IIT and Social Insurance for Foreigners Employed in China.

www.lehmanbrown.com

LEHMANBROWN
雷 博 國 際 會 計
International Accountants

Individual Income Tax (IIT)

General IIT Principles

For individuals to pay tax in China (PRC Tax Resident), they need to be domiciled in China (Chinese national). A Non-PRC tax resident is defined as an expat working in China, whose IIT is determined by applicability of the tax treaty, length of their stay in the PRC (People's Republic of China) within a calendar year (or tax year), as well as if the payroll of the expatriate is borne or deemed as borne by a PRC entity and also the position and nature of duties performed by the expatriate.

Tax Resident

An expatriate being domiciled in China is defined by being a registered homeowner with a personal residence in the PRC and who usually or regularly resides in the PRC due to a family relationship or business relationship. The individual is liable to pay IIT on his or her worldwide income derived from sources both inside and outside of China.

Income Subject to IIT

This consequently depends on the number of days spent in the country and whether the income is paid by a PRC employer or is PRC sourced income and borne or deemed as borne by an establishment in the PRC. For 90 days (or 183 days, where a relevant treaty applies) or less spent in the PRC, only PRC-sourced income, paid by a PRC employer which is borne or deemed as borne by a PRC entity is subject to IIT. Between 90 days (or 183 days where a relevant treaty applies) to a year, only PRC-sourced income, irrespective of whom the payment is made by, is subject to IIT. From 1 to 5 years, the worldwide income, except the income relating to non-PRC services and is paid or borne by non-PRC entities is subject to IIT. If the stay exceeds 5 years, then the worldwide income is subject to IIT.

PRC-Sourced Income

This is defined as income derived from PRC sources irrespective of where the payment is made from (internally or outside of China), including income from services rendered within China, employment (for example; wages, bonuses, allowances, subsidies, stock options and income related to an individual's position), or the performance of a contract, etc. Also, income from leasing of property for use in China, or assignment of properties, for example, buildings, land use rights and more, located within China, as well as income from granting licensing rights for use within China and income from interest paid by companies or other economic organisations or individuals in China is deemed as PRC- Sourced Income.

Tax Calculation Method

The IIT payable can be calculated by the below formula:
A quick calculation method is used to simplify the tax

$$\text{IIT Payable} = \text{Taxable Income} \times \text{Applicable Tax rate} - \text{Quick Calculation Deduction (QCD)}$$

calculation. Individual income tax on wages and salaries is payable on a monthly basis. An individual is also entitled to a fixed monthly deduction for expenses (for local staff – RMB 3,500 and for an expatriate- RMB 4,800).

Planning for Expats

Expatriates can take advantage of the non-taxable benefits and the special tax calculation for bonuses, break the five year rule, arrange dual employment where applicable and have offshore service agreements.

The 'Five Year Rule' (to have been residing in China continuously for 5 years)

An individual who has resided in China for 365 days in a calendar year (or tax year) is deemed to have lived in China for a full year. However, absences such as, a (single) temporary absence from China of less than 30 days or multiple absences less than a total of 90 days within a calendar year, are disregarded for the purposes of calculating the days of residence. Once the rule is established, in the 6th year (if a full year), the worldwide income will be subject to PRC IIT from the 6th year onwards, however, if the 6th year is not a full year (temporary absence is not counted), PRC- sourced income in any particular year would be subject to PRC IIT.

On one hand, breaking the 5 years rule, before the 5 years residence is established, requires the individual to avoid residing in China continuously for 5 full years; therefore, by staying out of China for more than 30 days on a single trip or a collective period of more than 90 days in a calendar year, this can be established. On the other hand, breaking the 5 years rule after the 5 years residence is established requires the individual to reside out of China for less than 90 days (or less than 183 days for treaty residents) in any one year from the sixth year.

