

Comments on the Revised Clauses of the Implementation Regulations of the PRC Individual Income Tax Law and Introduction to the Interim Measures for Special Additional Deductions for Individual Income Tax

Author: GUO, Yongmao

In order to implement the Individual Income Tax ("IIT") Law of the People' s Republic of China ("PRC") revised in 2018("2018 Version of the IIT Law") as reviewed and approved by the Standing Committee of the National People' s Congress ("NPC") on 31 August 2018, the Ministry of Finance ("MOF") and the State Administration of Taxation ("SAT") released the Exposure Draft of the Revised Implementation Regulations for the IIT Law ("Exposure Draft of the IRs") and the Exposure Draft of the Interim Measures for Special Additional Deductions ("SAD") for IIT("Exposure Draft of the IMSAD") on 20 October 2018. Recently, the finalized Revised Implementation Regulations for the IIT Law ("2018 IRs") and the finalized Interim Measures for SAD for IIT (Guo Fa [2018] No. 41, "Circular No. 41" or "IMSAD") were released (hereinafter the "Revision"). Both of them take effect since 1 January 2019. Based on the revised contents of the 2018 Version of the IIT Law, 2018 IRs further explains the residence time standard, scope of income, deduction items, overseas tax credit, and etc. in details. Comparing with Exposure Draft of the IRs, some technical positions in 2018 IRs are amended to some extent. The finalized Circular No. 41 stipulates deduction amount, deduction methods and management rules of the SAD items. Comparing with Exposure Draft of the IMSAD, Circular No. 41 enhances the operability of relevant technical provisions.

In comparison with the Implementation Regulations for the IIT Law as revised in 2011 ("2011 IRs"), 2018 IRs has made significant revisions to certain contents. Please find the tabular comparisons of relevant revisions as below. We also attach thereafter a tabular introduction of Circular No. 41. Our comments on the regulations and circular are set forth below as well.

I. Major Revisions of the Provisions and Our Comments

A. Refining residence time standard and changing "5-year relief" rule to "6-year relief" rule

2011 IRs	2018 IRs
Article 3 "Resided in China for 1 year or more" referred to in Paragraph 1 of Article 1 of IIT Law shall mean residing in China for 365 days in a tax year. The duration time of temporary trips out of China shall not be deducted when calculating the period of stay in China. "Temporary trips out of China" referred to in the preceding paragraph shall mean absence from China in a tax year for no more than 30 days in a single trip or no more than 90 days cumulatively over multiple trips. Article 6 Upon approval from tax authorities in charge, individuals who do not have a domicile in China but have resided in China for more than 1 year and less than 5 years may pay IIT only for the part of their income sourced outside China but paid by companies, enterprises and other economic organizations or individuals in China. Individuals who have resided in China for more than 5 years shall pay IIT on all income sourced outside China from the 6th year onwards.	Article 4 Individuals who do not have a domicile in China but have resided in China for 183 days cumulatively per year for less than 6 consecutive such years, upon filing with taxation authorities in charge, shall be exempted from IIT for their income sourced outside China and paid by entities or individuals outside China. If an Individual left China for more than 30 days in a single trip in any year during which he/she resided in China cumulatively for 183 days, the number of consecutive years in each of which he/she resided in China cumulatively for 183 days shall be restarted to count.

Haiwen Comments ("HW comments"):

2018 Version of the IIT Law has changed the residence time standard of "resident individuals", replacing the "1 year" standard with a "183 days" standard, making it easier for overseas individuals to become "resident individuals" of China.

Nevertheless, in order to attract and retain overseas talents, Exposure Draft of the IRs maintains the previous "5-year rule" and "non-temporary trips out of China" provision to some extent, which reserves tax relief treatment for foreign individuals who do not have a domicile in China. The officially promulgated 2018 IRs further changes the "5-year rule" to a "6-year rule", say, for overseas individuals without a domicile in China, if they stay cumulatively for 183 days per year in China for no less than 6 consecutive such years, they shall pay PRC IIT on their global income starting from the 7th such year. For overseas individuals who become PRC tax residents only because they meet "residence time standard", if they leave China for more than 30 days in a single trip in any year during which they become a tax resident, the number of consecutive years in each of which they reside in China cumulatively for 183 days shall be restarted to count. In conclusion, although 2018 Version of the IIT Law has made it easier for overseas individuals to become "resident individuals" of China, relevant individuals can reasonably reduce their risks of being subject to PRC IIT by applying the "6-year rule" and planning a "non-temporary trip out of China".

2018 IRs provides that in order to apply the "6-year relief" rule, relevant individuals shall do a filing with tax authorities (in 2011 IRs, tax authorities' approval is required in order to apply the "5-year rule"). Such arrangement will reduce uncertainty in the process of applying the preferential treatment. It should be noted that if an overseas individual could not file with (report to) tax authority in time to apply the "6-year rule", he/she might be subject to PRC IIT for overseas income. It should also be noted that, for an overseas individual who has a domicile in China, he/she is subject to PRC IIT for global income starting from the date when he/she owns a domicile in China, and he/she could not enjoy the preferential treatment of the "6-year relief" rule.

B. Adjusting scope of income prudently, "deemed transfer of properties" rule ultimately not adopted

1. Adjusting "source of income standard" prudently

2011 IRs	2018 IRs
Article 5 The following income shall be deemed as income sourced from China regardless whether the payment is made within China: (1) Income derived from personal services provided in China due to taking office, being employed, performance of contract, etc.; (2) Income derived from lease of properties to a lessee for use in China; (3) Income derived from transfer of properties such as buildings, land use rights and etc. located in China or transfer of other properties in China; (4) Income derived from licensing of various licensing rights for use in China; and (5) Income of interests and dividends derived from companies, enterprises and other economic organizations or individuals in China.	Article 3 Unless otherwise stipulated by the State Council's fiscal and taxation departments, the following income shall be deemed as income sourced from China, regardless whether the place of payment is in China: (1) Income derived from personal services provided in China due to taking office, being employed, performance of contract, etc.; (2) Income derived from lease of properties to a lessee for use in China; (3) Income derived from licensing of various licensing rights for use in China; (4) Income derived from transfer of properties such as immovable property and etc. located in China, or transfer of other properties in China; and (5) Income of interests and dividends derived from enterprises, institutions, other organizations and resident individuals in China.

HW comments:

The Revision adds the stipulation “unless otherwise stipulated by the State Council’ s fiscal and taxation departments” to the judgment criteria of the source of income. From a literal point of view, since mainbody clause of this Article is a “universal affirmative judgment” (say, for specified types of income, regardless of whether the place of payment is within China, such income is regarded as income sourced from China), the State Council's fiscal and taxation departments can only provide exclusionary (negative) exceptions (to otherwise stipulate) to relevant types of income specified in this Article. That is to say, the fiscal and taxation departments can exclude certain circumstances stipulated in this Article from being regarded as income sourced from China. And they are not allowed to create other circumstances outside the circumstances stipulated in this Article as additional scenarios “regardless whether the place of payment is in China” .

