

# EXPATRIATE NEWSLETTER

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## CHINA

### AMENDMENT OF PRC INDIVIDUAL INCOME TAX (IIT) LAW APPROVED ON 31 AUGUST 2018 AND WILL COME INTO EFFECT FROM 1 JANUARY 2019

Chinese National People's Congress (NPC) solicited public comments on the draft amendment of PRC IIT Law and more than 130,000 comments had been received by 28 July 2018. The updated PRC IIT Law has now been approved as of the 31 August 2018 which will come into effect from 1 January 2019. Starting from 1 October 2018, the updated monthly standard deduction of CNY 5,000 and PRC IIT tax rates on consolidated income will be applied to 'wages and salaries' income.

#### Main amendments

##### Introduction of the 183-day test rule to determine China residents and non-residents

According to updated PRC IIT Law, Chinese nationals will always be deemed as Chinese resident. However, for foreign individuals who hold non-Chinese passports, the duration of becoming a China resident will reduce from one year (i.e. not physically present outside PRC for either more than 30 days consecutively or 90 days cumulatively in a calendar year) to 183 days. If individuals are deemed China residents, they will be subject to PRC IIT on all the income derived within and outside China.

##### Consolidation of certain income types for taxation

Four types of labour income, which include wages and salaries, remuneration for personal service, author's remuneration and royalties are consolidated into one category (hereinafter referred to as 'consolidated income') for PRC IIT reporting purpose.

##### Updated PRC IIT rates and basic standard deduction applied to consolidated income

The unified progressive tax rates ranging from 3% to 45% will be applied to the consolidated income.

In addition, basic standard deduction applied to wages and salaries will continue to be applicable to consolidated income whilst the monthly deduction amount will increase from CNY 3,500 to CNY 5,000 (i.e. CNY 60,000 per year).

##### Extra itemised special deductions

For China residents, the following extra itemised special deductions can be deducted from the consolidated income for PRC IIT purpose:

- Child education expenses;
- Continued education expenses;
- Medical expenses for serious illness;
- Alimony for elderly parents;
- Housing loan interest or housing rent.

##### Anti-tax avoidance and collaboration among relevant government authorities

It is the first time of introducing anti-tax avoidance to PRC IIT Law. It stipulates that tax authorities are given the power to make tax adjustments and impose interest in a reasonable manner including but not limited to the following behaviours:

- Transferring of property between an individual and his/her related parties in violation of the arm's length principle;
- Tax avoidance in tax havens outside China and obtaining improper tax benefits from other unreasonable commercial arrangements;
- Obtaining improper tax benefits from implementing other arrangements which do not have reasonable business purposes.

##### New annual reconciliation filing requirement on consolidated income

For China residents who have withholding agents, the tax liabilities shall be withheld and prepaid by the withholding agent on a monthly basis or based on the occurrence of the income. However, if there is additional tax due or any overpayment, the taxpayers can file an annual reconciliation return from 1 March to 30 June following the year end, after receipt of such consolidated income.

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# EDITOR'S LETTER

The BDO Expatriate Newsletter provides a brief overview of issues affecting international assignees, predominantly, but not exclusively, from a tax and social security perspective.

This newsletter brings together individual country updates over recent months. As you will appreciate, the wealth of changes across multiple jurisdictions is significant so to provide easily digestible information we have kept it to the key developments that are likely to affect your business and international assignees.

For more detailed information on any of the issues or how BDO can help, please contact me or the country contributors direct.

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The articles contained in this newsletter have been prepared for your general information only and should not be acted or relied upon without first seeking appropriate professional advice for your circumstances.

## Impact

According to the existing PRC IIT Implementation Rule, foreign nationals who reside in China for less than five full consecutive years will only be subject to PRC IIT on their China sourced income. However, the updated PRC IIT Law will apply the 183-day test rule to determine the status of a Chinese resident who will be taxed in China.

Currently, it is still uncertain whether the Five-Year rule will cease to be in force pending release of relevant updated PRC IIT implementations. If it becomes invalid, for those individuals who are considered Chinese residents whilst also being residents of other countries, it is most likely that there will be doubly taxed income.

This is the first time that PRC IIT has introduced a new tax system by combining consolidated and classificatory income. Pursuant to the existing PRC IIT Law, qualified annual bonuses and equity incentive income enjoyed preferential tax treatment for PRC IIT calculation purposes. However, such treatment will no longer be applicable once the updated PRC IIT Law has been implemented.

