China Mainland

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1. Types of tax

1.1 Inheritance tax

The mainland of the People's Republic of China (China) issued a draft rule on inheritance tax in 2002 to solicit public opinion. However, as of today, no statute has been passed to provide guidance on inheritance tax.

1.2 Gift tax

No gift tax is levied in China.

1.3 Real estate transfer tax

From an estate and succession perspective, no real estate transfer tax is levied in China. However, an individual's transfer of real estate or land-

use rights in China may be subject to individual income tax (IIT), value-added tax (VAT), deed tax, stamp duty and land appreciation tax.

1.3.1 Individual income tax

In accordance with the provisions of Caishui [2009] No. 78 (Circular 78) and MOF/STA PN [2019] No. 74, if a transfer of real estate or land-use rights is made without consideration, the property received would be considered "contingent income" to the recipient and subject to IIT at a flat tax rate of 20%. However, according to Circular 78 and Guoshuifa [2009] No. 121, the transfer by virtue of inheritance or gift under the following circumstances will be exempted from the IIT:

- Gratuitous transfer of land-use rights or real estate to lineal relatives (i.e., spouse, children, parents, grandparents, grandchildren and siblings)
- Gratuitous transfer of land-use rights or real estate to dependents

- Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
- Gratuitous transfer of land-use rights or real estate to a spouse by virtue of divorce

To claim IIT exemption on these transfers, transferees should fulfill the registration requirement with the tax authority and obtain written approval.

If the transfer is subject to IIT, the taxable income would be determined based on the value of the real estate or land-use rights stated in the succession or gift contract, subtracting the relevant taxes and expenses paid by the transferee. However, if the value stated in the contract is obviously lower than the fair market value (FMV), or there is no price available in the contract, the relevant tax authority may deem the taxable income according to the market appraisal price or through other reasonable methods.

If the transferee later resells the land-use rights or real estate, such transfer will be subject to IIT. The tax base will be the proceeds from the sale of land-use rights or real estate, less the original purchase cost of the decedent or the donor, and the expenses and taxes paid by the heir or donee in the transfer.

IIT is required to be reported and paid upon transfer of legal title of the real estate at the real estate trading center.

1.3.2 VAT

Pursuant to Caishui [2016] No. 36 (Circular 36), real estate transactions are subject to VAT starting from 1 May 2016.

Circular 36 provides that individuals selling non-residential real estate property should generally be subject to VAT at 5% on a net basis, i.e., total payment collected minus the purchasing cost of the property.

For individuals selling residential real estate property, the relevant VAT implications should be as follows:
(a) 5% VAT rate imposed on the total payment collected for selling residential property acquired within two years.
(b) VAT exempted may be available for disposal of residential property if holding for a certain period or other criteria are fulfilled.

In addition, the following transfers of real properties between individuals are exempted from VAT, according to Circular 36:
- Gratuitous transfer of land-use rights or real estate to lineal relatives
- Gratuitous transfer of land-use rights or real estate to dependents
- Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
- Transfer of land-use rights or real estate as a gift to a spouse by virtue of divorce

Individual transferors are required to comply with the relevant registration formalities of the tax authority to claim the VAT exemption on the gift of real estate or land-use rights.

1.3.3 Deed tax

China levies deed tax on non-statutory successors who acquire real estate or land-use rights by virtue of inheritance or gift. Deed tax is required to be reported and paid upon transfer of legal title of the real estate at the real estate trading office by the transferee. However, inheritance by statutory successors is exempt from deed tax. Statutory successors include spouse, children, parents, siblings, paternal grandparents and maternal grandparents.

Deed tax rates range from 3% to 5%, depending on the location of the cities in different provinces. Effective from 22 February 2016, the tax rate applicable to residential properties was reduced to 1%, 1.5% or 2%, depending on the size and utility of the housing. The tax base for deed tax calculation is deemed by the tax authority with reference to the market value of the real estate or the land-use rights.

