China alert

Issue 18 – June 2011

Comments sought on implementation rules on social security contributions of foreigners

Regulation discussed in this issue:

- Draft interim measures for the participation of foreigners employed in China in the Chinese social security system, released by the Ministry of Human Resources and Social Security via the website of the Legislative Affairs Office of the State Council for public opinion on 10 June 2011

Background

The Ministry of Human Resources and Social Security in China has invited comments from the public on its draft interim measures for the participation of foreigners employed in China (Draft Interim Measures) in the Chinese social security system.

The salient points in the Draft Interim Measures and our comments on them are as follows:

1. What would the rules be applicable to?

The draft rules are applicable to foreigners (including residents of Hong Kong, Macau and Taiwan) lawfully working in China and holding appropriate work permits. They may be locally employed or employed overseas and on secondment to work in China.

2. What would the social security cover?

The contributions would be made towards a pension as well as medical, injury, unemployment and maternity insurance schemes in China.

3. Under what circumstances would pension contributions be withdrawn?

If foreigners leave China before the mandated date for drawing pensions, their accounts can either be maintained, as they may return to work in China, or terminated. If terminated, the amount accumulated in the account may be withdrawn in a lump sum upon approval by the relevant authority.

Based on the Social Security Law, a retiree is entitled to monthly pension payments only if he and his employer have made at least 15 years of contributions. If a foreigner is residing overseas when pension payments are due, he or she must submit, annually and at request, a certificate issued or approved by the China Embassy/Consulate to prove that he or she is alive to receive disbursements.

4. How would totalisation agreements be applied?

Foreigners working in China who are nationals of countries where China has concluded a totalisation agreement will follow the provisions of the agreement.

KPMG observations

Assuming that contributions for foreigners will be the same as for Chinese nationals and that a similar cap will be applied, the maximum monthly contributions will be approximately RMB 1,286 (USD 198) for employees and RMB 4,324 (USD 667) for employers. This estimate is based on contributions in Shanghai. Contributions in other locations may vary slightly. A breakdown of the contributions to each fund is as follows:

Type of Social Tax	Employee Contribution (RMB)	Employer Contribution (RMB)
Pension	935	2,571
Medical	234	1,403
Unemployment	117	234
Maternity	N/A	58
Injury	N/A	58
Total	**1,286**	**4,324**

The Draft Interim Measures indicate that pension can be withdrawn without clarifying if all the contributions can be withdrawn. The hotline operated by the social security administrations has indicated that only contributions made by the employee can be withdrawn. If the advice on the hotline is correct, then these contributions may become real additional costs to the employer where the employee does not make his own contributions.

If the pension contributions made by both the employer and the employee can be withdrawn, and the employer is able to claim the withdrawn amount from the authorities or through the employee, then this portion of the contributions may not be an additional cost of employment. Employers should consider concluding an agreement with the employee on which party will have the right to the withdrawn sum, especially in the case of a seconded employee where the employer usually bears both the employee's and employer's contributions.

The totalisation agreements that China has with Germany and the Republic of Korea do not cover all types of social taxes. It is still unclear whether exemptions will be extended to cover all the mandated contributions.

The issuance of this Draft Interim Measures is an indication of the authorities desire to start collecting these taxes, although the effective date was not stated therein. Given the deadline for the solicited comments was 17 June 2011, it is unlikely that they can start implementing the measures from 1 July 2011.

That said, an implementation date within the next six months is still possible.

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