



GES NewsFlash

People's Republic of China (PRC) — Guangzhou issues local Implementation guidance in relation to Bulletin 16

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Summary

Subsequent to the Bulletin 2012 No. 16 ("Bulletin 16") issued by the People's Republic of China's (PRC) State Administration of Taxation (SAT), the Local Tax Bureau (LTB) of Guangzhou issued a local implementation guidance Suidishuibanfa [2012] No. 27 ("Circular 27") on August 14, 2012 to implement Bulletin 16. The features of Circular 27 are as follows:

- It uses practical examples to illustrate the application of the two formulas mentioned in Bulletin 16.
- It clearly states that for a Hong Kong/Macau tax resident who has been resided in mainland China for one full year, who is employed solely by mainland Chinese entity, or who hold position only with mainland Chinese entity, the circular Guoshuifa [2004] No. 97, instead of Bulletin 16, should apply in the PRC individual income tax (IIT) calculation.
- It clarifies how Bulletin 16 will impact the IIT calculation methods of bonus as previously set out in Guoshuifa [2005] No. 9 ("Circular 9").
- It provides detailed document list with respect to the record filing under Bulletin 16. Employment contracts in and outside mainland China, secondment letter from employer outside mainland China, payroll details or payroll certificate of the latest month from employer outside mainland China, as well as the latest tax return filed outside mainland China for the individual taxpayers are required to be submitted in the record filing.
- It also puts in place the transitional filing arrangement to be adopted before the local IIT filing system is amended to accommodate the changes under Bulletin 16.

Key implications

Bulletin 16 provides a favorable "time-apportionment" tax calculation method of bonus for qualified Hong Kong or Macau individual tax residents. However, it is silent on how Bulletin 16 will be applied together with Circular 9, which is still valid and serves as general guidance to the IIT treatment of bonus. Therefore, Circular 27 has given detailed guidelines in this respect by illustrative examples.

Calculation method for annual bonus

Step 1 — To calculate the IIT applying the preferential tax treatment under Circular 9.

Step 2 — To select and apply the appropriate formulas in Bulletin 16 to pro rata the IIT determined in Step 1. To determine which formula shall be used, reference should be made to whether or not the individual has spent more than 183 days in mainland China during any 12-month period begins or ends in the concerned tax year.

It should be noted that “Actual days present in mainland China for the period concerned” should be the actual days present in mainland China during the covering period of the annual bonus; “total calendar days for the period concerned” should be 365 days.

Circular 27 uses examples to illustrate the calculation method.

Example 1:

Mr. A is a Hong Kong tax resident who is employed in both Hong Kong and mainland China. He received his 2011 annual bonus in the amount of RMB380,000 in June 2012, of which RMB200,000 was paid and borne by mainland Chinese company while RMB180,000 was paid and borne by company outside mainland China.

Scenario 1: He was present in mainland China for 210 days in year 2011.

Scenario 2: He was present in mainland China for 98 days in year 2011 and did not reside in mainland China for more than 183 days in any 12-month period beginning or ending in year 2011.

What would be the IIT liabilities of Mr. A for his annual bonus under the above two scenarios?

Solutions:

The applicable tax rate is 25% corresponding to the average monthly amount of 31,666.67 (380,000/12).

In Scenario 1, the IIT liability = $(380,000 \times 25\% - 1,005) \times (210 \div 365) = 54,079.30$

In Scenario 2, the IIT liability = $(380,000 \times 25\% - 1,005) \times (98 \div 365) \times (200,000 \div 380,000) = 13,282.64$

Calculation method for other types of bonus

According to Circular 9, for a nondomiciled individual who has worked in mainland China for a full month, the bonus (except annual bonus) received in that month, if being taxable in mainland China, should generally be combined with his/her monthly salary to calculate the IIT liabilities.

However, when Bulletin 16 is applied, how should the fraction “actual days present in mainland China for the period concerned ÷ total calendar days for the period concerned” be calculated? In absence of any explicit explanation from the superior tax authorities, the LTB in Guangzhou has put in place a provisional calculation method in this respect by adopting a weighted average method. According to Circular 27, the weighted average is determined as follows:

Actual days present in mainland China for the period concerned ÷ Total calendar days for the period concerned = $[\text{Total salaries and wages for the month} \div (\text{Total salaries and wages for the month} + \text{the bonus received in that month})] \times (\text{Actual days present in mainland China for the month} \div \text{Total calendar days for the month}) + [\text{The bonus received in that month} \div (\text{Total salaries and wages for the month} + \text{the bonus received in that month})] \times (\text{Actual days present in mainland China for the period where the bonus concerned} \div \text{Total calendar days for the period where the bonus concerned})$

Here is another example in Circular 27 to explain the methodology.