Non- Tax Benefits

An individual can take advantage of these benefits, as certain types of reimbursement, i.e. housing reimbursement, meal and laundry expenses, home trips, language courses and education expenses in the PRC, relocation allowances, that are provided to an expatriate (and of reasonable amount), on the reimbursement basis are not taxable.

Special Tax Calculation Method for Bonus

For example, if the annual bonus for the year 2013 was RMB 80,000, (the amount determining the tax rate and QCD is RMB 80,000 divided by 12 equaling RMB 6,667), the applicable tax rate is 20% and the QCD (quick calculation deduction) is RMB 555, therefore, the IIT payable is:

RMB 80,000 x 20% - RMB 555 = RMB 15,445

This method can only be applied once per year.
Furthermore, other bonuses are to be combined with wages and other types of employment income for the month, in order to determine the tax rate and calculate the liability.

Offshore Service and Employment Agreement

Service income from a consulting agreement is treated differently from an employment income under current PRC IIT regulations. Expatriates who are not undertaking the 5 years rule have no obligation to report their non-employment income (company to company, or individual to company) sourced outside China to the PRC tax authority. This is applicable to the individual where there is existence of offshore duties and where there is a certain period of absence from China.

Chinese Locals

Commercial insurance benefits may not be taxable if the insurance premium cannot be distinguished in the name of an employee. Professional development allowances may not be taxable if the valid invoices can be presented indicating that the expenses are for education or professional training.

Dual- Employment Agreement

If an expatriate is a senior manager, with positions both in a company registered inside China and the other outside of China, who has lived in China for more than 183 days but less than 5 years, works outside of China for several days within a month and receives salary separately paid by both their PRC and non-PRC employers, their PRC IIT exemption is the portion of salary paid by the non-PRC employer for working days outside China (includes working days and public holidays outside China), in relation to his non-PRC position.

This is subject to conditions and the 5 years rule is still undergoing discussions.

Simple Case:

Mr. A, a foreigner, is appointed as General Manager with a Beijing WFOE and at the same time taking employment position with the Beijing WFOE's overseas headquarters in the United States.

Both positions will be under employment agreements;

Mr A is expected to spend 40% of his time abroad and the remaining 60% of his time staying within China;

Base salary for the China onshore position with the Beijing WFOE will be RMB 50,000 and for the offshore position will also be RMB 50,000.

This gives Mr A an income of RMB 100,000 per month.

IIT Calculation Result under Normal Circumstances:

Regular Base Salary- Monthly	RMB 100,000
Applicable Formula	(100,000 – 4,800) x 45%- 13,505
Regular IIT Payable- Monthly	RMB 29,335
Tax Effective Rate	29.3%

IIT Calculation Result with Dual Arrangement

Regular Base Salary- Monthly	RMB 100,000
Applicable Formula	[(100,000 – 4,800) x 45%- 15,375] x(1-40%x50,000/100,000)
Regular IIT Payable- Monthly	RMB 23,468
Tax Effective Rate	23.5%

Social Insurance for Foreigners

Legislative Background

The publication of the China Social Security Law (the SS Law) was made in October 2010, and took effect from July 2011. In addition, the draft of "Provisional Measures of Participation in Social Insurance by foreign employees in China" (the Provisional Measure) was released for public consultation on the 10th of June 2011, which in effect states that the participation of foreign employees is a mandatory requirement. As of the 6th of September 2011, the finalised Provisional Measure was realised and took effect on the 15th of October 2011. To date, only Beijing has implemented collection of welfare, (central Beijing, outlying regions are less strict and still reviewing procedures).

Who is affected?

Non-Chinese individuals legally employed in China with a working permit, a foreigner employment permit, a foreign expert permit, a foreign correspondent permit and a permanent residence certificate for foreigners (Chinese green card).

Type of Employment Relationship

There are two types of employment relationships; these include Local Employment, which consists of foreigners who are employed directly by Chinese companies, and Foreign Employment with a China secondment agreement, assigned by a foreign employer to work in their Chinese subsidiaries, branch offices or representative office (RO).

