NEWSLETTER ASIA

SEPTEMBER 2011

CHINA

AMENDMENT TO THE PRC INDIVIDUAL INCOME TAX LAW

On 30 June 2011, the Standing Committee of the National People's Congress adopted the 6th amendment to the PRC Individual Income Tax Law which became effective on 1 September 2011. The officially announced goal of this amendment is to reduce the tax burden for taxpayers with low income by adjusting tax threshold, brackets and rate.

I- Tax threshold adjustment

It is the third time since 1994 that the Chinese legislator adjusts tax threshold for local individual taxpayers. This amount rose from RMB800 to RMB1,600 in 2006, then increased to RMB2,000 in 2008, and finally reached RMB3,500 per month on the 1 September 2011. It is worth noting that tax threshold remains unchanged for foreign individual taxpayers amounting to RMB4,800 per month.

According to the information provided by the State Administration of Taxation, this adjustment would result in an important decrease in the number of local taxpayers subject to the individual income tax: this number is said to drop from around 84 million today to 24 million.

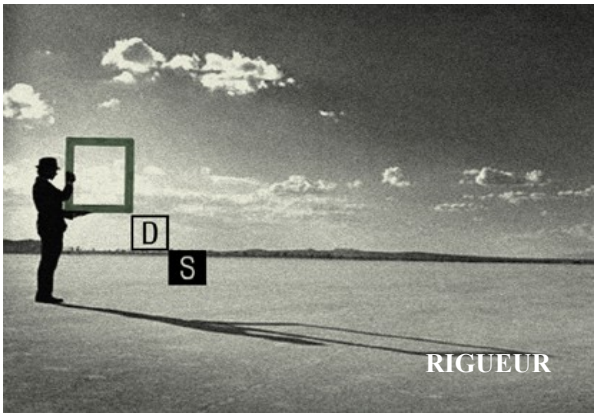
II. Tax brackets and rates adjustments

II.1. Situation of salaried taxpayers

Before the publication of this new revision, tax rates applied to individual incomes ranged between 5% and 45% according to 9 income brackets.

From 1 September 2011, there are only 7 income brackets, with rates ranging from 3% to 45%, implying the elimination of the income tax rates of 15% and 40%, and the replacement of the 5% income tax rate by a rate of 3%.

Comparative table of tax brackets and rates applied to salaried taxpayers before and after 1 September 2011.



Unit: RMB

Applicable tax brackets (after deduction of RMB2,000 (local taxpayer) or RMB4,800 (foreign taxpayer) before 2011.09.01	Tax rate	Applicable tax brackets (after deduction of RMB3,500 (local taxpayer) or RMB4,800 (foreign taxpayer) after 2011.09.01
	3%	Part below 1,500
Part below 500	5%	
Part between 500 and 2,000	10%	Part between 1,500 and 4,500
Part between 2,000 and 5,000	15%	
Part between 5,000 and 20,000	20%	Part between 4,500 and 9,000
Part between 20,000 and 40,000	25%	Part between 9,000 and 35,000
Part between 40,000 and 60,000	30%	Part between 35,000 and 55,000
Part between 60,000 and 80,000	35%	Part between 55,000 and 80,000
Part between 80,000 and 100,000	40%	
Part above 100,000	45%	Portion above 80,000

Relying on this table and considering tax threshold adjustment, it is clear that taxpayers with relatively low income will enjoy reduction in their tax burden whereas taxpayers with relatively high income will face a higher tax burden. More precisely, local taxpayers will face a higher tax burden only if their monthly taxable income is higher than RMB38,600 (after deduction of social contributions). Below this level, their tax burden will be reduced. For instance, local taxpayers with monthly taxable incomes varying between RMB8,000 and RMB12,000 (after deduction of social contributions) will enjoy a RMB480 discount on their monthly tax burden.

II.2. Specific case of foreign individual taxpayers

Since tax threshold has not been adjusted for foreign taxpayers, the tax burden they bear increases once their monthly taxable income reaches RMB17,400. Consequently, most of foreign taxpayers will face a higher tax burden. Thus, for instance, a foreign taxpayer with a monthly taxable income of RMB50,000 will face an increase of his monthly tax burden of RMB620 instead of RMB120 for a local taxpayer.

