Tax Newsletter - "Decision on Amending the Individual Income Tax Law of the People's Republic of China" of The Standing Committee of the National People's Congress

Dear our valued client,

The Standing Committee of the National People's Congress passed the "Decision on Amending the Individual Income Tax Law of the People's Republic of China" ("New Amendment") on 31 August 2018, which redefines the concept of PRC tax resident. The PRC tax resident is subject to Individual Income Tax in the PRC on their worldwide income.

Before the New Amendment, PRC tax resident refers to:

- Any individual who is domiciled in the PRC if he/she habitually resides in the PRC by reason of his/her permanent registered address, family ties, or economic interests; <u>**or**</u>
- Any individual who is a non-domicile of PRC but stays in the PRC for 365 days for any tax year (i.e. 1 January to 31 December).

If an individual is absence in a single period of more than 30 days consecutively or cumulative periods of more than 90 days within the same calendar year, he/she is considered as staying in the PRC for less than 365 days and the individual is not deemed to be a PRC tax resident.

Under the New Amendment, PRC tax resident refers to:

- Any individual who is domiciled in the PRC if he/she habitually resides in the PRC by reason of his/her permanent registered address*, family ties, or economic interests; <u>**or**</u>
- Any individual who is a non-domicile of the PRC but has stayed in the PRC in the **aggregate for 183 days or more of a tax year in the PRC^**.

*** An individual holding a "Residence Permit for Hong Kong, Macao and Taiwan Residents" has a greater chance to be deemed as having a permanent registered address in the PRC.**

^ A "day" includes any day on which a Hong Kong resident is physically present in the PRC (i.e. including the day of arrival and the day of departure). Regardless of how long the individual stays within a day in the PRC, it is regarded as one full day as long as the individual had stayed in the PRC for any moment within that day.

If an individual is deemed to be a PRC tax resident, he/she is subject to individual income tax in the PRC on their worldwide income (including Hong Kong and overseas). The following table shows the tax rates for individual income under the New Amendment:

<table>
<tr><th rowspan="2">Individual income</th><th colspan="2">Tax Rates</th></tr>
<tr><th>Hong Kong</th><th>China</th></tr>
<tr><td>• Stock dividends
• Bonus
• Capital gain (e.g. Gains on the disposal of long-term held securities)
• Bank interest income
• Occasional income</td><td>0%</td><td>20%</td></tr>
<tr><td>• Employment income (i.e. wages and salaries)</td><td>2% - 17% progressive rate
or
15% standard rate</td><td rowspan="2">3% - 45% progressive rate (The employment income, remuneration for labour services, author's remuneration and royalties income will be aggregated for calculation of tax liabilities)</td></tr>
<tr><td>• Remuneration for labour services
• Author's remuneration
• Royalties income</td><td>15% / 16.5%</td></tr>
<tr><td>• Incomes of private industrial and commercial households from their productions and business operations
• Incomes from contracting or leasing enterprises and institutions</td><td>15% / 16.5%</td><td>5% - 35% progressive rate</td></tr>
<tr><td>• Rental income</td><td>15% / 16.5%</td><td>20%</td></tr>
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According to the "Double Taxation Arrangements", generally the same item of income will not be taxed in both Hong Kong and the PRC. Therefore, if a Hong Kong resident is deemed to be the PRC tax resident under the New Amendment, the affected items include but do not limited to the followings:-

1. wages and salaries derived from Hong Kong or the overseas;
2. income is exempt from paying Hong Kong Tax (e.g. dividends and capital gain), but now is subject to Individual Income Tax in the PRC; and
3. some kinds of the income (e.g. wages and remuneration for labour services) are subject to Individual Income Tax with the highest tax rate of 45%, which is far higher than that of the tax rate in Hong Kong at 15%/16.5%. In addition, less deduction could be claimed under Individual Income Tax.

This email has been prepared for the purpose of providing general information only and does not constitute accounting, tax or other professional advice.

For professional advice on specific situation, please feel free to contact us by email at info@chengtax.com.hk or by phone at 39620114 (Mr. Kwong) or 39620129 (Ms. Chan).