

# HR and tax alert



## China

### Further guidelines issued on the implementation of the new social security obligations for foreign nationals working in Beijing

#### Executive summary

A notice was published on 19 December 2011 on the official website of the Chaoyang Social Security Center, a district in Beijing, regarding the social security registration and contribution for foreign nationals. The notice from Chaoyang refers to Renshebaotingfa [2011] No.113, an internal notice issued by State Ministry of HR and Social Security to the respective local bureaus. It is an internal circular and not available to the public.

The notice confirms that all registrations should be completed by 31 December 2011 and, where necessary, retroactive payments of Chinese social security be remitted backdated to 15 October 2011. Failure to do so will incur a late payment surcharge (0.05% per day per individual of the contributions due).

We are not aware that any other location has issued a similar announcement yet, although the possibility that other bureaus following Chaoyang's lead should not be discounted.

#### Background

In order to implement "Notice of the Implementation of Social Security on Foreign Nationals working in China" (Renshebaotingfa[2011] No.113) practically, the relevant operational procedures are listed in the notice as below:

1. The deadline of all of the relevant social security participation services for foreign nationals will extend to 31

December 2011. The relevant services include social security registration of foreign nationals and new social security registration for employers.

2. The employer is required to follow the instruction of "Guidelines on the Imposition of Social Security on Foreign Nationals Working in China issued by Beijing" Jingshebaofa[2011] No.55 to complete the registration.

However, if it is difficult for the employers to provide the original documents for any expatriate a full version of the photocopies of the such documents can be provided instead and the social security centre should proceed with the respective registration accordingly.

3. When registering with the social security system, each foreign national is required to provide his/her full English name in accordance with the name on his/her passport.
4. For those foreign nationals who have contributed into a social security system in another country which has a totalization agreement with China, the social security registration process shall follow the procedure outlined below:

- i) The employer should ensure the registration and payment of contributions for the foreign national is made within 30 days after his/her work permit is issued;
- ii) Within 3 months from the date the work permit is issued, the Foreign National can take exemption of social security contribution according to totalization agreement with another country if a Certificate of Coverage issued by another country can be provided. For those who have registered and made the contributions to the Beijing social security system, for previous months, the individual can claim a refund accordingly.
- iii) If a Certificate of Coverage is provided after 3 months from work permit issuance date, relevant exemptions can be claimed from the month the Certificate of Coverage is submitted to the bureau. No refund is possible for the contributions that have been paid to the Beijing social security system for previous months.
- iv) If a Certificate of Coverage cannot be provided after 3 months after the work permit issuance date, (and if the foreign national has not yet made contributions to the social security system), a retroactive payment is required and late payment surcharge will be imposed.
- v) For the social security items which are not covered in the totalization agreement or if the covered period is expired, the Foreign National is obliged to make contributions accordingly without any exemption.

5. For any foreign nationals who have obtained a work permit in Beijing before 31 October 2011, a retroactive payment from October 2011 to December 2011 is required. For those foreign nationals who have obtained a work permit in Beijing after 1 November 2011, a retroactive payment is required only from the month in which the work permit is issued.

If any foreign national completes the registration with the social security centre before 1 January 2012, no late payment surcharge will be imposed on the retroactive payments from October to December of 2011. However, for registration after 1 January 2012, implementation on the retroactive payments should follow "Measures of failure to participate social security system and late payment surcharge" issued by Jingshebaofa[2011] No.39 and impose late payment surcharge accordingly.

#### Next steps

It is essential that all employers with expatriate employees working in China urgently review the implications of this announcement and consider the impact it has on the registration process/timelines for its foreign nationals working in China.

Ernst & Young continue to be in ongoing discussions with the Chinese authorities and we aim to provide a further update of these new obligations shortly.

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