

## China alert

### Tax and regulatory developments

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## China's State Administration of Taxation clarifies individual income tax treatment for enterprises' annuities

### In Brief

- Both employer and employee contributions of annuity to an individual's account are subject to individual income tax (IIT) in the PRC.
- IIT paid on employer contributions of annuity not attributed to an individual employee may be refunded upon application with the tax authority.
- Enterprises should back-file IIT returns on the employer contribution portion of annuity for which IIT has not yet been withheld.

### Relevant regulation discussed in this issue:

*Notice on issues concerning IIT collection and administration of enterprises' annuities, Guoshuihan [2009] No. 694, issued by the State Administration of Taxation (SAT) on 10 December 2009*

With effect from 10 December 2009, Circular 694 clarifies that enterprises' annuities, as a type of supplementary pension fund, should be subject to PRC IIT.

### Main Contents

#### IIT treatment of enterprises' annuities

- Employee contribution

This portion should not be deducted from the employee's monthly salary or wages when calculating IIT.

- Employer contribution

This portion can be treated as salary for a separate month without any deduction for IIT computation purposes. The employer should withhold IIT in the month in which payment is made.

The employer contribution will still be treated as salary for a separate month without any deduction to calculate IIT, whether contributed on a quarterly, half-yearly or annual basis, and should not be amortised back to each month within the contribution period.

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- Employer contributions not attributable to the employee

For an employer contribution not attributed to the employee due to various restrictions, the relevant IIT paid is refundable by applying the below formula:

$$\text{IIT refundable} = \text{tax paid on the employer's contribution to the annuity scheme} \times (1 - \text{employer's contribution attributable to the employee} / \text{total employer's contribution})$$

#### IIT collection and administration

- The tax authority will not refund IIT paid before the issuance of Circular 694 on the employer contribution of annuity.
- If the enterprise has not withheld IIT on the employer contribution, it should calculate the IIT payable on a consolidated basis - combining all the under-withheld employer contributions of annuity for a year as the total taxable income - by applying the tax rate of the employee's monthly average salary for the same year, and then making the tax payment.

#### Applicability of Circular 694

- Circular 694 only applies to the supplementary pension fund established in accordance with the *Provisional measures governing enterprises' annuities*, i.e. enterprises' annuities. Other supplementary pensions paid for employees should be added to the monthly salary or wages to compute IIT.

#### **Impact on Enterprises**

- Circular 694 provides IIT planning opportunities for enterprises that are able to establish an annuity scheme. Compared with the method of combining the employer's contribution portion into the monthly salary, designing such a portion as salary in a separate month would reduce the applicable tax rate for employees.
- Enterprises that have already set up an annuity scheme but have not withheld IIT on the employer contribution should back-file tax returns on the amount under-withheld with the tax authority.

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