

# Tax Consideration for Expatriate Employees in China



Given the differences among various countries in taxation regulations and collection, multinational companies (MNCs) usually need to have some understanding of the taxation policies of the host country (i.e. the country of secondment), before seconding the employees to work in other countries. Under the assistance of tax advisors in the home country (i.e. country of residence) and the host country, MNCs are advisable to make arrangements in advance regarding the secondment period of expatriates, apportionment of remuneration, tax cost bearing, payment of salary etc., in order to avoid the additional tax cost to expatriate employees or MNCs due to double taxation arising from cross-border secondment.

The purpose of this article is to provide some tips on the taxation issues of expatriate employees (“Expatriates”) seconded to work in China (for the purpose of this article, Hong Kong, Macau and Taiwan are excluded). We hope that this will help MNCs to get a better understanding of the taxation of their Expatriates from a Chinese tax perspective.

## 1 Impact of tax resident status on tax liabilities

An Expatriate (assuming no habitual residence in China) who stays in China for more than 183 days in one calendar year will be categorized as a PRC tax resident; otherwise, the expatriate will be considered as a non-PRC tax resident.

It is likely that the Expatriate is simultaneously recognized as a tax resident in his or her home country. In this case, his or her ultimate resident status will be determined in accordance with the “tie-breaker rule” set out in the tax treaty/arrangement between China and this country/area.

Expatriates who are categorized as PRC tax residents are subject to IIT in China on their income from sources within and outside China. However, Expatriates who have resided in China for less than six consecutive years (counting from 2019) are not subject to IIT in China on income derived from outside China and paid by companies and individuals outside China, even if they have resided in China for more than 183 days in each year during that period. Once an Expatriate has resided in China for six consecutive years, with the number of days of residence exceeding 183 days in each year and has no absence of China for more than 30 days in one time, then from the seventh year onwards, if the expatriate employee is a PRC Chinese tax resident, he or she will be subject to IIT on income derived from both within and outside China (so called “worldwide income”). Therefore, Expatriates and MNCs should arrange and plan the number of residential days in advance, in order for the Expatriates to avoid being taxed in China on their worldwide income from 2025 onwards.

As a special reminder on the employment related income, under China tax regime, expatriates’ employment related income earned during the period of time they work in China should be regarded as China-sourced income regardless of whether the payments are made by an enterprise or individual situated within or outside China.

## 2 Tax Benefits for Expatriates

### 2.1 Tax-Free Allowances

According to the current tax regulations, certain allowances paid to Expatriates are not subject to IIT in China, known as “tax-free allowances”, including housing allowances, language training and children’s education allowances, meal and laundry allowances, home leave allowances, relocation allowances (from abroad to China), and travel allowances. Other allowances paid to Expatriates, such as car allowances, should be included in the Expatriates’ salary for the purpose of calculating and paying Chinese IIT.

It is worth noting that each tax-free allowance needs to meet certain requirements in order to be tax free. For example, the housing allowance requires the Expatriates to provide valid invoices to the company and obtain the payment by way of reimbursement. Another example is the home leave allowance, which also requires proof of airfare and subject to the specific requirement for the person (limited to the expatriates’ own tickets, not family members’), frequency (twice a year) and the location (only for flights from China to the location of the expatriates’ parents or spouses).

Moreover, the amount of the tax-free allowances addressed above should be within a reasonable range. However, China’s tax law does not specifically explain the term “reasonable” and the exact amount is subject to adjustment by the competent tax authorities in different regions on a case-by-case basis. In practice, the tax authorities will examine the reasonableness of the tax-free allowances on aggregate, i.e. if the amount of the tax-free allowances represents a higher percentage of the total remuneration of the Expatriates, the tax authorities will question the reasonableness of the tax-free allowance and require the Expatriates to provide supporting documents and reserve the right to make adjustments.

Starting from **January 1, 2024**, the three tax-free allowances, i.e. housing allowance, language training allowance and children education allowance will no longer be exempted from Chinese IIT. As a result, these allowances should be included into the salary of the Expatriates to calculate and pay Chinese IIT. At the same time, if Expatriates are PRC tax residents and expenses in the nature of the above-mentioned allowances are still incurred during their secondment

to China, they can make pre-tax deductions up to a certain limit which is usually very low. For example, only RMB 1,500 for rental expenses incurred in Shanghai is allowed for pre-tax deduction. As for the other existing tax-free allowances, whether they will still be tax-free from 2024 onwards, depends on further notification from the State Administration of Taxation.

