

The latest regulations on Individual Income Tax (IIT) and IIT rebate policies in the Mainland to improve the talent mobility in the Greater Bay Area.

News Flash
China Tax and Business Advisory
March 2019
Issue 11

In brief

The Central Government promulgated the Outline Development Plan for Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") on 18 February 2019, which signifies that the GBA development has entered a new stage of comprehensive implementation. On 1 March, several measures were proposed in the second plenary meeting ("the Meeting") of the leading group for the development of the GBA, two of which are noteworthy:

1. New IIT preferential policies will be implemented for counting the number of days of residing in the Mainland by foreign individuals under the IIT law, clarifying that the day of arrival, the day of departure as well as same-day trip will not be counted as a day of residing in the Mainland¹.
2. 9 cities² in the Guangdong province will provide IIT rebate to overseas high-end talents and talents in short supply (collectively "qualified overseas talents") (the "IIT rebate policy")³.

The above two measures are applicable to all eligible foreign individuals and, particularly, good news to those (including Hong Kong and Macao citizens) who are required to travel across the border frequently within the GBA to work. It will attract talents and improve the talent mobility in the GBA. Although the details of the measures have yet to be released, in this News Flash, we would like to discuss the eligible scope and unclear issues of the two measures based on the content of press release after the Meeting.

In detail

1. Criteria for determining the number of days residing in the Mainland

The tax residency status of a foreign individual (including Hong Kong and Macao citizens) and his/her IIT liability in the Mainland depend on the number of days that he/she resides in the Mainland.

Under the IIT Law that comes into effect in 2019, the criteria for determining the number of days of a foreigner's residing in the Mainland follows Article 1 of Guoshuifa [2004] No. 97 issued by the State Administration of Taxation (SAT), that is, "the day of arrival, the day of departure as well as any other day(s) when a same-day trip(s) was (were) taken should be counted as one day."

Under the new criteria for determining the number of days proposed in the Meeting, the day of arrival, the day of departure as well as same-day trip will not be counted as a day residing in the Mainland (The Chief Executive of the Hong Kong Special Administrative Region has a slightly different expression: "Any stay of less than 24 hours in the Mainland will not be counted as a day."). The new criteria will reduce the number of days that foreign individuals reside in the Mainland, which could correspondingly reduce their IIT burden in the Mainland (please refer to below analysis).

1.1、 The determination of tax residency status in the Mainland

The tax residency status of a non-China-domiciled individual under the IIT law depends on the number of days he/she resides in the Mainland, specifically:

- Resident individuals: Individuals without domicile in the Mainland are considered as tax residents for IIT purposes if they have resided for 183 days or more aggregately in the Mainland in a tax year. Tax residents in general are subject to IIT on their worldwide income. Article 4 of the Detailed Implementation Rules of IIT Law (DIR), which come into effect in 2019, provides a specific IIT exemption on non-China sourced income (the “6-year rule”) for this type of tax residents, that only when such type of tax residents have resided for 183 days or more in the Mainland annually for six consecutive years and have not spent more than 30 consecutive days outside the Mainland in any of the 6 consecutive years, will they be subject to IIT on their worldwide income.
- Non-resident individuals: Individuals without domicile in the Mainland who reside in the Mainland for less than 183 days aggregately in a tax year are considered non-residents for IIT purpose. Non-residents in general are only subject to IIT on their China-source income.

Therefore, the new criteria for determining the number of days residing in the Mainland as proposed in the Meeting will reduce the likelihood of a foreign individual being considered as a resident individual for IIT purposes, and thus lower the risk of being taxed in the Mainland on his/her worldwide income.

1.2、 “IIT exemption treatment of residing in the Mainland for not more than 90 days” under the IIT law

According to Article 5 of the DIR, which comes into effect in 2019, for a non-resident individual who has resided in the Mainland for an aggregate period of not more than 90 days in a tax year, the part of his/her income sourced within the Mainland and is paid by an overseas employer and not borne by a permanent establishment which the employer has in the Mainland is exempt from IIT (“IIT exemption treatment of residing in the Mainland for not more than 90 days”).

