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Recent Important New Laws, Measures, Rules and Announcements

1. **New Implementation Regulations for Individual Income Tax Law**
2. **New Policy on Investment in the Automobile Industry**
3. **Social Security Premiums will be Collected by the Tax Bureau**
4. **Revision to the Condemnation Standard for Malicious Overdraft of Credit Card**

1. New Implementation Regulations for Individual Income Tax Law

Following the release of the newly revised Individual Income Tax Law of the People's Republic of China on August 31, 2018, PRC State Council promulgated the revised Implementation Regulations for the Individual Income Tax Law ("New Regulations") recently on December 18, 2018, which will come into force on the same day along with the new Individual Income Tax Law on January 1, 2019.

To ensure the better implementation of the new Individual Income Tax Law, the New Regulations have following highlights:

The highlights of the New Regulations are as follows:

a. Increase the tax preferential treatment for foreigners

To better attract overseas talents, the New Regulations extend the time limit for the exemption of individual income tax on incomes from outside China.

Before the New Regulations, for those income sourced outside China earned by an individual who has no domicile in China but has resided for 1-5 years, individual income tax during such 1-5 years' stay will be exempted. Starting from January 1, 2019, the residing period will be extended to continuous 6 years with accumulative 183 days' residence for each tax year, in other words, if an individual has no domicile in China but has resided in China for less than continuous 6 years with an accumulative 183 days' stay for each tax year, upon filing with competent tax authorities, all the income sourced outside China and paid by overseas companies or individuals during such stay period shall be exempted from individual income tax.

It shall also be noticed that if a departure of 30 days occurs during the tax year, the start of the 183 days' period in such given year shall be re-calculated.

b. Refine the details of "other deductions" for the calculation of taxable income of a resident individual.

According to the New Regulations, when calculating the taxable income of consolidated income of a resident individual, certain qualified expenditures which were not deductible in the past can now be deducted from the taxable income, such as education expense for children, expense for continuing education and training, expense for supporting parents, house mortgage and rent etc. Such deductions will be subject to different conditions and amount limits.

- c. Final settlement can be handled through delegation

The New Regulations clarifies that the tax payer may entrust the withholding agent or other enterprises and individuals to handle the final settlement of individual income tax.

2. New Policy on Investment in the Automobile Industry

The National Development and Reform Commission (the “NDRC”) released the Administrative Provisions on the Investment in the Automobile Industry (the “Provisions”) recently, which will take effect on January 10, 2019. Compared to the Policies for the Development of the Automotive Industry (the “Policies”) promulgated in 1994 and 2004, the Provisions are, as a matter of fact, the 3rd revised version of the Policies which is a milestone and sets the development direction for automobile industry in China for the next ten years.

The Provisions mainly reveals changes in three aspects:

- a. Fully cancel the approval system for automobile investment projects which has been enforced for many years

After the implementation of the Provisions, the prior approval is no longer required, the full-set automobile investment projects and other automobile investment projects shall be filed with local Development and Reform Committee. Such action will effectively solve many existing disadvantages, such as the complicated approval procedure, the inefficient process before the investment and the heavy burden undertaken by enterprises etc. Since the supervising system together with strict and detailed administrative rules is introduced, the filing system could also ensure the proper administration on automobile investment industry. The filing system will also speed up the establishment process of automobile investment projects.

- b. Put stricter limit on the capacity of fuel automobile

Certain fuel automobile investment projects will be forbidden, such as newly-established fuel automobile enterprises; some of the existing fuel automobile enterprises will be relocated to other provinces; if the existing automobile enterprises want to increase the manufacturing capacity of fuel automobile, strict rules shall be followed concerning the capacity utilization, production amount of new energy automobile and research and development expenditure etc.

In general, the measures introduced aim to (1) centralize the production of fuel automobile to certain preferred provinces; and (2) encourage the development of new-energy automobile.

c. Raise the threshold for pure electric automobile

As mentioned above, the fuel automobile is restricted in way to provide certain support and encouragement to the new energy automobile. This being the case, the Provisions also sets rules for the newly-established pure electric automobile projects. For example, if an enterprise wants to establish a new pure electric automobile project, certain requirements with regard the shareholder(s) shall be met.

