



The Application of Tax Treaty to Non-China-mainlanders

Qiaoling WU

Department of International Taxation Administration

Guangzhou Municipal Tax Service

State Taxation Administration

Who is related to a tax treaty?



- ❖ foreign senior management in domestic institutions

- ❖ pioneers sent abroad to expand business

- ❖ foreign professors in Chinese universities

- ❖ students studying overseas under a work-study program



- ❖ foreign musicians performing in Guangzhou Grand Theatre

- ❖ overseas stars coming to play in China mainland

- ❖ foreigners obtaining dividends, interests and royalties from China mainland

- ❖ people who invest in many overseas real estates

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- 2 How to pay taxes when there is no tax treaty?
- 3 Who can enjoy the treaty benefit?
- 4 How do the labour incomes enjoy the treaty benefit?
- 5 How does the investment income enjoy the treaty benefit?
- 6 How does the property income enjoy the treaty benefit?



1 What is the function of tax treaty?

1. Tax treaty solves the dilemma of cross-border flow of people



The overlapping of tax jurisdiction



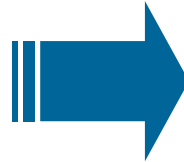
Territory jurisdiction



Resident jurisdiction



Citizen jurisdiction



Tax treaty

It is the agreement concluded between countries or regions with tax jurisdiction to avoid double taxation and prevent tax evasion of transnational taxpayers. It reflects coordination between different tax jurisdictions.



1.1. Avoidance of international double taxation through tax treaties

- ❖ **Allocating the tax right** : restricting the tax right of the state of source
- ❖ **Elimination of double taxation article** : the obligation of the state of residence to undertake the tax credit
- ❖ **Settlement of tax related disputes**
- ❖ **Adjustment of transfer pricing among associated enterprises**





1.1. Avoidance of international double taxation through tax treaties (continued)

Contracting State

It refers to the country or region with tax jurisdiction that conclude treaties.

State of residence

It refers to the tax resident country of the taxpayer who obtains the income.

State of source

It refers to the source place of the income.

Example

Mr. R, an Australian tax resident, obtains income from the sale of property located in China mainland.



1.2. Articles on division of tax rights related to taxation of individuals

1 Labour income

income from employment
independent personal services
business profits

international transportation
pensions
government service
students
teachers and researchers

directors' fees
entertainers and sportspersons

not articles to reduce the tax burden of the state of source

2 Investment income

dividends
interests
royalties

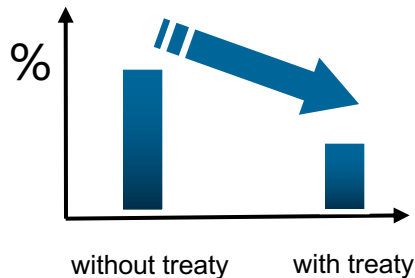
3 Property income

income from immovable property
capital gains

4 Other incomes

1.3. Methods of tax treaty to reduce the tax burden of state of source

Restricted tax rate



dividends, interests and royalties

- 1 different tax rates
- 2 different tax calculation methods

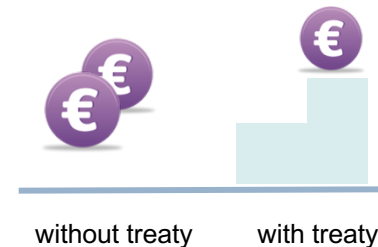
Tax-free benefit

TAX
FREE

international transportation,
capital gains, government
service, students article

- 1 all income tax exemption
- 2 income amount calculation affected (formula)

Raising tax threshold



business profits, independent
personal services, income
from employment article

2 How to pay taxes when there is no tax treaty?

2. Pay individual income tax in accordance with domestic law



- *Individual Income Tax Law of the People's Republic of China (2018)*
- *Individual Income Tax Law Implementation Regulation of the People's Republic of China (2018)*
- *Ministry of Finance State Taxation Administration Announcement on the Criteria for Determining the Residence Time of Non-China-mainland-domiciled Individuals (Announcement No. 34 of the Ministry of Finance and the State Taxation Administration in 2019)*
- *Ministry of Finance State Taxation Administration Announcement on the Individual Income Tax Policies of Non-residents and Non-China-mainland-domiciled Residents (Announcement No. 35 of the Ministry of Finance and the State Taxation Administration in 2019)*

The
Announce-
ment No.
34

The
Announce-
ment No.
35

2.1. Tax liability of resident and non-resident



Resident



pay individual income tax on the incomes the individual obtains from inside and outside China mainland

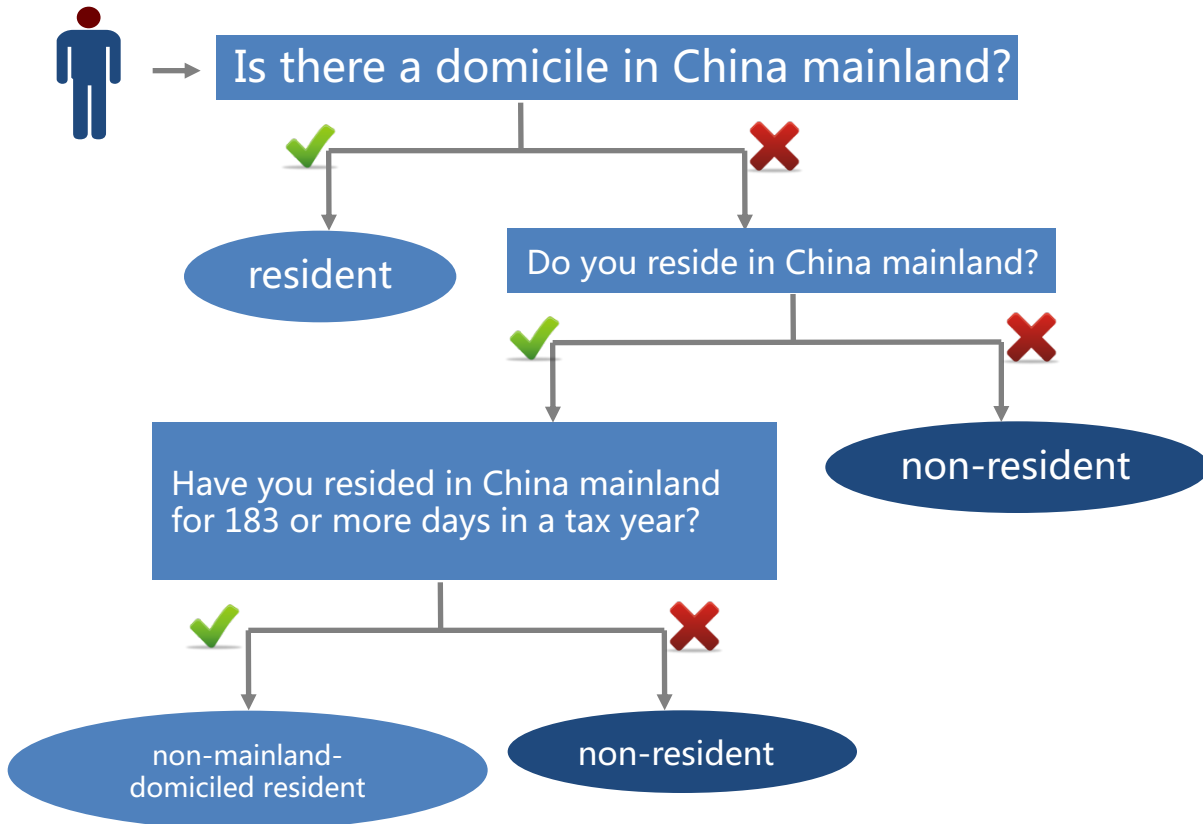


Non-resident



pay individual income tax on the incomes the individual obtains from China mainland

2.1.1. Judgement of resident status in domestic law



Two criteria for judging resident status:
1 domicile
2 domestic residence days

2.1.1. Judgement of resident status in domestic law (continued)



Point 11 of the Announcement No. 35 Interpretation

Domicile ≠ House in the physical sense

China-mainland-domiciled individual = Individual habitually residing in China mainland due to household registration, family and economic interests



Habitual residence is a legal criterion to judge whether a taxpayer is a resident or a non-resident.

For individual who resides outside China mainland for study, work, family visit, tourism and other reasons, after these reasons are eliminated, the individual must return to reside in China mainland, and the individual's habitual abode is China mainland.

2.1.1. Judgement of resident status in domestic law (continued)



Article 2 of the Announcement No. 34

The accumulated number of domestic residence days in a tax year of a non-mainland-domiciled individual shall be calculated according to the accumulated number of domestic days of physical presence.

If the domestic day of physical presence reaches 24 hours, it shall be counted as the number of domestic residence days. If the domestic day of physical presence is less than 24 hours, it shall not be counted as the number of domestic residence days.

Example

Mr. Li, a Hongkong resident, works in Shenzhen. He comes to work in Shenzhen on every Monday morning and returns to Hongkong on Friday night. On Monday and Friday, he is physically present less than 24 hours in Shenzhen, so they are not counted as the domestic residence days. Moreover, Saturday and Sunday, those two days are also not included. so the number of days that can be included every week is only 3. According to 52 weeks of the whole year, Mr. Li resides in China mainland for 156 days in the whole year, but less than 183 days. This does not meet the requirement of being a resident. All overseas income obtained by Mr. Li may not be subject to domestic individual income tax.

2.1.1. Judgement of resident status in domestic law (continued)



Example

Tax resident judgement

Are they tax residents of China?

1. Chinese who have been residing in foreign countries for a long time on business
2. Chinese who have obtained foreign green cards
3. overseas Chinese with Chinese nationality and habitually residing abroad
4. foreigners with long-term residence permit
5. foreigners who do not have a long-term residence permit but habitually reside in China mainland



2.1.2. Judgement of source place of income

1 Arising place of service

Income from provision of services in China mainland due to holding a post, employment, performance, etc.

2 Place of use

- Income from leasing the property to the lessee for domestic use
- Income from licensing the domestic use of various chartered rights

3 Location of immovable property, transfer institution and behaviour

Income from the transfer of immovable property and other properties located in China mainland or from the transfer which is domestically conducted of other properties

4 Payment place

Income from interests, dividends and bonuses obtained from enterprises, institutions, other organizations and residents in China mainland

Authors' remuneration paid or borne by domestic enterprises, institutions and other organizations

Article 3 of the implementation regulation

The Announcement No. 35



2.1.2. Judgement of source place of income (continued)

Income from the provision of services in China mainland due to holding a post, employment, performance, etc. shall be domestic-sourced income.

The
Announcement
No. 35

The salaries and wages obtained by an individual during the domestic work period shall be the domestic-sourced income.

Special
regulation

The directors' fees, supervisors' fees, salaries and wages or other similar remuneration paid or borne by the domestic resident enterprise, obtained by an individual who holds the post of director, supervisor and senior management (hereinafter referred to as the "senior-occupation holder") of a domestic resident enterprise, whether or not performing the individual's duties in China mainland, belong to the domestic-sourced income.

(arising place of service + payment place)

Senior management positions: chief executive, deputy (general) manager, chief officer of each function, chief inspector and other similar company management



2.1.2. Judgement of source place of income (continued)

Example The judgement of source place of income

Mr. R, a resident of Country A, worked in company A of Country A, and was assigned to subsidiary company B in Guangzhou as department manager in 2019, with all salaries borne by company B. Mr. R spends half his time in Country A and half in Guangzhou every month.

In 2020, Mr. R is promoted to be the chief inspector of company B and receives dividends from company C in Country A, and company D in China mainland.

salary of 2019	arising place of service	half of it comes from domestic-sourced salaries and wages
salary of 2020	arising place of service + payment place	all of it is domestic-sourced salaries and wages
dividend of company C in Country A	payment place	overseas income from dividend and bonus
domestic-sourced dividend of company D	payment place	overseas income from dividend and bonus



2.1.3. Tax exemption for overseas payment income of non-mainland-domiciled resident

Exempted

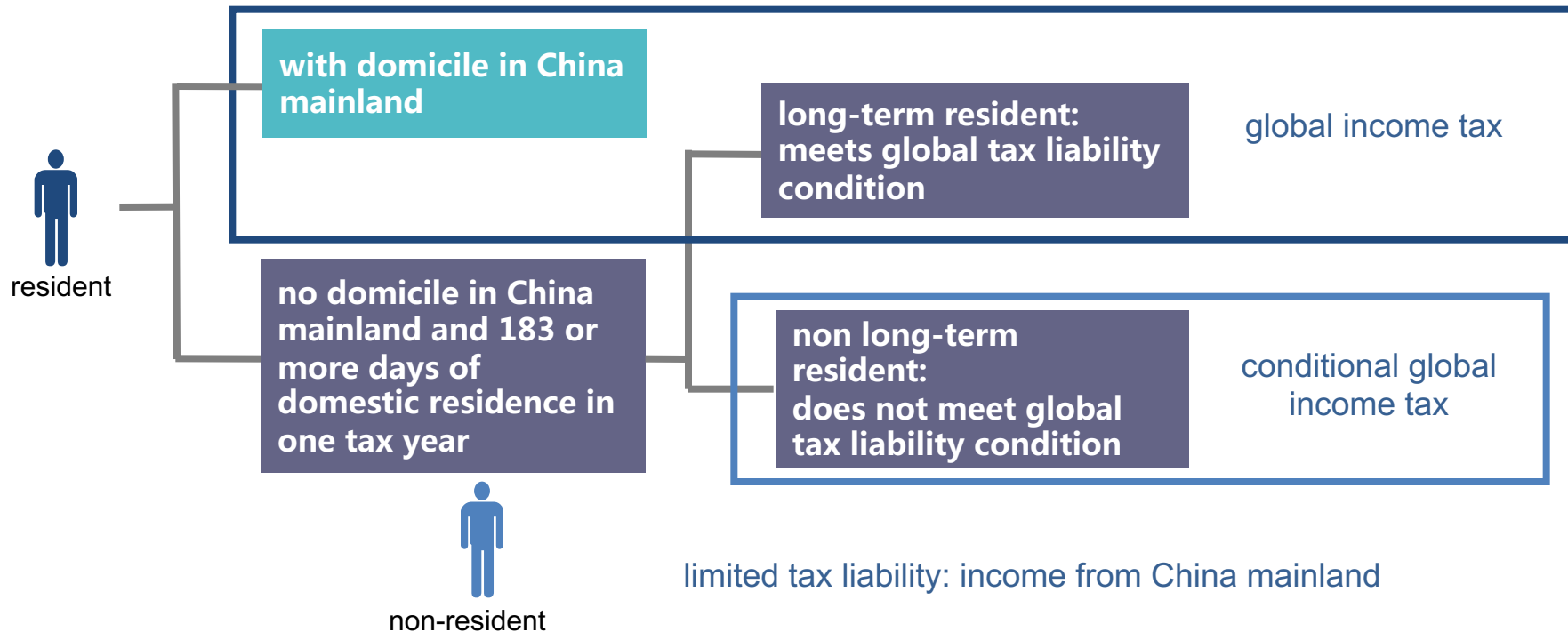
Individual Income Tax Law Implementation Regulation of the People's Republic of China

Article 4 A non-mainland domiciled individual whose number of consecutive years in which the individual has domestically resided every year for 183 or more days is less than 6 shall be exempted from paying individual income tax on the income obtained from overseas sources and paid by overseas units or individuals after filing with the tax authority in charge; In any one year in which the individual has domestically resided for 183 or more days, if the individual leaves China mainland in a single time for more than 30 days, the total number of consecutive years shall be recalculated.