In Exposure Draft of the (2018) IRs, it stipulated that “income derived from business activities carried out in China” (“business operation income”), “income derived from transfer of equity assets constituted by investments in enterprises, institutions or other economic organizations in China” (“equity capital gains”) and “author’ s remuneration and contingent income paid or borne by enterprises, institutions, other economic organizations or individual residents in China” (“author’ s remuneration/contingent income paid/borne within China”) shall also be deemed as income sourced from China regardless whether the place of payment is in China (“payment-place-regardless provision”). However, in the officially promulgated 2018 IRs, the aforementioned 3 types of income are excluded from the “payment-place-regardless provision” . We understand that the reason may be that the “payment-place-regardless provision” intends to grant the Chinese government the power to levy tax on certain types of income, however,

- In the case of “business operation income” , on the one hand, “independent personal services terms” of relevant tax treaties generally stipulate that income derived by an individual who is a resident of a contracting state in respect of professional services or other activities of an independent nature shall be taxable only in that contracting state, unless he/she has a fixed base regularly available to him/her in the other contracting state for the purpose of performing his/her activities or he/she is present in that other contracting state for a period or periods exceeding 183 days cumulatively in a calendar year (or any 12 months) concerned. That is to say, the internationally

agreed common basis to judge attribution of taxation power is mainly “fixed base standard” and “time standard”, rather than “payment place standard”. On the other hand, “carrying out business activities” is usually “performing contracts”. In this regard, the provision “income derived from personal services provided in China due to taking office, being employed, performance of contract, etc.” in this Article already covers the main scope of “business activities”, therefore, the necessity of listing “business operation income” separately among the “payment-place-regardless provision” is reduced.

- In the case of “equity capital gains”, “capital gains terms” of tax treaties stipulate rules to attribute taxation powers for immovable properties, equity interest and other properties. Since in China international law usually prevails over domestic law, the “payment-place-regardless provision” rule for “equity capital gains” is highly substitutable (by tax treaties) and is therefore finally not included in 2018 IRs.
- In the case of “author’s remuneration/contingent income paid/borne within China”, on the one hand, as for “author’s remuneration/contingent income paid within China”, the wording itself has indicated “paid within China”. If such circumstance would be included in “payment-place-regardless provision”, it will be logically not self-consistent. On the other hand, as for “author’s remuneration/contingent income borne within China”, this may refer to the situation in which domestic entity pays to overseas enterprise and then overseas enterprise pays to overseas individual. When domestic entity pays to overseas enterprise, relevant overseas enterprise may be subject to PRC Enterprise Income Tax (“EIT”). If relevant overseas individual would also be required to pay PRC IIT on such “income sourced from China indirectly”, it is difficult for PRC tax authorities to enforce “long-arm jurisdiction”. Therefore, it is advisable not to prescribe such a clause.

In the Revision, the term “properties such as buildings, land use rights” is changed to “properties such as immovable property”. Technically speaking, such a revision expands the covered scope of “payment-place-regardless provision” (for detailed analysis, please refer to the section entitled “F. Discrimination and analysis of the word ‘ETC.’ ” in this article).

2. Adjusting scope of income according to the new IIT Law

2011 IRs	2018 IRs
Article 8 The scope of each type of individual income item referred to in Article 2 of IIT Law shall be: (1) Income of wages and salaries, meaning wages, salaries, bonuses, year-end increased salaries, profit sharing, allowances and subsidies derived by individuals from taking office or being employed, as well as other income in relation to taking office or being employed. (2) Income generated from production and business operation by individual industrial and commercial households ("IICH"), meaning: (a) income derived by IICH engaged in industrial operations, handicraft, construction, transportation, commercial operation, food and beverage industry, services, repair industry and other industrial production and business operations; (b) income derived by an individual holding a license issued by relevant government department(s) and engaged in educational, medical, consulting and other compensated services; (c) other income derived by an individual engaged in individual industrial and commercial production and business operations; and (d) various taxable income derived by the aforesaid IICH and individuals in relation to production and business operations. (3) Income generated from contracted and/or leased operation of enterprises and institutions, meaning income derived by individuals engaged in contracted operations, leasing operations, subcontracting and sub-leasing operations, including income of wages and salaries derived by individuals on a monthly basis or for each project. (4) Income generated from personal services, meaning income derived by individuals engaged in design, renovation, installation, engineering drawing, laboratory testing, testing, medical service, legal service, accounting, consulting, lecturing, news, broadcasting, translation, proofreading, painting and calligraphy, sculpting, movie and television services, recording, video recording, performance, advertising, exhibition, technical services, introduction services, brokerage services, agency services and other personal services. (5) Income of author's remuneration, meaning income derived by individuals from publication of their works in forms of books and newspapers. (6) Income of royalties, meaning income derived by individuals from providing patents, trademark rights, copyrights, non-patent technologies and the right to use other licensing rights; income of author's remuneration does not fall into this category. (7) Income of interests and dividends, meaning income derived by individuals from interests and dividends in relation to their possession of creditor's rights and equity interests. (8) Income generated from lease of properties, meaning income derived by individuals from leasing of buildings, land use rights, machinery and equipment, vehicles and vessels and other properties. (9) Income generated from transfer of properties, meaning income derived by individuals from transfer of priced securities, equity interests, buildings, land use rights, machinery and equipment, vehicles and vessels and other properties. (10) Accidental income, meaning income derived by individuals from awards, prizes, lottery and other income of contingent nature. If specific category of taxable income derived by individuals is difficult to be classified, it shall be determined by tax bureaus in charge.	Article 6 The scope of each type of individual income item stipulated in IIT Law shall be: (1) Income of wages and salaries, meaning wages, salaries, bonuses, year-end increased salaries, profit sharing, allowances and subsidies derived by individuals from taking office or being employed, as well as other income in relation to taking office or being employed. (2) Income generated from personal services, meaning income derived by individuals engaged in design, renovation, installation, engineering drawing, laboratory testing, testing, medical service, legal service, accounting, consulting, lecturing, translation, proofreading, painting and calligraphy, sculpting, movie and television services, recording, video recording, performance, advertising, exhibition, technical services, introduction services, brokerage services, agency services and other personal services. (3) Income of author's remuneration, meaning income derived by individuals from publication of their works in forms of books and newspapers, etc. (4) Income of royalties, meaning income derived by individuals from providing patents, trademark rights, copyrights, non-patent technologies and the right to use other licensing rights; income of author's remuneration does not fall into this category. (5) Business operation income, meaning: (a) income generated from production and business operation by IICH, as well as income generated from production and business operation of sole-proprietorship enterprise or partnership enterprise registered in China derived by the investor of such sole-proprietorship enterprise or the partner individual of such partnership enterprise; (b) income derived by an individual from engaging in educational, medical, consulting and other compensated services pursuant to laws; (c) income derived by an individual engaged in contracted operations and leasing operations, as well as subcontracting and sub-leasing operations; and (d) income derived by an individual from other production and business operation. (6) Income of interests and dividends, meaning income of interests and dividends derived by individuals in relation to their possession of creditor's rights, equity interests and etc. (7) Income generated from lease of properties, meaning income derived by individuals from leasing of immovable properties, machinery and equipment, vehicles and vessels and other properties. (8) Income generated from transfer of properties, meaning income derived by individuals from transfer of priced securities, equity interests, shares of properties in partnership enterprises, immovable properties, machinery and equipment, vehicles and vessels and other properties. (9) Accidental income, meaning income derived by individuals from awards, prizes, lottery and other income of contingent nature. If specific category of taxable income derived by individuals is difficult to be classified, it shall be determined by the State Council's taxation department.

