



Hong Kong Institute of  
**Certified Public Accountants**  
香港会计师公会

# Meeting notes

**The Guangdong Provincial Local Taxation Bureau  
and  
The Hong Kong Institute of Certified Public Accountants**

2013

## **Preface**

The Hong Kong Institute of Certified Public Accountants ("HKICPA") was pleased to be able to discuss with the Guangdong Provincial Local Taxation Bureau ("GPLTB") various tax topics on 11<sup>th</sup> November 2013 in Guangzhou.

The following is a translation of the meeting notes prepared, in Chinese, by the Institute. Please note that the meeting notes reflect the views of GPLTB officials attending the meeting only and are not intended to be legally-binding or a definitive interpretation. Professional advice should be sought before applying the content of these notes to your particular situation. If there are differences in the interpretation between English and Chinese versions, reference should be made to the Chinese version.

## **Meeting notes**

### **Discussion items**

#### **A. Individual Income Tax ("IIT")**

- A1 IIT annual filling for Chinese expatriates in overseas related parties
- A2 Announcement [2012] No.16 issued by the State Administration of Taxation ("Announcement 16")
- A3 Loans to employees

#### **B. Real Estate Tax ("RET") and Land Appreciation Tax ("LAT")**

- B1 LAT clearance
  - (a) Application to forgo the tax-free relief available to ordinary residential properties
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  - (c) Tax refund

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- C1 Intangible assets
  - (a) Deductibility of amortization of intangible assets

## **Participants**

### **GPLTB**

Su Zhen Dian	Chief Accountant
Zhan Li Ren	Director, International Taxation Division
Luo Cui Ying	Deputy Director, International Taxation Division
Meng Quan Zhong	Deputy Director, First Division, Tax Administration
He Fan	Principal Staff Member, Second Division, Tax Administration
Huang Wu Ru	Principal Staff Member, Tax Regulatory and Expense
Tang Dan Dan	Principal Staff Member, International Taxation Division
Zhu Guo Qiang	Principal Staff Member, International Taxation Division
Yan Hao	Deputy Principal Staff Member, International Taxation Division
Lin Wei Tao	Staff Member, International Taxation Division

### **HKICPA**

Anthony Tam	Deputy Chair, Taxation Faculty Executive Committee and Convenor, Mainland Taxation Subcommittee
William Chan	Members, Taxation Faculty Executive Committee and Mainland Taxation Subcommittee
Daisy Kwun	Member, Mainland Taxation Subcommittee
Mak Ho Sing	Member, Mainland Taxation Subcommittee
Shanice Siu	Member, Mainland Taxation Subcommittee
Michael To	Member, Mainland Taxation Subcommittee
Percy Wong	Members, Taxation Faculty Executive Committee and Mainland Taxation Subcommittee
Christopher Xing	Member, Mainland Taxation Subcommittee
Susan Ye	KPMG GZ Tax Manager
Mary Lam	Deputy Director, Specialist Practices
Wallace Wong	Manager, Specialist Practices

## **Discussion items**

### **A. IIT**

#### **A1. IIT annual filling for Chinese expatriates in overseas related parties**

With an increasing level of outbound investments from China, more and more Chinese are working as expatriates in overseas related entities. However, it is known that some of these Chinese expatriates do not complete IIT annual filing. Does GPLTB envisage promulgating any tax regulation or taking any action to reinforce the administration of IIT annual filing by Chinese expatriates?

Reply of GPLTB: Chinese individual residents went abroad mainly, to work or for personal reasons. For individuals working for State-owned enterprises or various government departments in Guangdong, the Department of Foreign Trade and Economic Cooperation of Guangdong Province ("GD DOFTEC") would provide the list of overseas workers in State-owned enterprises and government to GPLTB on a regular basis. As the administration of tax collection on IIT was conducted by local tax bureaux, GPLTB would share the list with relevant local tax bureaux in the province, which would follow up the administration accordingly.