2.1.3. Tax exemption for overseas payment income of non-mainland-domiciled resident (continued)

Consider the tax liability of non-mainland-domiciled resident after tax exemption for overseas payment income





2.1.3. Tax exemption for overseas payment income of non-mainland-domiciled resident (continued)

Article 1 of the Announcement No. 34

If a non-mainland-domiciled individual has resided domestically for 183 or more days in a tax year, and if he has resided domestically for 183 or more days in any one year of the previous six consecutive years and has not left China mainland for more than 30 days in a single time, this individual shall be taxed subject to individual income tax on domestic and overseas incomes; If the accumulated number of domestic residence days is less than 183 in any one year of the previous six years or the taxpayer left China mainland for more than 30 days in a single time, the income derived overseas and paid by overseas units or individuals in the tax year shall be exempted from individual income tax.

The "previous six years" mentioned in the preceding paragraph refers to six consecutive years from the previous one-year to the previous six-year of this tax year, and the starting year of the "previous six years" is calculated from 2019 (inclusive).



2.1.3. Tax exemption for overseas payment income of non-mainland-domiciled resident (continued)

Conditions for global income tax liability

Meet at the same time:

- (1) The total number of domestic residence days in the current year has reached 183 or more;
- (2) In any one year of the previous six years, the accumulated number of domestic residence days has reached 183 or more;
- (3) No single departure of more than 30 days in any one year of the previous six years.

Conditions for zero-clearing consecutive years

Meet any of the following conditions:

- (1) The total number of domestic residence days in the current year is less than 183;
- (2) More than 30 days for a single departure in the current year.

❖ The starting year of “the previous six years” starts from 2019 (inclusive)



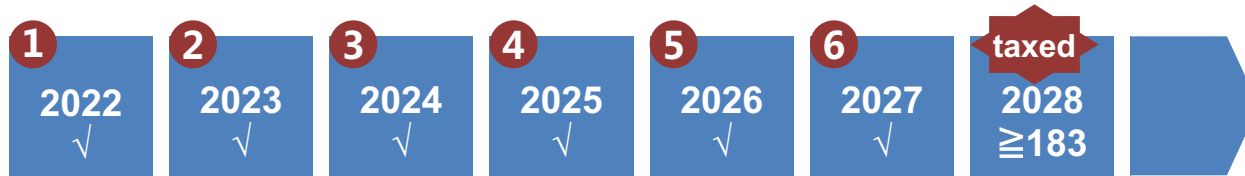
2.1.3. Tax exemption for overseas payment income of non-mainland-domiciled resident (continued)

Example

Whether the years of 183 or more domestic residence days in anyone year have been six consecutive years

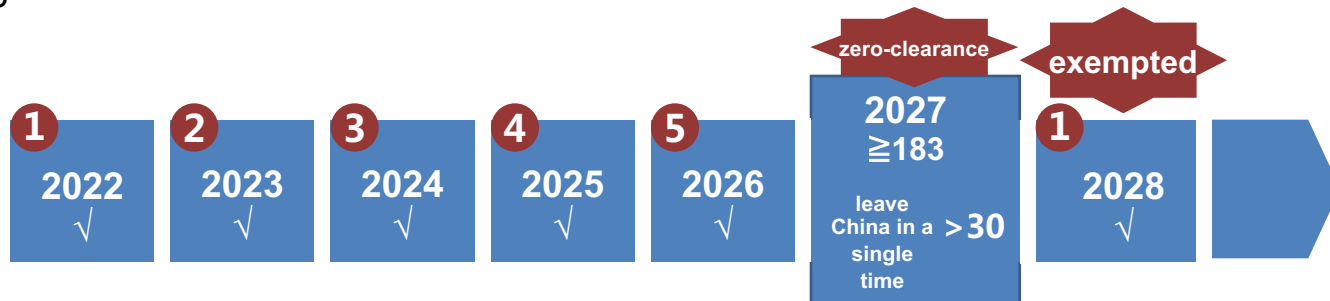
Assuming that John, a French citizen, comes to work in China mainland on January 1, 2022, and returns to France at the end of his term of office on September 30, 2028, he has a large amount of investment income from the UK and India every year. What is his tax liability in 2028?

(1) It is assumed that each year during this period, his domestic residence time is more than 183 days, and there is no single departure for 30 days. In 2028, John shall declare and pay individual income tax in China on his global income including investment income in the UK and India, and the calculation chain of "six consecutive years" shall continue for he does not meet the "zero-clearing" condition.



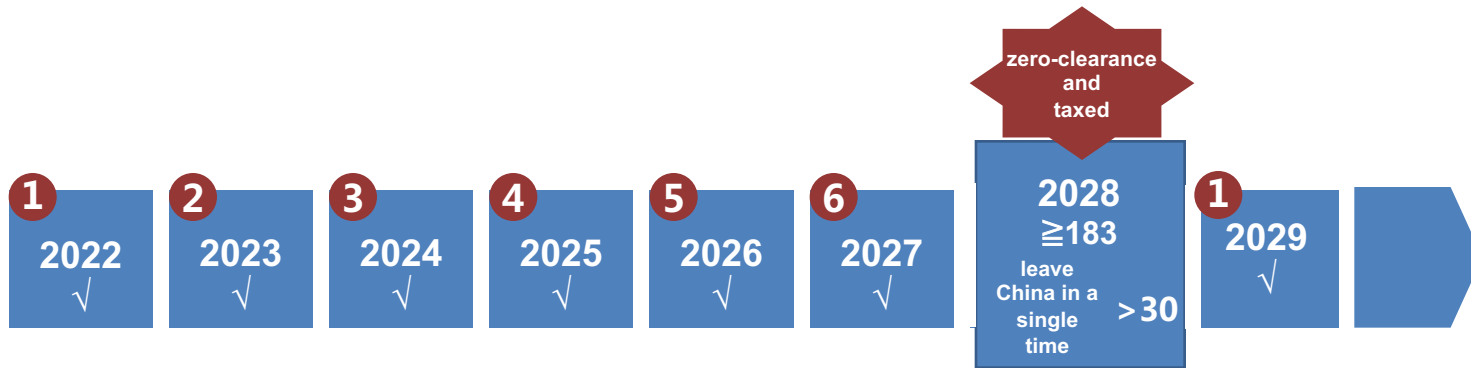
2.1.3. Tax exemption for overseas payment income of non-mainland-domiciled resident (continued)

(2) It is assumed that the domestic residence time is more than 183 days per year during this period, but there is a departure in a single time of more than 30 days in 2027. In 2027, the calculation chain of "six consecutive years" can be broken for the condition of "zero-clearing" is met. Even though John has domestically resided for more than 183 days in 2028, his investment income in the UK and India is also exempt from individual income tax due to the fact that he has left China mainland for more than 30 days in a single time in the previous six years, which does not meet the conditions for undertaking global income tax obligations.



2.1.3. Tax exemption for overseas payment income of non-mainland-domiciled resident (continued)

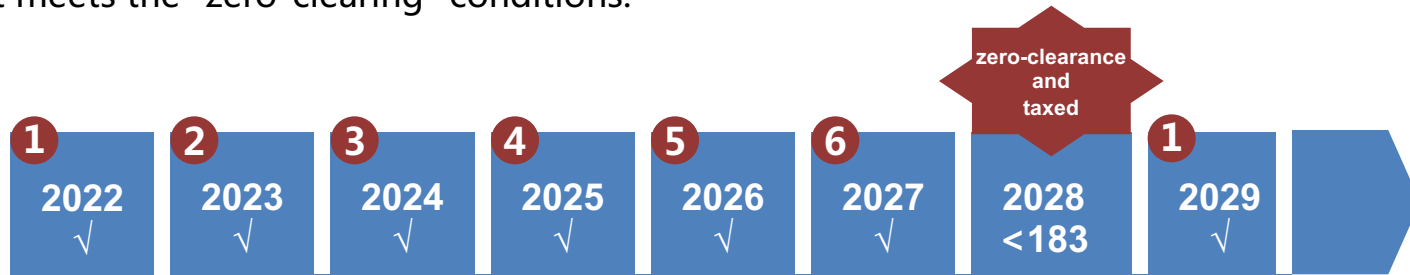
(3) It is assumed that during this period, the annual domestic residence time is more than 183 days, but there is a single departure time of more than 30 days in 2028. In 2028, John's investment income in the UK and India should still be taxed in China. However, the calculation chain of "six consecutive years" can be broken due to the "zero-clearing" condition.





2.1.3. Tax exemption for overseas payment income of non-mainland-domiciled resident (continued)

(4) It is assumed that from 2022 to 2027, the domestic residence time is more than 183 days, and in 2028, the domestic residence time is less than 183 days, which does not constitute a resident. In 2028, it will no longer meet the conditions of global income tax liability, and the investment income from the UK and India will not be subject to individual income tax in China; Moreover, it can break the calculation chain of "six consecutive years" for it meets the "zero-clearing" conditions.





2.1.4. Tax exemption of salaries and wages of non-resident from overseas payment

Exempted

Individual Income Tax Law Implementation Regulation of the People's Republic of China

Article 5 For non-resident who has domestically resided for no more than 90 days in a tax year, the part of the individual's domestic-sourced income paid by an overseas employer and not borne by the employer's institutions or premises in China mainland shall be exempted from individual income tax.

The Announcement No. 35

In a tax year, a non-resident who has domestically resided for no more than 90 days shall pay individual income tax only on the income from salaries and wages paid or borne by the **domestic employer** during the domestic work period.



2.1.4. Tax exemption of salaries and wages of non-resident from overseas payment (continued)

Implication of "domestic employer"

Item 1, Article 2 of the Announcement No. 35: domestic employers include

- ❖ Domestic units and individuals that employ employees
- ❖ **Domestic institutions and premises of overseas units or individuals**

Where a domestic employer adopts verified income tax collection or no income collection due to no business income, the income from salaries and wages obtained by a non-mainland-domiciled individual for the work, whether or not recorded in the accounting books of the domestic employer, shall be deemed to be paid or borne by the domestic employer.

Example

Mr. R is a non-mainland-domiciled individual, who is dispatched to the domestic representative office by overseas company B. The domestic representative office adopts the verified profit method to calculate and collect business income tax. In October 2019, Mr. R received salary of RMB120,000 Yuan, all of which was paid by overseas company B.



2.1.5. Tax liability on salaries and wages of non-mainland-domiciled individual

Table of tax liability on salaries and wages of non-mainland-domiciled individual (except senior-occupation holder)

Domestic residence time		Income from salaries and wages attributable to domestic work		Income from salaries and wages attributable to overseas work	
		Paid or borne by domestic employers	Paid and borne by overseas employers	Paid or borne by domestic employers	Paid and borne by overseas employers
Non-resident	≤ 90 days	taxed	exempted	not taxed	not taxed
	> 90 days and < 183 days	taxed	taxed	not taxed	not taxed
Non-mainland-domiciled resident	≥ 183 days and ≤ 6 years #1	taxed	taxed	taxed	exempted
	> 6 yrs (the 7 th yr ≥ 183 days) #2	taxed	taxed	taxed	taxed

#1. Reside domestically for 183 or more days in the current year, and have resided domestically for less than 183 days in any one year of the previous six years, or have left China mainland for more than 30 days in a single time.

#2. Reside domestically for 183 or more days in the current year, and have resided domestically for 183 or more days in every year of the previous six years, and have not left China mainland for more than 30 days in a single time.

2.1.5. Tax liability on salaries and wages of non-mainland-domiciled individual (continued)



Table of Tax liability on salaries and wages of non-mainland-domiciled individual (for senior-occupation holder)

Domestic residence time		Income from salaries and wages attributable to domestic work		Income from salaries and wages attributable to overseas work	
		Paid or borne by domestic employers	Paid and borne by overseas employers	Paid or borne by domestic employers	Paid and borne by overseas employers
Non-resident	≤ 90 days	taxed	exempted	taxed	not taxed
	> 90 days and < 183 days	taxed	taxed	taxed	not taxed
Non-mainland-domiciled resident	≥ 183 days and ≤ 6 years #1	taxed	taxed	taxed	exempted
	> 6 yrs (the 7 th yr ≥ 183 days) #2	taxed	taxed	taxed	taxed

#1. Reside domestically for 183 or more days in the current year, and have resided domestically for less than 183 days in any one year of the previous six years, or have left China mainland for more than 30 days in a single time.

#2. Reside domestically for 183 or more days in the current year, and have resided domestically for 183 or more days in every year of the previous six years, and have not left China mainland for more than 30 days in a single time.

Note: 1. The term "senior-occupation holder" in this table includes non-residents who hold the posts of directors, supervisors and senior management of domestic enterprises. Senior management positions include chief executive, deputy (general) manager, chief officer of each function, chief inspector and other similar company management.

2. This table is not applicable when senior management personnel are not included explicitly in the tax treaty (arrangement) signed between the state of residence (or region) of the senior management and China, and not applicable when supervisors are not included explicitly in the tax treaty (arrangement) signed between the state of residence (or region) of the supervisors and China.



2.2. Tax system combining comprehensiveness and classification

Comprehensive incomes



- 1 salaries and wages
- 2 independent personal services income
- 3 authors' remuneration
- 4 royalties

The tax calculation methods are different for resident and not-resident.

Classified incomes



- 5 income from business operation
- 6 interest, dividend and bonus
- 7 income from lease of property
- 8 income from transfer of property
- 9 incidental income

The tax calculation methods are the same for resident and not-resident.



2.2.1. Tax calculation method of comprehensive incomes

Comprehensive incomes

- 1 salaries and wages
- 2 independent personal services income
- 3 authors' remuneration
- 4 royalties

3%-45%

7-level excess progressive tax rate

Resident

- Tax is calculated by combining all comprehensive incomes in the tax year
- Withholding in advance + Final settlement
- basic deduction expenses: 60,000 Yuan/year
 - special deductions
 - special additional deductions
 - other deductions

Non-resident

- Calculation of individual income tax by month, times or items
- Tax is withheld by the withholding agent
- salaries and wages: basic deductions: 5,000 Yuan/month



2.2.1. Tax calculation method of comprehensive incomes (continued)

Income amount of certain types of income
≠
Gross income actually obtained by the taxpayer

- ❖ Income amount of salaries and wages of non-mainland-domiciled individual: select corresponding formula according to the tax obligation (detailed introduction later)
- ❖ income amount of independent personal services income = gross income of independent personal services $\times (1 - 20\%)$
- ❖ income amount of authors' remuneration = gross income of authors' remuneration $\times (1 - 20\%) \times 70\%$
- ❖ income amount of royalties = gross income of royalties $\times (1 - 20\%)$



2.2.1.1. Provisions on calculation of tax on comprehensive incomes of resident

$$\text{tax payable of annual comprehensive incomes} = \text{taxable income of annual comprehensive incomes} \times \left[\text{applicable tax rate} - \frac{\text{quick deduction number}}{\text{taxable income of annual comprehensive incomes}} \right]$$

Individual income tax rate table (applicable to comprehensive incomes) (RMB: Yuan)

level	annual taxable income	tax rate	quick deduction number
1	No more than 36,000	3%	0
2	Over 36,000 to 144,000	10%	2,520
3	Over 144,000 to 300,000	20%	16,920
4	Over 300,000 to 420,000	25%	31,920
5	Over 420,000 to 660,000	30%	52,920
6	Over 660,000 to 960,000	35%	85,920
7	Over 960,000	45%	181,920



2.2.1.1. Provisions on calculation of tax on comprehensive incomes of resident (continued)

The calculation formula of tax payable of annual comprehensive incomes is as follows:

$$\begin{array}{l} \text{tax payable} \\ \text{of annual} \\ \text{comprehensive} \\ \text{incomes} \end{array} = \left[\begin{array}{l} \text{income amount of annual} \\ \text{salaries and wages} \\ + \\ \text{income amount of annual} \\ \text{independent personal} \\ \text{services income} \\ + \\ \text{income amount of authors'} \\ \text{remuneration} \\ + \\ \text{income amount of annual} \\ \text{royalties} \end{array} \right] - \left[\begin{array}{l} \text{basic deduction expenses} \\ + \\ \text{special deductions} \\ + \\ \text{special additional} \\ \text{deductions} \\ + \\ \text{other deductions} \end{array} \right] \times \begin{array}{l} \text{applicable} \\ \text{tax} \\ \text{rate} \end{array} - \begin{array}{l} \text{quick} \\ \text{deduction} \\ \text{number} \end{array}$$



2.2.1.1. Provisions on calculation of tax on comprehensive incomes of resident (continued)

- The cumulative withholding in advance method shall be applied to the withholding in advance of salaries and wages

The withholding agent shall, within one tax year, take the balance of the accumulated income amount of salaries and wages of the taxpayer in the unit up to the current month minus the accumulated tax-free income declared by the taxpayer, the accumulated basic deduction expenses, the accumulated special deductions, the accumulated special additional deductions and the accumulated other deductions determined according to law, as the taxable income for withholding, then according to the comprehensive incomes tax rate table (annual) , the accumulated withholding in advance tax payable shall be calculated, and the balance after deducting the tax already been withheld in advance shall be taken as the withholding tax payable of the current period.