In practice, the “IIT exemption treatment of residing in the Mainland for not more than 90 days” usually applies to foreign individuals employed by overseas employers who need to travel to the Mainland frequently. For example, Mr. A is a non-China-domiciled individual employed by an overseas entity who is required to travel to the Mainland frequently, and his salary is paid by the overseas employer. Assuming that the overseas employer does not create a permanent establishment in the Mainland, as long as Mr. A resides in the Mainland for not more than 90 days in a tax year, he can enjoy the “IIT exemption treatment of residing in the Mainland for not more than 90 days” under the IIT law in relation to the income that he received from his overseas employer. With the introduction of the new criteria for determining the number of days residing in the Mainland, the day of Mr. A’s arrival, departure and same-day trip will not be counted as a day of residing in the Mainland. Therefore, it will greatly increase the likelihood of Mr. A enjoying the “IIT exemption treatment of residing in the Mainland for not more than 90 days”.

1.3、 Issue No.1 to be clarified: How to implement the “IIT exemption treatment for not more than 183 days of presence” under Double Tax Agreements/Arrangements (DTAs)

The Article of *Dependent Personal Services (Income from Employment)* in most of the DTAs entered by the Mainland has extended the 90-day threshold (as mentioned in above section 1.2) to “183 days during any 12 consecutive months”. Taking the Mainland/Hong Kong DTA and Mainland/Macao DTA as an example: if a Hong Kong/Macao tax resident individual is present in the Mainland for an aggregate period of not more than 183 days in any 12-month period, the part of his/her income sourced from China which is paid by the overseas employer and not borne by a permanent establishment which the employer has in the Mainland is exempted from IIT in the Mainland. (“IIT exemption treatment for not more than 183 days of presence” under DTAs)

However, the current method adopted by the Mainland tax authorities for determining the number of days of presence under DTAs is “the day of arrival, the day of departure as well as any other day(s) when a same-day trip(s) was (were) taken should be counted as one day”, which is much stricter than the new criteria for determining days of residing proposed in the Meeting. Whether the SAT will revise the criteria for determining “days of presence” under DTAs remains unclear.

1.4、 Issue No.2 to be clarified: How to calculate “the number of days working in the Mainland in the current month” in the formula to compute the taxable income

According to the IIT Law, when certain conditions are met, foreign individuals can adopt time-apportionment method to calculate his/her IIT liability in the Mainland, i.e. the IIT payable amount would be apportioned by the number of days working in the Mainland in the current month to the total number of days in the current month. Currently, the “number of days working in the Mainland in the current month” in the formula is interpreted as “the day of arrival, the day of departure as well as any other day(s) when a same-day trip(s) was(were) taken should be counted as half a working day.” Whether the SAT will revise the interpretation has yet to be clarified, because counting the number of days residing in the Mainland to determine the tax residency status and computing the taxable income are two different concepts.

1.5、 Employee’s IIT exposure is closely linked to employer’s corporate income tax (CIT) status

It should be noted that there is one same condition which has to be met for foreign individuals to enjoy the “IIT exemption treatment of residing in the Mainland for not more than 90 days” under the IIT law or the “IIT exemption treatment for not more than 183 days of presence” under the DTAs, that is the wages and salaries of the foreign employees are not borne by a permanent establishment which the employer has in the Mainland. If the overseas employer has created a permanent

establishment in the Mainland, its employees cannot enjoy either of the tax exemption treatment mentioned above, and are exposed to IIT risk even for a short-term stay in the Mainland. Therefore, the foreign employee's IIT risk and the overseas employer's CIT exposure should be assessed and evaluated together.

2、 Providing IIT rebate based on the difference in IIT burden between China and the overseas tax jurisdiction of the overseas high-end talents and talents in short supply (Including Hong Kong and Macao)

According to the PRC IIT law and regulations, wages and salaries of foreign individuals employed by China enterprises are subject to IIT. The progressive tax rate for wages and salaries in the China is between 3% and 45%, and in some cases the tax rate is higher than the highest rate of 15% in Hong Kong and 12% in Macao. Considering that Hong Kong and Macao residents may avoid frequent travel to the Mainland because of the additional individual tax burden, the meeting proposed to expand the policy of overseas talent income tax subsidies currently implemented in Qianhai and Hengqin to nine cities in the Guangdong Province, which will benefit the wider area and will greatly promote the mobility of talents in the GBA.