For individuals going or living abroad for personal reasons or for individuals working for non-State owned enterprises being sent abroad, GPLTB indicated that due to the constraint on tracking sources of income, the tax administration relied mainly on IIT annual self-reporting filing, due within 30 days after the calendar year end. In addition, GPLTB would select certain industries as key targets and review their IIT annual filing status every year. In 2012, the key targets were hospitals and universities. GPLTB would review whether taxpayers whose annual taxable income exceeding RMB 120,000 had completed IIT annual self-reporting filing. Those who failed to fulfil the filing obligation would be passed to in-charge local tax bureaux for detailed inspections. Meanwhile, GPLTB was developing an IIT management system for high-wage earners and was expected that the administration of IIT collection would be strengthened after the system was launched.

#### **A2. Announcement [2012] No.16 issued by the State Administration of Taxation ("Announcement 16")**

The State Administration of Taxation ("SAT") issued Announcement [2012] No. 16 on 26 April 2012 to address the double taxation issues that are encountered by Hong Kong and Macau tax residents who carry out their employment duties partly in mainland China. Announcement 16 provides a practical solution to counting of days of presence for tax residents of Hong Kong and Macau in determining their PRC IIT by allowing them to count only the number of days they are physically present in mainland China.

Please confirm the method to be used to calculate taxable annual bonuses for employees who have worked less than a year, or who have resigned before the calendar year end.

If an individual taxpayer joins a company during the year or resigns from his position during the year, the annual bonus attributable to his employment in China is therefore shorter than a year. Under such circumstances, we understand that only the portion of the individual's bonus attributable to his employment in China should be taxable in China. For example, if there is a Hong Kong tax resident with dual employment in Hong Kong

and China, who works outside China from January to June (is not present in China at all) and subsequently works for the Chinese company and is present in China from July to December, which of the following methods should be used to calculate his annual bonus for that year?

- i. 100 percent of the annual bonus  $\times$  (number of days physically present in mainland China during the year / 365 days) or
- ii. Apportion the annual bonus to the months of July to December, i.e., apportion the annual bonus to the period to which the individual works for Chinese entity, i.e. China-sourced performance bonus (which would be eligible for the 12-month average method to calculate the appropriate IIT rate), and the China-sourced performance bonus would be apportioned based on number of days in China, i.e. China-sourced performance bonus  $\times$  (number of days physically present in mainland China from July to December / total number of days from July to December) to calculate IIT

Reply of GPLTB: The calculation of annual one-off bonus for Hong Kong and Macau tax residents who carried out their employment duties in Macau or Hong Kong and mainland China should be based on the principle of "Apportion after tax". According to Guo Shui Fa [2005] No.9, the one-off bonus should be deemed as one month's salary for tax computation purpose. The entire IIT should be computed based on the method prescribed in Guo Shui Fa [2005] No.9. Then, either of the calculation method in Announcement 16 should be applied subject to whether the individual was present in mainland China for more than 183 days. As such, both the calculation methods listed above questions are not applicable. If the said individual was present in mainland China not exceeding 183 days in any twelve months, he was required to declare and pay IIT only on the portion of income derived, during his actual working period in mainland China, from wages or salaries paid or borne by Chinese domestic enterprises or individual employers. If the individual was present in mainland China for more than 183 days but less than 365 days in any twelve months, he needed to declare and pay IIT on income derived, during his actual working period in mainland China, from wages and salaries paid by both the Chinese domestic enterprises or individual employers and the overseas enterprises or individual employers.

### A3. Loans to employees

Are the benefits of interest-free loans extended by companies to employees subject to IIT? (For instance, will the corresponding loan interest calculated at the bank's lending rate be considered a benefit to the employee (a benefit because there being no interest) and then IIT computed accordingly?) If IIT is applicable, in what name of income should such benefit be taxed and how should it be computed?