If the amount of withholding in advance tax payable in the current month is calculated to be **negative**, the tax will **not be refunded temporarily**. When the balance is still negative after the end of the tax year, the taxpayer shall finally settle the annual comprehensive incomes, refund the overcharge and demand the shortage.



2.2.1.1. Provisions on calculation of tax on comprehensive incomes of resident (continued)

➤ Differences between withholding in advance and final settlement of other three items of income:

1 Different calculation methods of income amount

At the time of annual settlement, the income amount is the balance of the gross income minus its 20% as the expenses; At the time of withholding in advance, the income amount is the balance of each gross income minus the expenses, among which, "if the gross income is no more than 4,000 Yuan, the expenses shall be calculated as 800 Yuan; if the gross income is more than 4,000 Yuan, the expenses shall be calculated as its 20%."

2 Different applicable tax rate / withholding rate

For annual settlement, the 7-level excess progressive tax rate of 3% to 45% shall be applied; For withholding in advance, the 3-level excess progressive tax rate of 20% - 40% shall be applied; For the authors' remuneration and royalties, the 20% withholding rate shall be applied.

3 Different deductible items

The above three items of income and salaries and wages of resident belong to comprehensive incomes. The taxable income shall be the sum of the four income amounts minus 60,000 Yuan of expenses, special deductions, special additional deductions and other deductions determined according to law at the time of annual settlement. According to the provisions of the individual income tax law and the implementation regulation, the above deductions of the three items of income shall not be deducted for the withholding in advance tax payable.

4 Specific provisions on "by times"

If the three comprehensive incomes of independent personal services income, authors' remuneration and royalties belong to one-off income, the income shall be counted once; If the income is continuous income of the same project, the income obtained within one month shall be counted once.



2.2.1.2. Tax calculation of salaries and wages of non-resident

$$\text{tax payable of salaries and wages of the current month} = (\text{income amount of salaries and wages of the current month} - 5000) \times \text{applicable tax rate} - \text{quick deduction number}$$

Table of monthly comprehensive incomes tax rate (RMB: Yuan)

level	monthly taxable income	tax rate	quick deduction number
1	No more than 3,000	3%	0
2	Over 3,000 to 12,000	10%	210
3	Over 12,000 to 25,000	20%	1,410
4	Over 25,000 to 35,000	25%	2,660
5	Over 35,000 to 55,000	30%	4,410
6	Over 55,000 to 80,000	35%	7,160
7	Over 80,000	45%	15,160

2.2.1.3. Tax calculation of independent personal services income, authors' remuneration and royalties of non-resident



tax payable of independent personal services income	=	income amount of independent personal services income each time	×	applicable tax rate - quick deduction number
tax payable of authors' remuneration	=	income amount of authors' remuneration each time	×	applicable tax rate - quick deduction number
tax payable of royalties	=	income amount of royalties each time	×	applicable tax rate - quick deduction number

Table of monthly comprehensive incomes tax rate (RMB: Yuan)

level	monthly taxable income	tax rate	quick deduction number
1	No more than 3,000	3%	0
2	Over 3,000 to 12,000	10%	210
3	Over 12,000 to 25,000	20%	1,410
4	Over 25,000 to 35,000	25%	2,660
5	Over 35,000 to 55,000	30%	4,410
6	Over 55,000 to 80,000	35%	7,160
7	Over 80,000	45%	15,160

2.2.1.4. Special calculation method of reward and equity incentive



The reward and equity incentive paid by the employer to encourage the employees belong to the salaries and wages. For their large amount, the tax burden is heavy under the system of excess progressive tax

Old method

- Tax calculation method of one-off annual reward
- Tax calculation method of equity incentive

New method

- Resident—the Document No. 164 of the Ministry of Finance and the State Taxation Administration in 2018
- Non-resident—the Announcement No. 35 in 2019

Multi-month reward

- reward
- year-end pay increase
- bonus

Equity incentive

- stock option
- equity option
- restricted stock
- value-added rights on stock
- discount or subsidy from employer for subscribing for stock and other valuable securities



2.2.1.4. Special calculation method of reward and equity incentive (continued)

Resident: one-off annual reward

- before December 31, 2021: may not be incorporated into comprehensive incomes of the current year
divided by 12 and find the tax rate according to the **monthly tax rate table**

tax payable = monthly income amount of one-off annual reward × applicable tax rate – quick deduction number

- from January 1, 2022: incorporated into the tax of comprehensive incomes of the current year

Non-resident: multi-month reward

- It is not combined with other salaries and wages of the current month, and the income of the current month is calculated separately
- Tax shall be apportioned by six months without deduction of expenses
- Apply to **monthly tax rate table** to calculate tax payable

tax payable of multi-month reward in current month = $\left[\left(\frac{\text{income amount of multi-month reward}}{6} \right) \times \text{applicable tax rate} - \text{quick deduction number} \right] \times 6$

It can only be used once a year



2.2.1.4. Special calculation method of reward and equity incentive (continued)

Example

Calculation of individual income tax payable of one-off annual reward

Mr. R is a non-mainland-domiciled individual. In 2020, his accumulated number of domestic residence days is 183 days, so he is a resident. In January 2020, Mr. R obtains the fourth quarter reward of 2019 and the whole year reward at the same time. Suppose that after calculation, the income amount of the salaries and wages of the two rewards is RMB100,000 Yuan.

This is the first time for Mr. R to obtain rewards in the current year. He can choose the method to calculate the one-off annual rewards according to the Document No. 164 of the Ministry of Finance and the State Taxation Administration in 2018, which is not incorporated into the comprehensive incomes of the current year. The amount obtained by dividing the rewards income by 12 is used to determine the applicable tax rate and quick deduction number according to the monthly comprehensive incomes tax rate table, and the tax payable is calculated separately.

$$100,000 \div 12 = 8,333.33 \text{ (Yuan)}$$

From the monthly comprehensive incomes tax rate table, we find the applicable tax rate is 10%, and the quick deduction number is RMB210 Yuan

$$\text{The tax payable of one-off annual reward in January 2020} = 100,000 \times 10\% - 210 = 9,790 \text{ (Yuan)}$$



2.2.1.4. Special calculation method of reward and equity incentive (continued)

Example

Calculation of individual income tax payable of multi-month reward

Mr. R is a non-mainland-domiciled individual. In 2020, the cumulative number of domestic residence days is less than 183 days. He is a non-resident. In January 2020, Mr. R receives both the fourth quarter reward of 2019 and the full year reward. Suppose that after calculation, the income amount of the salaries and wages of the two rewards is RMB100,000 Yuan.

This is the first time for Mr. R to obtain rewards in the current year. He can choose to apportion the tax according to the calculation method of multi-month reward stipulated in the Announcement No. 35, without deducting expenses. The monthly comprehensive incomes tax rate table is applicable to calculate the individual income tax payable separately.

$$100,000 \div 6 = 16,666.67 \text{ (Yuan)}$$

From the monthly comprehensive incomes tax rate table, find the applicable tax rate is 20%, and the quick deduction number is RMB1,410 Yuan

$$\text{tax payable of multi-month reward in January 2020} = (16666.67 \times 20\% - 1410) \times 6 = 11,540 \text{ (Yuan)}$$



2.2.1.4. Special calculation method of reward and equity incentive (continued)

Income from equity incentive of resident

- Before December 31, 2021, it will not be incorporated into the comprehensive incomes of the current year, and the full amount applies to comprehensive incomes tax rate table

Tax payable = income amount of equity incentive × applicable tax rate - quick deduction number

If two or more times (including two times) are obtained in a tax year, the tax shall be calculated in combination

- After January 1, 2022 - Policy will be clarified separately.

Income from equity incentive for non-resident

- It is not combined with other salaries and wages of the current month, and the income amount of the current month is calculated separately
- The tax of equity incentive within one calendar year shall be apportioned by six months after the combination
- No deduction for expenses
- Apply monthly tax rate table to calculate tax payable

$$\text{Tax payable of equity incentive in the current month} = \left[\left(\frac{\text{Total amount of equity incentive in this Gregorian calendar year}}{6} \right) \times \text{applicable tax rate} - \text{quick deduction number} \right] \times 6 - \text{Tax paid of equity incentive in this Gregorian calendar year}$$



2.2.2. Tax calculation method of classified incomes

Classified incomes

- | | |
|-------------------------------------|---|
| 5. Income from business operation | Calculation and payment on annual basis
may deduct cost, expense and loss |
| 6. Interest, dividend and bonus | collected by times |
| 7. Income from lease of property | Tax is collected by times, and the income
obtained within one month is taken as
once; RMB800 Yuan or 20% of the income
can be deducted as expenses |
| 8. Income from transfer of property | The original value and reasonable
expenses of the property can be deducted
while collecting by times |
| 9. Incidental income | Collected by times |

5%-35%
5-level excess
progressive tax rate

20%
Proportional tax
rate

3 Who can enjoy the treaty benefit?



3. Two conditions for the application of tax treaty

1 Status requirements

According to the resident article of the Double Taxation Avoidance Treaty signed by the Chinese government and the Double Taxation Avoidance Arrangement signed between the mainland, Hongkong SAR and Macao SAR (hereinafter referred to as the "**tax treaty**"), **an individual who is a tax resident of the other contracting party** (hereinafter referred to as the "**tax resident of the other party**"), can enjoy the tax treaty benefit in accordance with the tax treaty and the relevant provisions of the Ministry of Finance and the State Taxation Administration, or choose to calculate the tax payable without tax treaty benefit. [\[Article 4 of the Announcement No. 35\]](#)

2 Procedure requirements

Measures for the Administration of Non-resident Taxpayers' Enjoyment of Tax Treaty Benefits

(The Announcement No. 60 of the State Taxation Administration in 2015)

Self-judgment, declaration and enjoyment, submission of relevant reports and materials

January 1,
2020

Measures for the Administration of Non-resident Taxpayers' Enjoyment of Treaty Benefits

(The Announcement No. 35 of the State Taxation Administration in 2019)

Self-judgment, declaration and enjoyment, retention of relevant materials for future reference



3.1. Conditions for "tax resident of the other party"

Condition 1

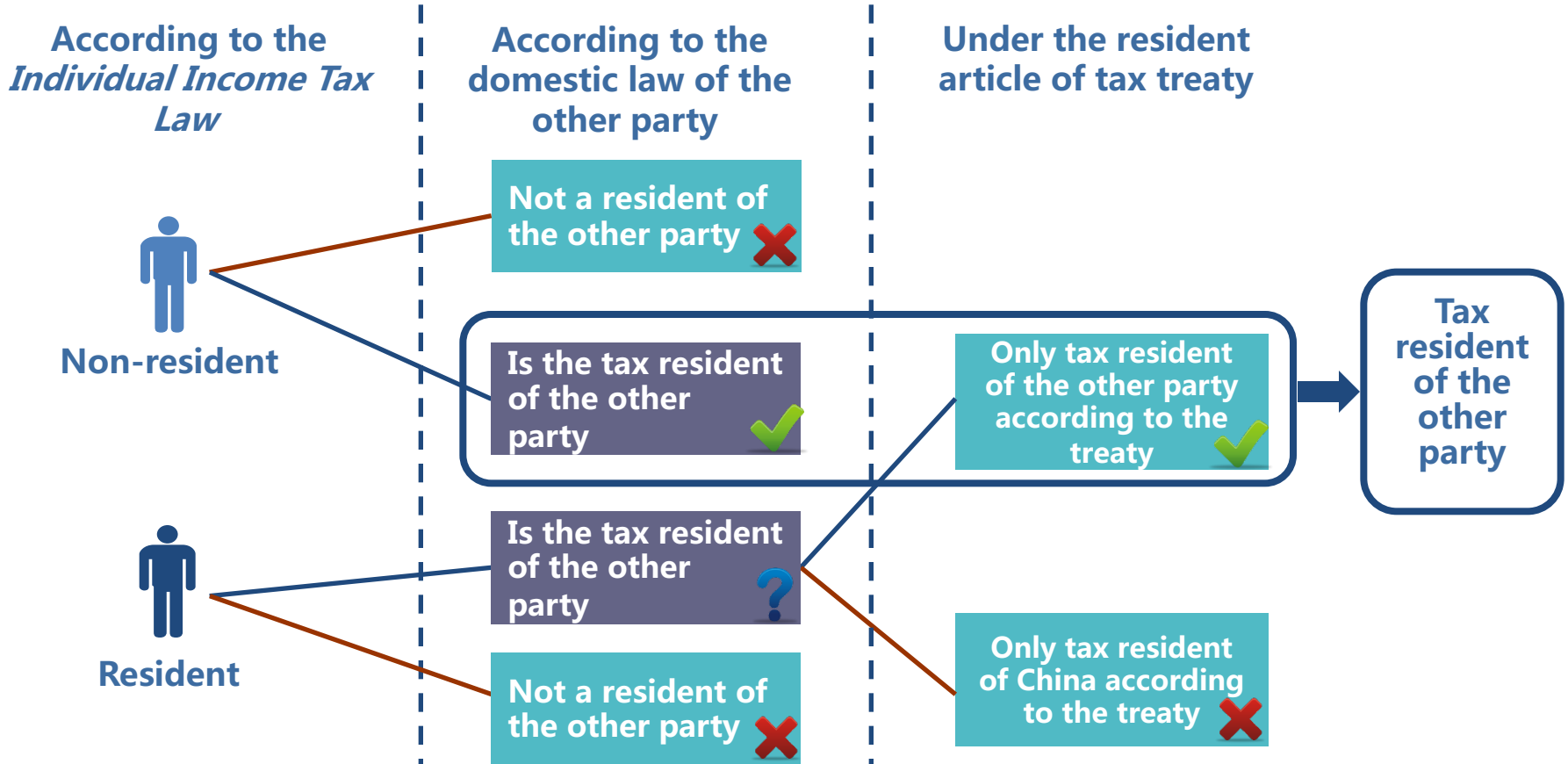
An individual who, in accordance with the domestic tax laws of the other contracting party, has a full tax liability in that Contracting State (or region) because of the criteria of domicile, residence or other similar nature.