Example 2:

Mr. A is a Hong Kong tax resident who is employed in both Hong Kong and mainland China. He received his monthly salary of RMB20,000 and 2nd quarter bonus of RMB50,000 in June 2012.

Scenario 1: Mr. A works for a full month (see note, below) in mainland China in June and was present in mainland China for 26 days in June; he was present in mainland China for 75 days in 2nd quarter. He will stay in mainland China for more than 183 days in year 2012.

Scenario 2: Mr. A was present in mainland China for less than 183 days during any 12-month period beginning or ending in year 2012, part of his monthly salary in the amount of RMB10,000 and part of his 2nd quarter bonus of RMB30,000 was paid and borne by mainland Chinese company.

Note: For the determination of working period in mainland China, it seems that Guangzhou LTB still follows article 1 of Guoshuihanfa [1995] No. 125 to include any period of vacations, holidays and trainings in overseas but related to the mainland China assignment. Further clarification may be expected.

What would be his IIT liabilities in June under the above two scenarios?

Solutions:

The weighted average of actual days present in mainland China for the period concerned over total calendar days for the period concerned = $[20,000 \div (20,000 + 50,000)] \times (26 \div 30) + [50,000 \div (20,000 + 50,000)] \times (75 \div 91) = 0.84$

In Scenario 1, the IIT liability = $\{ [(20,000 + 50,000) - 4,800] \times 35\% - 5,505 \} \times 0.84 = 14,544.60$

In Scenario 2, the IIT liability = $\{ [(20,000 + 50,000) - 4,800] \times 35\% - 5,505 \} \times 0.84 \times [(10,000 + 30,000) \div (20,000 + 50,000)] = 17,315 \times 0.84 \times 0.57 = 8,290.42$

For the nondomiciled individual who does not work in mainland China for a full month in the month concerned, the IIT for bonus should be calculated separately from that for the monthly salary.

Scenario 3: Following Example 2 mentioned above, if Mr. A worked in mainland China for only 21 days and was present in mainland China for 18 days in June. He was present in mainland China for 75 days in 2nd quarter. Assuming he will stay in mainland China for more than 183 days in year 2012, the IIT liabilities for June is as below:

IIT for monthly salary = $[(20,000 - 4,800) \times 25\% - 1,005] \times (18 \div 30) = 1,677$

IIT for 2nd quarter bonus = $(50,000 \times 30\% - 2,755) \times (75 \div 91) = 10,092$

Total IIT liabilities for June = $1,677 + 10,092 = 11,769$

Deloitte's view

- Circular 27 is a relatively detailed and comprehensive guidance for the implementation of Bulletin 16, which effectively helps taxpayers to further understand and better apply Bulletin 16 in tax filing. Many of details left open by Bulletin 16 have been addressed in this circular.
- However, taxpayers should note that Circular 27 is issued by the local tax bureau of Guangzhou. Therefore, consultation and discussion should be carried out with LTBs of other locations outside Guangzhou to confirm whether the calculation methodology discussed in this circular can be referred to.
- It should be aware that, by requiring detailed record filing documents from the individual taxpayer, the LTB may scrutinize whether the IIT treatment adopted for the individual taxpayers are correct and in compliance with relevant tax rules and regulations. If any noncompliance is being discovered, it may alert the LTB to initiate tax inspection on the employer.
- For annual bonus covering one or a few months in which the individual was completely working outside mainland China so that the portion corresponding to these months is considered non-PRC sourced, neither Bulletin 16 nor Circular 27 has stated it clearly how the IIT should be calculated, i.e., whether such non-PRC sourced bonus should be excluded from the whole amount of the annual bonus before the formulae can be applied. This will in turn affect how the actual days present in mainland China and the calendar days in the period concerned should be determined. In practice, it is suggested that the taxpayers should further consult the LTBs if they come across such situation.

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