

# News Flash

## China Tax and Business Advisory

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Our International Assignment Services / Human Resources Services team offers comprehensive solutions that help clients maximise business value from international assignments - bringing organisations to the leading edge of business performance. We specialise in international assignments management, expatriate tax compliance and advisory, tax & assignment policy review and design, regional health check, expatriate compensation and benefits design and global visa services.

### ***Latest updates on enforcement and collection of social security contributions for foreigners working in China***

In the October 2011 **Issue 27** of our China Tax and Business News Flash, we discussed the national social security scheme applying to both Chinese companies and their employees (including local PRC and foreign nationals). The basic regulatory framework of this scheme is made up of the *Social Security Law*, its *Implementation Rules* as well as the *Provisional Measures on the Participation in the Social Security Scheme by Foreign Employees Working in China* (“the Provisional Measures”), issued by the Ministry of the Human Resources and Social Security (“MHRSS”) dated 6 September 2011. However, there are still various unclear issues which have not been specified in these policy documents.

On 2 December 2011, the MHRSS issued a Circular Renshetingfa [2011] No. 113, titled “*Notice Clarifying Certain Issues Regarding the Participation in the Social Security Scheme by Foreign Employees Working in China*” (“Circular 113”) to further clarify some points of concern/uncertainty arising from the aforementioned regulations that affect foreigners participating in the social security scheme. Circular 113 has been circulated by the MHRSS for a while but has only been formally released on its official website recently.

In this News Flash, we would like to share with you the salient points of Circular 113 and our observations on this important and widely discussed topic that affect many businesses and their foreign employees in China.

### ***Salient points of Circular 113***

We summarised the salient points of Circular 113 in the table as below:

<b>Effective date</b>	<ul style="list-style-type: none"> <li>• The effective date for social security contribution for foreign employees working in China is <b>15 October 2011</b> or upon the commencement date of their employment in China (whichever is later).</li> <li>• Companies should complete the registrations for their foreign employees who have obtained work permit and worked in China in 2011 by <b>31 December 2011</b>; otherwise, there will be a daily late payment surcharge of 0.05%.</li> </ul>
<b>Claim of protection under Totalization Agreements</b>	<ul style="list-style-type: none"> <li>• Foreign employees entitled to protection under a Totalization Agreement should produce a copy of the Certificate of Coverage from their home country <b>within 3 months</b> upon obtaining the work permit; otherwise, contributions can only be stopped after the Certificate of Coverage is submitted and prior contribution is not refundable.</li> <li>• For the types of social security that are not covered by the relevant Totalization Agreements, foreign employees are still required to contribute to these non-protected types of social security.</li> </ul>
<b>Administration</b>	<ul style="list-style-type: none"> <li>• Local Social Security Bureau will share and exchange information and intelligence with the local Public Security Bureau and Labour Bureau etc. on information concerning the arrival/departure and employment status of a foreigner.</li> </ul>

### ***Our observations***

- Circular 113 clarifies various fundamental issues surrounding the implementation and enforcement of the social security contribution by foreigners and their Chinese employers and sets out in a strong tone on the Government's determination to collect this social security contribution by foreigners for the sake of preserving the authority and solemnity of the *Social Security Law* as well as to follow international practice and protect the legitimate rights and interests of foreign employees working in China. Therefore, it is expected that the requirement for foreign employees to participate in the Chinese social security scheme will be widely implemented and enforced very soon. Indeed, we are aware that in locations such as Beijing and Guangzhou, many companies have been approached and requested by the local Social Security Bureaus to register their foreign employees and to start the contributions.
- However, it still remains unclear as to whether Taiwan, Hong Kong and Macao ("THKM") residents are within the scope of the Chinese social security scheme. In Beijing, some districts (e.g., Chaoyang District) have requested companies to only register their non-THKM foreign employees, i.e., not to register THKM residents. In Southern China (e.g., Guangzhou and Shenzhen), however, we are aware that the local Social Security Bureaus only requires THKM residents who are directly employed by local employers to register and participate in the Chinese social security scheme and this appears to be in line with the requirement set out in Circular MHRSS Decree [2005] No. 26 issued by the MHRSS back in June 2005.
- Despite the 31 December deadline has already lapsed, given the tight deadline imposed by Circular 113, we believe that many local Social Security Bureaus may accept the late registration if the companies take immediate action to quickly register their foreign employees and start the contributions. Hence, in order to avoid potential exposures to the late payment surcharge and penalty, companies should take immediate steps to review their own situations, consider the potential tax and other non-tax implications arising from this, communicate with the foreign employees concerned and take necessary steps to comply with the requirements.
- Special attention should also be given to certain types of foreign employees. For example, for foreign employees working in representative offices or from countries with Totalization Agreement with China (currently, South Korea and Germany only), there are additional (and somehow complicated)

requirements on the compliance procedure. For THKM residents, their Chinese employers should also consult the local Social Security Bureaus and monitor the ongoing development from time to time. For foreign employees who are already contributing to their home country pension/social security plans, their Chinese employers (or host employers) may have to consider bearing the employees' share of the Chinese social security contributions in order not to increase the burden of the employees. Should this happen, professional tax advice must be sought in order to avoid any adverse impacts to the home and host tax positions and to the HR or mobility policies.

Please feel free to contact your usual PwC client support team or our International Assignment Services experts directly for more detailed advice in this area.

In the context of this News Flash, China, Mainland China or the PRC refers to the People's Republic of China but excludes Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Region.

The information contained in this publication is for general guidance on matters of interest only and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PricewaterhouseCoopers client service team or your other tax advisers. The materials contained in this publication were assembled on 19 January 2012 and were based on the law enforceable and information available at that time.

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