Condition 2

An individual who is also a resident of both parties of the Contracting State is determined to be a resident of the other party only according to the tie-breaker rule of the resident article.

- coordination of double residence status of individual

3.1. Conditions for "tax resident of the other party" (Continued)





3.1.1. The tie-breaker rule of individual in the resident article of tax treaty

Permanent home

Permanent home which includes any form of domiciles, must be permanent, i.e. the individual has arranged for long-term residence, rather than temporary stay for some reasons (such as tourism, business investigation, etc.).

Centre of vital interests

Shall be judged by the comprehensive evaluation of personal family and social relations, occupation, politics, culture and other activities, business location, management property location and other factors. The state in which an individual has resided, worked and owned his or her family and property is usually the centre of vital interests.

Habitual abode

In one of the following two cases, the criterion of habitual abode is used to determine the belonging of the individual resident status: one is that the individual has permanent homes in both parties of the Contracting State and it is impossible to determine the state where the centre of vital interests is located; the other is that the permanent home of the individual is not in either party of the Contracting State. Habitual abode is determined by considering the time of physical presence in a country

Nationality

3.1.2. Example of determining "tax resident of the other party"

Example Treaty application of non-resident

China

- No domicile in China mainland
- Residing less than 183 days in a tax year
(non-resident)

Country A

- According to the law of Country A, due to the criteria of domicile, residence, etc., the individual has the tax liability in Country A, and is **a resident of Country A**



Example Treaty application of resident

China

- No domicile in China mainland
- Residing less than 183 days in a tax year
(resident)
- No permanent home

Country A

- According to the law of Country A, due to the criteria of domicile, residence, etc., the individual has the tax liability in Country A, and is **a resident of Country A**
- **With permanent home**

✓Tax resident of the other party



3.2. Procedures for the enjoyment of treaty benefit

The Announcement No. 60 of the State Taxation Administration in 2015

Procedure of prior application of enjoyment of treaty benefit

1. Self-declaration

- ❖ The taxpayers shall make their own declaration and submit their own report forms and materials to the tax authority.
- ❖ The taxpayers shall, at their own discretion, withhold in accordance with the treaty benefit, and transmit the report forms and materials to the tax authority.

2. The tax authority shall implement follow-up management.

Procedure of replenishing the enjoyment of treaty benefit

Submit the required report form and materials, and the statement of replenishing the enjoyment of treaty benefit, and apply for tax refund.



3.2.1. Submission

1 Information report forms

- ❖ *Information Reporting Form of Tax Residence Status of Non-resident Taxpayer (for Individuals)*
- ❖ *Reporting form for Non-resident Taxpayer Claiming Tax Treaty Benefits (Form A/B/C/D for individual income tax)*

2 Core certificates and materials

- ❖ *Resident status certificate*
- ❖ *Proof of ownership related to the acquisition of relevant income*

3 Provisions of other tax regulatory documents

4 Other materials provided by non-resident taxpayers themselves



3.2.2. Materials used to prove the status of tax residents

1 Requirements for certificate template

The Notice of the State Taxation Administration on Printing and Distributing the Certificate Templates of Tax Residents in Some Countries (Regions) (a letter of State Taxation Administration No. 395 in 2009) has the templates of resident status certificates, the certificates provided shall be basically consistent with the templates.

2 Requirements of certificate issuing subject

The tax resident status certificate shall be issued by the tax authorities in charge of the other contracting party of the treaty. However, for the enjoyment of the benefit of the shipping, inland waterways transport and air transport, the certificate may be replaced by a copy of the passport issued by the government of the other contracting party.

3 Requirements for proving effectiveness

4 Requirements of the subject of the certificate applicant

3.2.3. New procedures for the enjoyment of treaty benefit



The Announcement No. 35 of the State Taxation Administration in 2019

1. Change “filing” to “future reference”

Self-judgment, declaration and enjoyment, and retention of relevant materials for future reference

2. Simplified report forms

Information Reporting Form of Tax Residence Status of Non-resident Taxpayer (For Individuals)

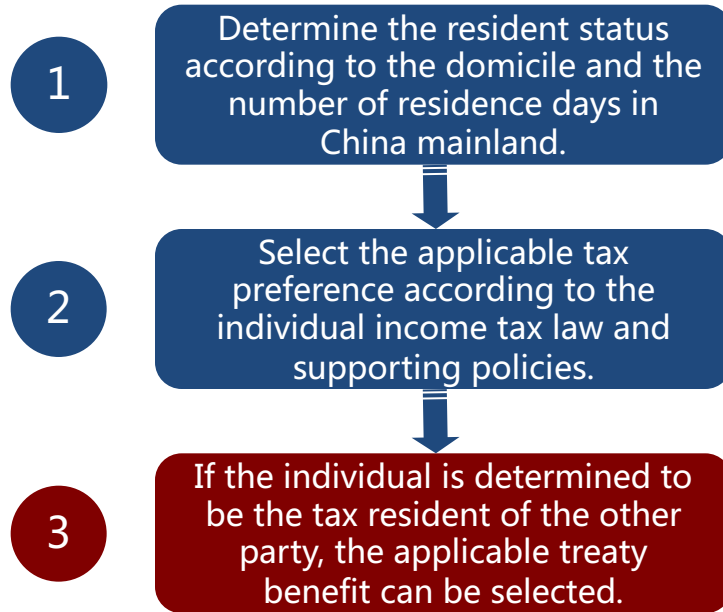


Reporting Form for Non-resident Taxpayer Claiming Tax Treaty Benefits (Form A/B/C/D for Individual Income Tax)

Information Reporting Form for Non-resident Taxpayers Claiming Treaty Benefits

3.3. Time to enjoy the treaty benefit

Steps for calculating individual income tax payable by non-mainlanders

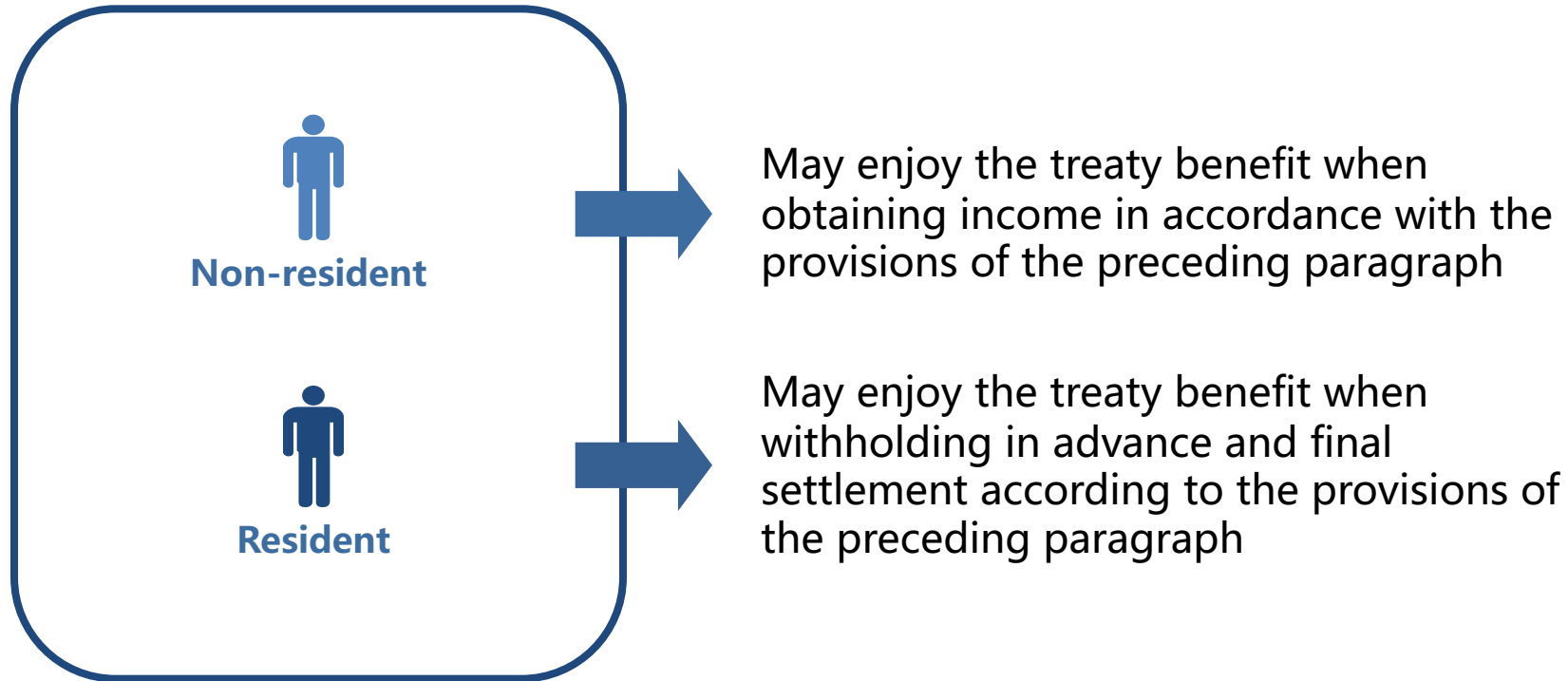


Function

- Determine tax obligations, tax calculation methods, deduction items and declaration methods
- Reduce tax liability
- Further reduce tax liability (do not change the declaration method)

3.3. Time to enjoy the treaty benefit (continued)

Tax resident of the other party



4 How do the labour incomes enjoy the treaty benefit?

4. Articles about labour incomes

4.1. Benefit of income from employment article

4.2. Benefit of independent personal services article

4.3. Application of directors' fees article

4.4. Application of entertainers and sportspersons article

4.5. Benefit of articles about other labour incomes

**Not an article to
reduce the tax
burden of the state
of source**

Pensions
Government service
Students
Teachers and researchers



4.1. Benefit of income from employment article

4.1. Benefit of income from employment article

4.2. Benefit of independent personal services article

4.3. Application of directors' fees article

4.4. Application of entertainers and sportspersons article

4.5. Benefit of articles about other labour incomes



4.1.1. Contents of income from employment article

(1) Non-mainland-domiciled individual enjoys the benefit of provision of the overseas income from employment

Paragraph 1 of the income from employment article (Treaty benefit of income from overseas employment)	Income from employment of resident of other party	
	Obtained from domestic employment activities	Obtained from overseas employment activities
	China has the right to tax	China has no right to tax

AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Article 14 Non-independent personal services

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.



4.1.1. Contents of income from employment article (continued)

Example

Non-mainland-domiciled individual enjoys the benefit of provision of the overseas income from employment



China

- No domicile in China mainland
- Reside 183 or more days domestically in a tax year, but the number of consecutive years in which the domestic residence days in any one year is 183 or more is less than 6

(resident)

- **No permanent home**

Country A

- According to the law of Country A, due to the criteria of domicile, residence, etc., the individual is liable for tax in Country A

(resident of Country A)

- **Permanent home**

Income from employment of resident of other party

Obtained from domestic employment activities		Obtained from overseas employment activities	
Domestic payment	Overseas payment	Domestic payment	Overseas payment
8	10	12	15
18		27	
45			

4.1.1. Contents of income from employment article (continued)



(2) Non-mainland-domiciled individual enjoys the benefit of provision of the domestic income from employment

Paragraph 2 of the income from employment article (benefit of provision of the domestic income from employment)	Remuneration of the resident of the other party for the domestic employment	
	At the same time, the following three conditions are met: 1. The payee shall be physically present in China mainland for no more than 183 days within the period specified in the tax treaty; 2. The remuneration is not paid by or on behalf of the Chinese resident employer; 3. The remuneration shall not be borne by the employer's permanent establishment or fixed base in China mainland.	Other situations when the three conditions are not satisfied at the same time
	China has no right to tax	China has the right to tax

Domestic days of physical presence

- Including any days of arrival and departure which are all less than one day, and weekends, festivals, as well as holidays spent in China mainland before, during and after the employment activity;
- Leaving days are allowed to be deducted.



4.1.1. Contents of income from employment article (continued)

Example

Non-mainland-domiciled individual enjoys the benefit of provision of the domestic income from employment



China

- No domicile in China mainland
- Reside less than 183 days but more than 90 days in a tax year
(non-resident)

Country A

- According to the law of Country A, due to the criteria of domicile, residence, etc., the individual is liable for tax in Country A
(resident of Country A)

Income from employment of resident of other party			
Obtained from domestic employment activities		Obtained from overseas employment activities	
Domestic payment	Overseas payment	Domestic payment	Overseas payment
8	10	12	15
18		27	
45			

4.1.1. Contents of income from employment article (continued)



Table of salaries and wages tax obligations of enjoying the treaty benefit of income from employment article

Domestic time of physical presence		Salaries and wages belonging to domestic work period		Salaries and wages belonging to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Non-resident	≤183 days	Taxed	Exempted	Not taxed	Not taxed
	> 183 days	Taxed	Taxed/Exempted*	Not taxed	Not taxed
Non-mainland-domiciled resident	≤183 days	Taxed	Exempted	Exempted	Exempted
	> 183 days	Taxed	Taxed	Exempted	Exempted

Note: 1. "Non-resident" and "resident" in the first column of the table refer to the individual determined as non-resident or resident according to Article 1 of the Individual Income Tax Law.

2. ≤183 days refers to continuous or accumulative domestic days of physical presence is no more than 183 within the period specified in the tax treaty, and > 183 days refers to continuous or accumulative domestic days of physical presence is more than 183 within the period specified in the tax treaty.

* Non-residents are exempt from individual income tax when they meet the provisions of Article 5 of the Implementation Regulation.



4.1.2. Conditions for application of the income from employment article

1 The payee shall be physically present in China mainland for no more than 183 days within the period specified in the tax treaty

(1) Days calculation

- If an individual leaves the country midway, the number of leaving days is allowed to be deducted
- The actual number of days of physical presence in the state of source refers to all number of days of physical presence in the territory

(2) How to understand "stay 183 days in any 12 months"?

- All rolling and crossing months shall be considered together.
- If the twelve months calculated within which 183 days has been reached span two years, the state of source may tax the income belonging to the individual's actual period of physical presence in the state of source in those two years.



4.1.2. Conditions for application of the income from employment article (continued)

Example Determination of days of physical presence

Mr. R was physically present in China mainland from April 1, 2016 to July 31, 2017 to engage in employment activities. He was physically present in China mainland for 150 days during the 12 months from his arrival in China mainland to March 2017, and 210 days during the 12 months from August 2016 to July 2017.