Under the updated PRC IIT Law, the tax brackets of the income applicable to consolidated income tax rates between 3% and 25% are adjusted to allow taxpayers to enjoy lower tax rates while those of the tax rates from 30% to 45% remain unchanged. This means that taxpayers at a low and moderate income level will enjoy more benefits by adopting the new tax rates.

According to the updated PRC IIT Law, China residents could apply for a lower tax burden if they are qualified to enjoy certain types of extra itemised special deductions. China residents who have withholding agents can submit relevant documents to their withholding agents in order to also enjoy such deductions. The withholding agent cannot refuse to deduct such amounts while prepaying the monthly IIT for the taxpayers. Therefore, it will significantly increase the withholding agents' workload.

Anti-tax avoidance is introduced against the back drop of the implementation of the Common Report Standard (CRS). For taxpayers' cross-border transactions, the tax authority can apply relevant anti-tax regulations to assess whether such behaviours are reasonable. If there is any under-reported income, the Chinese tax authority has the right to demand taxpayers pay Chinese tax and impose late payment surcharges and penalties accordingly.

For Chinese residents, the existing annual IIT filing requirement will be suspended and replaced by the new annual reconciliation filing requirement on consolidated income according to the updated PRC IIT Law. In addition, introduction of taxpayers' identification number which requires tax payers to submit more personal information to the Chinese tax authority. In this regard, the tax authorities will have more complete information, giving them a full picture of the taxpayers' income structure to better monitor the tax filing status.

## Recommendations

Review current employment/assignment statuses to determine if there is any need for tax planning in accordance with the new 183-day test rule.

Arrange training for HR or finance departments in relation to the implementation of updated PRC IIT Law to improve the compliance level.

Due to the new tax filing requirement, the withholding agents should assign more staff to work on identifying relevant supporting documents for extra itemised special deductions that are submitted by the taxpayers.

Review the company's previous tax planning and future tax planning to assess if there is any non-compliance risk.

Pay close attention to the upgrade of the tax filing system and the update of tax filing requirements to reduce potential tax risks.

For further information in relation to above topic, please do not hesitate to contact us.

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# HONG KONG

## HIRING EMPLOYEES WITHOUT THE RIGHT OF ABODE OF HONG KONG

The Hong Kong Government welcomes foreigners who possess special skills, knowledge or experience of value that is scarce or not readily available in Hong Kong to enter and stay in Hong Kong for employment as professionals.

A foreigner must have a valid work visa to be able to work in Hong Kong. If you wish to hire a foreigner without the right of abode of Hong Kong, you will have to apply for a valid work visa on your employee's behalf before he/she can commence employment with you.

The Hong Kong Immigration Department has launched the following Admission Schemes for Talent, Professionals and Entrepreneurs:

### 1. General Employment Policy (GEP) (for non-Mainland residents) – Professionals

Professionals from overseas (including Taiwan and Macao) who are interested in working in Hong Kong may apply under the GEP as this has no sector restrictions. Key requirements include:

- Applicant secures a job relevant to his/her academic qualifications and work experience is scarce or not readily available in the local workforce;
- The remuneration package and other fringe benefits offered to the applicant are broadly commensurate with the prevailing market level for professionals;
- Applicant possesses a good educational background, technical qualifications or proven professional experience and expertise.

#### Enhancement measures

- Duration of stay granted by the Immigration Department from 1 year (or 2 years) renewable for 2 years (or 3 years) consecutively (i.e. '1+2+2+3' years to '2+3+3' years);
- Eligible top-tier entrants' pattern of duration of stay from '1+2+2+3' years to '2+6' years; on time limitation with no other conditions of stay upon extension;
- Upon completion of 7 years consecutive stay, eligible applicants may apply for right of abode in Hong Kong with the Immigration Department.

### 2. GEP – Entrepreneurs

Entrepreneurs from overseas (including Taiwan and Macao) who plan to establish or join in a business in Hong Kong may apply under the GEP. Key requirements include:

- Applicant possesses a good educational background, technical qualifications or proven professional experience and expertise;
- Applicant is in a position to make a substantial contribution to the economy of Hong Kong.