It should be noted that IIT rebate policies currently implemented in Qianhai and Hengqin are different (see Annex I), each with its own highlights. Although the IIT rebate measures to be extended to nine cities in Guangdong Province have yet to be introduced, we expect that the specific plan will draw on the current IIT rebate policies of Qianhai and Hengqin, and consider the characteristics and special needs of overseas talents in the GBA. The focus of the Development Plan will also be considered in order to set forth a talent attraction policy that will promote the future development of the GBA.

In addition, we expect that the IIT rebate policy for overseas talents will only be applicable to specific talents. Specific requirements that would be considered including the industries requiring the talents, the positions of talents and the qualifications of talents, so as to accurately attract the high-end talents required.

The takeaway

Since the signing of the "Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Bay Area" on July 1, 2017, professional institutions and social groups, including PwC, have been collecting fiscal and tax issues and hurdles related to the development of the GBA, and recommendations have been submitted to the mainland China, Hong Kong SAR and Macao SAR governments through various channels. Talents, being the essential driver of innovation, play a vital role in the development of the GBA. We are very pleased to see that several measures announced after the Meeting are aiming at reducing the cost of labor flow and attracting more high-quality talents to the GBA. This is a breakthrough and inspiring news for the development of the GBA.

According to the press release after the Meeting, the new criteria for determining the number of days residing in the Mainland is applicable to all foreigners, including but not limited to those who work or travel in the GBA. In other words, the day any foreign individual enters or leaves the Mainland through any border control point would not be counted as a day of residing in the Mainland. Due to the geographical advantages of the Guangdong province, Hong Kong and Macao, foreign individuals employed by Hong Kong or Macao enterprises who are required to travel across the border in the GBA frequently can make good use of this policy. Having said, for the purpose of enjoying the "IIT exemption treatment for not more than 183 days of presence" under the DTAs, foreigners should pay special attention to whether the SAT would continue to use the current standard being "the day of arrival, the day of departure as well as any other day(s) when a same-day trip(s) was(were) taken should be counted as one day", or the SAT would also adopt the new criteria for determining the number of days residing in the Mainland proposed in the Meeting. This would be very important as to whether they would have a greater chance to enjoy the "IIT exemption treatment for not more than 183 days of presence" under the DTAs.

The IIT rebate policy will also apply to all eligible foreign individuals, but it seems that they have to be employed by enterprises located in the 9 cities in the Guangdong Province. Since these foreign individuals are employed by mainland enterprises, they are not eligible to either the "IIT exemption treatment of residing in the Mainland for not more than 90 days" under the IIT law or the "IIT exemption treatment for not more than 183 days of presence" under the DTAs. However, the new criteria for determining the number of days of a foreign individual residing in the Mainland proposed in the Meeting can reduce the risk of these non-China domiciled individuals being considered as tax residents in the Mainland, and thus lower the risk of being taxed on their worldwide income.

Foreign employees and their employers in the GBA are recommended to assess the current employment arrangements and make possible adjustment to better leverage on the IIT incentives and IIT rebate policy based on the overall consideration, including their own organizational structure, business model, employment needs, expected cross-border travel frequency, the willingness and flexibility of employees to travel across the border, as well as the corporate tax and individual tax liability in Hong Kong, Macao and the Mainland, etc.

We expect the formal documents for the above measures to be released soon. PwC will closely follow up on the development of the relevant policies and share the observations with you in a timely manner. It should be particularly noted that, as the IIT and CIT regulations in the Mainland are relatively complex, employers and employees should take into consideration the potential corporate and individual tax burden when conducting business and working in the Mainland, as well as the relevant policies regarding employee mobility. Professional advice should be sought when necessary.



