China Amends its Individual Income Tax Law

On 31 August 2018, the National People's Congress of the People's Republic of China ("**PRC**") promulgated the revised PRC Individual Income Tax ("**IIT**") Law ("**IITL**"). The 2018 IITL, when it comes into force on **1 January 2019**, will repeal the earlier PRC IITL which was promulgated on 30 June 2011 ("**2011 IITL**").

This Update sets out a short summary of the key differences between the 2011 IITL and the 2018 IITL.

Global tax will apply to PRC Tax Resident

A "PRC tax resident" under the current 2011 IITL is defined as anyone who has a domicile in mainland PRC, or otherwise residing in mainland PRC for one (1) year or more except for temporary physical absence from mainland PRC. "Temporary physical absence" means any physical absence from mainland PRC of less than (i) 30 days continuously or (ii) 90 days in aggregate in any given calendar year (i.e. from 1 January to 31 December). Foreign passport holders will be exposed to global tax only if they have resided in mainland PRC for 5 years continuously. Therefore, foreigners residing in PRC will generally take a tax break (i.e. spending a continuous 30-day period outside mainland PRC) after they have spent 4 or 5 years continuously in mainland PRC so that they will not be considered PRC tax residents. For the aforesaid purpose, “PRC” excludes Hong Kong, Macau and Taiwan which are deemed as “foreign” in practice.

The 2018 IITL will abolish this and make it clear that a "PRC tax resident" means anyone who has a domicile in mainland PRC or anyone who physically stays in mainland PRC for 183 days or more in any given calendar year. What constitutes a "domicile" remains to be clarified, but it is generally interpreted as the place where a person concerned habitually resides. However, even if a foreigner does not have a domicile in mainland PRC, the tax break will no longer apply and the foreigner will be exposed to global tax regime after 1 September 2019 as long as he physically stays in mainland PRC for 183 days or more in any given calendar year.

Common Reporting Standards ("CRS")

Up to the end of August 2018, 83 countries/jurisdictions have already signed agreements with mainland PRC to exchange financial accounts information. These countries include Singapore, Cayman, Panama, Mauritius, Cook Islands, Bermuda, Australia, Canada, France, Germany, Japan, Korea, Malaysia, UK, Switzerland and Sweden. Therefore, as long as a person qualifies as a "PRC tax resident", the PRC tax authority will be able to track his non-PRC income by utilising the information obtained under the CRS regime to tax his global income. What remains to be seen is how and to what extent the PRC tax authority will tax the global income of a PRC tax resident and the implications thereof.

Anti-Tax Avoidance

The 2018 IITL also introduces certain anti-tax avoidance rules which entitle the PRC tax authority to adjust the IIT payable under the following circumstances:

- Where the transaction between an individual and its affiliates is not on an arm's-length basis and which has a consequence of reducing the PRC IIT payable. For example, a person uses a yacht or aeroplane owned by a company controlled by him and pays nominal or zero fee for such use;

- Where a special purpose vehicles/holding vehicles controlled by PRC tax resident(s) incorporated in tax havens refuse to distribute dividends. For example, a SGX listed company distributes dividends to a BVI company controlled by an individual substantial shareholder but the BVI company does not dividend out upstream further;
- Where the PRC tax resident obtains tax benefits by other arrangements without reasonable commercial basis. This serves as a "catch all" arrangement and it is not clear what constitutes "other arrangements".

The 2018 IITL fundamentally changes the landscape of PRC IIT, in particular, the tax profile of foreigners working in PRC on long term basis. The whole implications of the 2018 IITL, working together with CRS, remain to be tested after taking effect on 1 January 2019.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:

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