

Tax – Time and duration of the assignment

[CHN ¶10-350] Time and duration of the assignment

As mentioned previously, one of the key factors to determine whether a non-People's Republic of China (PRC) domicile individual is liable to PRC Individual Income Tax (IIT) is the length of the individual's physical stay in the PRC. As such, an employer needs to think carefully about the time and duration of the assignment as this could have a significant impact on an expatriate's tax status in the PRC.

[CHN ¶10-360] Temporary visitor

A temporary visitor is an individual who has lived in the People's Republic of China (PRC), continuously or cumulatively, for a total of 90 days or less during a calendar year (or 183 days or less during the treaty prescribed period if a tax treaty applies). Temporary visitors are exempted from individual income tax on the portion of their employment income derived from within the PRC that is paid by an overseas employer and is not borne or deemed to have been borne by the overseas employer's permanent establishment in the PRC.

For the purpose of counting the number of days that an individual is present in the PRC during a calendar year in determining the PRC tax obligations, both the day of entry into the PRC and day of departure from the PRC is counted as one day each of presence in the PRC. See CHN ¶10-140 for more details on the calculation of time spent in the PRC.

A temporary visitor is required to pay individual income tax only on the portion of his/her employment income paid by Chinese domestic enterprises, individual employers or offices in the PRC established or deemed as borne by the overseas employer's permanent establishment in the PRC during the individual's actual period of work in the PRC.

[CHN ¶10-370] Expatriates living in the PRC for more than 90 or 183 days but less than one year

An individual who is not a domicile of the People's Republic of China (PRC), and has resided in the PRC for a consecutive period or an aggregate period of more than 90 days (or 183 days for a tax resident of a tax treaty country) but less than one year, is subject to tax only on the income derived from sources within the PRC, regardless of whether the income is borne by any PRC entity or individual.

Wages and salaries received by an individual during his/her actual working period (see CHN ¶10-150) within the PRC are regarded as being derived from sources within the PRC, regardless of whether the enterprise or individual employer making the payments is situated inside or outside of the PRC.

[CHN ¶10-380] Expatriates living in the PRC for more than one year but less than five years

Individuals who have lived in the People's Republic of China (PRC) for 365 days in a calendar year are deemed to have lived in the PRC for one full year. Temporary absences from the PRC of 30 days or less, or multiple temporary absences totalling 90 days or less within a tax year, are not deducted for the purpose of calculating the number of days an individual has lived in the PRC.

Individuals whose domicile are in the PRC, and who have lived in the PRC for at least

one full year, are subject to individual income tax on their worldwide income derived from sources within and outside of the PRC. However, as a concession, a non-PRC domiciled resident individual who has lived in the PRC for more than one year but not more than five years, subject to approval by the relevant tax authorities, may be taxed only on the portion of his/her income that is derived from the PRC. The foreign-sourced income will not be taxable unless it is paid by individuals or enterprises in the PRC.

[CHN ¶10-390] Expatriates living in the PRC for more than five years

Individuals who have lived in the People's Republic of China (PRC) for a continuous five-year period are thereafter subject to individual income tax on their worldwide income from the sixth year in which they continue to live in the PRC.

An individual taxpayer is considered to have lived in the PRC continuously for five years if he/she has been present in the PRC consecutively for a full year in each of the past five years. (Temporary absences ie a single absence of 30 days or less or multiple absences totalling 90 days or less are not deducted from the total days spent in the PRC for the purposes of determining whether an individual has lived in the PRC for a full year.)

If the five-year residence is established, the taxpayer will be subject to income tax on his/her income from sources within and outside of the PRC from the sixth year onwards.

If, in any year thereafter, the taxpayer does not live in the PRC for the full year, he/she will be subject to individual income tax only on his/her PRC-sourced income for that year.

In order to avoid the worldwide income tax exposure, generally, the following tax planning could be made to break the five-year-residence rule:

- Leave the PRC for a consecutive 31 days or a total of 91 days in the fifth year
- Leave the PRC for a consecutive 31 days or a total of 91 days during the sixth year and each year thereafter so that only income sourced in the PRC for those years will be taxable
- Leave the PRC for more than 90 days (or 183 days for treaty residents) during the sixth year. This will restart the clock for the counting of a new five-year period.

[CHN ¶10-400] Expatriate senior management personnel

An individual who is not a domicile of the People's Republic of China (PRC), but who holds a senior management position in a Chinese domestic enterprise, is subject to individual income tax on PRC-sourced income. The liability to tax commences from the date on which he/she assumes the post until the date on which the post is terminated, unless he/she has a dual employment contract, the actual working period within the PRC does not exceed 90 or 183 days and the salary costs are not charged back or borne by any PRC entity.

Senior management personnel (SMP) in a Chinese enterprise is defined to include:

- company chiefs
- deputy general managers
- persons occupying functional chief positions
- chief supervisors

- other persons occupying similar company management level positions.