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## China Alert

## Social Insurance Contribution Requirements for Foreigners Working in China

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In late 2010, China unveiled the new Social Insurance Law with an aim to strengthen the administration of social insurance funds and facilitate labour mobility. The new law, which took effect from 1 July 2011, has attracted a lot of attention as it introduced a new provision on the participation of foreigners in the social insurance scheme. With the extension of the social insurance scheme to cover foreign employees for the first time, the Ministry of the Human Resources and Social Security ("MHRSS") issued two important circulars to provide guidance on enforcement. These include:

- Interim Measures for Social Insurance System Coverage of Foreigners Working within the Territory of China dated 6 September 2011 (Decree No.16)
- Notice Clarifying Certain Issues Regarding the Participation in the Social Insurance Scheme by Foreigners Working in China dated 2 December 2011 (Decree No. 113)

It is important to note that participation in China's social insurance scheme has become a mandatory requirement for foreigners who meet the conditions for contributions since 15 October 2011. Affected employers and employees should take immediate steps to comply with the new registration and contribution requirements so as to avoid penalties and/or late payment surcharges.

This alert highlights the salient provisions of the new rules and the general compliance procedures.

### Salient points

- Foreigners lawfully working in China are required to participate in China's social insurance scheme that covers five types of social insurance contributions, i.e. basic pension insurance, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance.
- The rules apply to all foreign nationals who possess employment permits, including Employment Permit for Foreigners, Foreign Expert Certificate, or Resident Foreign Correspondent's Press Card, Resident Permit for Foreigners and Permanent Residence Permit of Foreigners. Foreign nationals dispatched by overseas employers to work in their branches or representative offices in China (i.e. host entities) are also required to participate in the social insurance scheme.
- All affected employers, host entities and foreign employees should make social insurance contributions in accordance with the rules starting from 15 October 2011 or upon commencement of employment in China, whichever is later.

- Affected employers and host entities should perform social insurance registration for the foreign employees within 30 days from the date of submission of employment permit applications. For affected foreign employees who meet the conditions for registration after obtaining work permit in 2011, registration should be made by employers and host entities on or before 31 December 2011 to avoid penalties and/or surcharges.
- Foreign nationals from countries that have concluded totalisation agreements with China could be exempted from making social insurance contributions that are covered in such agreements. To date, China has only concluded totalisation agreements with Germany (covering pension and unemployment) and South Korea (covering pension only). Since such totalisation agreements do not cover all five types of social insurance contributions in China, affected nationals from Germany and South Korea are still required to make contributions in China for insurance types that fall outside the scope of the agreements. Affected foreign nationals who would like to apply for protection under the totalisation agreements should submit a copy of the Certificate of Coverage from their home countries within 3 months upon receipt of employment permits in China.
- Social insurance contributions should be made in RMB and the exact contribution rates and base are determined by the local authorities. Foreigners who participate in the scheme are assigned social security numbers and given social security cards to enjoy prescribed benefits under the scheme once the qualifying conditions are met.
- A penalty from one to three times of the outstanding social insurance contributions and a daily surcharge of 0.05% could be imposed for late payment based on the outstanding amount from the payment due date.
- Since employees from Hong Kong, Macau and Taiwan are subject to special regulations under Decree [2005] No.26 issued by the MHRSS in June 2005, there remains uncertainty over the applicability of the new rules on such employees. We understand that the local social security bureaus in certain cities have started to apply the new registration and contribution rules for foreign nationals on Hong Kong, Macau and Taiwan employees while other cities have not yet imposed such requirements.

In view of the retroactive effect of the above circulars, affected employers, host entities and foreign employees in China should take immediate action to ensure that they comply with the registration and contribution requirements. They should also take note of the costs and administrative implications, the differences in contribution rates across different cities in China as well as other Enterprise and Individual Income Tax implications associated with the new contribution requirements.

For more information about the new social insurance rules, please contact our PRC tax team.

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