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China Individual Income Tax Guide (4) - Detailed Provisions on Income of Foreign Individuals and Taxation on Relevant Items of Income

1. Determination of Income from Wage and Salary

In accordance with the Notice on the Payment Issue of Individual Income Tax by Foreign Staff Working in China (Cai Shui Zi [1980] No.189) issued by the Ministry of Finance, foreign staff who come to China will be paid by the foreign-sponsored unit, including personal wages, public expenses (postage and telecommunications expenses, office expenses, advertising expenses, entertainment expenses necessary for business transactions) and living allowance fees (housing expenses, travel expenses). If the income from the preceding item can be clearly divided, personal income tax may be levied only on the portion of the income from wages and salaries.

In accordance with the Notice on Deduction of House Allowance of Foreign Staff Working in China from Taxable Income (Cai Shui Wai Zi [1988] No.021) jointly issued by the Ministry of Finance and the State Administration of Taxation, houses purchased or rented by foreign-funded enterprises and foreign establishments in China for the purpose of being provided to foreign personnel for residence free of charge may not be counted as taxable income of foreign personnel. Housing accommodation expense being granted to foreign personnel on quota basis could be itemized as expenses and shall be recognized as the income from wage and salary of foreign personnel.

2. Provisions on Taxation on Foreign Directors and Senior Executives

In accordance with the Notice on Tax Liabilities of Individuals without Domicile obtaining Salaries and Wages within China (Guo Shui Fa [1994] No.148) released by the State Administration of Taxation and the Notice on Specific Issues Concerning Computation and Payment of Individual Income Tax for Individuals Without Domicile in China (Guo Shui Han Fa [1995] No.125) issued by the State Administration of Taxation, for individuals holding the positions of directors or high-level managements of the enterprises within China, the directors' fees and salaries and wages paid by domestic resident enterprises shall be subject to individual income tax from the date when taking the posts as directors or high-level managements till removal from the aforesaid posts, regardless of whether the duties are performed within the territory of China. The high-level managements of the enterprises within China refer to chief or deputy (general) managers, chief executives of various functional departments, directors and other similar managements.

In accordance with the Notice on Clarifying the Implementation of Certain Policies on Individual Income Tax (Guo Shui Fa [2009] No.121), individual income tax levied on directors' remunerations as labor service fees is only applicable to the cases where the individuals serve as directors but are not engaged or employed by the companies. If an individual is employed in a company (including an affiliated company) and concurrently serves as a director and a supervisor, the director's fee and supervisor's fee shall be combined into salary income and subject to individual income tax as salaries and wages.

In accordance with the Notice on Individual Income Tax Policies Applicable to Non-Residents and Residents without Domicile ([2019] No.35) jointly issued by the Ministry of Finance and State Administration of Taxation, for individuals holding the positions of directors, supervisors or high-level managements (hereinafter collectively referred to as "senior executives") of the enterprises in China, the fees of directors and supervisors, wages and salaries or other similar remunerations (hereinafter collectively referred to as "remuneration of senior executives", including several months bonuses and equity incentives) paid or borne by domestic resident enterprises are China-sourced incomes, regardless of whether the duties are performed within the territory of China. The high-level managements mentioned in this notice include chief or deputy (general) managers, chief executives of various functional departments, directors and other similar managements.

3. Provisions on Taxation on Foreign Troupes or Individuals Engaged in Arts and Sports Performances in China

In accordance with the Notice on Taxation Issues Concerning Foreign Troupes or Individuals engaged in Arts and Sports Performances in China (Guo Shui Fa [1994] No.106) released by the State Administration of Taxation,

In regard to the remunerations paid by the performance troupe to individual performers and athletes, if the performers and athletes are temporarily hired and are not employees of the performance troupe, the remunerations shall be recognized as labor service income and shall be subject to individual income tax after deducting the prescribed expenses in accordance with the Individual Income Tax Law; in case the performers and athletes are employees of the performance troupe, the remunerations shall be recognized as salaries and wages and are subject to individual income tax after deducting the prescribed expenses in accordance with the Individual Income Tax Law.

For foreign or Hong Kong, Macao, and Taiwan performers and athletes engaged in performances in mainland China on their own name, individual income tax shall be levied on such income as labor service fees in accordance with the Individual Income Tax Law.

4. Provisions on Taxation on Certain Allowances Received by Foreign Individuals

In accordance with the Notice on Policies Concerning Individual Income Tax (Cai Shui Zi [1994] No. 20), jointly issued by the Ministry of Finance and State Administration of Taxation, the following incomes are temporarily exempt from individual income tax.

- (1) Housing allowances, meal allowances, relocation fees and laundry fees obtained by foreign individuals in the form of non-cash or cost-based reimbursements
- (2) Travel allowances obtained by foreign individuals on reasonable standards for business trip within or outside of China
- (3) Fees for family visits, language training and children's education received by foreign individuals which are reviewed and approved by the local competent tax authorities as reasonable fees

In accordance with the Notice on Transitional Preferential Policies after the Amendment of the Individual Income Tax Law (Cai Shui [2018] No. 164), during the period from 1 January 2019 to 31 December 2021, foreign individuals who meet the conditions of residents can choose to enjoy special additional deductions for individual income tax, or they can also choose to enjoy tax exemption policies for housing allowances, language training fees, children's education fees and others. The tax preferential policies cannot be enjoyed at the same time. Once selected, it cannot be changed within a tax year. Starting from 1 January 2020, foreign individuals cannot enjoy the tax exemption policies for housing allowances, language training fees, children's education fees and others, and could enjoy special additional deductions as stipulated.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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