## 2.2 Preferential Calculation Method for IIT for Annual Bonus

Firstly, the preferential method of calculating IIT on annual bonus applies not only to Expatriates but also to non-foreign employees in China. The preferential calculation method mainly reflects in the way that the total amount of the bonus can be divided by 12 months (assuming the Expatriates work in China throughout the year) to determine the applicable tax rate, thus significantly reducing the amount of IIT payable on the annual bonus. For example, if the Expatriate's annual gross salary is RMB 1,000,000 and the amount of annual bonus is RMB 144,000. If this annual bonus is taxed separately, the applicable tax rate is 10%; if this annual bonus is included in the total salary to calculate IIT, the corresponding tax rate is up to 45%.

Please note that the above preferential calculation can be used only once a year. For other payments if paid separately, even of bonus nature, the above preferential calculation is not applicable. They will need to be added to the salary for the purpose of calculating IIT. We therefore recommend that the various bonuses are combined into one lump sum payment, if commercially viable, to minimize the PRC IIT to the utmost extent.

Same as tax-free allowance, also starting from **January 1, 2024**, the preferential calculation method for bonus payment is also set to end for all resident individuals in China. The bonus payment shall be included into consolidated income in a year to determine the tax rate and calculate PRC IIT accordingly.

## 3 Mechanism for Elimination of Double Taxation

Up to now, China has signed double taxation agreement/arrangement with 111 countries and regions, under which taxpayers can avoid, to a certain extent, paying double income tax or incurring tax liabilities of a similar nature on the same income between two countries or territories.

Let's take an example for clarification and assume there is a German tax resident. According to the double taxation agreement between Germany and China, the employment income obtained by such Expatriate in China shall be excluded from the basis upon which German tax is imposed, thus eliminating the double taxation. However, the German tax authorities may take the Expatriate's China sourced income into account when determining the respective tax rate applicable to the Expatriate's income under domestic tax law. Therefore, after the Expatriate has fulfilled his or her IIT obligations in China, he or she can apply to the competent tax authorities for the issuance of a tax payment record. The exemption for income from China is then applied for with the German tax authorities within a specified period in accordance with the tax treaty.

## Conclusion

In conclusion, MNCs should have a certain understanding of China's tax policies and seek the support of China tax experts to plan ahead for the secondment arrangement for their employees in order to ensure tax compliance in China and reduce the tax burden on Expatriates and the company's manpower costs. It is also crucial to keep a close eye on new tax policies and adjust secondment arrangements for Expatriates in a timely manner, particularly with regard to tax-free allowances and annual bonuses that will be changed in the coming year. In response, MNCs and Expatriates may consider to make arrangements in advance for potential increased tax costs, for example by offering a "net to gross" scheme or a "hypothetical tax" arrangement for Expatriates working in China for 2024 and beyond. As always, we will continue to monitor updates to China's tax policies and provide support to MNCs and their employees on tax policy interpretations, tax calculations and employment contract updates among others.



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## 外籍员工在中国的税务考虑



鉴于各国税收制度和征管都存在差异，在派遣员工到其他国家工作之前，跨国公司通常需要对东道国（即派驻国）的税收政策有一定的了解。在母国（居住国）和东道国的税务顾问的共同协助下，跨国公司最好事先就外派人员的任期、薪酬分摊、税费承担、工资支付等问题做好安排，以避免因跨境派遣而引发的双重征税，给外派员工或跨国公司带来额外的税负成本。

本文旨在对派遣至中国（就本文而言，不包括香港、澳门和台湾）工作的外籍员工（“外籍员工”）的税收问题给出一些提示，希望有助于跨国公司从中国税收的角度对派遣员工的税务事宜做好规划。

## 一、税收居民身份对纳税义务的影响

根据中国的个人所得税法规定，外籍员工（假定在中国没有习惯性住所）如在一个纳税年度内（日历年）累计在中国境内居住满183天，将被认定为中国税法意义上的税收居民个人；反之，则为非中国税收居民。

外籍员工很可能同时被认定为其本国的税收居民。在这种情况下，外籍员工的最终居民身份将根据中国与该国/地区之间的税收协定/安排中规定的“加比规则”来确定。

外籍员工如为中国税收居民，就其来自中国境内和境外的所得，需要在中国缴纳个人所得税。但当外籍员工在中国连续居住不满六年（自2019年开始计算），即使在此期间每年在中国的居住天数都超过183天，对于其源于中国境外且由境外公司和个人支付的所得，仍然无需在中国缴纳个人所得税。一旦外籍员工中国连续居住满六年，每年居住天数都超过183天且没有一次离境超过30天的情形，那么从第七年开始，如果外籍员工为中国税收居民，需要其从中国境内和境外取得的所得（即“全球所得”）缴纳个人所得税。因此，外籍员工和跨国公司应当外籍员工在中国的居住天数提前进行安排和规划，以避免自2025年起，外籍员工需要就其全球收入在中国纳税。

