

Further clarification on social insurance participation of foreigners working in China



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Background

The Chinese social insurance scheme covers five types of social insurance contributions including pension, medical, work-related injury, unemployment and maternity insurance. Previously, foreigners working in China are not required to participate in the Chinese social insurance scheme. However, the situation has changed.

- According to *the Chinese Social Insurance Law* (“*the Law*”), foreigners working in China can refer to the Law and participate in the social insurance scheme effective from 1 July 2011.
- According to *the Interim Measures for the Participation of Foreigners Employed in China in the Social Insurance* (“*Decree No. 16*”) issued by the Ministry of Human Resources and Social Security (“MOHRSS”), foreigners working in China must participate in the social insurance scheme effective from 15 October 2011.

Following the release of the above measures, there were discussions regarding whether the participation of foreigners working in China in the social insurance is an optional “can” in accordance with the Law or a compulsory “must” in accordance with Decree No. 16.

On 2 December 2011, MOHRSS issued *Notification on Guiding Measures for Foreigners Working in China to Participate in the Social Insurance* (“*Decree No. 113*”), which clarifies that the participation of foreigners working in China in the social insurance scheme is a must.

However, foreign employees who come from countries that have concluded totalisation agreements with China could be exempted from certain Chinese social security contributions in accordance with such agreements.

Currently, China has only entered into totalisation agreements with Germany and South Korea. Basically, German nationals are exempted from pension and unemployment contributions if same types of contributions are made in Germany; whereas, South Korean nationals are exempted from pension contributions if they have made such contributions in South Korea. However, these nationals are still liable to other social insurance items not covered in the totalisation agreements.



Key points worth noting

The key points of Decree No. 113 include:

- Foreigners working in China who meet the participation requirements should participate in the Chinese social insurance scheme from 15 October 2011.
- Foreigners working in China who meet the participation requirements should register with the MOHRSS authorities by 31 December 2011, if they have started working in China before 31 December 2011. Otherwise, there could be late payment surcharges.

Not all cities have implemented Decree 16 or Decree 113.

We set out below the implementation status in certain major cities as of 15 January 2012 for reference purpose.

Relevant companies or foreigners are suggested to check with their respected MOHRSS authorities on the implementation status.

Cities	Implementation Status
Beijing	Implemented retrospectively from October 15, 2011
Guangzhou	Implemented without updated implementation rules
Nanjing	Implemented without updated implementation rules
Ningbo	Implemented without updated implementation rules
Shenzhen	Implemented without updated implementation rules
Shanghai	Not yet implemented



Comments

Relevant companies or foreigners are suggested to assess and budget the potential costs of making social insurance contributions for foreign employees.

Relevant companies or foreigners		Proposed actions
Located in cities which have implemented the rules <i>(e.g. Beijing)</i>	HR department	Review the relevant employment contracts. Assess and budget the additional labor costs if any.
	Finance department	Assess and budget the PRC corporate income tax and individual income tax impact as a result of making social insurance contributions for foreign employees.
	Foreigners	Review the employment contracts and payment terms with the employing units.
Located in cities which have <u>not</u> implemented the rules	HR department	Check constantly with the MOHRSS authorities on the implementation progress and schedule if applicable.
	Finance department	Consider and assess the need of accruing additional costs associated with the social insurance contributions made for foreign employees.
	Foreigners	No proposed action.

From a China individual income tax ("IIT") perspective, social insurance contributions made by employer in accordance with the Chinese Social Insurance Law is exempted from IIT while the contributions made by the foreign employee is deductible for IIT purpose.

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