4.1.2. Conditions for application of the income from employment article (continued)



2 The remuneration is not paid by or on behalf of the Chinese resident employer

- (1) Employer: a person who has the right to, and bears the responsibility and risk associated with, the results of an employee's work.
- (2) Judging principle: substance is more important than form.
- (3) Factors for reference
 - Instruction over the work
 - Control or responsibility of the workplace
 - Supply of tools and materials
 - Who determines the number and standard of personnel employed
 - In case of employing personnel through overseas intermediaries, consideration shall be given to the way of paying remuneration to the intermediaries

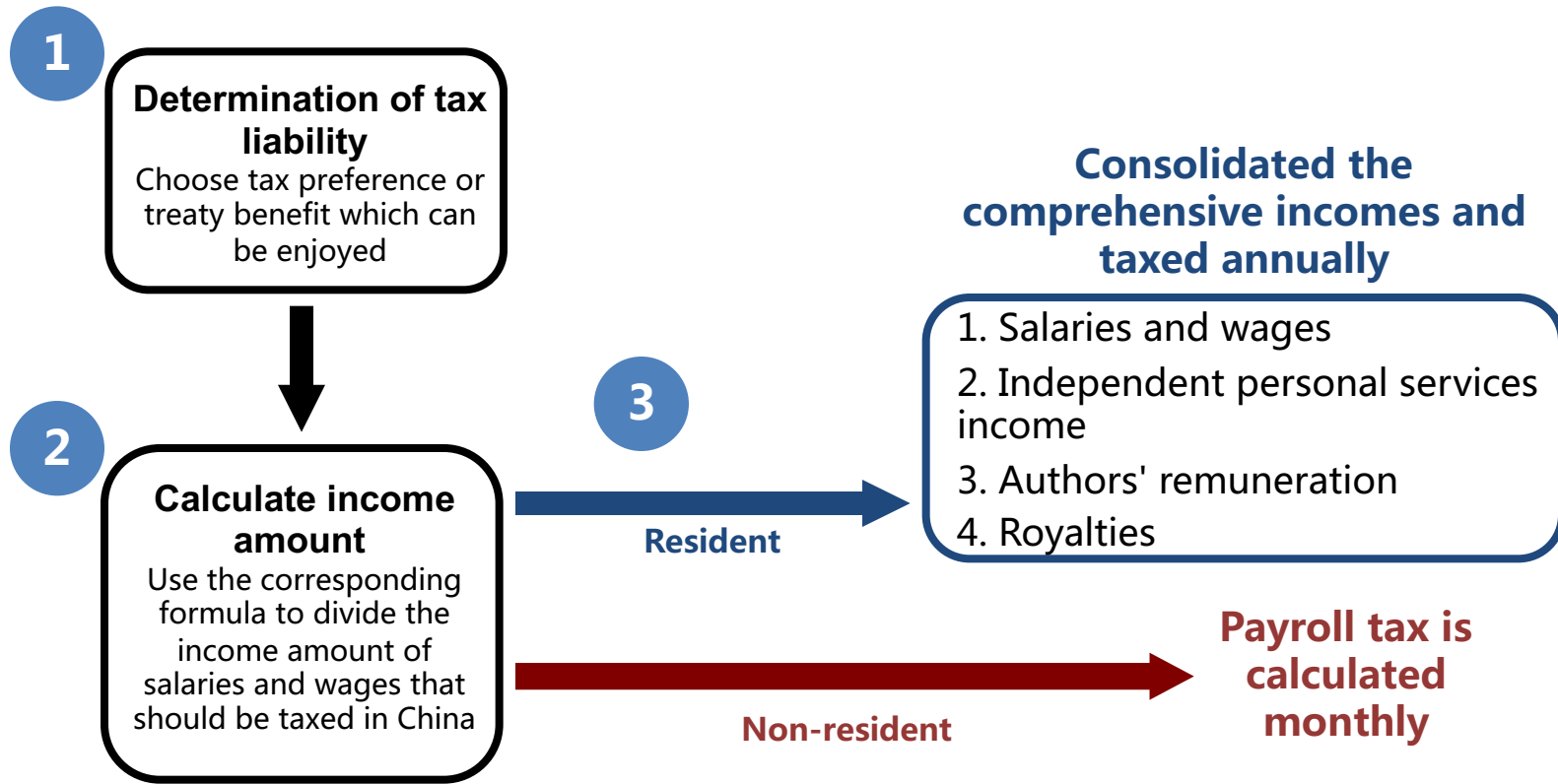
4.1.2. Conditions for application of the income from employment article (continued)



3 The remuneration is not borne by the employer's permanent establishment or fixed base in China mainland

- (1) If a non-mainland-domiciled individual is dispatched to a domestic permanent establishment set by a non-resident enterprise, or if the non-resident enterprise sends its employees and other personnel to work in a contracted engineering or service project that has formed a domestic permanent establishment, the income of such personnel during the domestic work period, no matter how long they have worked in China mainland or where their salaries and wages are paid, shall be considered as income borne by the permanent establishment.
- (2) It **shall not be applicable to** the personnel who temporarily dispatched by the headquarters to inspect, supervise or temporarily provide assistance and activities.

4.1.3. Calculation of the tax payable on salaries and wages of non-mainland-domiciled individual





4.1.3.1. Calculation of domestic and overseas work days

- ❖ The salaries and wages belonging to the domestic work period is the domestic-sourced salaries and wages.
- ❖ The domestic work period shall be calculated according to the number of domestic work days.

The domestic and overseas work days can be divided in the cases of:

- Holding concurrent posts in domestic and overseas units, or
- Only hold a post in overseas unit, and work domestically and overseas at the same time in the current period

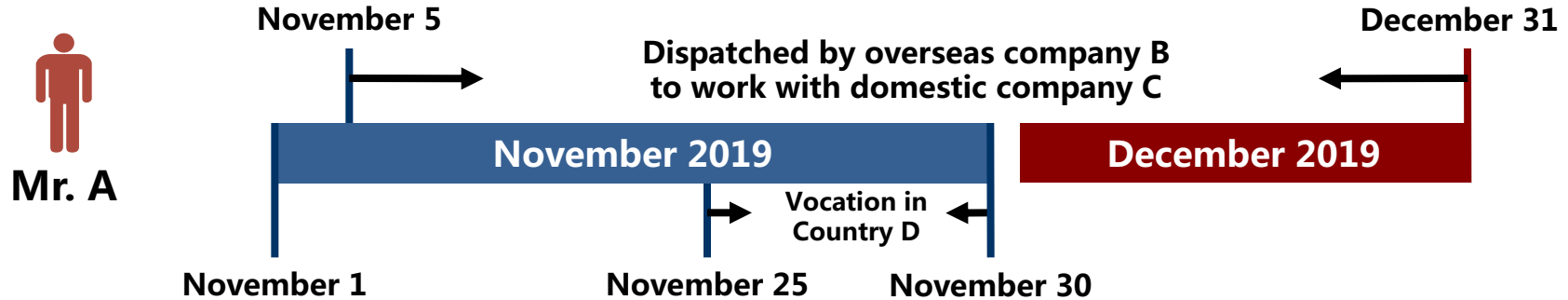
Division method:

- If the domestic day of physical presence is less than 24 hours, the domestic work days shall be counted as half day
- Domestic work days include the actual domestic work days and the days of public holidays, personal holidays and training days enjoyed inside and outside China mainland during the domestic work period
- Overseas work days are calculated based on the current Gregorian calendar days minus the current domestic work days

4.1.3.1. Calculation of domestic and overseas work days (continued)

Example

Division of domestic and overseas work days



Mr. A has both domestic and overseas work periods in November, which are determined as follows:

- From November 5 to November 24, he worked in China mainland. Although he left for Country D for 6 days, these 6 days belong to the public holidays enjoyed outside China mainland during his domestic work period, which cannot be excluded.
- If the domestic day of physical presence on November 5 is less than 24 hours, the domestic work days shall be calculated as half day.

Mr. A's domestic work time in November = $30 - 4 - 0.5 = 25.5$ days.



4.1.3.1. Calculation of domestic and overseas work days (continued)

Comparison of residence days, days of physical presence and work days

Function	Calculation method
Domestic residence days	Judge the resident status of a non-mainland-domiciled individual and determine the tax liability. If the domestic day of physical presence reaches 24 hours, it shall be included in the number of domestic residence days. If the domestic day of physical presence is less than 24 hours, it shall not be included in the number of domestic residence days. —The day of arrival and departure will not be counted as one day.
Domestic days of physical presence	Judge whether the tax resident of the other party can enjoy the benefit of provision of the domestic income from employment. (1) Days of physical presence include any days less than one day on the arrival and departure day, weekends and holidays, as well as holidays spent in China mainland before, during and after this employment activity; —each of the day of arrival and departure is calculated as one day; (2) Days of departure are allowed to be deducted.
Domestic work days	Divide the salaries and wages of non-mainland-domiciled individual and the part which belongs to the domestic work period is determined to be the income amount of salaries and wages in the current month. (1) Including the actual domestic work days and the days of public holidays, personal holidays and training days enjoyed inside and outside China mainland during the domestic work period; (2) If an individual who holds posts in a domestic or overseas entity at the same time or only holds a post in an overseas entity is physically present in China mainland for less than 24 hours on the same day, the number of domestic work days shall be calculated as half day. —0.5 days for each of the day of arrival and departure.



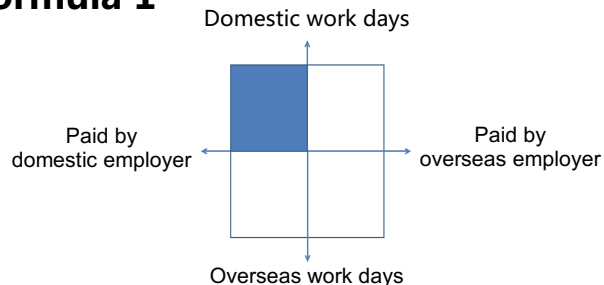
4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual

Domestic residence time / Domestic time of physical presence		Salaries and wages attributable to domestic work period		Salaries and wages attributable to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Non-resident (except senior-occupation holder)	≤90 days #1	Taxed	Exempted	Not taxed	Not taxed
benefit of provision of the domestic income from employment	≤183 days #2	Taxed	Exempted	Exempted / Not taxed	Exempted / Not taxed

#1 ≤90 days means that within a tax year, the accumulated domestic residence time does not exceed 90 days

#2 ≤183 days refers to continuous or accumulated being physically present in China mainland for no more than 183 days within the period specified in the tax treaty

Formula 1



$$\begin{aligned}
 &\text{Income amount of salaries and wages of the current month} \\
 &= \text{Total amount of domestic and overseas salaries and wages of the current month} \times \frac{\text{Amount of domestic salaries and wages of the current month}}{\text{Total amount of domestic and overseas salaries and wages of the current month}} \times \frac{\text{Domestic work days within the work period of salaries and wages of the current month}}{\text{Gregorian calendar days within the work period of salaries and wages of the current month}}
 \end{aligned}$$

4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)



Example

Calculation of income amount of salaries and wages of non-resident paid by permanent establishment

Mr. R is a non-mainland-domiciled individual, who was dispatched by company B of Country A to work in the domestic representative office. He entered China mainland on September 1, 2019 and left China mainland on September 15 after the completion of his work. The domestic representative office adopts the verified profit method to calculate and collect business income tax. In October 2019, Mr. R received RMB120,000 Yuan of salaries and wages of September 2019, all of which were paid by company B.

What is Mr. R's income amount of salary in October?

1. Judge the tax liability in the year of salary payment.

In a tax year, a non-resident who has resided domestically for no more than 90 days in total shall pay individual income tax only on the income from salaries and wages paid or borne by the domestic employer during the domestic work period. Use formula 1 to calculate the income amount of salaries and wages of the current month.

The domestic employer uses verified method for income tax collection. The salaries and wages obtained by non-mainland-domiciled individuals for their work, whether or not recorded in the accounting books of domestic employer, is deemed to be paid or borne by the domestic employer.

4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)



Domestic residence time / Domestic time of physical presence		Salaries and wages attributable to domestic work period		Salaries and wages attributable to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Non-residents (except senior-occupation holder)	≤90 days	Taxed	Exempted	Not taxed	Not taxed

Formula 1

$$\begin{aligned}
 &\text{Income amount of salaries and wages of the current month} \\
 &= \text{Total amount of domestic and overseas salaries and wages of the current month} \times \frac{\text{Amount of domestic salaries and wages of the current month}}{\text{Total amount of domestic and overseas salaries and wages of the current month}} \times \frac{\text{Domestic work days within the work period of salaries and wages of the current month}}{\text{Gregorian calendar days within the work period of salaries and wages of the current month}}
 \end{aligned}$$

2. Calculate the income amount of salaries and wages of October.

Mr. R's salaries and wages earned during his work period in the representative office shall be deemed to be paid by the representative office. The total salaries and wages paid domestically and overseas in the current month = the salaries and wages paid domestically in the current month = 120,000 Yuan

Domestic work days in the current month = 0.5 + 13 + 0.5 = 14 (days)

Income amount of salaries and wages in October = 12 × (14 ÷ 30) × (12 ÷ 12) = 56,000 Yuan

↓
September Gregorian calendar days

4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)

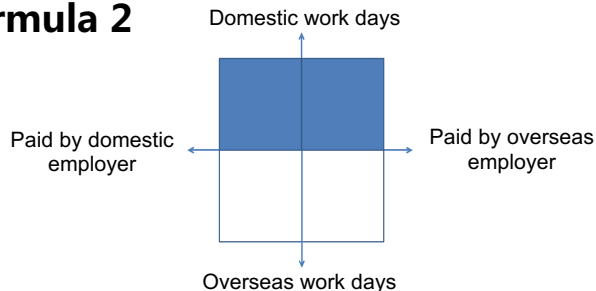


Domestic residence time / Domestic time of physical presence		Salaries and wages attributable to domestic work period		Salaries and wages attributable to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Non-resident (except senior-occupation holder)	> 90 days and < 183 days #1	Taxed	Taxed	Not taxed	Not taxed
Benefit of provision of the overseas income from employment	>183 days #2	Taxed	Taxed	Exempted	Exempted

#1 > 90 days and < 183 days refers to more than 90 days but less than 183 days domestic residence time in a tax year.

#2 > 183 days refers to continuous or cumulative stay in China for more than 183 days within the period specified in the tax treaty.

Formula 2



Income amount of salaries and wages of the current month

= Total amount of domestic and overseas salaries and wages of the current month

× $\frac{\text{Domestic work days within the work period of salaries and wages of the current month}}{\text{Gregorian calendar days within the work period of salaries and wages of the current month}}$

4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)



Example Calculation of provision of the domestic income from employment

According to the domestic law of Country A, Mr. R is a tax resident of Country A. Mr. R was dispatched by company B of Country A to company C of China mainland as department manager. On October 5, 2019, Mr. R received RMB100,000 Yuan of salary of September 2019, and company B and company C each paid half of it. According to statistics, Mr. R worked 24 days in September 2019, and resided 100 days in China mainland in 2019. According to statistics, Mr. R was physically present in China mainland for 120 days in 2019.

What is Mr. R's income amount of salary in October?

1. Judge the tax liability in the year of salary payment.

Domestic law: Individual income tax shall be calculated and paid for all salaries and wages belonging to the domestic work period when the accumulated residence days is more than 90 but less than 183.

Enjoy the provision of the domestic income from employment: if it is not paid by or on behalf of the employer of a domestic resident or borne by a permanent establishment of the domestic employer, the payment may not be subject to individual income tax—Formula 1.