HW comments:

In the officially promulgated 2018 IRs, the scope of "business operation income" has been adjusted to some extent in comparison to Exposure Draft of the IRs: (1) "Income generated from production and business operation by IICH" and "Income generated from production and business operation of sole-proprietorship enterprise or partnership enterprise registered in China derived by the investor of such sole-proprietorship enterprise or the partner individual of such partnership enterprise" are presented separately, no longer emphasizing "IICH registered in China". (2) 2018 IRs no longer requires "holding a license" for the income derived by an individual from engaging in educational, medical, consulting and other compensated services. In this regard, since "income generated from personal services" also includes "compensated services" such as "medical" and "consulting" services, if "holding a license" is no longer a criterion to distinguish "business operation income" from "income generated from personal services" (IIT rates of the 2 types of income are different), it is necessary to make specific judgment to differentiate them based on factors such as service frequency (incidental/regular/daily), business size (whether hiring assistants/apprentices) and accounting method (simple accounting/normal accounting)

of the compensated services. In practice, there might be disputes on the differentiation between the 2 types of income between taxpayers and tax authorities. At present, the Tax Computation Measures for IIT on IICH (Revised in 2018) treats “individuals engaged in educational, medical, consulting and other compensated services approved by government departments” and “other individuals engaged in individually-owned production and business operation” as “IICH”. After the promulgation and implementation of 2018 IRs, the aforementioned Tax Computation Measures for IIT on IICH may need to be amended to reflect the legislative changes.

Comparing to 2011 IRs, in the officially promulgated 2018 IRs, the provision “income derived by an individual engaged in contracted operations and leasing operations as well as subcontracting and sub-leasing operations” no longer includes “income of wages and salaries derived by individuals on a monthly basis or for each project” as a part of “business operation income”. That is to say, the provision of “items being deemed as business operation income” is cancelled.

In the Revision, the “shares of properties in partnership enterprises” is clearly defined as one item of the “income generated from transfer of properties”. This is a legislative confirmation of the taxable nature for the transfer of property in partnership operation situation.

In the Revision, “news” and “broadcasting” are deleted from the list of “income generated from personal services”. We understand that this should not be interpreted as an individual engaged in “news” and “broadcasting” industries are not allowed to obtain “income generated from personal services”. In addition, in taxable items of “income generated from lease of properties” and “income generated from transfer of properties”, “buildings” and “land use rights” are combined as “immoveable properties” (the scope of “immoveable properties” is greater than the scope of “buildings” plus the scope of “land use rights”).

In the officially promulgated 2018 IRs, the provisions for “income of interests and dividends” basically remain the same as that in 2011 IRs, stipulating that it refers to “income of interests and dividends derived by individuals in relation to their possession of creditor's rights, equity interests and etc.” The wording “income of interests and dividends nature” in Exposure Draft of the IRs is not adopted (the wording “... nature” implies discretionary power of tax authorities to determine certain types of income as certain taxable income). Nevertheless, it should be noted that the wording “etc.” is added after the term “possession of creditor's rights and equity interests”, which may lead to disputes between tax authorities and taxpayers in the practice of tax collection and administration on the meaning of “etc.” (for detailed analysis, please refer to the section entitled “F. Discrimination and analysis of the word ‘ETC.’ ” in this article)

In the officially promulgated 2018 IRs, it is stipulated that “If the specific category of taxable income derived by individuals is difficult to be classified, it shall be

determined by the State Council’ s taxation department.” In comparison, in 2011 IRs and Exposure Draft of the IRs, for “the specific category of taxable income derived by individuals difficult to be classified” , it shall be “determined by tax bureaus in charge” . That is to say, 2018 IRs recalls the “power to determine the specific category of income” (interpretation power) to the highest level tax department of the PRC. This is a more prudent arrangement than giving such power to tax low level bureaus in charge. Of course, since 2018 Version of the IIT Law removes “other taxable income determined by the State Council ’s fiscal department” from taxable items, the SAT should not define certain unclear income as “other taxable income” .

3. “Deemed transfer of properties” rule ultimately not adopted

2011 IRs	Exposure Draft of the 2018 IRs	2018 IRs
No such provision.	Article 16 If an individual occurs a non-monetary asset exchange or uses his/her property for donations, debt repayment, sponsorship, investment, etc. , such activities shall be deemed as transfer of relevant properties and he/she shall pay IIT, unless otherwise stipulated by the State Council’s fiscal and taxation departments.	No such provision.

HW comments:

Exposure Draft of the IRs drew on relevant provisions of the Implementation Regulations for the Enterprise Income Tax (“EIT”) Law of the PRC and introduces the concept of “deemed as sales” into the IIT field, meaning certain activities will be “deemed as transfer of taxable properties” and “transferor is deemed to obtain income generated from the transfer” . However, in the officially promulgated 2018 IRs, such provision is finally not adopted.

Prior to the Revision, tax treatments regarding donation (transfer of properties without obtaining considerations) in IIT field are not consistent in many aspects. For example, taxpayers are deemed as transferors (donors) or transferees (recipients), applicable taxable income items regarding transfer of shares, houses, gifts from enterprises, red envelopes issued online and etc. are categorized differently, and taxation regulations in different provinces are also different in technical positions. You may find such examples listed below for reference (for below, 2018 Version of the IIT Law has cancelled “other taxable income” , and regulation of Hebei Province was abolished in 2015, but other provisions are still valid).

- If an individual transfers his/her house without getting compensation, the recipient may need to pay IIT as per “other taxable income” item. (For details, please refer to circular Cai Shui [2009] No. 78).
- If individuals distribute cash red envelopes online between each other, such income of recipient is not IIT taxable income and the recipient shall not be subject to IIT. However, if an individual obtains cash red envelopes online from an enterprise, the recipient may need to pay IIT as per “accidental income” item. (For details, please refer to circular Shui Zong Han [2015] No. 409).
- If an individual transfers equity shares without getting compensation, tax authority might adjust transferor’ s income and the transferor shall pay IIT as per “income generated from transfer of properties” item. (For details, please refer to circular SAT

Announcement [2014] No. 67)

- Guangdong Province and Hebei Province issued policies stipulating that if an individual obtains equity shares without paying compensation, the recipient shall pay IIT as per “income generated from transfer of properties” item. (For details, please refer to circulars Yue Di Shui Han [2009] No. 940 and Ji Di Shui Han [2009] No. 119).

In regards to activities of individuals conducting non-monetary asset exchange, circular Cai Shui [2015] No. 41 stipulates that if an individual makes investment using his/her non-monetary assets, such activity shall be deemed that the transfer of non-monetary assets and the investment occur simultaneously. Accordingly, the investor is subject to IIT for his/her income “generated” from non-monetary assets as per “income generated from transfer of properties” item. Since the officially promulgated 2018 IRs does not adopt “deemed as sales” rule, tax authority may need to clean up relevant circulars and make a policy choice based on the position of 2018 IRs.

C. Further stipulating the scope of deduction items

1. Clarifying the scope of “other deductions”

2011 IRs	2018 IRs
No such provision.	Article 13“Other deductions determined by the law” provided in Paragraph 1(1) of Article 6 of IIT Law shall include payments made by individuals for enterprise annuity and occupational annuity purposes according to relevant provisions of the country, expenditures of individuals for purchases of commercial health insurance and tax-deferred commercial pension insurance according to relevant provisions of the country, and other deductible items stipulated by the State Council. The special deductions, the SAD and other deductions determined pursuant to the law shall be capped at taxable income amount of a resident individual in a tax year. The excess amount in a tax year shall not be carried forward to subsequent years for deduction.

