Duke UNIVERSITY

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Duke Tax Policy – Duke Kunshan

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EXECUTIVE SUMMARY

The Duke Tax Policy – Duke Kunshan is designed to remove any personal financial obstacles for Duke Faculty and Staff Members to contribute their talents to the development of Duke Kunshan University by ensuring that their tax payments while on assignment at Duke Kunshan University remain approximately the same as they would have if they had worked in the US. The Tax Policy ensures that an assignment to Duke Kunshan neither adds significantly to the personal tax liability nor results in significant tax savings due to differences in income tax costs between the US and China. If a Duke Faculty or Staff Member has a China individual income tax obligation on Duke income sourced in China, Duke Kunshan will remit taxes to the Chinese tax authorities. Further, in accordance with the agreement between the US government and the government of the People's Republic of China, this Tax Policy will ensure the avoidance of double taxation. Duke Kunshan will cover the costs associated with the implementation of the Tax Policy, including tax return preparation and filings through a designated professional tax services firm. In order to receive the protection and benefits of this Tax Policy, Duke faculty and staff members must fully comply with its provisions and procedures.

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INTRODUCTION

The Duke Tax Policy – Duke Kunshan (“**Tax Policy**”) applies to Duke University (“**Duke**”) faculty or staff members (“**Duke Faculty or Staff Members**” or “**Assignees**”) who (1) are on assignment at Duke Kunshan University (“**Duke Kunshan**”), (2) have a change in actual taxes because of assignment allowances and/or China Individual Income Tax (“**China IIT**”) obligations, and (3) are approved by Duke and Duke Kunshan as entitled to the benefits of this Tax Policy. This tax policy is initially recorded as of July 2016. Its effective date is January 2013 because the goal of the Tax Policy is to organize the details that have been in place for Duke Faculty or Staff Members or Assignees who have traveled since that time.

Duke and Duke Kunshan have implemented this Tax Policy with the goal of removing any personal financial obstacles for Duke Faculty and Staff Members to contribute their talents to the development of Duke Kunshan University. It is designed to ensure that tax obligations for its employees remain approximately the same as they would have if they worked in the US. The Tax Policy ensures that an assignment to Duke Kunshan neither adds significantly to the personal tax liability nor results in significant tax savings due to differences in income tax costs between the US and China. Therefore, under this Tax Policy, Assignees pay theoretical (stay-at-home) US income tax on those items of compensation as agreed upon in the Duke Faculty or Staff Member’s assignment letter. The Tax Policy is limited to income and social security taxes. It specifically excludes, but is not limited to, taxes such as inheritance/estate tax, gift tax, sales tax and property tax.

This Tax Policy is administratively managed by the Duke Kunshan Support Unit in the Office of the Provost (“**Support Unit**”) and the Office of Human Resources at Duke Kunshan.

I. EMPLOYEE RESPONSIBILITIES

Duke Faculty or Staff Members covered by this Tax Policy must comply with the Tax Policy, which includes adherence to regulations governing income tax as determined by relevant jurisdictions in China, as well as the US. In addition, Duke Faculty or Staff Members should help minimize the tax burden on Duke by complying with the instructions of Duke and Duke Kunshan’s designated professional tax services firm (“**Tax Firm**”) including, but not limited to, timely submission of documents, positions taken on the tax returns and social security compliance. Duke Faculty or Staff Members, or Assignees, should make every effort to meet with the US-based Tax Firm before departure and with the China-based Tax Firm once the assignment at Duke Kunshan begins, plus as needed during the assignment.

It is the Assignee’s responsibility to inform the Tax Firm regarding any actions that may adversely affect their tax position before any such actions are taken. This includes, but is not limited to, remitting any personal income into China or selling anything that may generate a taxable capital gain.

Assignees are responsible for US hypothetical income tax on the following types of income:

- salary (less pretax deductions);
- incentive compensation;
- employee benefit taxable income; and
- any other Duke stay-at-home taxable income.

Assignees are also subject to home country hypothetical income tax on the following types of non-Duke income (including but not limited to):

- interest;
- dividends;
- rental income/losses;
- spouse income;
- partnership income/losses;
- capital gains/losses; and
- pension income.

If an Assignee chooses to use another tax services firm to file their annual returns, the Assignee must submit any requested information to the Tax Firm by the deadlines communicated to permit the Tax Firm to prepare the settlement for Duke and Duke Kunshan.

A Duke Faculty or Staff Member who is offered the benefits of this Tax Policy and wants to accept them must sign Annex 1, acknowledging that he or she has fully read and understands it, including without limitation, his or her obligation to comply with the full and timely cooperation requirements in it.

II. DUKE AND DUKE KUNSHAN RESPONSIBILITIES

Duke Kunshan will cover the costs associated with the implementation of the Tax Policy, including tax return preparation and filings through the Tax Firm, which has offices in the US and China. Tax return preparation and filing services are limited to one US federal return and up to three separate US state returns per Assignee. The Tax Firm will prepare and file all returns but the Assignee will be responsible for any expenses beyond three state returns.