The principle behind such restrictions is to prevent the overheating of the new energy industry. Only qualified investors with serious commitments shall enter the industry and market.

3. Social Security Premiums will be Collected by the Tax Bureau

Starting from 1st January 2019, the social security premiums, including pension insurance, medical insurance, unemployment insurance, employment injury insurance, maternity insurance etc. will be collected by the tax bureau, according to the newly published Reform Plan for National and Local Tax Collection and Management System (the "Reform Plan").

The Reform Plan likely leads to the following effects and consequences:

a. Clarification on the competent authority to collect social security premiums

Before the reform, the collection authority of social security premiums is different across the country, some cities collect through tax bureau, while others make the collection through social security bureau.

The situation is caused because there is no specific law clarifying the competent collection authority. In the Provisional Regulations for the Collection and Payment of Social Insurance Premiums published by the State Council in 1999, either tax bureau or social security bureau may collect the social security premiums. The Social Security Law enacted in 2011 didn't give a clear answer for a unified collection authority.

With the Reform Plan coming into force, the collection system of social security premiums is unified. The tax authority will become the solely competent authority to collect social security premiums.

b. Payment evasion will be better prevented

Although PRC laws and regulations specify how the social security premiums shall be calculated and paid, some enterprises still find ways to evade its payment obligations imposed by law by splitting the salary into several parts or paying in cash.

The aforesaid situation will be better prevented after the Reform Plan comes into force. According to a researcher from International Social Security Research center of CASS, tax bureau will strengthen the collection of social security premiums, the enforceability of tax bureau will also be helpful in implementing the penalty system stipulated by Social Security Law regarding failure of payment of social security premiums.

c. Problems to be considered after the reform

With the strengthened collection of social security premiums, for many enterprises who are used to evading its payment obligations or regularly pays inadequate social security premiums, survival and continuing operation might be threatened because the payment obligations will be aggravated rapidly.

For those who are self-employed or for freelancers, since they have no employer to withhold and remit tax, it will be the tax bureau that ensures the information management, so that payment of social security premiums for these groups will not be omitted.

4. Revision to the Condemnation Standard for Malicious Overdraft of Credit Card

The Supreme People's Court and Supreme People's Procuratorate released the Decisions on Revising the Several Issues concerning the Application of Laws in Handling Criminal Cases of Obstructing Credit Card Management (the "Decisions"), to make a systematic revision to malicious overdraft of credit card fraud crime, which aims to better protect the interests of the card holder and card-issuing bank.

The Decisions have following changes compared to its predecessor:

1. Clarify the standard to evaluate 'the purpose of illegal possession'.

According to the Decision, the purpose of illegal possession for malicious overdraft shall be decided based on comprehensive judgment by considering the factors such as cardholder's credit record, repayment ability and willingness, the status of the credit card application and overdrawing, the use of the overdraft funds, the performance after the overdraft, and the reasons for not repaying the loan etc.

2. Increase the standard for sentencing the malicious overdraft of credit card

The 'large amount' as stipulated in Article 196 of the Criminal Law is revised from the overdraft of 'RMB 10,000-RMB 100,000' to 'RMB 50,000-RMB 500,000'; 'huge amount' from 'RMB 100,000 (incl.)-RMB 1mio' to 'RMB 500,000 (incl.)-5 mio'; 'extremely large amount' from over RMB 1mio (incl.) to over RMB 5mio.

3. Confirm the calculation method for malicious overdraft amount, i.e. the amount of the principal of the actual overdraft that has not been returned at the time of criminal filing by the public security organ, excluding the fees charged by the issuing bank such as interest, compound interest, late payment fee and handling fee. Besides, the amount returned or paid shall be deemed to be the principal of the actual overdraft.

4. Set the lenient punishment principle for malicious overdraft of credit card, emphasize that if the amount of malicious overdraft is large but all is returned before the prosecution is filed, or there are other minor circumstances, prosecution may not be pressed; if the drafted fund is all returned before the judgment of first instance or there are other minor circumstances, criminal punishment may be exempted. However, in case the offender has already been subject to two or more penalties for credit card fraud, such term shall not apply.

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