



如聞律師事務所

# Cancellation of Non-taxable Allowances for Foreign Employees

Rewin Law Firm



1. Is the “wolf” really coming this time?
2. If yes , what will happen?
3. If yes, what can we do?
4. Any magic take away?

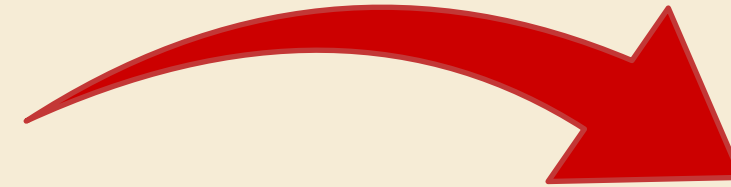
# 1. Is the “wolf” really coming this time?

- I. Individual Income Tax Law of the People's Republic of China (2018 Amendment)
- II. Notice of the Ministry of Finance and the State Administration of Taxation on Issues Concerning the Connection of Preferential Policies after the Individual Income Tax Law Is Amended (No. 164 [2018] of the Ministry of Finance )
- III. Notice of the State Administration of Taxation on the Implementation of Exemption of Individual Income Tax on the Relevant Subsidies Obtained by Foreign Individuals (No.54 [1997] of the State Administration of Taxation )
- IV. Notice of the Ministry of Finance and the State Administration of Taxation on Exempting the Hong Kong or Macao Housing Subsidies Received by Foreign Individuals from Individual Income Tax ( No. 29 [2004] of the Ministry of Finance )
- V. .....

# 1. Is the “wolf” really coming this time?

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- Report on the work of the state council in 2020
- To recover the development the economic in the post-epidemic era
- The trend of economic globalization and talent internationalization
- Implementation rules have not yet been issued, lacking for the practical guidance
- There are still five non-taxable allowances that have not been formally abolished
- A lot of lobby letters to SAT



**To be or not to be?**

## 2. If yes , what will happen?

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### What will be canceled:

housing subsidy	language training fee	children's education
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### What TBD:

food subsidy	relocation fee	laundry fee	business trip at home and abroad	family visit fee
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## 2. If yes , what will happen?

<b>Children's education</b>	RMB1,000/child/month Pre-school education(from age 3) to post graduate	
<b>Continuing education</b>	Diploma education: RMB400/month(maximum claim for the same diploma: 48 months) Vocational education: annual claim of RMB3,600 in the year of obtaining the certificate/ qualification	
<b>Mortgage interest</b>	RMB1,000/ month (maximum claim: 240 months)	Deduction of rental expense and mortgage interest cannot be claimed concurrently in the same year by the taxpayer and his/her spouse.
<b>Rental expense</b>	State administered, provincial, planned municipal cities & other cities designated by the State Council: RMB1,500/month Cities with household registration population over 1 million: RMB1,100/month Cities with household registration population of 1 million or less: RMB800/month	
<b>Elderly care</b>	RMB2,000/month for single child For non-single child, the RMB2,000 deduction can be split by taxpayer & siblings (but not over RMB1,000/month/child)	
<b>Medical expenses for serious illnesses</b>	Self-paid portion above RMB15,000 of the actual medical expenses (shall be recorded in the social medical insurance system) is deductible, subject to an annual cap of RMB80,000	

\*Quote from file of RSM

### 3. If yes, what can we do?

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**If you're the Boss, CEO or a decision maker, you may change the company registered address,**

- 1. Shanghai Lin-Gang Special Area**
- 2. Guangdong-Hong-Kong-Macao Greater Bay Area**
- 3. Nanchang, Jiangxi Province**
- 4. Hainan Free Trade Port**
- 5. Suzhou, Jiangsu Province**
- 6. ....**

### 3.If yes, what can we do?

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EMPLOYER, you may think about the follows,

- A.Negotiation
- B.Signing another Labor Contract
- C.Increase bonuses

General principle: Keep employees' income at the same level with low cost.



# 3. If yes, what can we do?

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Case study:

Michael, from Australia, CFO in WOFE. Signed Labor Contract in 2018.

In the Contract: after-tax salary, housing subsidy and food subsidy, the relocation fee, the laundry fee, the business trip reimbursement, family visit fee, language training fee, children's education fee, the severance packages, one month notice payment.

### 3. If yes, what can we do?

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**Q: What are his current non-taxable allowances? Can he enjoy it in the future according to the new policy? How to enjoy it?**

**A:** Housing subsidy, food subsidy, the relocation fee, the laundry fee, the business trip at home and abroad, family visit fee, language training fee, children's education.

Housing subsidy, language training fee, children's education are cancelled.

Food subsidy, the relocation fee, the laundry fee, the business trip at home and abroad, family visit fee  
TBD.

**Q: Will Michael lose his benefits if the new policy is implemented?**

**A:** No, he won't. Because his labor contract stipulates after-tax salary, and there is no loss of his personal income.

### 3. If yes, what can we do?

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**Q: If Michael wants to leave the WOFE, can he claim for severance packages?**

**A:** No, he can't. According to the *Labor Contract Law*, if Michael applies for resignation due to his own reasons, he shall not be entitled to severance compensation.

**Q: What compensation can Michael get if he is fired by the WOFE?**

**A:** The severance packages calculated as  $N * \text{Monthly wage} * 2 + \text{Monthly wage}$ ,  
N = working years in the WOFE, no more than 6 month calculated as 0.5  
Monthly wage = the total monthly income (salary + allowance), no more than the legal upper limit (three times of social average salary of previous year).

**2** means if it's an **illegal termination**.

### 3. If yes, what can we do?

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EMPLOYEE, you may think about the follows,

- A. After-tax salary – Insist if it is in Labor Contract.
- B. Pre-tax salary- Negotiate if it's not

Notes: If no stipulation on severance packages, then the employer will not pay you for leaving.



## 4. Any magic take away?

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**But**

## 4. Any magic take away?

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- 1. Labor Contract, Labor Contract, Labor Contract——Three times repeated for important matters!**
- 2. The minimum wage, working hours, rest and vacation, labor safety and healthy care, and social insurance must comply with Chinese Laws and Regulations**
- 3. Always consult an Attorney before signing a Labor Contract**

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