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GES NewsFlash

People's Republic of China (PRC) — Implementation rules officially announced requiring all foreign individuals working in China to participate in the PRC Social Security System

September 19, 2011

Summary

On September 8, 2011, the Provisional Measures for Foreigners to Participate in the PRC Social Security System (the "Implementation Rule"), which was announced in draft form ("Draft") for public consultation in June, has been finalized and promulgated by the Ministry of Human Resources and the Social Security System. The Implementation Rule will officially take effect on October 15, 2011.

Essentially, all foreign individuals who legally work in the PRC with either a work permit, resident permit, or permanent residency certificates are required to participate in the PRC Social Security System. When compared to the Draft, a more detailed implementation guidance is provided under the finalized Implementation Rule.

Key implications

The Implementation Rule requires that :

- All foreign individuals legally working in China (i.e., those who are legally hired by the PRC entities or assigned to work in the PRC entities/subsidiaries and representative offices by their foreign employers) are required to participate in the PRC Social Security System, unless exemption is provided under a social security Totalization Agreement signed between the PRC and the individuals' home country;
- The mandatory PRC Social Security contributions for foreign individuals includes basic pension, basic medical insurance, work-related injury insurance, unemployment insurance, and maternity insurance schemes. Both employers and employees are required to contribute into these schemes as stipulated;
- Social security codes will be set up for foreign individuals coming from different countries for tracking and administration purposes, where social security cards will be issued by the relevant authorities to all registered foreign individuals.

When compared to the Draft, the Implementation Rule has retained most of the Draft's context, but also contains several changes as indicated below. Specifically, the Implementation Rule :

- Expands the coverage of foreign individuals.
 - In addition to the foreign individuals who have obtained work and resident permits, the Implementation Rule also requires those foreigners who have obtained permanent residency in the PRC to participate in the Social Security System as stipulated therein.
- Introduces a timeline for social security registration.
 - Employers are required to register all qualifying foreign individuals working in the PRC with the local social security authority within 30 days from the date they applied for their relevant employment permits.
- Emphasizes supervisory powers from the social security authorities.
 - The Implementation Rule requires a close and coordinated cooperation between the different government authorities (i.e., immigration and labor bureaus) with the social security authority. Information sharing among the different government authorities is encouraged. In particular, the social security authority is required to check the work permit applications status on a regular basis with the relevant immigration authorities.
 - Employers that fail to fulfill the social security registration obligation or fail to make social security contributions will be subject to penalties stipulated under the Social Security Law and other relevant regulations. If the foreign individuals are working in the PRC without legal work permits, their local employers will be subject to penalties and/or other punitive measures stipulated under the rulings regulating the foreign individuals working in China.

Deloitte's view

The official announcement of the Implementation Rule will have significant impact on multinational companies (MNCs), especially those with a large number of foreign employees/assignees, whether on a local-hired basis or under a secondment arrangement.

At present, the PRC only has a signed social security Totalization Agreement with Germany and a tentative pension agreement with the Republic of Korea to avoid a potential double levy. We understand that further Totalization Agreements are currently in the process of being negotiated between the PRC and other major jurisdictions. As such, most foreign individuals will be mandatorily required to participate in the PRC Social Security System.

The Implementation Rule will clearly lead to additional social security costs and consequently administration burdens for MNCs managing foreign individuals working in China. On the other hand, the Implementation Rule will also provide legislative support on a national basis for those foreign individuals who plan to work in the PRC for a longer period to be able to participate in the PRC Social Security System and benefit from such schemes in the long run.

Another key factor under the Implementation Rule is the introduction of social security codes for foreign individuals working in the PRC. These codes will provide a better tracking mechanism to monitor foreign individuals working in the PRC, from not only a social security perspective, but also by potentially expanding into other areas such as tax, foreign exchange, and immigration. It is important to point out that the Implementation Rule also emphasizes that if the foreigner individuals are working in the PRC without legal work permits, their local employers will be subject to penalties and/or other punitive measures according to relevant rules.

In view of the above, we would recommend companies to take the following actions:

- Review carefully the current situation for the foreign individuals working in the PRC under various mobility/employment arrangements and budget for their social security costs on a going-forward basis.
- Set up internal administration procedures for foreign individuals with regard to setting up social security codes and social security contributions.
- Arrange for proper staff communications for any foreign individuals working in the PRC specifying their personal rights and responsibilities with the new social security changes.
- Review the current mobility/employment arrangements and consider proper human resources strategies on a going-forward basis.
- Consider applying for exemptions of applicable schemes for any employees from Germany and South Korea.
- Follow up on implementing the social security contribution for residents from Hong Kong, Taiwan, and Macau

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People to contact

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals at our Deloitte offices as follows:

Beijing

Gus Kang

Tel: + 86 (10) 8520 7600

Huan Wang

Tel: + 86 (10) 8520 7510

Guangzhou

German Cheung

Tel: + 86 (20) 2831 1369

Hong Kong

Mona Mak

Tel: + (852) 2852 1051

Stephen Green

Tel: + (852) 2238 7178

Shanghai

Joyce W. Xu

Tel: + 86 (21) 6141 1178

Mark Ni

Tel: + 86 (21) 6141 1458

Sandy Cheung

Tel: + 86 (21) 6141 1156

Tony Jasper

Tel: + 86 (21) 6141 1228

Shenzhen

Vincent Lo

Tel: + 86 (755) 3332 1682

Jim Chung

Tel: + 86 (755) 3332 1699

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30/F Bund Center
222 Yan An Road East
Shanghai, PRC

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