#### Enhancement measures

- Specify consideration factors in assessing applications include:
  - Business plan;
  - Business turnover;
  - Financial resources;
  - Investment sum;
  - Number of jobs created locally;
  - Introduction of new technology or skills.
- Applications will be favourably considered for start-up entrepreneurs who plan to establish or join in a start-up business supported by a government-backed programme such as:
  - InvestHK's StartmeupHK Venture Programme;
  - Hong Kong Science and Technology Parks Corporation's Incu-App, Incu-Bio and Incu-Tech programmes;
  - Cyberport Incubation Programme;
  - Innovation and Technology Commission's Small Entrepreneur Research Assistance Programme and Enterprise Support Scheme;
  - Hong Kong Design Centre's Design Incubation Programme.

### 3. Admission Scheme for Mainland Talents and Professionals (ASMTP) – for Mainland residents

Professionals from the Mainland who are interested in working in Hong Kong may apply under the ASMTP which has no sector restrictions. Key requirements include:

- Applicant secures a job relevant to his/her academic qualifications or work experience where there is a scarcity of knowledge not readily available in the local workforce;
- The remuneration package and other fringe benefits offered to the applicant are broadly commensurate with the prevailing market level for professionals;
- Applicant possesses a good educational background, technical qualifications or proven professional experience and expertise.

#### Enhancement measures

1. Duration of stay granted by the Immigration Department from 1 year (or 2 years) renewable for 2 years (or 3 years) consecutively (i.e. '1+2+2+3' years to '2+3+3' years);
2. Eligible top-tier entrants' pattern of duration of stay from '1+2+2+3' years to '2+6' years; on time limitation with no other conditions of stay upon extension;
3. Upon completion of 7 years of stay consecutively, eligible applicants may apply for right of abode of Hong Kong with the Immigration Department.



#### 4. Quality Migrant Admission Scheme (QMAS)

Highly skilled or talented individuals who have not yet secured a job offer in Hong Kong but are interested in settling and working in Hong Kong may apply under the QMAS which has no sector restriction. There are two points-based tests under the scheme:

- General Points Test (GPT) for highly skilled or talented persons
- Assessment factors: age, academic/professional qualifications, work experience, language proficiency, family background
- Achievement-based Points Test (APT) for talent with outstanding achievements (e.g. recipients of an Olympic medal, Nobel prize, national/international awards)

##### Enhancement measures

- Duration of stay granted by the Immigration Department from 1 year (or 2 years) renewable for 2 years (or 3 years) consecutively (i.e. '1+2+2+3' years to '2+3+3' years) for GPT entrants;
- Eligible top-tier entrants' pattern of duration of stay to '2+6' years;
- APT entrants may be granted 8 years of stay upon entry;
- Bonus points for outstanding academic background and international work experience under GPT.

#### 5. Immigration Arrangements for Non-local Graduates (IANG)

Non-local graduates may apply under the IANG to stay in Hong Kong for one year to look for a job. Key requirements include:

- Applicant has obtained an undergraduate or higher qualification in a full-time locally-accredited programme in Hong Kong;
- Job offer not required upon entry (for fresh graduates);
- Job is at a level commonly taken up by degree holders and is remunerated at the market rate (for returning graduates).

#### 6. Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents (ASSG)

Applicants who are the second generation of Chinese Hong Kong permanent residents from overseas may apply for entry into the HKSAR under ASSG. There are no sector restrictions and no job offer is required upon entry. Key requirements include:

- Aged 18-40; born overseas;
- At least one parent holds a valid Hong Kong permanent identity card upon application and was a Chinese national settled overseas at the time of applicant's birth;
- Good educational background, technical qualifications or proven professional experience and expertise;
- Proficient in written and spoken Chinese (Putonghua or Cantonese) or English.

#### 7. Dependants and Stay Arrangements

- Successful entrants may bring their spouse and unmarried dependent children under the age of 18 to Hong Kong. The dependants' length of stay will normally be linked to that of the sponsor and they are free to take up employment or study during their stay in Hong Kong;
- After 7 years of continuous ordinary residence, entrants and their dependants may apply for Hong Kong permanent resident status in accordance with the law.

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# UNITED KINGDOM

## OWNING A PROPERTY ABROAD

**D**ue to the increase in global mobility, it has become increasingly popular for individuals to own property in multiple countries. Governments are beginning to be extra vigilant when it comes to investment in real estate by foreigners.