HW Comments:

2018 IRs clarifies the specific contents of “other deductions determined by the law” as stipulated in 2018 Version of the IIT Law. In fact, before the revision of IIT Law and its implementation regulations, the MOF, the SAT and other departments of the State Council have issued relevant policies stipulating that expenses for paying or purchasing enterprise annuities/occupational annuities (Cai Shui [2013] No. 103, etc.), for paying business health insurance (Cai Shui [2017] No. 39, etc.) and tax-deferred commercial pension insurance (Cai Shui [2018] No. 22, etc.) can be deducted for IIT purposes. However, some of them stipulate deduction under certain ratio, some stipulate deduction under certain threshold amount, some apply to specific pilot areas (ending date of the pilot is also specified), while 2018 IRs does not stipulate any specific provisions regarding the limitations, applicable areas and applicable time period of relevant expense deductions. Therefore, previously issued relevant regulations are subject to appropriate adjustments in accordance with 2018 IRs.

2. Releasing separate regulation to stipulate the “SAD”

2018 IRs does not include detailed provisions on the operation methods for SAD. The State Council separately issued Circular No. 41 (IMSAD) to elaborate detailed

implementation measures regarding SAD. Please refer to the following form for main contents of the IMSAD.

Deduction Items	Deduction Standard	Other provisions / notes
Children's Education Expense	- Deduction amount (fixed amount): 1,000 yuan per child per month - Taxpayers who can claim deduction: parents of children receiving education. Each of parents may choose to deduct 100% deduction amount, or they may choose to deduct 50% deduction amount for each of them. Once the election was made, it cannot be changed within a tax year.	- Education for academic qualifications (full time) includes compulsory education (primary school and junior middle school education), senior high school education (general senior secondary school, secondary vocational school and technical school education) and higher education (junior college, undergraduate, postgraduate and doctoral education). - Provisions of education for academic qualifications shall also apply to children receiving pre-school education from the age of 3 until primary school. - If children's education is received outside China, admission letter from overseas school, student visa and other proofs of education shall be retained for future inspection.
Continuing Education Expense	- Deduction amount (fixed amount): 400 yuan per month for academic/ degree education; 3,600 yuan for continuing education for professional qualifications of skilled or professional workers in the year when receiving qualifications. - Taxpayers who can claim deduction: if a taxpayer receives academic (degree) continuing education for university degree or below, the deduction may be claimed by his/her parents or the child himself/herself. In other cases, deduction can be claimed by the child himself/herself.	- Academic/ degree continuing education shall be received within China. - Deduction period: deduction period for continuing education for the same academic qualification/degree shall not exceed 48 months. - Taxpayers receiving professional qualification continuing education shall retain relevant certificates and other proofs for future inspection.
Expenses for Medical Treatment for Major Illness	- Deduction amount (actual deduction with a limit): if medical expenses incurred and borne by a taxpayer in relation to basic medical insurance after deducting medical insurance reimbursement (referring to the portion borne by the insured within the scope of medical insurance directory) cumulatively exceed 15,000 yuan, the taxpayer shall deduct the excess amount with a limit of 80,000 yuan within a tax year. - Taxpayers who can claim deduction: taxpayer or his/her spouse may claim deduction for medical expenses incurred by the taxpayer. Only one parent may claim deduction for medical expenses incurred by his/her minor children.	- Deduction time point: when taxpayer makes annual final settlement and payment of IIT. - Deduction amount for medical expenses incurred by a taxpayer, his/her spouse and minor children shall be computed separately. - Materials such as original copy (or photocopy) of relevant invoices/vouchers for medical services and medical insurance reimbursement shall be retained for future inspection. - Medical insurance departments shall provide enquiry services for patients to access their personal annual medical expenses information recorded in medical insurance information system.
Housing Loan Interest Expenses	- Deduction amount (fixed amount): 1,000 yuan per month during housing loan repayment period. - Taxpayers who can claim deduction: single taxpayer claims deduction for himself/herself. Married taxpayers may mutually agree to choose one of the couple to claim deduction. Once the selection was made, it shall not change within a tax year. For the first-time housing loan incurred by husband and wife for houses purchased respectively before marriage, the couple may choose one of the houses to claim 100% deduction by the purchaser, or may claim 50% deduction for the house purchased by himself/herself respectively. Once the selection was made, it shall not change within a tax year.	- Deduction period shall be no longer than 240 months. - The deduction is limited to interest expenses incurred by a taxpayer or his/her spouse singly or jointly using commercial bank loan or housing provident fund personal housing loan to purchase a first house in China for himself/herself or his/her spouse. First-time housing loan shall mean the housing loan for which the first-time housing loan interest rate is applicable for purchasing the house. - A taxpayer is entitled to interest deduction of first-time housing loan only once. - Housing loan contract and proofs of loan repayment expenses shall be retained for future inspection.
Housing Rent Expenses	- Deduction amount (fixed amount): according to the level of the city where the rented house is located, deduction standard is 1,500 yuan / 1,100 yuan / 800 yuan per month. - Taxpayers who can claim deduction: if main workplace city of husband and wife is the same and there is no residence owned by themselves in this city, only one party of the couple can claim deduction. If husband and wife work in different cities and there is no residence owned by them in each city, both parties of the couple can claim deduction respectively.	- Deduction is limited to the situation where a taxpayer and his/her spouse do not own a residence in the taxpayer's main workplace city and they occur housing rent expenses. - Main workplace city shall mean the city in which the taxpayer is employed. If a taxpayer does not have an employer, his/her main workplace city shall be the city where tax authority processes his/her annual IIT final settlement for his/her consolidated income. - Taxpayer and his/her spouse shall not claim SAD concurrently for housing loan interests and housing rental within a tax year. - Relevant materials such as housing rental contract/ agreement shall be retained for future inspection.
Elderly Supporting Expenses	- Deduction amount (fixed amount): if taxpayer is an only child in family, the deduction shall be a fixed amount of 2,000 yuan/month. If taxpayer is not an only child in family, he/she and the sibling(s) shall share deduction limit of 2,000 yuan/month. The limit shared by each person shall not exceed 1,000 yuan/ month. Once the sharing method and amount are determined, they shall not change within a tax year. - Taxpayers who can claim deduction: taxpayers who support dependents.	- Dependents (the elderly being supported) mean parents aged 60 and above, as well as paternal and maternal grandparents aged 60 and above whose child(ren) has/ have passed away. - Those who support 2 or more elderly people cannot claim multiple deductions for Elderly Supporting Expenses according to the number of elderly people. - Taxpayers supporting elderly dependent(s) may claim equal shares of the deduction amount or agree a sharing ratio, or the dependent(s) may designate a sharing ratio/amount. Designated sharing shall prevail over agreed sharing.

HW Comments:

The SAD items are further deductible items besides basic standard deduction (60,000 yuan/year) and special deductions (basic pension insurance, basic medical insurance, unemployment insurance and other social insurance premiums and housing provident

fund, etc.). SAD includes 6 deduction items for expenses of children' s education, continuing education, medical treatment for major illness, housing loan interests or housing rental and elderly supporting. The State Council may adjust scope and standards of the SAD in due frequency according to changes of people' s expenses of education, medical care, housing, pensions and other livelihood expenses.