II.3. Situation of self-employed taxpayers

Tax brackets for self-employed taxpayers have also been adjusted in order to significantly reduce their tax burden. The average decrease reaches 40% with a maximum of 57% for entrepreneurs with a monthly income below RMB60,000.

Comparative table of tax brackets and rates applied to self-employed taxpayers before and after 1 September 2011.

Unit: RMB

Applicable tax brackets		Applicable tax brackets
Part below 5,000	5%	Part below 15,000
Part between 5,000 and	10%	Part between 15,000 and
Part between 10,000 and	20%	Part between 30,000 and
Part between 30,000 and	30%	Part between 60,000 and
Part above 50,000	35%	Part above 100,000

III. Further modifications

Lastly, the amendment now sets a new deadline for monthly individual income tax reporting and payment which can be realized 15 days after the end of the month instead of 7 days as previously admitted. These new deadlines are thus consistent with the deadlines set for payment of Business Tax and Enterprise Income Tax, and will simplify the work of the taxpayers.

INDIA

NEW REGULATION ON ATTENDING BOARD AND GENERAL MEETINGS THROUGH ELECTRONIC MODE

As part of the ongoing modernisation process initiated to reform corporate laws in India, the Ministry of Corporate Affairs ("MCA") has recently allowed participation of directors and shareholders of a company in meetings of the board/shareholders through electronic mode, via a General Circular issued on 20 May 2011.
The General Circular defines electronic mode as "video conference facility i.e. audiovisual electronic communication facility employed which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting".
So far, attendance through electronic mode was not permitted under the Indian Companies Act,1956 and physical attendance was necessary in many cases.

I - Procedure and requirements

In addition to the procedures prescribed under the Companies Act, regarding Board/Shareholder meetings, the following must be complied with:

(a) Notice of the meeting should inform the directors/shareholders regarding availability of participation through video conference;

(b) The notice must provide necessary information to enable directors/ shareholders to access the available facility of video conferencing;

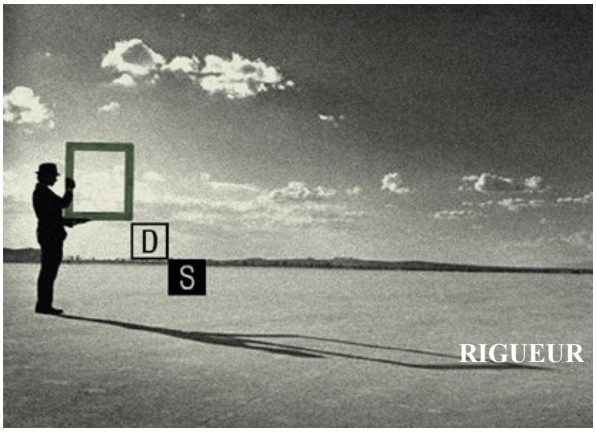
(c) Notice of the meeting must seek confirmation from the directors/ shareholder as to whether the director/ shareholder shall attend the meeting physically or through electronic mode;

(d) Notice of the meeting must also contain the contact number(s)/e-mail addresses of the Secretary/designated officer whom the directors/shareholder must send the confirmation to. In the absence of any confirmation from the director/shareholder, it will be presumed that he/she will physically attend the meeting;

(e) At the start of such a meeting, a roll call will be made by the Chairman/ Secretary. During such roll call every director/shareholder shall, for the record, state the following:
i. Full Name,
ii. Location,
iii. That he/she can clearly see and communicate with all the other participants,

Once the above procedure is complete the Chairman/Secretary shall confirm the participation of the directors/ shareholder in the meeting who are not physically present.
After the roll call, the Chairman/ Secretary may certify the presence of a quorum.

At the end of such meeting, the Chairman shall announce the summary of decisions taken in the meeting in respect of each agenda.
Video recording of parts of such meetings where decisions were taken and votes were casted shall be preserved by the company for a



minimum of 1 year from the conclusion of each such meeting.
Draft minutes of the meeting in soft copy shall be circulated to all the directors/shareholders for confirmation, within 7 days of conclusion of the meeting.
Once the above formalities are completed, the minutes of the meeting shall be entered into the minute book, in the manner prescribed under the Companies Act.