Some common themes we are seeing are as follows:

- Restrictions on ownership to only include newly built properties – this will help drive the construction industry for their countries;
- Restrictions on domestic loans provided to foreign nationals for the purchase of property – to try and ensure that property prices do not increase for domestic buyers;
- A 'vacancy levy' or 'empty house tax' will be applied to encourage rental and therefore increase housing availability and affordability;
- Registration of beneficial ownership to help keep track of property owned by foreign nationals;
- Sharing of information between the domestic and foreign governments.

Foreign nationals purchasing real estate should be aware of potential increased restrictions on ownership. They may also find that there are less favourable tax rates should they rent or subsequently sell the property as well.



## CLASS 2 NATIONAL INSURANCE CONTRIBUTIONS

**I**t has been under discussion for some time that Class 2 National Insurance Contributions (NICs) were going to be abolished. The implementation date has actually already been deferred twice. This would have meant expatriates would need to pay Class 3 NICs instead of Class 2 where they wanted to make voluntary contributions.

It was recently announced that the abolition of Class 2 NICs that had been deferred to April 2019 will no longer be taking place during this parliament. This is beneficial to expats who wish to make voluntary NICs.

## TERMINATION PAYMENTS

**A**s you may be aware, there were significant changes implemented during 2017 that came into force from April 2018. Some of the key changes are set out below:

- Foreign Service Relief has been abolished in certain circumstances;
- The same rules on tax exemption for payments for injury and disability will not apply to injury of feelings;
- Payments in Lieu of Notice are now considered taxable and liable to National Insurance Contributions (NIC), regardless of whether they are contractual or not.

As an employer, you need to ensure that you understand the rules for termination payments and remain compliant when it comes to payments made to your international employees. Key considerations include:

- The abolition of Foreign Service relief for certain individuals. This is likely to see an increase in foreign tax credit claims on termination payments;
- There is likely to be a higher instance of double taxation on termination payments;
- Do bear in mind that even if a termination payment is received after the assignee has left the UK, it may still be taxable in the UK;
- The changes and rules in place apply to both inbound and outbound assignees.

Do also bear in mind that employer NIC will be due on the balance of any qualifying redundancy payments over GBP 30,000 from April 2019.

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# UNITED STATES

## CHANGES TO US TAX LEGISLATION DUE TO THE RECENT TAX CUTS AND JOBS ACT

This 2018 tax year has seen some major tax law changes stemming from US legislation with the implementation of the current administration's Tax Cuts and Jobs Act (TCJA) going into effect 1 January 2018. With the calendar year-end swiftly approaching, the effects of some of these changes will have some major implications on individual filing in the US for non-resident aliens in the country for any portion of the 2018 tax year.

### Loss of personal exemptions

As part of the TCJA's sweeping changes, both personal and dependent exemptions (USD 4,050 per exemption in 2017) have been suspended starting in the 2018 tax year and continuing through at least 2025. Those hardest affected by the removal of personal exemptions will be non-resident individuals filing in 2018. For US tax resident filers and filers below the phase-out threshold, the loss of this exemption is slightly mitigated by the favourable changes to the tax table rates and an increase in standard deductions based on your filing status (doubled in most cases).

Non-resident Individuals filing form 1040NR (including dual-status filers), however, do not benefit from these mitigating items. They are forced to itemise since they are not eligible for the standard deduction and are not able to claim what's considered the more tax favourable filing status.

### No more child tax credits without SSN

As relief to the suspension of dependent exemptions, the TCJA goes on to revise the Child Tax Credit (CTC) starting in 2018 by increasing the credit to USD 2,000 (up from USD 1,000) per qualifying child under age 17, with USD 1,400 of the credit being refundable. The phase-out for the credit has also been increased to USD 400,000 for married filing jointly and USD 200,000 for individuals.

While the above changes all appear to be favourable, an additional revision was included that disallows qualifying children without a valid Social Security number from being eligible for the full credit. They do, however, provide a USD 500 non-refundable credit for dependents who are not qualifying children under age 17.

For parents traveling to the US for work and bringing their children, this could create potential planning complexities as an Individual Tax Identification Number (ITIN) no longer allows for the additional tax savings it has in previous years. For US tax preparers, it will be more important to identify these child ITIN holders in order to prevent potential notices for claiming the credit improperly going forward.

