

# Corporate Commercial Client Alert

## Employment & Pensions

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### Mainland China: Extension of several Preferential Individual Income Tax (IIT) policies – relevant plan and compliance work needs to be carried out by the employers

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Recently, various authorities in Mainland China (“PRC”) issued announcements to extend several Preferential Individual Income Tax (IIT) policies. To further benefit from such extension and save labor costs, it is necessary for employers to understand the policies from legal, compliance and tax planning perspectives, as well as making changes on internal management and regulations in order to mitigate the compliance and dispute risk.

#### Part One: Extension of the Preferential IIT policies

##### 1. “Exemption of IIT on the relevant subsidies obtained by foreign individuals” extended to 31 December 2023

According to this policy, all foreigners are entitled to 8 categories of subsidies in total for housing, meal, relocation, laundry fees, domestic and international business trips, home leave expenses, language training and children’s education allowances, which **shall be exempted from IIT when certain conditions are met**.

It is worth noting that:

- (1) Since the subsidy under this policy is in the form of “reimbursement” or “non-cash form”, the employers should pay attention to the authenticity of the invoice in order to avoid being vicariously liable for the possible forgery.
- (2) The prerequisite for enjoying relevant preferential policies is “approval and confirmation from tax authority”. It is recommended that a preliminary review should be carried out by employers before filing on the “reasonableness” of application.
- (3) “Additional Special Deductions” for tax residents of PRC shall not apply where the policy “Exemption of IIT on the Relevant Subsidies Obtained by Foreign Individuals” is applicable.

##### 2. “IIT policies regarding equity incentives for listed companies” extended to 31 December 2022

According to this policy, **when certain conditions are met**, equity incentive related income such as stock options, stock appreciation rights, restricted stocks and equity incentive obtained by (tax) residents, shall not be included as part of their comprehensive income of the year, but will be **counted separately for the calculation of tax in accordance with Comprehensive Income Tax rate**.

It is worth noting that:

- (1) The tax authorities in PRC have implemented policies to strengthen the management of IIT for equity incentives in 2021 and have imposed additional reporting obligations for companies implementing equity incentives. Employers should follow relevant withholding and reporting obligations in order to deal with the potential compliance risks properly.
- (2) The nature of equity incentives and its calculation may be complicated and confusing. Employers may consider consulting professionals to provide further assistance, to make the equity incentives more effective.
- (3) This policy is only extended for one year (to the end of 2022). Employers should plan ahead for their medium and long-term equity incentives.

### **3. “Preferential IIT regarding annual one-off bonuses” and “Preferential IIT on term-of-office rewards of Persons in charge of central enterprises” extended to 31 December 2023**

Under these 2 policies, “(tax) residents receiving annual one-off bonuses” and “the income the payment of which is postponed amid performance-based wages and salaries and the term-of-office rewards of the persons in charge of central enterprises” (according to the definition of their respective policy) **shall not be included as part of the comprehensive income of the year, but will be counted separately for calculation of tax in accordance with Comprehensive Income Tax rate on a monthly basis.**

It is worth noting that:

- (1) In a tax year, the “annual one-off bonuses” are only allowed to be adopted once for each taxpayer. Other bonuses such as half-year bonus, quarterly bonus, overtime bonus, performance bonus and attendance bonus, etc., should be combined with the salary income of the month for determining the payment of IIT accordingly.
- (2) “Preferential IIT on term-of-office rewards of persons in charge of central enterprises” has its terminologies clearly defined in the policy. It is important for employers to ensure that the relevant policies would have been complied with before applying the rule.

## **Part Two: Deacons insights**

1. Employers who hire foreign employees may need **further review/modify their labor contracts and/or internal regulations**, regulate the use of invoices and standardise the process of invoice verification. Dishonest behavior should be punished in accordance with internal disciplinary action, which may avoid vicarious liability of the employers.
2. Both listed and non-listed companies should understand relevant IIT policies pertaining to equity incentives. **Plan ahead with guidelines and trainings for employees as appropriate** will make the best use of equity incentives project.
3. Employer could **calculate and adjust the structure of remuneration** (the specific amount of basic salary, subsidies, annual one-off bonus and other categories of items) in order to make employees benefit from preferential IIT policies to the maximum extent possible.

In view of complexity of laws, regulations and policies, employers should understand the trend of IIT development and the corresponding priorities to ensure compliance, adjust the compensation & benefits for employees where necessary and conduct the tax planning lawfully, not only to maximise the benefit for employees, but also to cope with the tax-related risks and challenges for the company.

The employment and tax teams of Deacons are highly experienced in the field of individual income tax of PRC and

salaries tax of Hong Kong. We have extensive experience in providing one-stop services in human resources compliance and optimisation of payroll and tax structure. We are particularly experienced in the design and implementation of employee incentive plans (e.g., tax equalisation plan for cross-border employees and equity incentive plan) and dispute resolution in the context of cross-border dispatch and/or dual employment. In addition, our firm is experienced in cross-border wealth planning, immigration planning, design of family trust and tax planning. We will be pleased to extend our support at any time in case of needs.

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