China Legal Report*

November 2018

* CHINA LEGAL Report is a monthly collection of Chinese law related news gathered from various media and news services, edited by WENFEI ATTORNEYS-AT-LAW LTD. distributed to its clients and CHINA LEGAL REPORT subscribers.

WENFEI ATTORNEYS-AT-LAW LTD. does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL REPORT is not intended to provide advice.

I. Introduction

On 20 October 2018, the Ministry of Finance and the State Administration of Taxation of the People`s Republic of China published the "Notice of the Ministry of Finance and State Administration of Taxation on Soliciting Public Comments on Interim Measures for Special Additional Deductions for Individual Income Tax" (hereinafter referred to as "Exposure Draft") for soliciting public comments until 4 November 2018. The final version of the Exposure Draft will be released and will take effect on 1 January 2019. The Exposure Draft supplements the newly drafted "Individual Income Tax Law of the People's Republic of China" (hereinafter referred to as "IIT Law") released on 31 August 2018 and its "Implementation Regulations for the Individual Income Tax Law of the People's Republic of China", which was released in notice for public comments on 20 October 2018. Wenfei Law has recently published a China Legal Report (hereinafter referred to as "CLR") on the new IIT Law in the People`s Republic of China (hereinafter referred to as the "PRC" or "China"). This CLR intends to further clarify the new IIT Law by describing and explaining the special additional deductions that can be made by the taxpayer.

II. Special Additional Deductions

The special additional deductions mentioned in Art. 6(1) of the IIT Law, which will come into force on 1 January 2019, are deductions to be made from the individual income in the calculation of overall taxable income of taxpayers in China.
This is the first time that such list of special additional deductions has been introduced into the individual income tax system and can be pre-deducted. Such in total six types of special additional deductions as explained in detail in the Exposure Draft are as follows:

1 Children`s education

According to Art. 5 Exposure Draft, expenditures on each child's education can be deducted at a fixed standard quota of RMB 12`000 a year or RMB 1`000 per month. The allowed time period for the child's education starts from the age of three (pre-school education) up to a doctoral degree (for academic qualification). The deduction can be made by one single parent (100% deduction) or by both parents (mother and father each 50% deduction, see Art. 6 Exposure Draft). Upon agreement between the parents, deductions may also be made as per 100% of the deduction criteria for either the father or the mother. If the family has two children, it is allowed to double the deduction range. The specific deduction method shall not be changed within one tax year.

For the purpose of the Exposure Draft and as indicated in Art. 27, "parents" refers to biological parents, step-parents and adoptive parents; and "children" refers to children born in wedlock, children born out of wedlock, step-children and adopted children. If persons other than parents act as the guardians of minors, it shall be governed mutatis mutandis by the provisions of the Exposure Draft.

2 Continuing education

According to Art. 7 Exposure Draft, the taxpayer himself/herself can deduct the expenses for his/her own continuing education at RMB 3`600 (for vocational qualification as skilled personnel or specialized technical personnel) or at RMB 4`800 (for academic qualification with a formal diploma) per year.

Pursuant to Art. 8 Exposure Draft, if an individual receives academic qualification education, which meets the conditions for deduction, the education expenses may be deducted by his parents as deductions for expenses of children's education, or may be deducted by him/her as the expenses for continuing education, but may not be deducted twice at the same time.

3 Serious illness medical treatment

Art. 9 Exposure Draft states that the yearly expenditure spent by the patient (as the taxpayer him/herself) above RMB 15`000 according to his/her record in the social insurance system (including the deductible part within the scope of medical insurance catalogue and the self-paying part beyond the medical insurance catalogue) that can be deducted, with an annual cap of RMB 60`000.

4 Housing loan interest

As indicated in Art. 12 Exposure Draft, if a taxpayer himself/herself or his spouse uses loans from commercial banks or housing provident fund loans to purchase housing for himself/herself or his spouse, the expenses of housing loan interest incurred for the first property may be deducted as per the standard quota of RMB 12`000 per year (RMB 1`000 per month) during the period of loan repayment; while the expenses of housing loan interest incurred for non-first property may not be deducted by the taxpayer.

Upon agreement by a couple, deductions may be made by either of the couple. The specific deduction method shall not be changed within one tax year.

5 Housing rent

If the taxpayer and his/her spouse has no own house in the city where taxpayer works most of the time and therefore cannot enjoy the above deduction for housing loan interest, but if he/she rents a house in said city, he/she can enjoy the deduction for housing rent based on Art. 15 Exposure Draft. The deduction will vary between various cities, ranging from RMB 800 to RMB 1`200 per month. "The city where a taxpayer works most of the time" shall refer to the city where the taxpayer is employed. In the absence of an employer, it shall be the city where the taxpayer's habitual residence is located.

If the cities where a couple works most of the time are the same, expenses for housing rent may only be deducted by either spouse. If the cities where a couple works most of the time are different and either spouse has no house in the city where he/she works most of time, the expenses for housing rent may be deducted separately by both spouses.

Expenses for housing rent shall be deducted by the tenant that signed the housing tenancy contract.

A taxpayer and his/her spouse may not enjoy special additional deduction for housing loan interest (see point 4 above) and special additional deduction for housing rent concurrently.

6 Caring for the elderly

If taxpayers are supporting their parents aged sixty or above or other statutory dependents, they can get a monthly deduction of RMB 2`000." Other statutory dependents" refer to grandchildren that actually assume support obligations for their grandparents whose children have passed away.

If the taxpayer is the only child, he/she can enjoy the whole sum of RMB 2`000 per month in deduction, while the sum will be divided among siblings if there is more than one child.

The method of apportionment includes average apportionment, apportionment specified by the elderly or apportionment agreed by supporters. The specific apportionment method shall not be changed within one tax year. For the apportionment specified by the elderly or apportionment agreed by supporters, the maximum deduction by each taxpayer shall not exceed RMB 12`000 per year (RMB 1`000 per month), with a written agreement on apportionment signed. In the case of inconsistency between the specified apportionment and the agreed apportionment, the specified apportionment shall prevail.

If a taxpayer supports two or more elderly people, deductions shall not be made based on the number of elderly people.

7 Foreign taxpayer

According to Art. 28 Exposure Draft, if a foreign individual meets the conditions for special additional deductions as mentioned above, he/she may choose the above items for deduction, or may opt to continue to enjoy the current preferential treatment of tax exemption policies concerning expenses for children's education, language training and housing subsidies, but the same type of expenses cannot be eligible for both polices at the same time.

8 False information

Pursuant to Art. 26 Exposure Draft, if it is found that a taxpayer refuses to provide or provides false information evidence for the first time, taxpayer and the withholding obligor shall be bulletined. If the above situation is found again within five years, it shall be recorded in the taxpayer's credit history, with joint punishment jointly imposed by relevant departments.

III. Conclusion

Undoubtedly, the New IIT Law will have significant impact on the tax collection system in China. It is also expectable that China’s tax authorities will take more control over the individual income tax collection. However, the relatively detailed Exposure Draft is good news for taxpayers in China.

*****

Check the China Legal Briefing archives on: http://www.wenfei.com/publications.html
Obtain your personal subscription from: china@wenfei.com