### Costs to company programs

For company's bringing assignees into the US, the recent tax reform changes result in additional tax costs for the inbound population starting in the 2018 tax year. Whether the company is carrying the burden of these tax costs (in tax protected or equalised assignments) or the individual is, the removal of personal and dependent exemptions and the continued inability for non-residents to claim the standard deduction. You can expect to see increases for the majority of your 1040NR filers who won't benefit from these reductions of taxable income as they have in the past.

It's recommended that you speak with your tax advisor before year-end, whether you are a non-resident alien, programme manager or even US business traveller, to plan and better understand the impact these changes will have.

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## US – BRAZILIAN SOCIAL SECURITY AGREEMENT TO ENTER INTO FORCE

On 1 October 2018, the bilateral Social Security agreement between the United States of America and Brazil will enter into force. According to a White House Office of The Press Secretary Fact Sheet, the United States estimated that the agreement would save US and Brazilian companies more than USD 900 million over the first six years. Currently, mobile employees who are working in Brazil and the United States are required to pay social tax in both countries.

### Totalisation agreements defined

International Social Security agreements seek to eliminate duplicate Social Security on the same earnings and coordinate retirement benefits. Where employee wages would otherwise be subject to Social Security taxes in both countries, the totalisation agreement would restrict taxation to the country in which the individual performs services.

Under the detached worker exception, social taxes would be restricted to only the home country. The detached worker exception is available for temporary assignments expected to last no more than five years and the employee continues to work for the employer in the home country. If a US employee is transferred temporarily to a foreign affiliate of the US entity, the US entity can enter into an agreement under the relevant section of the Internal Revenue Code to treat any US citizens and resident employees of the foreign affiliate as employees of the US entity for US Social Security purposes. Where this is the case, those employees would be subject to US Social Security taxes.

To certify that an employee is exempt from paying social tax in the host country, a Certificate of Coverage (CoC) must be obtained from the country that will continue to cover the employee.

### The impact to US and Brazilian workers and employers

According to Brazil's Ministry of Finance's Secretariat of Social Security, the bilateral agreement is expected to benefit approximately 1.3 million Brazilians and more than 35,000 US citizens. As reflected in the chart below, the bilateral agreement will bring about much needed relief for both employees and employers, since it will limit an employee's and employer's social tax contributions to only one country.

	Paid by Employee	Paid by Employer
United States	7.65%	7.65%
Brazil	8.00% to 11.00%	20.00% to 22.50%

While the chart above does not include additional surcharges in each country nor outline compensation caps that may apply, it provides a general guideline to compare US and Brazilian social tax rates.

In addition to protecting against duplicate social taxes, the agreement will also protect mobile workers from losing retirement benefits in their home country while they are working in the host country. Under the agreement periods of coverage in another totalisation agreement country or countries can be added together in order to determine retirement eligibility requirements.

### Looking ahead

For Americans who are currently working in Brazil, once the agreement enters into force and the SSA begins accepting CoC applications, employers should immediately begin initiating the CoC application process. This will ensure that current duplicate social tax contributions can promptly cease since the transition rules allow for employees who are temporarily assigned to a host country prior to the effective date of the totalisation agreement to obtain a CoC as if their temporary assignment started on the date the agreement was entered into force. US entities with foreign affiliates in Brazil will also need to consider if it is appropriate to enter into an agreement; however it is important to remember that the agreement also applies to any US citizens or residents hired locally by the foreign affiliate not just US employees who are temporarily transferred to the foreign affiliate. In addition the totalisation agreement does not apply to Brazil's Fundo de Garantia do Tempo e Serviço. This Severance Indemnity Fund, which is referred to as FGTS, is funded by the employer and is for the employee's benefit.

Finally it is also important to remember that, while most other bilateral agreements allow for an extension beyond the five-year period for which a CoC is generally issued, the agreement with Brazil does not follow this general rule. In accordance with the agreement, an employee may only qualify for an additional exemption if he or she is absent from the host country for at least six months.

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## CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 21 September 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Chinese Yuan Renminbi (CNY)	0.12443	0.14597
British Pound (GBP)	1.12677	1.32176
US dollar (USD)	0.85245	1.00000

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