另外需要特别注意的是，根据中国税法规定，外籍员工在中国工作期间取得的与任职相关收入，无论该笔收入是由位于中国境内还是境外的企业或个人支付，应被视为来源于中国的收入。

## 二、外籍员工的税收优惠

### 1. 免税补贴

根据现行的税收法规，支付给外籍员工的补贴无需在中国缴纳个人所得税，即所谓的“免税补贴”，包括以下内容：住房补贴、语言培训和子女教育补贴、餐费和洗衣费补贴、探亲费补贴、搬迁补贴（从国外到中国）、差旅费补贴。对于支付给外籍员工的其他补贴，如用车补贴，应包括在外籍人员的工资中，以计算和支付中国的个人所得税。

值得注意的是，每项补贴都需要满足某些要求才能免税。例如，住房补贴要求外籍人员向公司提供有效的发票，并通过实报实销的方式获得。另一个例子是探亲费补贴，也需要提供机票证明，并且要符合对适用人员（仅限于外籍员工自己的机票，不包括家庭成员）、适用次数（仅限于一年两次）和地点（仅限于从中国到外籍员工的父母或配偶所在地的机票）的具体要求。

此外，上述免税补贴的金额应在合理范围内。然而，中国的税法并没有具体解释“合理”一词，具体数额由不同地区的主管税务机关根据实际情况进行调整。实践中，税务机关会从总量上审视免税补贴的合理性，即如果免税补贴的金额在外籍员工的薪酬总额中占比较高，税务机关会质疑免税补贴的合理性，并要求外籍员工提供证明材料和保留调整的权利。

从2024年1月1日起，三项免税补贴，即住房补贴、语言培训补贴和子女教育费补贴将不再被豁免

于中国的个人所得税。鉴于此，这些补贴应包括在工资中计算和支付中国的个人所得税。同时，如果外籍员工是中国的税收居民，外派中国期间有上述补贴性质的费用产生，可以在一定限额范围内按照税法规定的金额进行税前扣除，但通常扣除限额较低，例如，在上海发生的租金费用，可税前扣除的金额为1500元。至于其他现行的免税补贴，目前还不能确定从2024年起是否还能免税，取决于国家税务总局的进一步通知。

## 2. 年度奖金的个税优惠算法

首先，计算年度奖金个人所得税的优惠方法不仅适用于外籍员工，也适用于在中国的非外籍员工。优惠计算方法主要体现在奖金总额可以根据除以12个月（假设外籍员工全年都在中国工作）后的金额确定适用的税率，从而大大降低年度奖金的个人所得税应纳税额。通过采用优惠算法，年度奖金的个人所得税可以在一定程度降低。例如，如果外籍员工的年工资总额为100万，年度奖金的金额为人民币144,000元；如该年度奖金单独计税，则适用税率为10%；如将该年度奖金并入工资总额中计算个税，则适用税率高达45%。

需要注意的是，上述优惠办法一年只能适用一次。对于个人取得的其他收入，如果是公司单独支付，即使是奖金性质的收入，上述奖金的优惠办法也不适用，需要并入工资薪金计税。因此，我们建议在商业上可行的情况下，将各种奖金合并为一次性付款，最大限度地减少中国的个人所得税。

## 三、避免双重征税的机制

截至目前，中国已与111个国家和地区签署了避免双重征税的协定或安排，根据这些协议或安排，纳税人可以在一定程度上避免在两个国家或地区就同一笔所得重复缴纳个人所得税或者承担类似性质的税负。

以外籍员工为德国税收居民为例进行说明。根据德国和中国之间的避免双重征税协定，对于德国税收居民来说，其在中国获得的与任职收入的收入无需纳入到德国的税基中进行征税，以此消除双重征税的问题。当然，德国税务机关在按照德国国内税法确定该外籍员工所得适用的税率时，可以将该外籍员工来源于中国的收入考虑在内进行确定。因此，外籍员工在中国履行完个人所得税义务后，可以向主管税务机关申请开具纳税记录。然后，根据税收协定在规定期限内向德国税务机关申请对来自中国的收入进行豁免。

## 四、结语

总而言之，跨国公司应该对中国的税收政策有一定的了解，并寻求中国税务专家的支持，为其员工的派遣安排提前做好规划，以确保符合中国税收规定，减少派遣人员的税收负担和公司的人力成本。密切关注新的税收政策并及时调整员工的派遣排也是至关重要的，特别是在明年将发生变化的免税补贴和年度奖金方面。作为应对，跨国公司和派遣人员可考虑为可能增加的税收成本提前做出安排，例如为2024年及以后在中国工作的派遣人员提供“净收入换算毛收”计划或“假设税”安排。我们将一如既往地继续关注中国税收政策的更新，并为跨国公司及其派遣人员提供税收政策解读、税收计算和雇佣合同更新等方面的支持。



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