II - Responsibilities of the Chairman / Company

The Circular further provides that the Chairman and Secretary shall have the following responsibilities:

(a) To safeguard the integrity of the meeting via video conferencing,
(b) To ensure proper video conference equipment/facilities,
(c) To prepare minutes of the meeting,
(d) To ensure that no person other than the director or other authorised participants are attending the meeting through electronic mode.

The new regulation will hence facilitate governance of Indian companies, especially in instances where some of the shareholders or directors are based abroad.

However, as far as directors are concerned, the General Circular still provides that every director of a company must physically attend at least one meeting of the board/ Committee of directors, in one financial year of the company.

JAPAN

AMENDMENTS TO THE JAPANESE CODE OF CIVIL PROCEDURE CONCERNING INTERNATIONAL JURISDICTION

On April 28, 2011, the "Act for the Partial Amendment of the Code of Civil Procedure and the Civil Provisional Remedies Act" was enacted, amending the Code of Civil Procedure to newly include certain provisions concerning international jurisdiction. This Act will come into effect within one year from its date of promulgation (May 2, 2011), on a date to be separately specified by Cabinet Order.

In line with the globalization of economic activities, prompt resolution of international disputes on civil and commercial matters has become increasingly necessary. Until now, however, the existing Code of Civil Procedure has contained no express provisions concerning instances in which actions can be filed with Japanese courts. Judicial practice has, therefore, relied on the criteria presented by legal precedents.

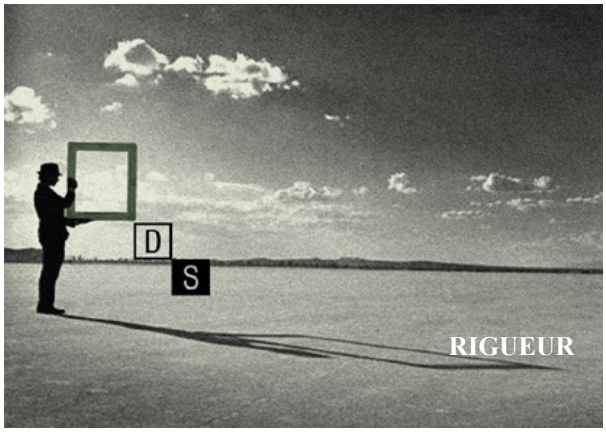
In the amended Code of Civil Procedure ("Amended Act"), instances under which Japanese courts will hold jurisdiction are expressly prescribed according to the respective categories of actions they fall under (actions relating to contractual obligations, actions relating to consumer contracts and employment relations, actions relating to intellectual property rights, etc.) and are basically in line with the legal theories postulated in earlier legal precedents.

The amendments to the Code of Civil Procedure have clarified, to a certain degree, the instances in which

Japanese courts will have jurisdiction in civil matters, so that the presence/ absence of international jurisdiction will become more foreseeable, and the filing of international litigation with Japanese courts will be more effectively facilitated.

The Amended Act also prescribes that an action can be dismissed in whole or in part if a court "recognizes the presence of special circumstances under which trial and judicial decision by a Japanese court would harm the equity between the parties, or would hinder the accomplishment of proper and prompt proceedings, taking into account the nature of the case, the level of burden to be imposed on the defendant, the location of evidence and other circumstances.

Furthermore, interpretational problems are likely to remain even after the amendments to the Code of Civil Procedure, so that individual cases must be carefully considered, while also taking into account factors such as the enactment process of the Amended Act and the interpretation under past legal precedents.



SINGAPORE

PROPOSED REVISIONS TO THE CODE OF CORPORATE GOVERNANCE

On 14 June 2011, the Monetary Authority of Singapore ("MAS") issued a Consultation Paper on Proposed Revisions to the Code of Corporate Governance ("Consultation"). This is the second review of the Code of Corporate Governance ("Code") since it was first introduced in March 2001. The Code is applicable to listed companies in Singapore on a "comply or explain" basis (principle according to which a company shall comply with the Code or properly explain its deviation from the Code). Further to recent financial crisis, these proposed changes aim to raise the standard of corporate governance among listed companies. The key changes proposed are summarised below.

I – Board to take a wider view of the company's interests

The Consultation proposes a broader role for the Board and specifies the Board's responsibility for the company's long-term success. Indeed the Board should identify the key stakeholder groups for the company and recognise that their perceptions affect the company's reputation.

