals outside its system.

It establishes a reporting system to manage important matters of overseas enterprises. It states that where any of the following matters occur, the overseas enterprise shall report it to the central enterprise for approval: (1) increase or decrease of the registered capital; (2) conducting merger, split, dissolution, liquidation; (3) issuance of bonds or stocks or other financing activities; (4) disposal of material assets, transfer of property rights and other important matters. In the event its bank account is frozen, material assets losses and war or other emergencies with a significant impact occur, the overseas enterprise shall report to the central enterprise immediately; where the impact is particularly significant, it shall report to SASAC within 24 hours through central enterprise. If the key subsidiary of a central enterprise is converted from wholly PRC state-owned to majority RPC state-controlled or from majority PRC state-controlled to relative control or loss of control arising from the transfer of the state-owned assets by the overseas enterprise, the underlying transfer shall be reported to SASAC for approval.

It specifies that the relevant in-charge persons of the central enterprise shall be investigated for relevant liabilities according to law, in the event that the relevant provisions of the Assets Measures are violated.

**The Property Measures consists of twenty articles, the main contents of which are summarized below:**

It standardizes the registration of the overseas state-owned property rights. Where any of the following matters occurs to a central enterprise and its subsidiaries at all levels, the central enterprise shall apply for a property rights registration with SASAC: (1) establishment of new overseas enterprises by means of investment, split, merger and other methods, or obtaining the overseas property rights for the first time by means of acquisition and



investment; (2) change of the basic information of the overseas enterprise such as its name, registered address, registered capital and principal business, or the change of the property rights status of the overseas enterprise due to the change of investors, capital contribution amount and percentage, etc.; (3) dissolution, bankruptcy of the overseas enterprise, and loss of state-owned property rights due to transfer of property rights, registered capital decrease, etc.; (4) other circumstances that need to be applied for registration of property rights.

It sets forth detailed provisions to address such issues as the approval authority, basic procedures, transfer price, transfer method, consideration payment, and other matters in connection with the transfer of the ownership of overseas state-owned enterprises and other changes regarding the state-owned property rights. Under the Property Measures, the transfer of the ownership of overseas enterprises and other matters that may lead to change of state-owned property rights shall be determined or approved by the central enterprise, among which, in the event that the key subsidiary of the central enterprise is converted from wholly PRC state-owned to majority RPC state-controlled or from majority PRC state-controlled to relative control or loss of control arising from the transfer of the state-owned assets by overseas enterprises, the underlying transfer shall be reported to SASAC for approval. If applicable, the transfer of overseas state-owned property rights shall be conducted through bidding process or be conducted at the central enterprise state-owned assets transfer transaction pilot institution. The transfer price shall be determined based on the price given by professional appraisal agencies and filed or approved by the competent governmental authorities. If the central enterprise conducts internal assets reorganization, the transfer price can be determined based on the appraised or approved net assets value. In principal, the transfer price shall be paid in a lump-sum, however, if the transferee does need installments, he/she/it shall provide lawful guarantee to the transferor.

It clarifies the basic principles for management of the state-owned shareholdings of red-chip companies. It indicates that in the event the overseas enterprises wholly owned or controlled by the central enterprise and its subsidiaries at all levels conducts overseas initial public offering, or the equity structure of overseas-listed companies held by a central enterprise and its subsidiaries at all levels changes, the central enterprise shall make decisions on or approve the foregoing matters according to the security-related laws and regulations, and report the relevant information in writing to SASAC. If the overseas-listed company is a key subsidiary of the central enterprise, the above matters shall be reported to SASAC for approval or recordation by the central enterprise pursuant to the *Interim Measures for the Administration of State-owned Shareholders' Transfer of Their Shares of Listed Companies* and other relevant regulations.

It clarifies that if the responsible person of the central enterprise and its subsidiaries at all levels fails to fulfill the supervision responsibilities for the overseas state-owned property

rights, which results in losses of the state-owned assets, such person shall be punished by relevant departments in accordance with relevant laws and regulations; and the case shall be passed on to the judicial authority for disposition, if a crime is suspected.

### **3. Brief of the Circular of the People's Bank of China on Relevant Issues Regarding Cross-border RMB Settlement Services (Author: Ying YANG; Zaiguang LU)**

To further facilitate financial banking institutions (the “**Banks**”) in providing services to enterprises under the pilot project of RMB settlement for overseas direct investment, the People's Bank of China promulgated the *Circular of the People's Bank of China on Relevant Issues Regarding Cross-border RMB Settlement Services* ( the “**Circular**”) on June 3, 2011.

The Circular clarifies that domestic importing enterprises shall not make payment to foreign exporters by buying foreign exchanges abroad (inclusive of Hong Kong) directly. Domestic settlement banks shall not provide such RMB settlement services.

The Circular points out that the RMB settlement for overseas direct investment is now on a pilot period. To assure the relevant business a good order, as well as prevent ‘hot money’ inflows, currently, banks will not accept projects in the national restricted and major regulated categories in providing foreign direct investment RMB settlement services.

The Circular also provided that the Banks can issue letters of guarantee in RMB for overseas construction contract and cross-border financing project and so forth in accordance with *the PRC Property Law and Guarantee Law*. The letters of guarantee transaction and RMB settlement for overseas direct investment are not included in the current management of foreign debt.

The entrecote trade can be settled in RMB, provided that domestic settlement banks shall duly perform its obligations on investigating the authenticity of the trade and provide the RMB settlement service according to the relevant regulations regarding the pilot project of RMB settlement for overseas direct investment.

As provided by the Circular, the Banks shall report the aggregate balance of accounts opened by foreign individuals monthly, as well as the information of each province to the RCPMIS system. The Circular also clarifies that the RMB settlement agreements entered into between domestic settlement banks and overseas participating banks shall at least explicitly set forth the obligations of the foreign participating banks.

## **Important Announcement**

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