Due to limitation of tax collection and administration conditions, SAD deduction is currently based on methods of fixed amount deduction and actual expenses deduction within certain limit (1 item is deducted as per actual expenses within limit, and 5 items are deducted at fixed amounts). Correspondingly, the purpose of SAD is mainly to "cut tax" rather than "adjusting disposable incomes" .

In the practice of tax collection and administration, there will arise challenges to resources and capabilities of tax authorities for them to examine authenticity and accuracy of the reported SAD information, to supervise risks of repeated deductions among family members, and to deal with tax refund application at the time of IIT final settlement and payment.

According to Circular No. 41, when taxpayers enjoy SAD treatment for the first time, they shall submit relevant information (including personal information of taxpayer himself/herself, his/her spouse, children, dependents, etc.) to withholding agents or tax authorities. If relevant information changes, they shall promptly provide changed information to withholding agents or tax authorities. It is foreseeable that the submission and storage and confidentiality issues of relevant information require more resources and attention from taxpayers and withholding agents.

In order to implement the new arrangements of 2018 Version of the IIT Law, Circular No. 41 stipulates that relevant government departments and units bear responsibility and obligation to provide SAD related information to tax authorities or assist tax authorities in verifying such information. If relevant government departments and units fail to provide information to tax authorities in due course, the person-in-charge and related personnel shall bear corresponding responsibilities.

According to Circular 41, relevant materials for future inspection shall be retained for 5 years.

In Exposure Draft of the IMSAD, there was a provision stipulating "If a foreign individual meets requirements of SAD on expenses of children's education, continuing education, housing loan interests or housing rental, he/she may claim such deductions, or may choose to continue enjoying current preferential tax treatments for foreigners (i.e., IIT exemption for expenses of children's' education and language training and housing subsidies), but the same type of expenses cannot be eligible for both the SAD and the current preferential tax treatments for a foreigner at the same time." This provision is not included in the officially promulgated Circular No. 41, but is separately specified to some extent in the Notice on the Effect Linkage of Preferential Policies

after the Revision of IIT Law (Cai Shui [2018] No. 164) (“Notice No. 164”) issued by the MOF and the SAT. According to Notice No. 164, during the period from 1 January 2019 to 31 December 2021, if an overseas individual meets conditions of tax resident, he/she may choose to enjoy SAD treatments, or choose to enjoy preferential IIT treatments for foreigners as stipulated before the Revision, but may not choose to enjoy both treatments at the same time. Once the choice was made, it may not change within a tax year. Starting from 1 January 2022, overseas individuals could no longer enjoy IIT exemption for expenses of children's' education and language training and housing subsidies and other tax exemption policies, and could only claim SAD as provided by Circular No. 41.

3. Other revisions relating to deduction items

2011 IRs	2018 IRs
Article 17 Costs and expenses referred to in Paragraph 1(2) of Article 6 of IIT Law (i.e., “Income generated from business operation of IICH shall be the balance after deduction of costs, expenses and losses from total income in each tax year.”) shall mean all direct expenses, indirect expenses which are allocated as costs, as well as sales expenses, administrative expenses and financial expenses incurred by taxpayers engaged in production and business operations. Losses referred to shall mean all non-operating expenditures incurred by taxpayers in the course of production and business operations. Where a taxpayer engaged in production and business operations is unable to provide complete and accurate tax documents and is unable to compute taxable income accurately, in-charge tax authority shall assess the taxable income. Article 18 Total income amount in each tax year referred to in Paragraph 1(3) of Article 6 of IIT Law (i.e., “Taxable income amount for income generated from contracted and/or leased operations of enterprises and institutions shall be the balance after deduction of requisite expenses from total income amount in each tax year.”) shall mean income generated from business profits and income of wages and salaries derived in accordance with the provisions of contracted operation contracts or leasing operation contracts. Deduction of requisite expenses shall mean the deduction of 3,500 yuan/month from taxable income.	Article 15 Costs and expenses referred to in Paragraph 1(3) of Article 6 of the IIT Law (i.e., “Taxable income amount for business operation income shall be the balance after deducting costs, expenses and losses from total income in each tax year.”) shall mean all direct expenses incurred in production and business operations, and indirect expenses which are allocated as costs, as well as sales expenses, administrative expenses and financial expenses. Losses referred to shall mean losses of shorts, damage, scrap loss of fixed assets and inventories incurred in production and business activities, losses from transfer of property, bad debt loss, losses due to force majeure factors such as natural disaster, etc., and other losses. Where an individual who derives business operation income does not have consolidated income, when computing his/her taxable income of each tax year, expenses of 60,000 yuan/year, special deductions, SAD and other deductions determined pursuant to the law shall be deducted. The SAD shall be deducted when conducting final settlement and payment of IIT each year. Where a taxpayer engaged in production and business activities is unable to provide complete and accurate tax payment materials and is unable to compute taxable income accurately, tax authority in charge shall assess the taxable income or the tax payable amount.

HW Comments:

2018 IRs stipulates that “Where an individual who derives business operation income does not have consolidated income, when computing his/her taxable income of each tax year, expenses of 60,000 yuan/year, special deductions, SAD and other deductions determined pursuant to the law shall be deducted (in order to facilitate description below, the aforementioned deduction items are collectively referred to as “Specific Deductible Items” , the “SDI”). In Exposure Draft of the IRs, relevant wording was “For...individual, taxable income is the balance of income of...deducting expenses of 60,000 yuan, special deductions and other deductions determined pursuant to the law.” On the one hand, 2018 IRs adds the provisions of SAD deduction, which is a preferential treatment for business operators. At the same time, relevant provisions in 2018 IRs resolved the inconsistency between the provisions of Article 15 of Exposure Draft of the IRs and the provisions of Paragraph 1(3) of Article 6 of IIT Law and Article 14(1) of Exposure Draft of the IRs on how to calculate business operation income. On the other hand, comparing to Exposure Draft of the IRs, 2018 IRs stipulates that “no consolidated income” is a general precondition for deducting relevant SDI by business operators. Literally speaking, this means that if relevant business operator “has consolidated incomes” , then the SDI can only be deducted when calculating his/her

taxable income amount of the consolidated income, and shall not be claimed when calculating his/her business operation income. That is to say, if the amount of consolidated income of relevant business operator is not large enough, in certain circumstances, the loss of tax benefits arising from the loss of eligibility to claim SDI when calculating business operation taxable income will be larger than the tax benefit savings arising from deducting relevant SDI when calculating the consolidated income tax payable amount (i.e. the loss will outweigh the gain). In order to avoid the “passive negative impacts in tax benefits” under specific circumstances, relevant tax regulations may need to be issued to clarify the meaning of the aforementioned provisions.

In addition, in comparison to 2011 IRs, 2018 IRs deleted the provisions about “additional deductible amount” (1,300 yuan/month) that can be claimed by “taxpayers who do not have a domicile in China but receive income of wages and salaries in China or taxpayers who have a domicile in China but receive income of wages and salaries outside China” so as to reflect the changes in 2018 Version of the IIT Law.