1.3.4 Stamp duty

The stamp duty is imposed when a contract of property transfer is concluded. Both parties who sign the contract are liable for the stamp duty. The tax base for the stamp duty is calculated based on the value of the property specified in the contract. The tax rate applicable to the contract concluded for transferring property rights is 0.05%. The transfer of residential real estate by individuals is not subject to stamp duty.

1.3.5 Land appreciation tax

According to the China Temporary Regulation of Land Appreciation Tax (LAT), sale or compensated transfer of real estate or land-use rights is subject to LAT. A transferor who benefits from the transfer is liable for LAT. However, transfer of real estate or land-use rights without consideration — such as inheritance by statutory successors or gratuitous transfer of LAT to lineal family members — will not realize a charge. The transfer of residential real estate by individuals is not subject to LAT.

1.4 Endowment tax

No endowment taxes are levied in China.

1.5 Transfer duty

No transfer duty is levied in China.

1.6 Net wealth tax

No net wealth tax is levied in China.

2. Who is liable?

China residents

China residents include the following persons:

- Individuals who have their domicile in China
- Individuals who do not have their domicile in China, but reside in China for 183 days or more in a tax year

Individuals domiciled in China means those who, by reason of permanent household registration (i.e., Hukou), family ties and economic interest, habitually reside in China. China-domiciled individuals are subject to China IIT on their worldwide income. Non-domiciled individuals (i.e., non-China nationals) could be exempted from China IIT on non-China-sourced income paid by foreign companies or individuals if they are China tax residents for no more than six consecutive years and a registration is performed with China tax authorities. Note that if a non-domiciled individual stays outside of China for more than 30 consecutive days in any tax year during which he or she stays in China for 183 days or more, the consecutive years in which he or she is China tax resident will be recounted.

Non-residents are subject to tax on their China-source income only.

2.1 Real estate located in China

In general, China exercises tax jurisdiction over the transfer of real estate or land-use rights located in the territory of mainland China regardless of the holder's domicile or residency status. Please refer to the preceding paragraphs regarding the relevant taxes that may be imposed on the transfer of real estate or land-use rights.

According to STA PN [2020] No. 3, a non-resident indirectly disposes offshore companies, of which the underlying investment is China real estate heavy, could be subject to IIT on the indirect transfer if certain conditions are met.

2.2 Real estate outside China

In the event of transfer of real estate outside China, no specific China tax regulation is available to guide the taxation on such transfers, except the provisions of IIT law.

Individuals who are domiciled in China and non-domiciled individuals who have resided in China for more than six consecutive years may be liable for IIT on the gain arising from the transfer of real estate located outside China.

3. Rates

Different tax rates are applicable to different types of taxes. Please refer to Section 1 for details.

4. Exemptions and reliefs

See Section 1 for details.

5. Filing procedures

See Section 1 for details.

6. Assessments and valuations

The tax base of properties that are acquired by virtue of inheritance or gift is the FMV of the property at the time of the transfer. The specific method of valuation may vary depending on the type of property.

Land-use rights and real estate

The value of land-use rights and real estate is generally determined based on the value specified in the transfer contract. The value in the transfer contract should be assessed and approved by the administration offices of land or real estate before the contract comes into effect. In most cases, the tax authority would rely on the value assessed by the administration offices of land or real estate. However, if the tax authority considers the assessed value to be far from the FMV, the tax may be levied on a deemed basis.

7. Trusts, foundations and private purpose funds

For purposes of succession and estate planning, no specific tax regulation has been issued by China for taxes on the income from trusts or foundations.

8. Grants

There is no inheritance tax in respect of death grants in China.

9. Life insurance

According to China's IIT law, life insurance compensations are generally exempted from IIT.

10. Civil law on succession

This is not applicable in China.

11. Estate tax treaties

No estate tax is levied in China. Therefore, no terms regarding estate tax are available in China's double-taxation treaties.