4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)



Domestic residence time / Domestic time of physical presence		Salaries and wages attributable to domestic work period		Salaries and wages attributable to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Benefit of provision of the domestic income from employment	≤183 days	Taxed	Exempted	Not taxed	Not taxed

Formula 1

$$\begin{aligned}
 &\text{Income amount of the salaries and wages of the current month} = \text{Total amount of domestic and overseas salaries and wages of the current month} \times \frac{\text{Amount of domestic salaries and wages of the current month}}{\text{Total amount of domestic and overseas salaries and wages of the current month}} \times \frac{\text{Domestic work days within the work period of salaries and wages of the current month}}{\text{Gregorian calendar days within the work period of salaries and wages of the current month}}
 \end{aligned}$$

2. Calculate the income amount of salaries and wages of October.

$$\text{Income amount of salary in October} = 10 \times (24 \div \underline{30}) \times \frac{1}{2} = 40,000 \text{ (Yuan)}$$

↓
September Gregorian calendar days



4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)

Example Calculation of provision of the overseas income from employment

According to the domestic law of Country A, Mr. R is a tax resident of Country A and has permanent home in Country A. Mr. R was dispatched by company B of Country A to company C of China mainland as department manager. On July 5, 2020, Mr. R receives a salary of RMB100,000 Yuan of June 2020, and company B and company C each pays half of it. According to statistics, the work days in June 2020 are 24 days, and the accumulated domestic residence time in 2020 is 200 days. According to statistics, Mr. R is physically present in China mainland for 220 days.

What is Mr. R's income amount of salary in July?

1. Judge the tax liability in the year of salary payment.

Domestic law: For a resident, if the number of consecutive years within which 183 or more days have been reached in any one year is less than 6, all the individual's salaries and wages shall be subject to individual income tax, except for the part that belongs to the period of overseas work and paid by the overseas unit or individual.

Enjoy the provision of the overseas income from employment: income from overseas employment may be exempted from individual income tax—Formula 2.



4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)

Domestic residence time / Domestic time of physical presence		Salaries and wages attributable to domestic work period		Salaries and wages attributable to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Benefit of provision of the overseas income from employment	> 183 days	Taxed	Taxed	Not taxed	Not taxed

Formula 2

$$\text{Income amount of salaries and wages of the current month} = \text{Total amount of domestic and overseas salaries and wages of the current month} \times \frac{\text{Domestic work days within the work period of salaries and wages of the current month}}{\text{Gregorian calendar days within the work period of salaries and wages of the current month}}$$

2. Calculate the income amount of salaries and wages in July.

$$\text{Income amount of salaries and wages in July} = 10 \times (24 \div \underline{30}) = 8 \text{ (ten thousand Yuan)}$$

↓
Gregorian calendar days in June

4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)

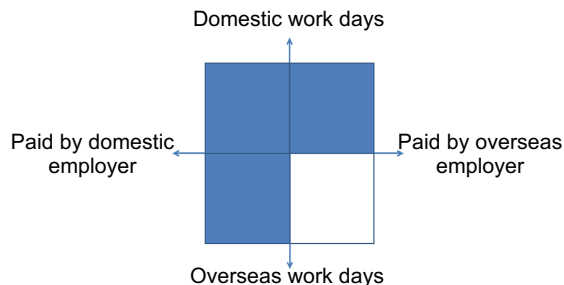


Domestic residence time		Salaries and wages attributable to domestic work period		Salaries and wages attributable to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Non-resident (senior-occupation holder)	> 90 days and < 183 days #1	Taxed	Taxed	Taxed	Not taxed
Resident	≥183 days and ≤ 6 years #2	Taxed	Taxed	Taxed	Exempted

#1 > 90 days and < 183 days refers to more than 90 days but less than 183 days domestic residence time in a tax year.

#2 It refers to the number of domestic days of physical presence is 183 or more, and in any one year of the previous six consecutive years the number of cumulative residence days in our territory is less than 183 or there is a single departure for more than 30 days.

Formula 3



$$\begin{aligned}
 &\text{Income amount of salaries and wages of the current month} \\
 = &\text{Total amount of domestic and overseas salaries and wages of the current month} \\
 \times & \left[1 - \frac{\text{Amount of overseas salaries and wages of the current month}}{\text{Total amount of domestic and overseas salaries and wages of the current month}} \times \frac{\text{Overseas work days within the work period of salaries and wages of the current month}}{\text{Gregorian calendar days within the work period of salaries and wages of the current month}} \right]
 \end{aligned}$$

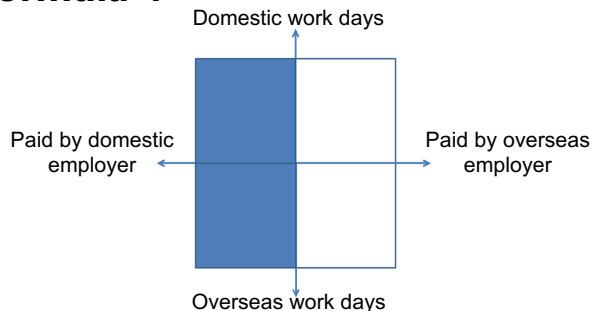


4.1.3.2. Calculation of income amount of salaries and wages of non-mainland-domiciled individual (continued)

Domestic residence time		Salaries and wages attributable to domestic work period		Salaries and wages attributable to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Non-resident (senior-occupation holder)	≤90 days #1	Taxed	Exempted	Taxed	Not taxed

#1 ≤90 days means that within a tax year, the accumulated domestic residence time does not exceed 90 days

Formula 4



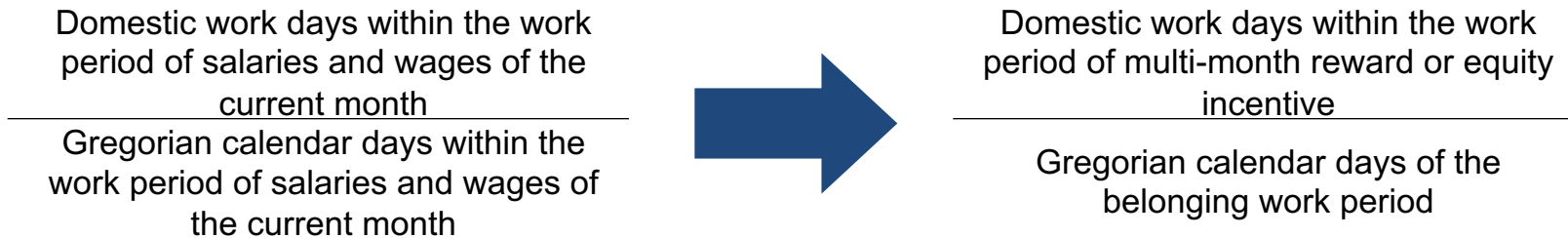
$$\text{Income amount of salaries and wages of the current month} = \text{Amount of domestic salaries and wages of the current month}$$



4.1.3.3. Calculation of income amount of reward and equity incentive

The multi-month reward and equity incentive belong to salaries and wages, the division of domestic and overseas incomes shall be handled according to the division rules of salaries and wages.

The part that belongs to the domestic work period is the domestic-sourced salaries and wages; the part that belongs to the overseas work period is the overseas-sourced salaries and wages (For senior-occupation holder, it is the arising place of service + payment place).



4.1.3.3. Calculation of income amount of reward and equity incentive (continued)



The combination of multi-month reward and equity incentive obtained by a non-mainland-domiciled individual within one month:

The Announcement No. 35: firstly, the domestic-sourced income in different belonging periods shall be calculated in accordance with the provisions of this announcement, and then the domestic-sourced income amount of multi-month reward or equity incentive in the current month shall be summed up.

Select the applicable formula according to the number of residence days (or days of physical presence) in the year in which the income is obtained



Then separately calculate the domestic-sourced income in different belonging periods



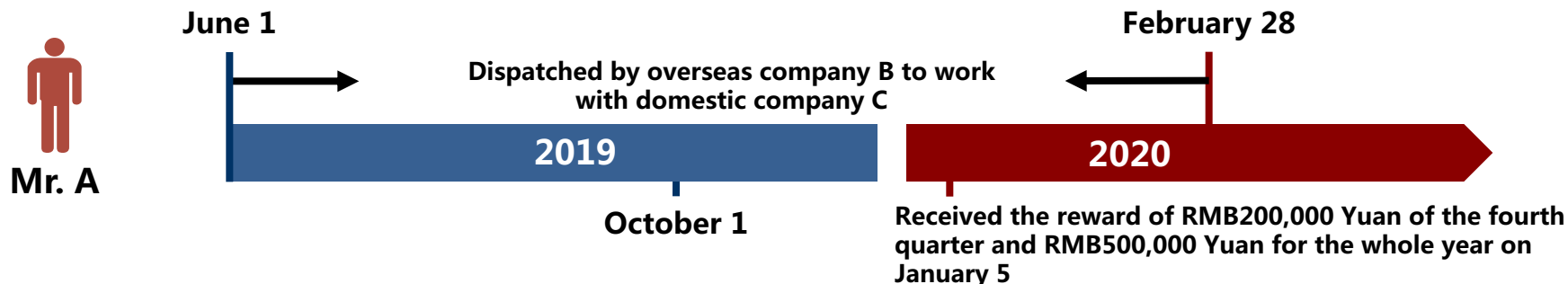
Finally, sum up the domestic-sourced income amount of multi-month reward or equity incentive in current month

4.1.3.3. Calculation of income amount of reward and equity incentive (continued)



Example

Obtaining several multi-month rewards at the same time



- ✓ In the fourth quarter of 2019, the number of domestic work days is 46; in the whole year of 2019, the number of domestic work days is 73.
- In January 2020, Mr. A worked in company C for 10 days.

If the two rewards are paid half for each by the domestic company and the overseas company respectively, Mr. A's income amount of multi-month reward is:

$$20 \times \frac{1}{2} \times \frac{46}{92} + 50 \times \frac{1}{2} \times \frac{73}{365} = 100 \text{ thousand Yuan}$$



4.1.4. Prediction and adjustment of resident status

First, the expected number of residence days and days of physical presence in China mainland shall be calculated and the tax shall be paid according to the expected situation. If the actual situation is inconsistent with the expected situation, it shall be handled according to the following provisions:

1. The non-mainland-domiciled individual is determined as a non-resident in advance, and the personal conditions of resident are met for the residence days are extended
 - The tax withholding method shall remain unchanged in a tax year, and the final settlement shall be conducted in accordance with the relevant regulations of resident after the end of the year
 - However, if the individual leaves the country in the current year and will no longer enter the country within the expected year, the individual may choose to handle the final settlement before leaving the country



4.1.4. Prediction and adjustment of resident status (continued)

2. The non-mainland-domiciled individual is determined to be a resident in advance, and cannot meet the personal conditions of the resident due to the shortening of the residence days

- Report to the tax authority in charge from the date when the personal conditions of residents cannot be met to the 15th days after the end of the year
- The amount of tax payable shall be recalculated according to the adjustment of non-resident, return the overcharge and demand the shortage when declaring complementary tax, and the tax overdue fine shall not be charged
- If tax refund is needed, it shall be handled in accordance with the regulation



4.1.4. Prediction and adjustment of resident status (continued)

3. If the total number of days of domestic residence of a non-mainland-domiciled individual in a tax year is expected to be not more than 90, but the actual total number of residence days is more than 90, or if the number of days of physical presence in China mainland of the tax resident of other party is expected to be no more than 183, but the actual number of days of physical presence is more than 183 within the period stipulated in the tax treaty

- Within 15 days after the end of the month reaching 90 days or 183 days
- Report to the tax authority in charge
- Recalculate the tax payable based on the salaries and wages in the previous months and make the complementary tax payment, without any tax overdue fine



4.1.5. Salaries and wages paid by overseas related party

If a non-mainland-domiciled individual holds a post or is employed in China mainland to obtain domestic-sourced salaries and wages, if the domestic employer has affiliation to an overseas entity or individual and make part or all of the salaries and wages of the individual that should have been paid by the domestic employer be paid by the overseas related party, this non-mainland-domiciled individual may choose

- Self-declaration and payment of taxes, and domestic employer reports relevant information to the tax authority in charge
- Entrust domestic employer to pay taxes on behalf of the individual



4.1.6 Summary: three "reporting" obligations

No.	Usage situation	Reporter	Time and content of report
1	Resident → Non-resident	Taxpayer	Report to the tax authority in charge from the date when the personal conditions of residents cannot be met to the 15th days after the end of the year . The amount of tax payable shall be recalculated according to the adjustment of non-resident, declare complementary tax, and the tax overdue fine shall not be charged.
2	Formula 1 → Formula 2	Taxpayer	Within 15 days after the end of the month reaching 90 days or 183 days , report to the tax authority in charge, recalculate the tax payable based on the salaries and wages in the previous months and make the complementary tax payment, without any tax overdue fine.
3	Paid by the overseas related party Taxpayers choose to declare by themselves	Domestic employer	Report the relevant information to the tax authority in charge within 15 days after the end of the month of relevant income payment , including the work arrangement by the domestic employer and the overseas related party, overseas payment and contact information of the non-mainland-domiciled individual.

The report format is not clarified.



4.2. Benefit of independent personal services article

4.1. Benefit of income from employment article

4.2. Benefit of independent personal services article

4.3. Application of directors' fees article

4.4. Application of entertainers and sportspersons article

4.5. Benefit of articles about other labour incomes

4.2.1. Application of independent personal services or business profits articles



Independent personal services refer to the scientific, literary, artistic, educational or teaching activities conducted in an independent personal status, as well as the professional services provided by doctors, lawyers, engineers, architects, dentists and accountants.

	The situation that China has the right to tax
Independent personal services article	<p>One of two conditions is met:</p> <ol style="list-style-type: none">1. There is a fixed base that is often used for independent personal services activities in China mainland (income attributable to the fixed base can be taxed)2. Being physically present in China mainland continuously or accumulatively for 183 days or more within the specified period (generally within any 12 months) (income from domestic activities can be taxed) <p>Note: a few treaties have three conditions.</p>
Business profits article	<p>The enterprise of other party conducts business in China mainland through a domestic permanent establishment (the profits belonging to the permanent establishment may be taxed)</p>



4.2.2. Key points on application of independent personal services article

Independence and professionalism of labour service

1. Professional certificate. Including the registration certificate and the certificate that can prove the person's status, or the statement of the current profession in the resident status certificate issued by the tax authority of the Contracting State in which the person is a resident.
2. Labour contract. Salary, insurance agreement, remuneration calculation and payment method, scope of labour service, division of responsibility and expense bearing method.

If it is difficult to distinguish, it shall be deemed as income from employment. (The Letter No. 609 of State Taxation Administration in 1990).

Set up a fixed base

1. For the purpose of engaging in independent personal services.
2. Independent personal services are not required to be carried out through fixed bases, while operating activities of businesses are required to be carried out partially or completely through permanent establishment.

Domestic time of physical presence

1. The actual number of domestic days of physical presence is calculated and the days when an individual enters, leaves, commutes or multiply commutes home and abroad are counted as one day in China mainland.
2. Refer to entry and exit records and residence records

4.2.2. Key points on application of independent personal services article (continued)



Example

Benefit of independent personal services article

Mr. Watanabe, a Japanese resident who is a dentist, has opened a dental clinic in Beijing and employs several doctors and nurses. His total number of days in China mainland is 60 in a year.

Instead of opening a clinic in Beijing, Mr. Watanabe, a Japanese resident, was invited by a hospital in Guangzhou to come to the hospital regularly for treatment, lecture, consultation and other activities. He has been in China mainland for 60 days in a year.

Mr. Watanabe, a Japanese resident, worked with A dental hospital in Japan, and was sent by the A dental hospital to a hospital in Guangzhou to participate in the cooperative treatment of the two hospitals. He has been in China mainland for 60 days in a year.