D. Adjusting taxation methods of overseas income and overseas tax credit system

2011 IRs	2018 IRs
Article 31 For income derived within and outside China by individuals who have a domicile in China or individuals who do not have a domicile in China but have resided in China for one year or more, tax payable amount shall be computed separately for income within and outside China respectively. Article 32 “IIT paid overseas” referred to in Article 7 of IIT Law shall mean tax payable amount actually paid by a taxpayer on income derived outside China in accordance with laws of the country/region where income is sourced from. Article 33 “Tax payable amount computed in accordance with the provisions of IIT Law” referred to in Article 7 of IIT Law shall mean tax payable amount for income derived outside China by a taxpayer computed in accordance with relevant standards for expenses deduction and applicable tax rate stipulated in IIT Law, based on different countries/regions and different taxable items separately; the aggregate of tax payable amount of different taxable items for the same country/region shall be the ceiling for deduction amount for such country/region. Where IIT actually paid by a taxpayer in an overseas country/region is less than the ceiling for deduction for the said country/region computed in accordance with the provisions of the preceding paragraph, the difference amount of tax shall be paid in China. Where IIT actually paid by a taxpayer in an overseas country/region exceeds the ceiling for deduction for the said country/region, the excess amount shall not be deducted from the tax payable amount of the current tax year but may be carried forward for deduction from the balance amount of the ceiling for deduction for the said country/region in subsequent tax years. The carrying-forward period shall not exceed 5 years. Article 34 Taxpayers applying for deduction of IIT paid overseas in accordance with the provisions of Article 7 of IIT Law shall provide original tax payment receipts issued by foreign tax authorities.	Article 20 For consolidated income and business operation income derived within and outside China by a resident individual, the tax payable amount shall be computed based on total income within and outside China for consolidated income and business operation income respectively. For other income derived within and outside China, the tax payable amount shall be computed separately for the amount within and outside China for each type of income respectively. Article 21 “IIT paid overseas” referred to in Article 7 of IIT Law shall mean tax payable amount actually paid by a resident taxpayer on income derived outside China in accordance with laws of the country/region where income is sourced from. “The tax payable amount computed pursuant to the provisions of this Law for the said taxpayer’s overseas income” referred to in Article 7 of IIT Law shall mean the tax credit ceiling for the income tax amount paid overseas by a resident individual on consolidated income, business operation income and other income (hereinafter referred to as the “tax credit limit”). Unless otherwise stipulated by fiscal and taxation departments of the State Council, the sum of tax credit limit for consolidated income sourced from an overseas country (region), the tax credit limit for income from business operation sourced from an overseas country (region) and the tax credit limit for other income sourced from an overseas country (region) shall be the tax credit limit amount for income sourced from the said country (region). Where IIT actually paid by a resident taxpayer in an overseas country (region) is less than the tax credit limit for the said country (region) computed in accordance with the provisions of the preceding paragraph, the difference amount of tax shall be paid in China. Where IIT actually paid by a taxpayer in an overseas country (region) exceeds the tax credit limit for the said country (region), the excess amount shall not be offset from the tax payable amount of the current tax year but may be carried forward for deduction from the balance amount of the tax credit limit for the said country (region) in subsequent tax years. The carrying-forward period shall not exceed 5 years. Article 22 Resident taxpayers claiming credit for IIT paid overseas shall provide tax payment receipt issued by foreign tax authorities for the year in which the tax is attributable.

HW Comments:

According to 2018 IRs, as for the consolidated income and business operation income derived within and outside China by a resident individual, tax payable amount shall be computed based on the total income within and outside China for consolidated income and business operation income respectively, while for other income derived within and outside China, tax payable amount shall be computed separately for the amount within

and outside China for each type of income respectively. 2011 IRs stipulated that for individuals who have a domicile in China or individuals who do not have a domicile in China but have resided in China for one year or more (i.e., a resident individual), all the income derived within and outside China shall be calculated separately. For consolidated income and business operation income, comparing the "IIT calculation method of combining income derived within and outside China" with the "IIT calculation method of dividing income derived within and outside China", tax burden on the income derived outside China under the former IIT calculation method under 2018 IRs may be heavier than before.

Exposure Draft of the IRs stipulated that losses of business establishments outside China of sole-proprietorships, partnerships and individuals who are engaged in "other production or business operations" shall not offset against profits of business establishments within China. This provision is deleted in 2018 IRs.

With respect to the limitation on overseas tax credit, 2018 IRs stipulates a calculation method as "aggregate tax credit limitation distinguished according to both the source of income and the taxable items" and stipulates that fiscal and taxation departments of the State Council can adjust the calculation methods for IIT tax credit. Comparingly speaking, in EIT field, starting from 1 January 2017, enterprises can choose method of "tax credit limitation calculated according to source of income regardless of taxable items" or method of "tax credit limitation calculated regardless of source of income and taxable items" to calculate their overseas EIT payable amount to be credited and the credit amount to be offset in China (Cai Shui [2017] No. 84). Such arrangement is conducive for enterprises to make full use of tax credit system, so as to comprehensively use "tax resources" in different jurisdictions to save tax. Therefore, it is worth for fiscal and taxation departments to take an appropriate opportunity to implement an overseas tax credit system that is more conducive to individual taxpayers.

Exposure Draft of the IRs specified the specific calculation formula for the credit limitation, but in the officially promulgated 2018 IRs, the formula is not included.

E. Weighing and considering new rules of tax collection and administration

1. Detailed provisions of anti-tax avoidance rules are not included in 2018 IRs

HW Comments:

2018 Version of the IIT Law introduces 3 types of anti-tax avoidance rules (i.e., Transfer Pricing Adjustment Rule, Controlled Foreign Enterprise Adjustment Rule and General Anti-tax Avoidance Rule), and Exposure Draft of the IRs refined the provisions relating to these 3 types of anti-tax avoidance rules. On the one hand, Exposure Draft of the IRs clarified the meaning of "related parties", "arm's length principle", "control", "actual tax burden is obviously low", "no reasonable commercial purposes", on the other hand, it stipulated specific calculation method of tax interests for the adjusted

tax payment amount. However, such provisions are not included in the officially promulgated 2018 IRs.

Comparing with other tax collection and administration arrangements, the formulation and implementation of anti-tax avoidance rules should be “more of technical level” . When technical preparation is not mature, it may not be appropriate to make provisions. Under such circumstances, it may be a more flexible way to issue relevant operational procedures by fiscal and taxation departments of the State Council.

It is particularly important to note that under the CRS (Common Reporting Standard of Overseas Financial Account Information Exchange) mechanism, tax authorities have power to obtain information on overseas financial assets of a large number of Chinese resident individuals through cross-border bulk information exchange channels. Accordingly, tax authorities may initiate a large number of tax adjustment surveys on relevant individuals. In this regard, high net value individuals having overseas corporate structure and other financial assets should re-examine their existing investment structure and enhance their tax compliance awareness and capabilities.