Reply of GPLTB: To target certain enterprises that extend loans to employees instead of paying wages and bonus to avoid IIT liabilities, the Ministry of Finance ("MOF") and SAT jointly clarified in Cai Shui [2003] No.158 and Cai Shui [2008] No.83 that if individual shareholders, their family members, or other persons associated with an enterprise (presumably including employees) obtained loans from the enterprise, and did not repay after the end of the loan term, regardless whether owners or persons were charged fees on using the enterprise's assets, the relevant loans (use of the enterprise's assets for a prolonged period) (hereinafter called the "Benefit") should be treated as the profit distribution to the individuals. Therefore, they should be subject to IIT as follows:

- "Business income of individual operators", for sole proprietorship, individual investors of partnership or their family members who obtained the Benefit;

- “Interest, dividend, other distributions”, for individual investors of enterprises other than sole proprietorship and partnership or their family members who obtained the Benefit;
- “Salary or wage income”, for other personnel of the enterprise who obtained the Benefit.

However, SAT had yet to explicitly address the issue of interest-free loans to employees and it was up to the local tax authorities to handle each case based on the actual circumstances. GPLTB was of the opinion that if the employee was facing financial difficulties, and if the loan was repaid within a stipulated period, then IIT on the interest free benefit might not be charged.

## **B. RET and LAT**

### **B1. LAT clearance**

Under LAT laws and regulations, if a development project comprises both ordinary housing and non-ordinary housing, the LAT shall be calculated accordingly. Often, in a commodity housing project, the ordinary housing is required to be developed together with relocation housing (a housing with gross floor area not exceeding 140 meter square), and the relocation housing is required to be sold at a price recommended by the relevant local government. As the recommended price for this relocation housing is generally low, the sales of relocation housing as part of ordinary housing in the above category could suffer losses.

#### **(a) Application to forgo the tax-free relief available to ordinary residential properties**

In view of the above, can developers of housing projects forgo the tax-free relief for ordinary housing and compute LAT regardless of classifying properties into ordinary and non-ordinary housing, (thus offsetting the profits on non-ordinary housing with the losses on ordinary housing)?

GPLTB: MOF and SAT jointly specified in Cai Shui [2006] No.21 that where a taxpayer constructed ordinary housing and other types of commodity housing, the amount of LAT shall be computed separately. (i.e., no offsetting)

#### **(b) Classification of properties to account for LAT**

For the purpose of accounting for LAT, should properties be classified merely into ordinary housing and non-ordinary housing? We understand that the LAT laws and regulations do not clearly require LAT clearance be classified by the property type (e.g. commercial properties, office towers or residential properties)?

Reply of GPLTB: GPLTB had discussed with SAT as to whether it was necessary to calculate LAT by property type after the classification of ordinary housing and non-ordinary housing. However, SAT had not given a clear answer to this. It was known that the actual practice varied among local tax authorities, and the classification of properties could be much finer in certain provinces. GPLTB was more inclined towards using the classification of ordinary and non-ordinary housing to account for the LAT computation, in order to avoid too detailed an allocation of real estate development expenses for LAT computation.

(c) Tax refund

How to deal with tax refund after LAT clearance? What would be the future developments of LAT?

Reply of GPLTB: After review by the tax authorities, the refunds for overpayment of taxes could be processed. GPLTB aimed to improve the tax regulations and standardize the administration of LAT.

**C. Others**

**C1. Intangible assets**

(a) Deductibility of amortisation of intangible assets

If the purchase of an intangible assets is not subject to Business Tax ("BT"), then a BT invoice will not be issued correspondingly. Would the amortization of these intangible assets be allowed to be deducted against CIT? If so, what are the documents required by the local taxation bureau in this regard?

Reply of GPLTB: According to CIT laws, production and operating related, reasonable and actual expenses incurred by an enterprise, including costs, expenses, taxes, losses and other expenses, were deductible in calculating taxable income for CIT purpose. Therefore, apart from the invoices, other legal documents such as contracts, proofs of payment, accounting documents, reports issued by accounting firms and other supporting documents would also be considered as valid documentation. In practice, it would be better for enterprise to discuss with the tax authorities in charge before-hand as to what proof of expenditure would be required before an amortization would be deductible.