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Individual Income Tax Collection and Administration, Turn Left, Turn Right?

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The recent amendments of the Individual Income Tax Law of People's Republic of China (Individual Income Tax Law) and Regulations for the Implementation of the Individual Income Tax Law of the People's Republic of China (Implementation Regulations) has become a nationwide hot topic due to their wide influences. For the purpose of reducing the burden on the individual taxation of the income of low-income population, the revision of the Individual Income Tax Law has modified the deductible amount of incomes before taxation and adjusted the tax rate and its structure for wages and salaries. On the other hand, the promulgation of a series of new tax rules and regulation in 2010 regarding the collection and management of individual income tax further reflects the trend of intensifying the tax collection and management on the high-income population. This article briefly introduces and interprets the recent development of rules regarding individual income tax.

The amendment of "Individual Income Tax Law" and "Regulations for the implementations"

After receiving about 240,000 comments from around the country, the revision of "Individual Income Tax Law" and "Implementation Regulations" has increased the deductible amount of incomes before taxation from RMB 2,000 to RMB 3,500 and the additional deductible amount to RMB 1,300. Moreover, the revision of Individual Income Tax Law modifies the excess progressive of tax rate system from a nine-level one to seven-level one. The new rate ranges from 3% to 45% while the rate of 15% and 40% has been cancelled. However, it seems that the two aforementioned adjustments only benefit the low-income population. According to the adjustments for tax rate and its structure, a line was drawn at the annual income of RMB 38,600. Those who makes more than RMB 38,600 per year will have to pay more tax.

Intensify of taxation supervision of high income group

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Due to the face that the high-income population have varies sources of incomes, State Administration of Taxation continuously strengthens the supervision policies regarding such population, especially for their non-labor earnings (including the transfer of properties, dividends, bonuses, equity incentive plans, etc). The supervision measures include examining tax sources, strengthening the tax-related communication with relevant government departments, enhancing the collection and analysis of publicly disclosed information, etc. The recent change of tax policies regarding the incomes from the transfer of equity and the dividends and bonuses of foreign individuals' requires our attention

- The transfer of equity faces stricter tax collection and management

  In order to balance the tax policy regarding individuals' transfer of restricted shares and equities of companies not publicly listed as well as enterprises' transfer of restricted shares, the Ministry of Finance, State Administration of Taxation and China Securities Regulatory Commission jointly published "Notice on Relevant Issues Concerning the Individual Income Tax on Individual Income from Transfer of Restricted Shares of Listed Companies" (Cai Shui [2009] No. 167, hereinafter referred to as "No.167 document") on 31 Dec 2009. The No.167 document states that the individual income from the transfer of restricted shares of listed companies shall be taxable.

  Furthermore, on 10 Nov 2010, the administrative department issued "Supplementary Notice on Relevant Issues Concerning the Individual Income Tax on Individual Income from Transfer of Restricted Shares of Listed Companies" (Cai Shui [2010] No.70), which added and explained several unmentioned issues in the No.167 document (i.e. restricted shares being transferred for many times before ready for transfer; the transferring of restricted shares by individuals through centralized trading system or block trading system of stock exchanges; the purchasing or subscribing of exchange traded fund (ETF) by individuals using restricted shares).

- The dividend incomes received by foreign individuals from foreign listed Chinese enterprises or the B-share market is now subject to individual income taxation.

  The "Announcement of the State Administration of Taxation [2011] No. 2" updates the catalogue regarding the repealing (in whole or part of the) of tax-related regulation documents, in which the "Notice from the State Administration of Taxation on Issues Concerning the Taxation of Profits from the Transfer of Stocks (Stock Rights) and Dividend Income of Foreign-invested Enterprises, Foreign Enterprises and Foreign Individuals" (Guo Shui Fa [1993] No. 45, hereinafter referred to as "No.45 document") is listed as a wholly repealed document. The repeal of No.45 document has terminated the previous policy that individual income tax is to be exempted regarding dividend incomes received by any foreign individual from foreign listed Chinese enterprises and the B-share market. Thus the rights and benefits of foreign individual investors have been greatly impacted.

  Following the repeal of the No.45 document, State Administration of Taxation has further issued Guo Shui Han [2011] No. 348, specifying issues regarding the taxation and administration of individual income tax on dividends and bonuses received by overseas residents from the H-share market. According to Guo Shui Han [2011] No. 348, foreign individuals may be entitled to tax benefits in accordance with the tax

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treaties between their residence countries or regions and Mainland China. Therefore, for the purpose of simplifying tax administration, considering the large number of shareholders in the H-share market, the Guo Shui Han [2011] No. 348 has decided the without the need of application, generally all foreign individuals shall be charged a 10% rate as their individual income taxes. For foreign individuals from countries or region that have tax treaties with Mainland China specifying that the individual income tax charge shall be less that 10%, the overpaid tax can be returned after the approval of the competent tax authorities; For foreign individuals from countries or region that have tax treaties with Mainland China specifying that the individual income tax charge shall be more than 10% and less than 20%, the individual income tax shall be charged at the actual rate stated in the treaty; For foreign individuals from countries or region that do not have any tax treaties with Mainland China or other circumstances, the individual income tax shall be charged at the rate of 20%.

Due to the fact that there are still issues not discussed in the abovementioned regulation, the enforcement of the new policies and their influences on listed companies remain to be further clarified.

It's reported that the proportion of individual income tax payers as to the entire population will drop from 28% to 7.7% and the number of tax payers will reduce from 84 million to 24 million after the amendment of Individual Income Tax Law. According to the estimation made by Minister of Finance, the amendment of Individual Income Tax Law will see the reduce of a total of RMB 53 billion in tax revenue in the period of Sep.2011-Dec.2011. On the other hand, incomes other than wages, salary and earnings from self-employed businesses may be more strictly supervised and regulated.

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