2. Adjusting collection and administration rules of tax declaration

2011 IRs	2018 IRs
No such provision	Article 25 The circumstances when “the taxpayer obtains consolidated income and needs to process final settlement and payment of IIT” shall include: (1) deriving consolidated income from 2 or more sources, and the balance after deducting special deductions from annual income amount of consolidated income exceeds 60,000 yuan; (2) deriving one or more taxable items from income of personal services, income of author’s remuneration and income of royalties, and the balance after deducting special deductions from annual income amount of consolidated income exceeds 60,000 yuan; (3) prepaid tax amount within a tax year is less than tax payable amount; and (4) the taxpayer applies for tax refund. A taxpayer applying for tax refund shall provide his/her bank account opened in China, and apply for tax refund at the locality of processing final settlement and payment of IIT. Detailed measures for final settlement and payment of IIT shall be formulated by taxation department of the State Council. Article 28 At the time of obtaining income of wages and salaries, a resident individual may provide information relating to SAD to withholding agent, so that the withholding agent could deduct SAD amount when making tax withholding. Where a taxpayer derives income of wages and salaries concurrently from 2 or more sources, and the withholding agent would deduct SAD amount for him/her, the same SAD items shall be deducted only from one source of income in a tax year. A resident individual deriving income generated from personal services, author’s remuneration or royalties shall provide relevant information to tax authorities at the time of final settlement and payment of IIT and deduct SAD amount accordingly. Article 29 A taxpayer may delegate withholding agent or other organization or individual to complete the final settlement and payment of IIT. Article 30 The withholding agent shall compute and handle withholding reporting based on the information provided by the taxpayer, and shall not arbitrarily change information provided by the taxpayer. Where a taxpayer discovers any discrepancy between actual situation and the personal information, income information, tax withheld information, etc. provided or declared by withholding agent, the taxpayer has right to require withholding agent to do amendment. Where withholding agent refuses to amend, taxpayer shall report to tax authorities, and tax authorities shall promptly handle such matter. Taxpayer and withholding agent shall retain materials relating to SAD pursuant to relevant provisions. Tax authorities may conduct random inspection for SAD information provided by taxpayers. Detailed measures of such inspection shall be separately stipulated by taxation department of the State Council. Where tax authorities discover that a taxpayer provided false information, tax authorities shall instruct taxpayer to make correction and shall notify withholding agent. In serious situations, relevant authorities shall handle the case pursuant to relevant law, and input relevant information in the credit information system and jointly implement punishment with other authorities. Article 31 Where there is wrong information provided by a taxpayer who is applying for tax refund in the final settlement and payment process of IIT, tax authorities shall notify taxpayer to make correction. Where the taxpayer makes correction, tax authorities shall process tax refund in time. Where withholding agent has not turned over the withheld tax to the account of the treasury of the country, this situation shall not affect taxpayer’s application for tax refund pursuant to relevant provisions, and tax authorities shall process tax refund based on relevant materials provided by the taxpayer.

HW Comments:

2018 Version of the IIT Law made a number of modifications to tax collection and administration arrangements. 2018 IRs refines these provisions, including: (1) Clarifying circumstances in which taxpayers obtaining consolidated income need to do

final settlement and payment of IIT, and providing relating to tax refund; (2) Stipulating the approach to claim SAD during tax collection and administration procedures and the requirements to retain relevant documents; (3) Stipulating that taxpayers may delegate withholding agent, other institutions or individuals to handle the final settlement and payment of IIT; (4) Stipulating that if withholding agent did not turn over the withheld tax to the treasury of the country, this situation shall not affect taxpayer's application for tax refund, etc.

Exposure Draft of the IRs stipulated that, tax authorities may not accept tax refund application declared after closing of the final settlement and payment of IIT. However, according to Article 51 of the Tax Collection and Administration Law of the PRC ("TCA Law"), where a taxpayer discovers that tax payment is in excess of tax payable amount, the taxpayer may, within 3 years from the date the payment is made, claim a refund of the excess payment plus interests accrued according to bank interest rates, and tax authorities shall immediately pay back the money upon examination and verification of the case. It is clear that Exposure Draft of the IRs' stipulation that tax authorities may not accept tax refund cases after closing of the statutory final settlement and payment period of IIT, conflicts with the superior law (TCA Law) and this provision improperly restricts taxpayer's right to apply for tax refund. Fortunately, this provision is not adopted in the officially promulgated 2018 IRs.

Furthermore, the officially promulgated 2018 IRs deleted relevant provisions relating to "resident individuals who cancel their Chinese household registration due to emigration shall report certain information to taxation authorities" and relevant provisions of "how to pay tax and make final settlement and payment of IIT if it is not certain that a taxpayer is a resident individual or a non-resident individual" as previously provided in Exposure Draft of the IRs. Relevant tax collection and administration rules may be issued separately.

In addition, the officially promulgated 2018 IRs also deleted relevant provision of "taxation authorities shall not levy IIT on certain IICHs, sole-proprietorships or partnerships by way of collecting a fixed amount for a certain regulated period or by way of deeming a tax in advance."

F. Discrimination and analysis of the word "ETC."

Comparing with 2011 IRs, the frequency of the word "etc." has increased significantly in relevant provisions of 2018 IRs. The word "etc. (等)" has 2 meanings in Chinese in relevant situations. One meaning is to end contents mentioned earlier. For example, the word "etc." in the expression "Special Administrative Regions include Hong Kong, Macau, etc." is to end the enumeration, meaning Special Administrative Regions only include Hong Kong and Macau. The other meaning is to extend contents mentioned earlier, meaning the examples have not been exhaustively enumerated. For example, the word "etc." in the expression "Nobel Prize winners include Tu Youyou and etc." is to extend the scope of the Nobel Prize winners, meaning Tu Youyou is not the only one

who won the Nobel Prize. Therefore, there may be differences in people' s understanding when we talk about the word "etc." Particularly, as for tax laws and regulations, the interpretation of "to end relevant contents" or "to extend relevant contents" will lead to different legal and economic consequences. Accordingly, when the word "etc." appears in the tax laws and regulations, it is necessary to interpret prudently from the aspects of logical meaning, rule attributes, legislation purposes and etc. so that tax authorities and taxpayers can reach a consensus on legal consequences of specific rules to the maximum possible extent. In the following contents, we try to discriminate and analyze the meaning of the word "etc." , hoping to help reach a consensus in relevant disputes. Please refer to our comments in the following tables for details.

In 2011 IRs, the word "etc." appears twice in total, which are set forth as follows:

Article No.	Relevant Provisions	Analysis of the meaning of "ETC."
Paragraph 1 (1) of Article 5	The following income shall be deemed as income sourced from China regardless whether the payment is made within China: (1) Income derived from personal services provided in China due to taking office, being employed, performance of contract, etc.	Strictly speaking, taking office (providing internal services) and being employed (providing internal or external services) are both performing contracts. The purpose to add the word "etc." after "performance of contract" is to end contents mentioned earlier instead of to extend the contents. Say, the scope of this item has been exhaustively enumerated here.
Paragraph 1 (3) of Article 5	The following income shall be deemed as income sourced from China regardless whether the payment is made within China: (3) income derived from transfer of properties such as buildings, land use rights and etc. , located in China or transfer of other properties in China;	Logically speaking, making distinction of "buildings, land use rights and etc." before the word "or" (Property A) from "other properties" after "or" (properties other than Property A) is a "full/complete division" of the connotation of the word "property". As a result, if the extension of the former is uncertain, the extension of the latter will not be determined as well. In this regard, the word "etc." should be interpreted as to constrain the scope of Property A so as to stabilize common expectations of law-executors and law-abiders.