Duke Kunshan will bear the cost of any China IIT on Duke employment income. In addition, Duke Kunshan may be responsible for the actual US income tax (if applicable) on the following items as agreed upon in the Duke Faculty or Staff Member's assignment letter:

- salary supplements and allowances;
- relocation benefits;
- housing benefit;
- education benefit; and
- other assignment-related provisions.

The Support Unit and the Duke Kunshan Office of Human Resources will connect Assignees with the Tax Firm and generally facilitate and support the relationship to ensure effective communication and timely action, as well as the provision of information by Duke or Duke Kunshan that may be necessary during the process.

IV. THE TAX POLICY IN OPERATION

China Individual Income Tax

After a Duke Faculty or Staff Member spends a minimum amount of time working in China but less than five years, the Assignee will have a China individual income tax ("**China IIT**") obligation on income sourced in China. This Tax Policy intentionally does not specify the amount of minimum time spent working in China by a Duke Faculty or Staff Member which would trigger China IIT obligations for China-sourced income because the rules often change and the analysis can depend upon many factors. If an

Assignee resides in China for more than five full consecutive years, their worldwide income would be subject to tax in China starting in the sixth year. The China-based Tax Firm will explain the implications on this issue.

If an Assignee's "main" role in China is teaching/research, he or she may be eligible for a China IIT exemption. If eligible, the Tax Firm will ask the Assignee to apply for a Tax Residency Certificate from the US Internal Revenue Service that shows that the individual is a taxpayer in the US and therefore, based on the US-China Tax Treaty, may be eligible for a three-year "scholarly exemption" of the China IIT. Assignees should expect to pay a filing fee that can be submitted for reimbursement. Once the Certificate is received, the China-based Tax Firm will assist the Assignee in applying for the exemption. Once the exemption has been granted, there is an annual application process. Administrators are not eligible for this exemption.

For administrators and other Assignees without the scholarly tax exemption, the China-based Tax Firm on behalf of Duke Kunshan will pay on a monthly basis the China IIT owed by these Assignees, as required by Chinese law. In order to calculate the monthly China IIT obligation, Duke will provide compensation details and Duke Kunshan will provide other in-country allowance information to the Tax Firm.

US Taxes

Assignees will be provided US tax preparation services by the Tax Firm if eligible under this Tax Policy. Assignees will be asked to provide requested information to the Tax Firm by the deadlines communicated by the Tax Firm. If the Assignee has not complied with their obligations to meet required filing deadlines, the Assignee will be responsible for any interest and penalties incurred with the filing of US tax returns.

The Tax Firm will advise the Assignee on the best tax position to take on the US returns to (1) avoid any personal tax liabilities or tax savings due to differences in income tax costs between the US and China and (2) minimize the costs to Duke Kunshan. Any foreign tax credits for foreign taxes paid by Duke Kunshan, which reduce the US income tax liability before, during, or subsequent to an assignment to Duke Kunshan, are owned/utilized by Duke and Duke Kunshan. This also applies to foreign earned income exclusions, US Alternative Minimum Tax credits and Claim of Right credits. After the assignment, Duke and Duke Kunshan determine whether to keep the Assignee in the tax equalization program if they have carryover items that may be used in the future. Duke and Duke Kunshan retain the tax benefit for utilization of the foreign tax credit. Duke Kunshan will continue to pay for the preparation of the US income tax return(s) during these years.

Itemized deductions are different during assignments to Duke Kunshan, mainly because the Assignee's personal residence may be temporarily rented or sold and the state residence position may alter, affecting the actual state tax liability. In addition to the "actual" itemized deductions as reported on the US federal tax return, Duke allows a deduction for the hypothetical state income taxes charged under this Tax Policy.

Social Security/Medicare tax is withheld on the Assignees total income, which includes the assignment-related allowances. Assignees are only responsible for OASDI and Medicare tax incurred on "stay-at-home" income (i.e. excluding payments on the assignment-related allowances). The Duke payroll system will calculate social security tax, which will be deducted from each paycheck and remitted to the tax authorities. Any excess social security tax over and above the hypothetical obligation will be reconciled with the final settlement.

Taxability of Payments made by Duke Kunshan

China IIT and any allowances that are considered taxable in the US and paid to or on behalf of the Assignee by Duke Kunshan during the year must be imputed in the Duke payroll system so it is reflected as taxable income on the W-2. On a monthly basis, the Support Unit collects this information from the China-based Tax Firm and Duke Kunshan. These payments are imputed for the Assignee in the Duke Payroll system in December each year.