4.3. Application of directors' fees article

4.1. Benefit of income from employment article

4.2. Benefit of independent personal services article

4.3. Application of directors' fees article

4.4. Application of entertainers and sportspersons article

4.5. Benefit of articles about other labour incomes



4.3. Application of directors' fees article

		Provisions
Item (3) of Article 1 of the Announcement No. 35		For an individual who holds the posts of director, supervisor and senior management of a domestic resident enterprise, whether or not the individual performs the duties in China mainland, the director's fees, supervisor's fees, salaries and wages or other similar remuneration paid or borne by the domestic resident enterprise shall be deemed as domestic-sourced income.
Tax treaty directors' fees article	Apply to directors only	Directors' fees and other similar payments received by a resident of a Contracting State who is a member of the board of directors of a company which is a resident enterprise of the other Contracting State may be taxed in that other Contracting State.
	Apply to directors and supervisors	Directors' fees and other similar payments received by a resident of a Contracting State who is a member of the board of directors or similar units of a company which is a resident enterprise of the other Contracting State may be taxed in that other Contracting State.
	Apply to directors, supervisors and senior management	<ol style="list-style-type: none">1. Directors' fees and other similar payments received by a resident of a Contracting State who is a member of the board of directors or similar units of a company which is a resident enterprise of the other Contracting State may be taxed in that other Contracting State.2. Salaries, wages and other similar remuneration received by a resident of a Contracting State who is a member of senior management of a company which is a resident enterprise of the other Contracting State may be taxed in that other Contracting State.

4.3. Application of directors' fees article (continued)



Taxable items of directors' fees

➤ If an individual holds the post of director or supervisor of the company and does not hold other post or is not employed in the company, the income from directors' fees obtained shall be taxed according to the income items of independent personal services.

- independent personal services (business profits) article

➤ If an individual holds a post or is employed in the company (including associated enterprises) and concurrently serves as a director and supervisor, the director's fee and supervisor's fee shall be combined with the individual wage income, and the individual income tax shall be paid uniformly according to the items of salaries and wages.

- income from employment article

State Taxation Administration Notice on Printing and Distributing the Provisions on Several Issues Concerning the Collection of Individual Income Tax (the Document No. 89 of the State Taxation Administration in 1994)

State Taxation Administration Notice on the Clarification of the Implementation of Certain Policies on Individual Income Tax (the Document No. 121 of the State Taxation Administration in 2009)



4.3. Application of directors' fees article (continued)

How to apply the treaty article to individuals who hold the posts of directors, supervisors and senior management of domestic resident enterprises?

Category 1 Have no treaty, it shall be implemented in accordance with domestic law:

- Item 3 Article 1 of the Announcement No. 35 determines the source place (arising place of service + payment place)

Category 2 Have treaty, and the provisions of the directors' fees are applicable, the provisions of the directors' fees shall be applied

- Unable to enjoy the benefit of income from employment and independent personal services (business profits) articles
- Equivalent to implement under domestic law

Category 3 Have treaty, the directors' fees article is not applicable, there is an opportunity to enjoy the treaty benefit:

- Enjoying the treaty benefit of income from employment, or
- Enjoy the treaty benefit of independent personal services (business profits)



4.3. Application of directors' fees article (continued)

Table of tax liability of salaries and wages of non-mainland-domiciled individual (senior-occupation holder)

Domestic residence time		Salaries and wages attributable to domestic work period		Salaries and wages attributable to overseas work period	
		Paid or borne by domestic employer	Paid and borne by overseas employer	Paid or borne by domestic employer	Paid and borne by overseas employer
Non-resident	≤90 days	Taxed	Exempted	Taxed	Not taxed
	> 90 days and < 183 days	Taxed	Taxed	Taxed	Not taxed
Non-mainland-domiciled resident	≥183 days and ≤ 6 years	Taxed	Taxed	Taxed	Exempted
	> 6 years and ≥183 days in the current year	Taxed	Taxed	Taxed	Taxed

Apply directors' fees article or no treaty

Have treaty and the directors' fees article is not applicable

Enjoy domestic income from employment benefit	Taxed	Exempted	Exempted	Exempted
Enjoy overseas income from employment benefit	Taxed	Taxed	Exempted	Exempted

4.3. Application of directors' fees article (continued)

Example Application of directors' fees article

China

- Without domicile in China mainland
- Accumulated residence days are less than 183 in a tax year
(non-resident)
- The senior management of resident enterprises in China mainland receives the salaries and wages paid by the enterprises
- Being not physically present in China mainland (always performing duties outside China mainland)



Country A

- According to the law of Country A, due to the criteria of domicile, residence, etc., the person has tax liability in Country A
(resident of Country A)

According to Item (3), Article 1 of the Announcement No. 35, the salary paid or borne by the domestic resident enterprise acquired by Mr. R when he holds the senior management post of the domestic resident enterprise belongs to the domestic-sourced income.

Situation 1	Situation 2
The directors' fees article in the tax treaty signed between China and Country A does not apply to senior management	The directors' fees article in the tax treaty signed between China and Country A is applicable to senior management
Income from employment article is applied	It is not the income from employment article, but the directors' fees article shall be applied
China has no right to tax on overseas employment activities	China has right to tax



4.4. Application of entertainers and sportspersons article

4.1. Benefit of income from employment article

4.2. Benefit of independent personal services article

4.3. Application of directors' fees article

4.4. Application of entertainers and sportspersons article

4.5. Benefit of articles about other labour incomes

4.4. Application of entertainers and sportspersons article



Entertainer activities

- Activities performed by entertainers of stage, film and television, music and other artistic forms;
- Other personal activities carried out in the capacity of entertainers: film publicity, advertising shooting, annual meeting of enterprises, and enterprise ribbon cutting;
- A recreational activity involving politics, society, religion, or charity.

Sportsperson activities

- Traditional sports: such as running, high jump, swimming
- Sports activities: golf, horse racing, football, cricket, tennis, racing, etc.
- Activities of recreational events: billiards, chess, bridge games, e-sports, etc.



4.4. Application of entertainers and sportspersons article (continued)

Income which is applicable to this article

Including: appearance fee, advertising fee, etc.

Excluding: income from copyright (**royalties article applied**)

Taxation principle

- Exclusive right to tax in the source state: an artist or sportsman of one party engages in personal activities in the other party, the state of activities has the right to tax the income no matter how long the artist or sportsman is present physically.
- If income is collected by others, the state of source still has the right to tax that part of income.
- Tax exemption in the state of source: **non-profit performance activities**



4.4. Application of entertainers and sportspersons article (continued)

Carry out non-profit performance activities and enjoy tax-free treaty benefit

1. Cultural exchanges between governments, or non-profit performance activities funded by the government or its statutory bodies or public funds of local authorities, shall be carried out in accordance with specific treaties (arrangements).
2. The approval document of intergovernmental cultural and sports exchange or the certificate of public fund and government funding issued by the Ministry of Culture, the General Administration of Sports and other departments in charge can be used as a reference basis.



4.5. Benefit of articles about other labour incomes

4.1. Benefit of income from employment article

4.2. Benefit of independent personal services article

4.3. Application of directors' fees article

4.4. Application of entertainers and sportspersons article

4.5. Benefit of articles about other labour incomes



4.5.1. Benefit of pensions article

Definition

Pensions and other similar payments based on previous employment.

Other similar remuneration includes payments made on an irregular basis which is similar to a pension, such as a one-off pension paid on or after termination of employment.

Taxation principle

1. Exclusive tax right in the state of residence


Regardless of the previous place of work of the person receiving the pension, the state in which the person is a resident at the time of receiving the pension has the right to tax the pension. (e.g. the UK)


2. Limited tax right in payment state

- Our government, administrative regions or local authorities have the right to tax the pension and other payments paid according to the social insurance system or public welfare plan. [Article 4 of individual tax law] (e.g. the United States)
- If it is borne by our enterprises or permanent establishments located in our state, it can be taxed in our state. (e.g. Thailand)

4.5.2. Benefit of government service article

Government service refers to wages, salaries and other similar remuneration obtained by an individual for providing services to the government or local authority of a Contracting State, including various physical benefits, such as apartments, vehicles, health and life insurance, club membership, etc.

 The exclusive tax right of the payment state is applicable to the remuneration paid by government departments to individuals who provide services to them.
(excluding pension)

 However, it **does not include** the income obtained by the domestic personnel of the tax residents of China who provide services to the other contracting party.

Example:

1. Singaporean individuals working in the Singapore Embassy in China.
2. Chinese working in Singapore Embassy in China.

4.5.2. Benefit of government service article (continued)

- ☒ Different tax treaties have different service objects, so it is necessary to distinguish whether the objects are "government", "statutory body" or "statutory group"

Example: Memorandum of understanding on China-ROK treaty

2. The provisions of paragraphs 1 and 2 of Article 19 shall also apply to remuneration or pensions paid by:

(2) In Republic of Korea:

1. Bank of Korea; 2. Korea Development Bank;
3. Export-Import Bank of Korea;
4. Korea Trade-Investment Promotion Agency;
5. Korea Tourism Organization;
6. Korean investment corporation;
7. Korean export insurance corporation;
8. The Financial Supervisory Service (Republic of Korea);
9. Other financial institutions agreed upon by the authorities in charge of both parties through mutual agreement.



4.5.3. Benefit of teachers and researchers article



Main taxation principle

Teachers and researchers of one contracting party who obtain income from teaching, lecturing or scientific research activities in universities, colleges, schools or other educational institutions or scientific research institutions recognized by the government of the other contracting party and meet the conditions stipulated in the tax treaties may enjoy tax-free benefit within the time limit stipulated in the tax treaties in the other contracting party.

The Document No. 30 of the Ministry of Finance and the State Taxation Administration in 1986, The Announcement No. 42 of the State Taxation Administration in 2011, The Announcement No. 91 of the State Taxation Administration in 2016

4.5.3. Benefit of teachers and researchers article (continued)



Key points of application

1 Subject status

Unless otherwise specified in the tax treaty, it only applies to teachers and researchers who have employment relationship with schools or research institutions in China mainland.

Employment relationship:

- Have an employment contract, or;
- Although there is no clear employment contract, the content, method and time of teaching, lecture or research activities are arranged or controlled by domestic institutions.

Not applicable:





- In an independent capacity or as an employee of a non-domestic organization
- Designated by overseas educational institutions as China-foreign cooperative education projects (excluding independent educational institutions jointly established by Chinese and foreign educational institutions in China) for teaching

Materials: employment contract, copy of foreigner work permit (foreign expert certificate, foreigner employment certificate)

4.5.3. Benefit of teachers and researchers article (continued)



2 Scope of activities

-  Various domestic and overseas teaching, lecturing or research activities as required by the employer
-  In addition to teaching, lecture or research activities, they also undertake related planning, consulting and administrative management activities
-  Planning, consulting and administrative activities only
-  Undertake occasional lectures in planning, consulting and administrative activities

4.5.3. Benefit of teachers and researchers article (continued)



3 Organization of activity

Scientific research institutions:

- Ministry, commission and directly affiliated institutions of the State Council;
- Institutions specialized in scientific research and development of provinces, autonomous regions, municipalities directly under the central government and cities specifically designated in the plan.

Universities, colleges, schools or other government recognized educational institutions:

- Kindergartens, ordinary primary schools, adult primary schools, ordinary junior high schools, vocational junior high schools, ordinary senior high schools, adult senior high schools, secondary training school, adult secondary training schools, vocational high schools, technical schools, special education schools, children's schools for foreigners, ordinary colleges and universities, vocational (training) colleges and adult colleges and universities.
- The training institution does not belong to the school.

4.5.3. Benefit of teachers and researchers article (continued)



4 Tax-free period

The tax-free period is generally three years, two years in some countries and five years in a few countries.

Exemption period:

➤ No tax shall be levied during the tax-free period. If the tax-free period is exceeded, the tax shall be levied from the day when the tax-free period is exceeded.

For example: the remuneration obtained from teaching, lectures or research shall be exempted from taxation within three years from the date of its arrival. For those who have engaged in the above activities for more than three years, the taxation shall start from the fourth year.

Exemption conditions:

➤ Those exceeding the prescribed time limit shall not be exempted from tax.

[China and Japan] where the time of physical presence is no more than three years from the date of first arrival - if it is more than three years, the tax shall be levied from the date of arrival.

➤ For multiple accepting offers and coming to China mainland many times or accepting offer once while coming to China mainland in stages, the departure date between multiple entries or different stages can be deducted.

4.5.3. Benefit of teachers and researchers article (continued)



Exemption conditions:

- If it is stipulated in the relevant agreements or contracts or can be scheduled in advance that the period of physical presence in China mainland exceeds the prescribed period of tax exemption, they shall declare and pay tax according to the date specified in the tax law of China from the month of their arrival. If they do not exceed the prescribed period of time, they are allowed to get refund of the tax paid;
- If it is impossible to predict in advance whether or not the prescribed period for tax exemption will be exceeded, tax may be declared and paid when the prescribed period is expected to be exceeded or actually be exceeded.

——*Ministry of finance State Taxation Administration Notice on the Issue of the Tax or Exemption of Individual Income Tax on Teachers and Researchers from Countries who have Tax Treaties with China* (Document No. 30 of the Ministry of Finance and the State Taxation Administration in 1986)

4.5.3. Benefit of teachers and researchers article (continued)



Example

Enjoy teachers and researchers article

Article 21 Teachers and researchers

An individual who is, or immediately before visiting a Contracting State, was a resident of the other Contracting State and, at the invitation of a university, college, school or other educational institution or scientific research institution recognized as non-profitable by the Government of the first-mentioned Contracting State, is present in the first-mentioned Contracting State solely for the purpose of teaching, giving lectures or conducting research, shall be exempt from tax in the first-mentioned Contracting State, for a period of three years from the date of his first arrival in the first-mentioned Contracting State in respect of remuneration for such teaching, lectures or research.

Mr. Kim, a tax resident of Republic of Korea, is a professor. He was employed as a professor of university A in China mainland. He started teaching at university A on January 1, 2019.

Mr. Kim, a tax resident of Republic of Korea, did not hold a post in the domestic university A. Invited by university A, he came to the university from time to time to hold lectures and teach.

4.5.4. Benefit of students and apprentices article



Taxation principle

The income obtained by one party's students and enterprise apprentices during the period when they go to the other party for education, training or technical experience, and meet the following conditions at the same time, shall be exempted from tax in the other party:

- The student or apprentice is a resident of one party before arriving at the other party;
- The income obtained is for the purpose of life, education or training;
- In order to ensure that tax-free benefit only covers the reasonable period necessary for education or training, some agreements have limitations on tax-free time.

For example: in the treaty between China and Sweden, the period is limited to no more than seven consecutive years.

4.5.4. Benefit of students and apprentices article (continued)



Key points for application

Status

It is necessary to distinguish the differences among students, apprentices, interns, etc. the student card or practice certificate can be used as the judgment evidence.

Item of payment

If a student or apprentice has income from work, a distinction should be made between remuneration for services and payments for survival, education or training:

- If there is a limit on labour service income in the treaty, judge whether the limit is exceeded
- If there is not a limit on labour service income in the treaty, and if the amount of remuneration is equal to the amount of remuneration received by the employees of the enterprise who provide similar services, it can be generally indicated that it is the remuneration for services

Limitation of time



4.6. Relationship between income from services articles

4.1. Benefit of income from employment article

4.2. Benefit of independent personal services article

4.3. Application of directors' fees article

adjustment

4.4. Application of entertainers and sportspersons article

4.5. Other labour incomes
treaty benefit

Pensions
Government service
Students
Teachers and researchers

supplement

5 How does the investment income enjoy treaty benefit?



5. Investment income and beneficial owner

Taxation principle

The state of source has a limited prioritized tax right, and the state of residence enjoys the final tax right.

