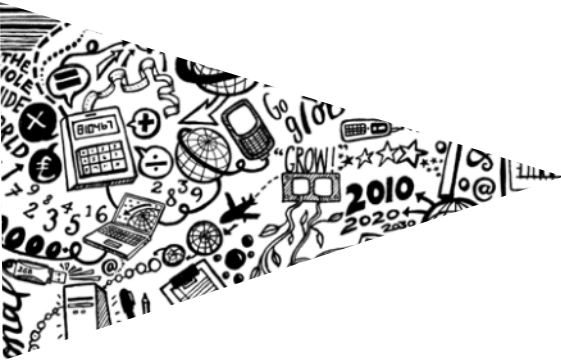


Human resource & Tax alert



China will Impose Social Security Insurance Requirement on Foreign Nationals Working in China

Key points

Executive summary

The Ministry of Human Resources and Social Security ("the MOHRSS") in China released Interim Measures for the Participation of Foreigners Employed in China in Social Security Insurances ("the Interim Measures"), which were approved by the State Council and announced on 6 September 2011. The Interim Measures will take effect from 15 October 2011.

The Standing Committee of the National People's Congress passed the PRC Social Security Law (the "Law") on 28 December 2010, which took effect on 1 July 2011. Article 97 of the Law requires, for the first time, that foreign nationals working in Mainland China should participate in the PRC Social Security System. On 10 June 2011, the MOHRSS drafted the "Provisional Measures for Expatriate Employees Making Social Security Contributions in China (Discussion Draft)" (the "Draft Measures") to supplement the Law.

This Alert aims to introduce and discuss the salient points of the Interim Measures.

1. Participants and Scope of Social Security Insurances

Article 97 of the Law provides that foreign nationals who are employed in China should make reference to the Law to participate in the PRC Social Security System. According to Article 2 of the Interim Measures, foreign nationals working in China should be those legally employed in China, having obtained work permit, Certificate of Foreign Expert, Certificate of Permanent Foreign Correspondent and residence certificates for foreigners in accordance with relevant regulations, and possessing Permanent Residence Certificate for Foreigners. It was not clearly indicated whether the Interim Measures also cover residents from HongKong, Macau and Taiwan.

Foreigners employed in accordance with regulations by an enterprise or organization registered in accordance with laws in China and foreigners who, after signing employment contracts with foreign employers, are assigned to work in subsidiaries, branches or representative offices of foreign enterprises registered in China shall participate in basic pension schemes, basic medical insurance, work-related injury insurance, maternity insurance and unemployment insurance which shall be contributed by those enterprises or organizations and foreign employees in accordance with the relevant social security rates.

2. Time frame for social security registration

The Interim Measures provide that an enterprise or organization should perform social security registration for foreign employees within 30 days after having obtained work permit for the foreign employees.

3. Social security contribution

Social security contribution rates vary in different locations throughout China. It is anticipated that the detailed implementation rules and rates will be announced by the respective local government authorities. Taking Shanghai as an example, if the social security contribution rates are the same as those for Chinese nationals, they will be as follows:



(USD1 = Rmb6.4)

Social insurances	Employee's portion A	Employer's portion B	Ceiling for 2011 monthly salary base for contribution (Rmb) C	Maximum Employee's contribution amount (Rmb) A x C	Maximum Employer's contribution amount (Rmb) B x C	Contribution amount deposited to the employee's individual account (Rmb)
Pension	8%	22%	11,688	935	2,572	935
Medical	2%	12%		234	1,402	246 - 269
Unemployment	1%	1.7%		117	199	0
Maternity	0%	0.8%		0	94	0
Work-related injury	0%	0.5%		0	58	0
Maximum monthly contribution (Rmb)	11%	37%	-	1,286	4,325	1,181 - 1,204
Maximum monthly contribution (USD)	-	-	-	201	676	185 - 188
Maximum annual contribution (USD)	-	-	-	2,412	8,112	2,220 - 2,256

Notes:

- ▶ Basic Pension Fund: According to Article 12 of the Law, 8% of the employee's contribution will be fully deposited into the employee's individual account whilst the employer's contribution will be deposited into the general pool fund of the MOHRSS. We assume this treatment also applies to foreign nationals working in Shanghai in future.
- ▶ Medical Insurance: Employee's 2% contribution will be fully deposited into the individual account whilst about 30% of the employer's contribution will be deposited into individual account depending on local rules. However, in Shanghai, the amount deposited into the individual accounts of the working employees only ranges from RMB140 to RMB420 per person per year.
- ▶ Work-related injury insurance, unemployment insurance and maternity insurance are general insurance and no individual account will be established. When an accidental injury, unemployment or maternity occurs, payments will be made from the general pool.
- ▶ Most foreigners' monthly salaries exceed Rmb11,688, so we have used this amount as the base for projecting the social security liability.



