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The State Administration of Taxation, Circular on Clarifying the Implementation of Several Policies Regarding Individual Income Tax

国家税务总局关于明确个人所得税若干政策执行问题的通知

Issued By	The State Administration of Taxation
Subject	Individual Income Tax
Promulgated on	August 17th, 2009
Source	http://www.chinatax.gov.cn

On August 17th, 2009, the State Administration of Taxation (hereinafter referred to as “SAT”) issued Circular on Clarifying the Implementation of Several Policies Regarding Individual Income Tax (hereinafter referred to as “Circular”). The Circular Specifies the rules regarding tax levy on director fees, the definition of overseas Chinese and the application of surcharge deduction, as well as tax levy on house transfer due to divorce.

The Circular points out that, for a director or a supervisor who doesn’t serve in the company or is not employed by the company, his/her director’s or supervisor’s fee shall be deemed as labor service remuneration and hence shall be taxed in accordance with tax rates for labor service remuneration. For an individual who is employed by a company or any affiliated company thereof and holding the position of a director or supervisor, his/her director’s and supervisor’s fee and salary shall be taxed together in accordance with the tax rates for wages and salaries.

The Circular also specifies the identification of overseas Chinese and the application of additional deduction method. The term “overseas Chinese” refers to Chinese citizens living abroad. The details are as follows:

- The term “settlement” applies to Chinese citizens who have already obtained the permit of long-term residence or permanent residence in a foreign country, who have continuously lived in such country for 2 years, in which the accumulated stay is not less than 18 months within those 2 years.
- Chinese citizens, who do not have the permit of long-term or permanent residence, can still be considered as overseas Chinese, if they have received the lawful residence permit from a foreign country for a minimum period of 5 years and have lived in such country for an accumulated period of more than 30 months within 5 years.

- The period of overseas study for Chinese citizens (including scholarships or self-paying students), or overseas work assignments (including overseas dispatched workers), shall not be included within the context of overseas Chinese.

The Circular stipulates that, for those who fulfill the overseas Chinese identity under Guo Qiao Fa [2009] No 5, the taxation authority may apply additional deductions to the salaries received within China when calculating the individual income tax according to Article 30 of the Implementation Regulations on Individual Income Tax of the PRC on the basis of relevant certification to prove the overseas Chinese identity provided by the taxpayers.

Furthermore, according to the Circular, for disposal of house property due to divorce, such transfer of the house property will be exempted from individual income tax. Further on the income acquired from such transfer due to divorce, deducting the original value and reasonable cost, shall be levied individual income tax. However, if the house was the only house and has been self-used by the family for at least 5 years, the taxpayer can apply for individual income tax exemption.

Shanghai Implementing Opinions for Promoting the Financing through Pledging of IP Rights

关于本市促进知识产权质押融资工作的实施意见

Issued By	Seven Shanghai Authorities
Subject	Financing of Pledge for IP Rights
Promulgated on	August 10th, 2009
Source	http://www.shanghai.gov.cn

On August 10th, seven Shanghai authorities jointly released the Implementing Opinions for Promoting the Financing of Pledge for IP Rights (hereinafter referred to as “Opinions”). The Opinions were formulated to widen the financing channels for enterprises, to ease the difficulty for enterprises’ financing and to accelerate the development of Shanghai based small and medium-sized enterprises.

The Opinions also clarify the innovative financing means of pledging of IP rights as the following:

- The enterprise pledges the IP rights to a financial service institution such as a bank, which will as a pledgee issue a loan to the enterprise. The enterprise will duly repay the loan and interests to the financial service institution.
- The enterprise pledges the IP Rights to a third party such as a financial guarantee institution or an insurance company, which will as a pledgee provide guarantee or credit insurance, so that the financing service institution such as banks may issue a loan to the enterprise, which will duly repay the loan and interests to the financing service institution.
- Other legal financing means of pledging of IP rights determined by the enterprise holding IP rights and the financial service institution through negotiation.

Because the Opinions are very general, some implementing regulations are expected to be formulated to specify the financial means and relevant evaluation and transaction work.

Supreme People's Court, Interpretations on Several Issues Regarding the Application of Laws in Trials of Urban House Leasing Contract Disputes

最高人民法院关于审理城镇房屋租赁合同纠纷案件具体应用法律若干问题的解释

Issued By	The Supreme People's Court
Subject	House Leasing Contract Disputes
Promulgated on	August 31st, 2009
Source	http://www.chinacourt.org

On August 31st, 2009, the Supreme People's Court issued the Interpretations on Several Issues Regarding the Application of Laws in Trials of Urban House Leasing Contract Disputes (hereinafter referred to as the "Interpretations"). The interpretations became effective on September 1st, 2009.

The Interpretations set up principles to determine the validity of house leasing contract. The first principle of the Interpretations is to restrict the range of invalid house leasing contract. According to the Interpretations, the scope of invalid house leasing contracts mainly include the leasing contracts for illegal temporary buildings or buildings without Permit for Planning of Construction Project (《建设工程规划许可证》), and contracts in which the sublease period exceeds the remaining lease period for the tenant. The second principle is taking remedy measures for the invalid contract: for the leasing contracts for

illegal buildings, if the landlord obtains the legal permit as stipulated by relevant laws and regulations before the final court debate of the first trial, the leasing contracts for illegal buildings shall be considered as valid.

The Interpretations set up a hierarchy to determine the tenant, if the landlord at the same time concludes several house leasing contract for the same house with several tenants. The people's court shall in accordance with the following hierarchy determine a tenant performing the house leasing contract:

- The tenant who legally possesses the house
- The tenant who files the house leasing contract with the authority
- The tenant whose house leasing contract was first concluded

The Interpretations point out that, if the tenant claiming for compensation due to the landlord's failure to notify the tenant of the sale of the rented house within a reasonable period or other circumstance of infringing the pre-emption right of the tenant, the tenant's claim shall be supported by the court. However, the request of the tenant to determine the house purchase contract concluded between the landlord and the third party as invalid shall not be granted by the court.

It has also been provided that, when the tenant claims to the pre-emption right of the leased house, the court shall not grant the claim, if any of the following circumstance exists:

- The co-proprietors purchase the house based on the pre-emption right;
- The landlord sells the house to his/her near relatives, which includes spouse, parents, children, brother, sister, grandparents, grandchildren;
- The landlord notified the tenant, but the tenant did not clearly reply within 15 days that he wants to purchase the house;
- The third party purchases the house in good faith and registers with the authority.

Furthermore, the Interpretations clarify the detailed rules on dispute cases regarding decoration and renovation of leased houses. Generally speaking, if the tenant decorates or renovates the house without the consent of the landlord, the tenant shall assume liability. If the landlord has agreed with the tenant's decoration or renovation, there are different settlements depending on the faults of the two parties, the validity of the leasing contract, the situation of the decoration or renovation. In case the rented house has been decorated or renovated at the time of termination of the house leasing contract, the court shall judge in accordance with the following rules:

- In case that the leasing contract is terminated due to the landlord's fault, the tenant's claim for remaining value of the decoration shall be granted;
- In case that the leasing contract is terminated due to the tenant's fault, the tenant's claim for remaining value of the decoration shall not be granted, unless the landlord agrees to use, in which case he shall duly compensate within the extent of usage value;
- In case that the leasing contract is terminated due to the faults of both parties, they shall assume their corresponding liabilities for the loss of remaining value of the decoration based on their own faults;
- In case that the leasing contract is terminated due to neither party's fault, they shall assume the liabilities for the loss of remaining value of the decoration based on the principle of fairness.

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