Beneficial owner

A person who has ownership and control of income or the rights or property on which it is derived

The preferential tax rate provided for in the treaty shall be allowed only if the beneficial owner of the investment income is a resident of the other Contracting State

- *Announcement of the State Taxation Administration on Issues Related to "Beneficial Owners" in Tax Treaties* (Announcement No. 9 of the State Taxation Administration in 2018) - referred to as "**the Announcement No. 9**"
- *Announcement of the State Taxation Administration on the Affirmation of Beneficial Owners in the Case of Entrusted Investment* (Announcement No. 24 of the State Taxation Administration in 2014)

5. Investment income and beneficial owner (continued)



How to determine the status of "beneficial owner": comprehensive analysis based on relevant factors.

Factors that are not conducive to the identification of beneficial owners:

1. The applicant is obliged to pay more than 50% of the income to the residents of a third country within 12 months after receiving the income.
2. The business activities undertaken by the applicant do not constitute substantive business activities.
3. The other contracting party's state does not tax or exempt the relevant income, or taxes but the actual tax rate is very low.
4. In addition to the loan contract on which the interest is generated and paid, there are other loan or deposit contracts with similar amount, interest rate and signing time between the creditor and the third party.
5. In addition to the transfer contract of copyright, patent, technology and other rights of use generated and paid by the royalties, there is a transfer contract between the applicant and the third party in respect of the right of use or ownership of copyright, patent, technology and others.

5. Investment income and beneficial owner (continued)



"Safe harbor" rules for beneficial owners of dividends (Article 4 of the Announcement No. 9)

When the income obtained by the following applicants from China mainland is dividends, the applicant can be directly determined to have the status of "beneficial owner" without comprehensive analysis based on the factors specified in Article 2 of this announcement:

- (1) The government of the other party;
- (2) A company that is a resident of the other party and is listed in the other party;
- (3) Resident of the other party;
- (4) The applicant is directly or indirectly held 100% of the shares by one or more persons in Items (1) to (3), and the middle tier in the case of indirectly holding shares is a resident of China or a resident of the other contracting party.

5.1. Benefit of dividends and interest article



5.1. Benefit of dividends and interest article

5.2. Benefit of royalties article

5.1. Benefit of dividends and interest article



Definition

Dividend: distribution of profits by the company. Dividend payment includes not only the profit distribution determined by the annual shareholders' meeting, but also the income distribution in currencies or earnings with monetary value, such as bonus shares, bonus, liquidation income and profit distribution in disguised form. Dividends also include "interest" adjusted by the contracting states to dividends in accordance with the provisions to prevent the thin capitalization.

Interest: income from various claims. "All kinds of claims" shall include cash and marketable securities in monetary form, as well as government bonds, bonds or credit bonds.

When it is difficult to distinguish dividend from interest, the principle of substance over form should be generally followed. If the lender does bear the debtor's corporate risk, the interest may be treated as dividend.



5.1. Benefit of dividends and interest article (continued)

Taxation principle

State of source: limited prioritized tax right; **State of residence:** final tax right, obligation of tax credit

Dividend: tax rate is 3% - 20%, generally 10%; **Interest:** tax rate is 3% - 15%

1. Shanghai Hongkong stock connect (Document No. 81 of the Ministry of Finance and the State Taxation Administration in 2014), Shenzhen Hongkong stock connect (Document No. 127 of the Ministry of Finance and the State Taxation Administration in 2016)

For the time being, the differentiated tax policy will not be implemented according to the shareholding time, and the income tax will be withheld by the listed company at the tax rate of 10%.

2. Mutual recognition of funds between the mainland and Hongkong (Document No. 125 of the Ministry of Finance and the State Taxation Administration in 2015)

	Withholding agent	Withholding time	Tax rate
Dividend	Listed companies in the mainland	Distribution of dividend bonus to mainland funds	10%
Interest	Enterprises issuing bonds	Distribution of interest to mainland funds	7%

❖ No income tax will be withheld when mainland funds distribute income to investors

5.1. Benefit of dividends and interest article (continued)



3. The official letter No. 348 of the State Taxation Administration in 2011

When a domestic non-foreign invested enterprise that issues shares in Hongkong issues dividends and bonuses, it is generally allowed to withhold personal income tax at the rate of 10%, without any application. If the dividend tax rate does not belong to 10%, the following provisions shall apply:

- ❖ Residents of treaty states with a tax rate lower than 10% shall apply for enjoying the relevant treaty benefit and refund the overpaid tax;
- ❖ If the tax rate is higher than 10% and lower than 20%, the withholding agent shall withhold the individual income tax according to the actual tax rate of the treaty when distributing the dividend and bonus, without any application;
- ❖ For residents and other situations of countries without tax treaty with our country, withholding agents should withhold individual income tax at the rate of 20% when distributing dividends and bonuses.

5.2. Benefit of royalties article



5.1. Benefit of dividends and interest article

5.2. Benefit of royalties article

5.2. Benefit of royalties article

Definition

Royalties include income from the use or right to use various intellectual property rights and proprietary technology, and rent from the use of equipment.

1. Use or have the right to use any literary, artistic or scientific work. (authors' remuneration, royalties)
2. Income from the use or right to use industrial, commercial and scientific equipment, i.e. equipment rent.
3. Income from the use or right to use information about industrial, commercial and scientific experience. (royalties)

Taxation principle

The state of source has a limited prioritized tax right with a tax rate of 3% - 25%

The state of residence enjoys the right of final tax, but has to undertake the obligation of tax credit

5.2.1. Calculation of tax payable of authors' remuneration and royalties



Article 14 of the *Individual Income Tax Law Implementation Regulation of the People's Republic of China*

If the income from independent personal services, authors' remuneration and royalties belongs to one-off income, the income shall be counted once at the time of its receiving; if the income is continuous income of the same project, the income obtained within one month shall be counted once.

$$\frac{\text{Income amount of authors' remuneration of current time}}{\text{/ current month}} = \text{Gross income of Authors' remuneration} \times (1 - 20\%) \times 70\%$$

$$\frac{\text{Income amount of royalties of current time}}{\text{/ current month}} = \text{Gross income of Royalties} \times (1 - 20\%)$$



5.2.1. Calculation of tax payable of authors' remuneration and royalties (continued)

➤ Resident

$$\text{Tax payable of annual comprehensive incomes} = \text{Taxable income of annual comprehensive incomes} \times \left(\frac{\text{Applicable tax rate} - \text{Quick deduction number}}{\text{Applicable tax rate}} \right)$$

Individual income tax rate table (applicable to comprehensive incomes) (RMB: Yuan)

Level	Annual taxable income	Tax rate	Quick deduction number
1	No more than 36000	3%	0
2	Over 36,000 to 144,000	10%	2,520
3	Over 144,000 to 300,000	20%	16,920
4	Over 300,000 to 420,000	25%	31,920
5	Over 420,000 to 660,000	30%	52,920
6	Over 660,000 to 960,000	35%	85,920
7	Over 960,000	45%	181,920



5.2.1. Calculation of tax payable of authors' remuneration and royalties (continued)

➤ Non-resident

$$\text{Tax payable of authors' remuneration} = \text{Income amount of authors' remuneration per time} \times \text{Applicable tax rate} - \text{Quick deduction number}$$

$$\text{Tax payable of royalties} = \text{Income amount of royalties per time} \times \text{Applicable tax rate} - \text{Quick deduction number}$$



Monthly comprehensive incomes tax rate table (RMB: Yuan)

Level	Taxable income of the whole month	Tax rate	Quick deduction number
1	No more than 3,000	3%	0
2	Over 3,000 to 12,000	10%	210
3	Over 12,000 to 25,000	20%	1,410
4	Over 25,000 to 35,000	25%	2,660
5	Over 35,000 to 55,000	30%	4,410
6	Over 55,000 to 80,000	35%	7,160
7	Over 80,000	45%	15,160

5.2.2. Application of royalties or fees for technical services article



If a tax resident of the other party obtains royalties or fees for technical services that meets the provisions, the resident may choose one of the two

Not enjoy tax treaty benefit

The tax payable shall be calculated according to the provisions of domestic law:

- Individual income tax shall be calculated on the basis of the consolidated comprehensive incomes of resident in the tax year
- The income amount from authors' remuneration and royalties shall be the balance of the gross incomes after deducting their 20% of the expenses
- Income amount of authors' remuneration shall be the result after deducting its 30%

Enjoy tax treaty benefit

The tax shall be calculated and paid in accordance with the amount of taxable income and the proportion of taxation stipulated in the tax treaty:

- The income of resident shall not be included in comprehensive incomes
 - In the current month of acquisition, the tax payable shall be calculated in accordance with the taxable income and tax proportion stipulated in the tax treaty, and the tax payment shall be withheld in advance;
 - At the time of annual settlement, those who have enjoyed the treaty benefit shall not be included in the annual comprehensive incomes, and the annual tax payable, the supplementary tax and the tax refund shall be calculated separately in accordance with the taxable income and the tax proportion stipulated in the tax treaty.
- It is not allowed to adopt the provisions of domestic law on the reduction of income amount at the same time

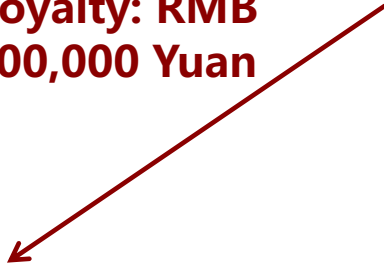
5.2.3. Application of article of royalties or fees for technical services by resident

Example

Calculation of tax payable for resident after applying the royalties article



**Royalty: RMB
100,000 Yuan**



China

- Without domicile in China mainland
- Over 183 cumulated residence days in a tax year

(resident)

Country A

- According to the law of Country A, due to the criteria of domicile, residence, etc., he is liable for tax in Country A
- With permanent home in Country A

(resident of Country A)

Choose not to enjoy tax treaty benefit

Assuming that Mr. R has no other incomes, so no other deductions other than expenses are applicable:

$$[100,000 \times (1 - 20\%) - 60,000] \times 3\% = 600 \text{ (Yuan)}$$

Choose to enjoy tax treaty benefit

Suppose the treaty provides that the state of source can tax at 10% on the full amount:

$$100,000 \times 10\% = 10,000 \text{ (Yuan)}$$

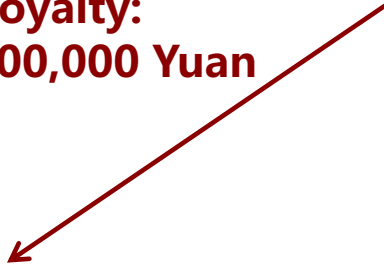
5.2.4. Application of article of royalties or fees for technical services by non-resident

Example

Calculation of tax payable of non-residents after applying the royalties article



**Royalty:
100,000 Yuan**



China

- Without domicile in China mainland
- Accumulated residence days are less than 183 in a tax year

(non-resident)

Country A

- According to the law of Country A, due to the criteria of domicile, residence, etc., he is tax liable in Country A

(resident of Country A)

Choose not to enjoy tax treaty benefit

The table of monthly comprehensive incomes tax rate and 20% of expenses deduction are applicable:

$$100,000 \times (1 - 20\%) \times 45\% - 15,160 = 12,840 \text{ (Yuan)}$$

Choose to enjoy tax treaty benefit

Suppose the treaty provides that the state of source can tax 10% of the total royalties:

$$100,000 \times 10\% = 10,000 \text{ (Yuan)}$$

6 How does the property income enjoy treaty benefit?

6.1. Capital gains article



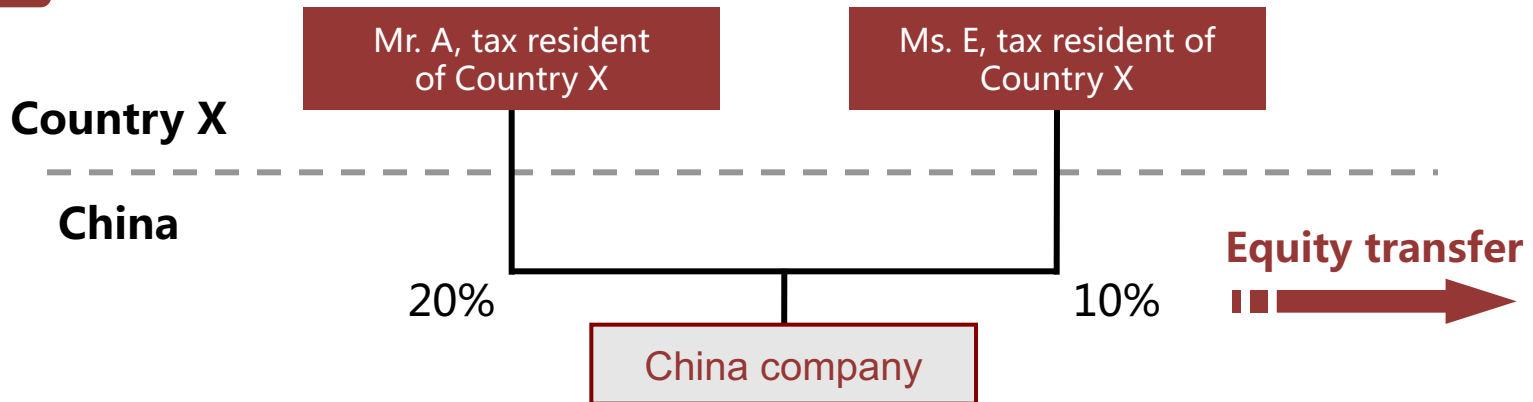
Taxation principle of equity transfer

- At any time in the three years before the transfer of the shares of the company, more than 50% of the value of the transferred company is directly or indirectly composed of real estate located in one party: Tax is collected in the country where the real estate is located
- If a resident of one party transfers shares in the capital of a company that is a resident of the other party or other legal person, the resident has participated directly or indirectly in at least 25% of the capital of the company or other legal person within 12 months prior to the transfer: Tax is collected in the state of residence of the transferred company

6.1. Capital gains article (continued)

When calculating whether or not the 25% of the company's or other legal person's capital once participated directly or indirectly is reached, it shall include the capital directly or indirectly participated by other members of the related group with significant interest relationship with the taxpayer. The members of the related group with significant interest include: the spouse of the taxpayer, the parents, the parents of the parents and above; the children, the children of the children and below.

Example





Thank you for your listening!



List of Reference

- State Taxation Administration, 1984, *Agreement Between the Government of the People's Republic of China and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*
- State Taxation Administration, 1994, *Agreement Between the Government of the People's Republic of China and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*
- State Taxation Administration, 2015, *Information Reporting Form of Tax Residence Status of Non-resident Taxpayer* (For Individuals) (Announcement No. 60)
- State Taxation Administration, 2015, *Reporting Form for Non-resident Taxpayer Claiming Tax Treaty Benefits* (Form A for Enterprise Income Tax) (Announcement No. 60)
- State Taxation Administration, 2015, *Reporting Form for Non-resident Taxpayer Claiming Tax Treaty Benefits* (Form A/B/C/D for Individual Income Tax) (Announcement No. 60)
- OECD, 2017, *Model Tax Convention on Income and on Capital* (full version)

List of Reference



- State Taxation Administration, 2019, *Certificate of Chinese Fiscal Resident* (Announcement No. 17)
- State Taxation Administration, 2019, *Information Reporting Form for Non-resident Taxpayers Claiming Treaty Benefits* (Announcement No. 35)
- State Taxation Administration, *Individual Income Tax Law Translation*
- State Taxation Administration, *Enterprise Income Tax Law Translation*