Hypothetical Tax: Process and Calculation

Those Assignees with a China IIT obligation will have different withholding obligations in the US. Instead of paying an "actual tax" to the US federal government, Assignees will have a "hypothetical tax" withheld monthly for the duration of the assignment. This estimated amount will be based on the Assignee's hypothetical stay-at-home income, considering marital status, filing status, dependents, itemized deductions and non-Duke income. Accurate projections of the tax liability are essential to minimize "due to/from" payments so Assignees are asked to make every effort to work with the Tax Firm on this calculation. Assignees will have to sign documentation to allow Duke to change their payroll withholdings to hypothetical tax.

Hypothetical taxes are generally computed annually to establish the appropriate withholding level for the whole year. The calculation is only revised if the Assignee experiences a significant change in their personal situation (e.g. large increase in salary, change in marital status, etc.). Duke requires notification of a qualifying life event within 30 days of the event. If a revised calculation is necessary, the Tax Firm works with Duke to adjust the hypothetical withholdings.

Hypothetical US tax includes federal and state income tax, if applicable, from the deemed home state. The home state is defined as the last state of residence. For non-US citizens, this will be calculated based on residency in North Carolina.

Year-end Filings

Those Assignees with an obligation to pay China IIT or with a tax exemption will have to file an annual return in China. The China-based Tax Firm will keep the Assignee informed of appropriate deadlines and complete the annual filing requirements in China. Assignees who have an exemption from paying China IIT still have an obligation to file an annual return in China.

The US-based Tax Firm will keep the Assignee informed of appropriate deadlines, prepare and file the US and applicable state tax returns and prepare a year-end tax equalization statement for Assignees.

Both processes will require full cooperation from the Assignee.

Final Settlement

The tax equalization settlement usually results in an amount due to/from the Assignee. The tax equalization calculation represents the reconciliation of the theoretical (stay-at-home) tax liability with the amount of hypothetical tax withheld and/or any actual taxes paid.

Monies owed to the Assignee from Duke will be paid within 30 days of the preparation of the tax equalization calculation. Monies owed to Duke by the Assignee must likewise be settled within 30 days of the preparation of the tax equalization unless such balance will be funded in whole or in part by refunds claimed on the tax returns, in which case settlement should occur within 10 days of receipt of the last refund to be received.

Tax equalization settlements are prepared annually at the same time the tax returns are completed. A copy of the calculation is included in the package of tax returns sent by the Tax Firm to ensure consistency and proper application of the Tax Policy.

V. POLICY PROVISIONS

Employment Termination

If the assignment to Duke Kunshan or the employment with Duke is terminated, the Assignee will be subject to the provisions of the Tax Policy through the assignment end date or date of termination. Any tax obligations in the US and China that relate to income earned after the assignment end date or date of termination are entirely the responsibility of the Assignee. Any foreign tax credits for foreign taxes paid by Duke Kunshan, which reduce the US income tax liability before, during, or subsequent to an assignment to Duke Kunshan, are owned/utilized by Duke and Duke Kunshan. Assignees must work with Duke and the Tax Firm with all annual filings required in the year(s) following the assignment end date or termination.

Interpretation and Exceptions

The Duke Provost and the Duke Kunshan Executive Vice Chancellor have ultimate authority with respect to assignments to Duke Kunshan and therefore this Tax Policy. All requests for exception to the Tax Policy will be reviewed by Duke and Duke Kunshan. In the event of varying interpretation of the Tax Policy, Duke and Duke Kunshan will consult with the Tax Firm to arrive at a fair and equitable solution for all parties.

Amendments

The Tax Policy may be wholly or partially amended or otherwise modified at any time at the sole discretion of Duke and Duke Kunshan.

ANNEX 1: Acknowledgment of Understanding and Consent

Assignee Name: ____

Time Period of Duke Kunshan Assignment: ______________________________

I give my consent to Duke and Duke Kunshan to provide any of my payroll and allowance information related to my employment at Duke and assignment to Duke Kunshan to the Tax Firm. I will provide, by the deadlines communicated, any required documents that are not available to Duke or Duke Kunshan in order for the Tax Firm to implement the Duke Tax Policy – Duke Kunshan on my behalf.

I have read and fully understand the Tax Policy, and I agree to abide by the Tax Policy.

____
NAME

____
DATE

ANNEX 2: Definitions

Assignee – A Duke University faculty or staff member who is on assignment at Duke Kunshan University.

China IIT – China Individual Income Tax.

Foreign Tax Credit – US tax credit designed to help minimize double taxation of income and can reduce U.S. federal and in some cases, state individual income tax.

Hypothetical Stay-at-Home Income Tax – The tax the employee on an international assignment would have paid had he/she remained in the US.

Tax Equalization – A process that ensures that tax obligations for the employee on an international assignment remain approximately the same as if he/she would have worked in the US.

Tax Firm – The professional tax services firm contracted by Duke to implement the Duke Tax Policy.

US-China Tax Treaty – Agreement between the US government and the Chinese government for avoidance of double taxation and the prevention of tax evasion with respect to taxes on income.