The Consultation also proposes to expressly provide that the Board should consider sustainability issues such as environmental and social factors, as part of its strategic formulation.

The Consultation suggests incorporating a reminder to boards that their fiduciary duties remain with them at all times and that while they may delegate authority to any board

committee or to management; this does not mean an abdication of responsibility for the decision reached.

II - Independent directors

The Consultation suggests that the existing requirement for independence be tightened to stipulate that independent directors should be independent from substantial shareholders of the company (in addition to the current requirement that they be independent from management). This would mean that a director would not be considered independent if he (i) is a substantial shareholder of the company, or (ii) is an immediate family member of substantial shareholder of the company, or (iii) is or has been directly associated with a substantial shareholder of the company in the current or past three financial years.

The length of time that an independent director has served on the board will also affect his independence and the Consultation suggests a maximum period of service of nine years.

Regarding the number of independent directors that should sit on the board, the Consultations suggests that the current requirement of one-third shall apply unless one of these specific circumstances incurs (i) where the chairman of the board and the chief executive officer ("CEO") is the same person, or (ii) where the chairman and the CEO are immediate family members, or (iii) where the chairman and the CEO are both part of the management team, or (iv) where the chairman is not an independent director. Under these proposed circumstances, half of the board shall be independent.

III – Remuneration

The Consultation suggests that remuneration levels and structures should be aligned with long-term interest and risk policies of the company. The requirements for disclosure of remuneration have been enhanced as follows: (i) for each individual director and the CEO, remuneration should be disclosed on a named basis to the nearest S$1,000, (ii) disclosure or remuneration of the top five key management personnel (who are not also directors or the CEO) will remain on the basis of bands of S$250,000, (iii) disclosure of salaries of employees who are immediate family members of a director or the CEO on the name basis and in bands of S$50,000 and (iv) disclosure of more information on the link between performance and the remuneration paid to directors, the CEO and key management personnel.

IV – Risk management

The Consultation proposes that the Code highlights that risk governance is the responsibility of the board. The main specific guidelines set out for risk management are as follows : (i)the board should determine the company's levels of risk tolerance and risk policies, (ii) the board should at least annually review the adequacy and effectiveness of the company's risk management and internal control

systems including financial, operational, compliance and information technology controls and, (iii) the board may establish a separate board risk committee in order to carry out its responsibility of overseeing the company's risk management framework and policies.

V – Shareholders rights and responsibilities

The Consultation aims at proposing a new statement on the role of the shareholders and a series of shareholders' rights such as (i) the right to be kept informed about changes in the company or its business which may materially affect the value of the company's shares, (ii) to have the opportunity to participate effectively in and vote at general meetings of shareholders and (iii) to allow corporation which provide nominee services to appoint more than two proxies.

Other proposed changes relating to communication with shareholders are as follows : (i) all directors, especially the chairman of the board and the various committee chairmen should be required to attend general meetings (ii) companies should communicate their policy on payment of dividends to shareholders including their reasons for not paying dividends should that be the case, (iii) the companies are expected to put all resolutions to vote by poll, disclosed detailed voting outcomes and encouraged to employ electronic polling and, (iv) the board should not limit its engagement with shareholders to general meetings but set up other opportunities to engage with them.

VIETNAM

DECREE 25/2011/ND-CP AND OPPORTUNITIES FOR INVESTORS IN THE TELECOMMUNICATIONS INDUSTRY OF VIETNAM

The Vietnamese telecommunications industry has until now been tightly held by public enterprises. However, the Vietnamese Government has demonstrated in the last few years their will to loosen State control by leaving more spaces in the market for private investors, especially foreign investors. This participates also in the implementation of the Service Schedule of Vietnam Commitments to WTO ("Service Schedule to WTO"). In the light of those considerations, a first step was taken with the adoption of the Law on Telecommunications dated 23 November 2009 and coming into effect on 6 April 2011, which was followed by the issuance of Decree 25/2011/ND-CP dated 6 April 2011 Providing Detailed Regulations and Guidelines for Implementation of the Law on Telecommunications ("Decree 25").

I – New provisions applicable to all investors in the Telecommunications sector

The most important change Decree 25 brings out, along with the Law on Telecommunications, is the introduction of new ownership limits aimed at struggling against unfair competition. In effect, it stipulates that any organization or individual already owning more than 20% of the charter capital or shareholding of a telecom enterprise shall not hold more than 20% of the charter capital or shareholding in another telecom enterprise which conducts business in the same "*telecom services market*". The list of these markets is set out by the Minister of Information and Telecommunication.