4. Potential benefits for foreigners

According to Article 5 of the Interim Measures, eligible foreign nationals who participate in the Chinese social security scheme can enjoy the relevant social security benefits. Foreign nationals who leave China before reaching the retirement age can either retain their individual account balance in China and resume contribution in their next PRC assignment or they can receive a one-time payment of their individual account balance upon application in writing.

5. Totalization Agreements

According to Article 9 of the Interim Measures, if foreigners who have the nationality of a country which has signed a totalization agreement with China are employed in China, the measures for their participation in social insurance shall be governed by the agreement. Currently, China has entered into totalization agreements with Germany and Korea. German nationals are exempted from the basic pension and unemployment insurance contributions if they have made these types of contributions in Germany. As for Korean nationals, they are exempted from the basic pension contribution if they have made this contribution in Korea. However, they will still be liable to those Chinese social insurance items that were not covered in the respective totalization agreement.

6. Penalty for non-compliance

According to Article 11 of the Interim Measures, employers who fail to perform social security registration or make social security contributions for employees, shall be penalized in accordance with the law, regulations on labor security supervision and other legal and administrative measures. Based on the relevant articles, if an employer fails to make social security contributions for employees, the maximum penalty could be three times of the outstanding social security contribution. In addition, a late payment surcharge of 0.05% per day on the outstanding amount may be imposed.

If an employer employs a foreigner and fails to apply for work permit in accordance with regulations, a penalty of Rmb5,000 to Rmb50,000 can be imposed in accordance with Article 44 of "Implementation Rules for PRC Law on Control of Entry and Exit of Aliens."



Our observations

Upon reviewing the Interim Measures and relevant regulations, further understanding on the following issues may be required:

1. Although the Interim Measures will take effect from 15 October 2011, considering the contribution rates as well as the contribution base vary in different locations, the specific social security rates, contribution bases as well as the starting dates for contributions still need to be clarified by the respective local government authorities. The respective HR management personnel should timely communicate with the relevant government authorities and be well prepared for the new social insurance contribution requirement.
2. According to a regulation issued by the State Council on establishing a unified fund for the basic pension system, i.e., Guo Fa [1997] No. 26, employees who make individual basic pension contributions for more than 15 years can receive basic pension on a monthly basis after retirement. If the employees' contribution period for the basic pension fund is less than 15 years, they cannot enjoy the basic pension benefits after retirement and they can only withdraw the remaining amounts in their individual accounts in one time. If this will apply to foreigners, most foreigners cannot enjoy the monthly pension payment as they generally do not contribute for more than 15 years, but they can only elect to withdraw the individual account balance in one time when they leave China. For foreigners who have made China social insurance contributions for less than 15 years and leave China after completing China employment or assignments, it should be a right choice to withdraw the individual account balance in one time if they expect that they will not contribute for 15 years accumulatively even if they may return to China to work again.
3. The Chinese medical insurances scheme only covers the local medical services in China. Most foreigners may not be able to use it due to the language barrier. If this scheme can extend to international medical clinics or outpatients services for foreigners of local hospitals, it will be a real benefit for foreigners covered by the scheme.
4. The additional insurance cost will not be a small amount if the insurance rates and calculation bases for foreigners follow those for the local Chinese. Taking Shanghai as an example, the total social security contribution will be USD10,524 per foreigner per year. However, according to the regulations, the amount that each of the foreigners can finally withdraw in one time from their individual accounts (including pension and medical) may only be USD2,220 to USD2,256 a year. This means that the majority is not enjoyed by the foreigners. For the employers and employees that will bear the expensive costs, relevant authorities may need to spend time to communicate clearly with them. Also, the Interim Measures did not mention how foreigners who participate in the China Social Security System can enjoy relevant benefits in relation to work-related injury insurance, unemployment insurance and maternity insurance, which needs further clarification.

5. Residents of Hong Kong, Macau and Taiwan are not covered by the Interim Measures. In accordance with the Labor and Social Security Bureau Order [2005] No. 26, employers should sign labor contracts with residents of Hong Kong, Macau and Taiwan employed in China and make social security contributions for them based on "Tentative Ordinance on Collection and Payment of Social Insurance Fees". However, in practice, it appears that this regulation has not been strictly enforced. Therefore, it needs to be clarified whether they are required to participate in the Chinese social security as well.
6. Currently the employer's and employee's contributions on Chinese mandatory social insurances are exempt from China individual income tax. This tax treatment should extend to foreigners when they participate in the scheme.

Next Steps

It is essential for all employers who have foreigners as employees working in China to urgently review the implications of these changes from both the cost and administrative perspectives and to keep close contact with local human resources and social security authorities to learn the local specific requirements and get prepared. Where necessary, employers should seek professional advice in this respect.

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