



China announces Provisional Measures for the Expatriate Employees Making Social Security Contributions in China (Discussion Draft)

Executive summary

On 28 October 2010, the Standing Committee of the National People's Congress passed the People's Republic of China Social Security Law (the "Law") that will take 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 without the details on what types of social security foreign nationals are obligated to contribute to, what kind of benefits foreigners can be entitled to, what amount can be withdrawn by the foreigners in cases of termination of their PRC employment, and what kind of relief will be available in cases of double contributions due to foreigner's home country laws and regulations.

On 10 June 2011, the Ministry of Human Resources and Social Security (MOHRSS) drafted the "Provisional Measures for the Expatriate Employees Making Social Security Contributions in China (Discussion Draft)" (the "Draft Measures") to supplement the Law, and may be able to provide further details to address some of the above-mentioned questions. The Draft Measures and its explanatory notes (in Chinese only) were published on the website of the Legislative Office of the State Council (<http://www.chinalaw.gov.cn>) for soliciting public opinion. The general public can submit their opinions on or before 17 June 2011.

This issue of Human Resource & Tax Alert discusses the salient points of the Draft Measures, which the Company executive overseeing the employment of expatriate employees and foreigners currently working in mainland China should pay attention to.

Salient points

1. Who are obliged to contribute

According to Article 97 of the Law and the Draft Measures, both foreigners working in mainland China and their employers should make social security contributions to relevant authorities as designated by the MOHRSS. "Foreigners working in mainland China" not only include those directly employed by entities registered within China in accordance with the PRC laws and regulations (e.g., FIEs, domestic enterprises, foundations, law firms, accounting firms, etc.) but also cover foreigners who signed employment contracts with overseas employers and are seconded to work in branches or representative offices (ROs) in China. For the latter case, instead of the foreign employers, the relevant branches and ROs should assume the role to make the employer's portion of social security contributions.

Individuals from Hong Kong SAR, Macau SAR and Taiwan working in China should also participate in the PRC social security system in accordance with the Draft Measures.

2. What types of social security insurance are required under the Draft Measures

Similar to Chinese nationals, foreigners working in mainland China should contribute to the following social security insurance:

- ▶ Basic pension fund
- ▶ Basic medical insurance
- ▶ Work-related injury insurance
- ▶ Unemployment insurance
- ▶ Maternity insurance

For contribution rates of each type of social security in Beijing, Guangzhou and Shanghai, please refer to the [Human Resource & Tax Alert](#) issued on 7 January 2011.

According to the Law, housing fund is not part of the PRC social security system. Therefore, the Draft Measures do not give further insight on whether a foreigner working in China will also be required to contribute to the housing fund.

3. What types of benefits foreigners are entitled to

Foreigners participating in the PRC social security system should be entitled to the same benefits as Chinese nationals after meeting relevant requirements. It is not uncommon, however, for expatriate employees repatriate to their home countries after completing their PRC assignments. Therefore, the Draft Measures allow foreigners who leave mainland China before attaining the prescribed retirement age either:

- ▶ Retain their personal account balance of basic pension fund in China and resume contribution during their next PRC assignment; or
- ▶ Elect to receive a one-time payment of their personal account balance of the basic pension fund (i.e., exclusive of any employer's contribution) and terminate their basic pension fund contribution relationship with the PRC.

4. Possible relief for double contributions to both home country and mainland China

The Draft Measures stipulates that foreigners holding citizenship of countries with which mainland China has entered into bilateral or multi-lateral Totalization Agreements could be exempted from contribution to specific types of social security in accordance with the relevant agreements. Currently, the PRC has entered into Totalization Agreements with Germany and Korea.

5. Other administrative measures

Foreigners working in the PRC will be assigned a social security number that will be used nationwide when they change their employment locations.

Foreigners who are entitled to Chinese social security benefits when they have departed from mainland China are obligated to provide a "Letter of Existence" (生存证明) on an annual basis to Chinese authorities designated by the MOHRSS. A more frequent submission of such proof should be supplied upon request.



Some views on the Draft Measures

The Draft Measures would definitely have an impact on both foreigners and their employers who are obligated to participate in the PRC social security system after the Law comes into force next month. In view of the current draft, certain modifications may be helpful to mitigate concerns of both parties:

- ▶ The Draft Measures only provide for foreigners to withdraw the amount of basic pension fund contributed by themselves in cases of early departure from mainland China before attaining the retirement age. It remains silent on whether they can withdraw their employers' contributions to the basic pension fund which could be as high as 20%-22% of three times of the city's last year monthly average salary (depending on provincial rules). If employers factor this additional cost in the salary revision of expatriate employees due to all these new regulatory changes, it would become not equitable if the expatriate are not allowed to withdraw the portion contributed by employers which were indeed coming out of their remuneration packages. Thus, allowing them to withdraw the employer portion as well would be more helpful.
- ▶ Similar to the basic pension fund, allowing foreigners to withdraw their personal and employer contributions to unemployment insurance would be reasonable as it is not unusual for expatriate employees to terminate their PRC employment before heading home. If in cases like this, flexibility in granting unemployment insurance based on prior contributions would be helpful to the individuals, and equitable to the companies that made contributions.
- ▶ The Law will come into force on 1 July 2011. It appears to be possible that the Draft Measures would also take effect concurrently with the Law. As the remuneration packages of expatriate employees already working in mainland China have already been agreed based on an assignment basis or would be reviewed and revised on a 12-month basis, it would be difficult for the employers and the expatriate employees to suddenly take up all the additional costs for contributing to the Chinese social security system. It would therefore be valuable to allow a grace period (e.g., six months) so that both parties can adjust themselves before starting the actual contributions.

Next Step

The Draft Measures are open to the public for comments until 17 June 2011, which is this Friday. The public can log on to the website <http://www.chinalaw.gov.cn> to express opinions.

Whoever wishes to express their opinions on the Draft Measures should log on to the above website to provide their comments (in Chinese only) for the government's consideration as further modifications may be possible. We will pay close attention to new developments on this subject and keep you posted.

For further information, please contact Ernst & Young's Human Capital practice in China:

Hong Kong

Paul Wen
+852 2629 3876
paul.wen@hk.ey.com

Ami KM Cheung
+852 2629 3286
ami-km.cheung@hk.ey.com

Beijing

Jason Mi
+86 10 5815 3990
jason.mi@cn.ey.com

William Cheung
+86 10 5815 3301
william.cheung@cn.ey.com

Shanghai

Norman Yu
+86 21 2228 2287
norman.yu@cn.ey.com

Freeman Bu
+86 21 2228 3880
freeman.bu@cn.ey.com

Ben Fan
+86 21 2228 2257
ben.fan@cn.ey.com

Hangzhou

Amy Wang
+86 571 8736 5000
amy.wang@cn.ey.com

Shenzhen

Sam Pang
+86 755 2502 8160
sam.pang@cn.ey.com

Guangzhou

George Sy
+86 20 28812912
george.sy@cn.ey.com

Ernst & Young

Assurance | Tax | Transactions | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 141,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit www.ey.com

About Ernst & Young's Tax Services in China

Ernst & Young's 930 tax professionals in China provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. Our talented people, consistent methodologies and unwavering commitment to quality service help you to build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its ambitions. It's how Ernst & Young makes a difference.

www.ey.com/china

© 2011 Ernst & Young (China) Advisory Limited.
All Rights Reserved.

FEA no. 03001196

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither Ernst & Young (China) Advisory Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.