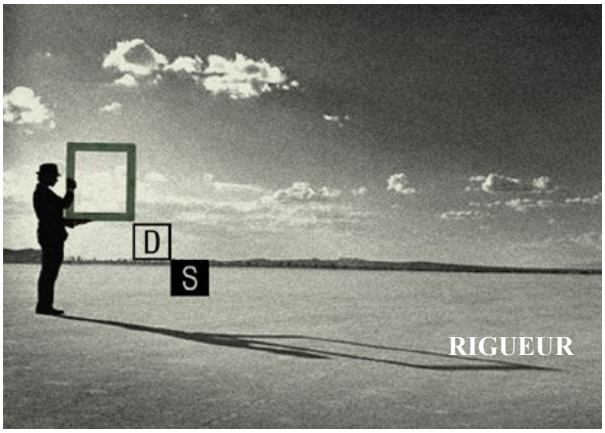
Besides, Decree 25 sets out a wide range of requisite minimum registered capital and level of committed capital depending on the type of telecom business and coverage. This starts at VND 5 billion (about € 200,000) as minimum legal capital required for investment projects for providing landline fixed telecom network in one province or city under central authority without using a radio frequency band. This amount can then rise to VND 7500 billion (about € 300,000,000) as minimum committed capital in the first 15 years for investment projects for providing landline mobile network using a radio frequency band.

However, the sensibility of the telecommunication sector, related to public and national interests, explains why the duration of telecom business service license and telecom specialized or professional license remains quite short. Decree 25 provides for a duration of maximum 15 years for licenses for establishment of public telecom networks, maximum 10 years for licenses for provision of telecom services, maximum 25 years for licenses for installation of telecom sea cabling, maximum 10 years for licenses for establishment of private telecom networks and maximum 1 year for licenses to test telecom networks and services. The whole duration of initial licensed period and extension periods shall not exceed these thresholds either. Therefore upon expiry of a threshold an entirely new application process shall be required if an investor wishes to extend its operation, (instead of a simple extension process).

Decree 25 also provides for some exemptions, notably for enterprises doing business in telecom goods, provision of telecom services in the form of telecom service agency or lease of a transmission line in order to supply telecom application services.

II - New opportunities for foreign investors

Firstly, the evaluation procedure of investment projects is no longer required for all projects, as this was the case before Decree 25. Decree 25 distinguishes three different procedures to be followed depending on the scale of the investment project and the geographical zone which is covered. From now on, investment projects without network infrastructure and with investment capital below VND 300 billion (about € 12,000,000) are subject to a simple registration procedure.



Meanwhile an evaluation procedure is required for projects without network infrastructure with investment capital above VND 300 billion. Finally, evaluation and approval procedures are required for projects with network infrastructure regardless of the amount of investment capital. It is important to note that these new provisions have released the telecom services without network infrastructure from of the list of conditional business sectors which requires either evaluation procedure or evaluation and approval procedures as provided in the Law on Investment[1] and the Annex III attached to the Decree 108 dated 22 September 2006.

As regards the forms of investments, these are always limited to the joint-venture structure and the business co-operation contract with companies established in Vietnam. In the case of investment in the provision of telecom services with network infrastructure, there must be at least a partner being a telecom enterprise already licensed to establish a telecom network in Vietnam. It is to be noted that Decree 25 makes no reference to limitations on the capital contribution ratio of foreign investors in telecom enterprises. Instead, only the Service Schedule to WTO provides the different caps on foreign investments for different types of telecommunication services.

In general, the foreign capital contribution ratio cannot exceed 50% of the capital of joint ventures providing

telecom services with network infrastructure and varies from 65% to 70% in case of joint ventures providing telecom service without network infrastructure.

[1] *Pursuant to the Law on Investment, foreign invested projects not included in the list of conditional business sectors, with an invested capital of below VND 300 billion, are subject to a registration procedure, while domestic or foreign invested projects (i) not included in the list of conditional business sectors, with an invested capital of VND 300 billion or more and (ii) investment projects included in the list of conditional business sectors, are subject to procedures for evaluation.*

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