Endnote

1. For details, please refer to the website of the State Council of People's Republic of China
http://www.gov.cn/guowuyuan/2019-03/01/content_5369786.htm?from=groupmessage&isappinstalled=0
2. Including Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen, Zhaoqing
3. For details, please refer to the press release of the Hong Kong Special Administrative Region
<https://www.info.gov.hk/gia/general/201903/01/P2019030100929.htm>

Annex I

	Hengqin's IIT rebate policy for Hong Kong and Macao residents	Qianhai's IIT rebate policy for overseas high-end talents and talents in short supply
Scope of application	- Hong Kong and Macao permanent residents who are employed in Hengqin or provide independent service in Hengqin - No industry restrictions	- overseas citizens (including Hong Kong, Macao, and Taiwan citizens) and overseas Chinese and talents returning from studying abroad with permanent overseas residence status, and: - The enterprises and related institutions whom the overseas talents worked for are in the financial, modern logistics, IT, technology services and other professional services industries that are in the encouraged industries of Qianhai; - Properly pay IIT in Qianhai according to the IIT Law
IIT rebate	- For income which the individuals have paid IIT in Hengqin, the portion of the IIT which is excess of the Hong Kong / Macao income tax calculated on such income will be refunded to the individual - The IIT rebate policy applies to all taxable incomes of the individual in accordance with the IIT Law, including employment income, income from providing independent personal services, rental income, and income from property transfers, etc. - The IIT rebate is exempt from IIT in the Mainland.	- Qualified expat talents are entitled to an IIT rebate on their portion of IIT payment in Qianhai exceeding 15% of their taxable income. - The scope of the IIT rebate are items that are included in the comprehensive income under the IIT Law (i.e., wages, salary income, remuneration for personal services, remuneration income, royalties income) and the IIT from business operation income. - The above IIT rebate obtained by the applicant is exempt from IIT



Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

PwC's China Tax and Business Service Team of Guangdong-Hong Kong-Macao Greater Bay Area

Charles Lee
+86 (755) 8261 8899
charles.lee@cn.pwc.com

Jeremy Ngai
+852 2289 5616
jeremy.cm.ngai@hk.pwc.com

Cathy Kai Jiang
+852 2289 5659
cathy.kai.jiang@hk.pwc.com

Ingrid Qin
+86 (20) 3819 2191
ingrid.qin@cn.pwc.com

Catherine Tsang
+86 (755) 8261 8383
catherine.tsang@cn.pwc.com

PwC's Global Mobility Services Team

Central

Jacky Chu
+86 (21) 2323 5509
jacky.chu@cn.pwc.com

North

Edmund Yang
+86 (10) 6533 2812
edmund.yang@cn.pwc.com

South

Louis CS Lam
+852 2289 5528
+86 (20) 3819 6308
louis.cs.lam@hk.pwc.com



One-stop tax information platform of Shui Jie 2.0 version

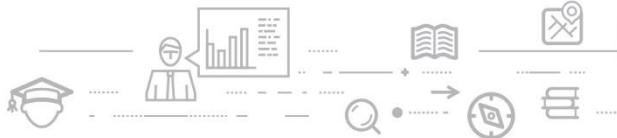
Your exclusive tax think tank



iPhone
(iOS 10 or above)



Android
(Android 6.0 or above)



- For Android users, please scan the QR code to access to Tencent App store.
- Shui Jie web portal - <https://taxnews.pwchk.com>.



In the context of this News Flash, China, Mainland China or the PRC refers to the People's Republic of China but excludes Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Region.

The information contained in this publication is for general guidance on matters of interest only and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PwC's client service team or your other tax advisers. The materials contained in this publication were assembled on 14 March 2019 and were based on the law enforceable and information available at that time.

This China Tax and Business News Flash is issued by the **PwC's National Tax Policy Services** in China and Hong Kong, which comprises of a team of experienced professionals dedicated to monitoring, studying and analysing the existing and evolving policies in taxation and other business regulations in China, Hong Kong, Singapore and Taiwan. They support the PwC's partners and staff in their provision of quality professional services to businesses and maintain thought-leadership by sharing knowledge with the relevant tax and other regulatory authorities, academics, business communities, professionals and other interested parties.

For more information, please contact:

Matthew Mui
+86 (10) 6533 3028
matthew.mui@cn.pwc.com

Please visit PwC's websites at <http://www.pwccn.com> (China Home) or <http://www.pwchk.com> (Hong Kong Home) for practical insights and professional solutions to current and emerging business issues.

www.pwccn.com