In the officially promulgated 2018 IRs, the word "etc." appears 8 times in total (in 7 articles), which are set forth as follows:

Article No.	Relevant Provisions	Analysis of the meaning of “ETC.”
Paragraph 1 (1) of Article 3	Unless otherwise stipulated by the State Council's fiscal and taxation departments, the following income shall be deemed as income sourced from China, regardless whether the place of payment is in China: (1) Income derived from personal services provided in China due to taking office, being employed, performance of contract, etc.	The analysis here is the same as our analysis for Paragraph 1(1) of Article 5 of 2011 IRs.
Paragraph 1 (4) of Article 3	Unless otherwise stipulated by the State Council's fiscal and taxation departments, the following income shall be deemed as income sourced from China, regardless whether the place of payment is in China: (4) Income derived from transfer of properties such as immovable property and etc. in China, or transfer of other properties in China;	2018 IRs replaces the wording “building, land use rights” in 2011 IRs with “immovable property”. According to Article 5 of the <i>Provisional Regulations on Immoveable Properties Registration</i> , rights to immovable properties include land use right, ownership of buildings and some other rights. This means that the extension of “immovable properties” is greater than the extension of “buildings and land use right”. Therefore, the Revision actually expands the scope of “payment-place-regardless provision”. After such expansion, in order to stabilize common expectations of the law-executors and the law-abiders, the word “etc.” should be interpreted as to constrain the scope of immovable properties.
Paragraph 1 (3) of Article 6	The scope of each type of individual income item stipulated in IIT Law shall be: (3) income of author's remuneration, meaning income derived by individuals from publication of their works in forms of books and newspapers, etc.	With the development of new media technologies, publication forms of works may not be limited to traditional books (non- periodical paper media) and newspapers (periodical paper media). In this regard, the word “etc.” added after “books” and “newspapers” in 2018 IRs should be interpreted as to extend the scope of publication forms. Say, the scope of publication forms is not exhaustively enumerated here.
Paragraph 1 (6) of Article 6	The scope of each type of individual income item stipulated in IIT Law shall be: (6) income of interests and dividends, meaning income of interests and dividends derived by individuals in relation to their possession of creditor's rights, equity interests and etc.	Basic rights related to properties include creditor's rights, equity interests, intellectual property rights, real rights, etc. (certain rights of them contain factors of personal rights). Among them, fruits of creditor's rights are interests, and fruits of equity interests are dividends. Since interests and dividends determinedly correspond to specific basic property rights, and since there is no “etc.” after “interests and dividends” in this provision, the word “etc.” added after “creditor's rights” and “equity interest” in the provision should be interpreted as to constrain the scope of relevant basic property rights.
Paragraph 1 of Article 15	Costs and expenses referred to in Paragraph 1(3) of Article 6 of IIT Law shall mean all direct expenses incurred in production and business operations, and indirect expenses which are allocated as costs, as well as sales expenses, administrative expenses and financial expenses. Losses referred to shall mean losses of shorts, damage, scrap loss of fixed assets and inventories incurred in production and business activities, losses from transfer of property, bad debt loss, losses due to force majeure factors such as natural disaster, etc. and other losses.	In 2011 IRs, “losses” of IICH are presented as “all non-operating expenditures incurred by taxpayers in the course of production and business operations”. However, in 2018 IRs, “losses” to compute the balance of “business operation income” are presented as “losses of shorts, damage, scrap loss of fixed assets and inventories incurred in production and business activities, losses from transfer of property, bad debt loss, losses due to force majeure factors such as natural disaster, etc. and other losses”. Since the wording “other losses” is to supplement the losses listed earlier (Loss A), meaning “other losses” equal to “other losses besides Loss A”, then Loss A plus “other losses” are collectively meaning “all the losses”. Therefore, the wording “etc.” after “force majeure factors...” should be interpreted as to extend the scope of the force majeure factors as maximum as possible. That is to say, the scope of force majeure factors is not exhaustively enumerated here.
Article 19	“Where an individual donates his/her income to public welfare and charitable undertakings such as education, poverty alleviation and etc. ” referred to in Paragraph 3 of Article 6 of IIT Law shall mean donations made by an individual through public welfare social organizations and State organs in China to public welfare and charitable undertakings such as education, poverty alleviation and etc. “Taxable income amount” referred to shall mean taxable income amount prior to deducting the donation amount.	This Article is derived from Article 6 (3) of 2018 Version of the IIT Law. In 2011 Version of the IIT Law, it was stipulated that “where an individual donates his/her income to education and other public welfare and charitable undertakings, the portion of donation may be deducted from his/her taxable income amount pursuant to relevant provisions of the State Council.” That is to say, 2011 Version of the IIT Law adopted a complete/full enumeration method (“public welfare undertakings A + other public welfare undertakings other than A”=all public welfare undertakings). Considering that 2018 Version of the IIT Law is more beneficial to public welfare undertakings, the wording “etc.” in this Article should be interpreted as to extend the scope of public welfare undertakings.
Paragraph 2 of Article 30	Where a taxpayer discovers any discrepancy between actual situation and personal information, income information, tax withheld information, etc. provided or declared by withholding agent, the taxpayer has right to require withholding agent to do amendment. Where withholding agent refuses to amend, taxpayer shall report to tax authorities, and tax authorities shall promptly handle such matter.	This Article is derived from Article 10 (2) of the 2018 Version of the IIT Law (i.e., “Withholding agents shall declare and withhold full amount IIT for all staff in accordance with the provisions of the State, and shall provide taxpayers with their individual income and tax withheld information, etc. ”). 2011 Version of the IIT Law did not require withholding agents to “provide taxpayers with their individual income and tax withheld information, etc.”. The reason why 2018 Version of the IIT Law adds this request is to facilitate taxpayers to obtain basic tax-related information so as to file tax returns (on their own). In this regard, in order to meet the purposes of such legislation, the wording “etc.” here should be interpreted as to extend the scope of information.

G. Other revisions

2018 IRs also revised some of the wordings in relevant provisions. In addition, Article 7 of 2018 IRs stipulates that measures of collecting IIT on the proceeds of stock transfer shall be separately prescribed by the State Council and such measures shall be reported to the Standing Committee of the NPC for record. 2011 IRs stipulated that the measures of collecting IIT on the proceeds of stock transfer shall be separately formulated by fiscal department of the State Council and submitted to the State

Council for approval. Obviously, under 2018 IRs, legislative grade of IIT on the proceeds of stock transfer will be improved.

II. Our Services

Taxpayers shall pay tax according to laws. This means, “paying tax” is an obligation for taxpayers while “according to laws” is a right for taxpayers. In order to act according to laws to protect legal rights, taxpayers need to have a comprehensive and deep understanding of tax laws and regulations. In this connection, Haiwen tax team is committed to providing the following professional services from “Tax + Law” standpoint in response to clients’ such needs:

- Daily tax consulting services;
- Tax structuring services;
- Preparation, review and revision of tax related terms in contracts;
- Legal support services in tax disputes;
- Tax compliance services.

If you are interested in learning more about our services, fee quotations and other related issues, please contact the following persons:

Guo Yongmao (Tax Partner)

E-mail: guoyongmao@haiwen-law.com

Li Yang (Senior Associate)

E-mail: liyang@haiwen-law.com

Tian Yue (Associate)

E-mail: tianyue@haiwen-law.com

2019-01-15