Foreigners with a foreign employment (F Visa) on travelling basis or on a PE Status, stationed in China (with no attachment to a locally registered entity/organisation) are not affected. Only foreign individuals who are directly employed are affected. There are some uncertainties on a few positions, for example, working foreigners who are not formally employed, without these documents, part-time workers, self-employed, freelancer, individual contractors and expatriates working for offshore projects registered in china.

Types of Employer

Enterprises including a RO or Branch office in China held by a foreign company, or public institution, foundation or law firm, accounting firms, non-governmental organisation, or a privately owned non-enterprise institution, and any other entity which is properly registered under the domestic laws in China, are subject to the legislation.

Exclusion

Chinese residents or regions with a signed bilateral agreement, and foreigners under the protection of the Totalisation Agreements with China, are relieved from the obligation. At present, Germany (for pension and unemployment) and South Korea (pension and unemployment) are in the agreement with China. Denmark signed the agreement with China (covering pension), which became effective starting May 2014, whilst other countries, for example, France; Japan; Switzerland, etc., are starting discussions.

Residents from Taiwan, Hong Kong and Macau were originally covered under the measure; however, they were removed from the finalised version. Furthermore, uncertainty arises when there is exemption from the contribution obligation, or the Provisional Measure does not apply to Hong Kong, Taiwan and Macau individuals, but subject to a separate set of rules, such as the Circular [2005] No.26 (for which no implementation guidelines have been set yet).

Social Insurances Covered

This consists of the 'five insurances'. These are basic; pension and medical insurance, work-related injury insurance, unemployment insurance, and maternity insurance. However, housing funds are not included, but for Chinese personnel they are.

Amount Contributed

In the "Provisional Measure", the contribution rates and basis is not specified, as cap salary and the contribution rates vary from place to place. These are still being calculated (this also applies to Chinese nationals). The monthly contribution basis is the individual's actual salary and capped at 3 times more than the average municipal monthly salary of the locality, (this is announced annually by the government), as well as bottomed at 60% of the average municipal salary. In 2014, the combination of employer and employee contribution is around RMB 7,355 – 7,476 (Beijing) and RMB 6,874 (Shanghai) per month.

	Beijing		Shanghai		Guangzhou	
	Employee	Employer	Employee	Employer	Employee	Employer
Pension	8%	20%	8%	21%	8%	12%
Medical	2%+RMB 3	10%	2%	11%	2%	8%+RMB 15.1
Unemployment	0.2%	1%	0.5%	1.5%	0.5%	8%+RMB 15.1
Maternity	0%	0.8%	0%	1%	0%	0.85%
Work – Related Injury	0%	0.3%-1%	0%	0.5%	0%	0.5%-1.5%
Total	10.2% + RMB 3	32.1%-32.8%	10.5%	35%	10.5%	22.25%+15.1-23.25%+15.1
Ceiling For 2014 Monthly Salary Base for Contribution (RMB)	17,379		15,108		17,424	
Maximum Monthly Contribution (RMB)	1775.7	5578.7-5700.3	1586.3	5288	1508	3410-3584

The contribution rate and maximum contribution level are valid from the middle of 2014 to the middle of 2015. The basis for pension in Guangzhou is RMB 13,404

Benefits

Officially, a foreigner and a Chinese local are entitled to the same benefits. There are no clarifications on how to claim these benefits or any details of them except for medical and pension. For pension, an individual contribution account can be preserved if a foreigner is leaving China. Additional years of contribution (15 years or more) can be accumulated when the foreigner returns and continues to participate. Furthermore, pension benefits can be claimed at the qualified age (male 60, female 55) however, if the individual is living overseas, documentation proving their physical existence must be provided on an annual basis. In the event of death, the balance of the individual's social security account can be inherited.

Tax implication

Individual Income Tax

There is no formal clarification, so they follow the same rules as applicable to Chinese nationals (for personal contribution, tax is deducted, but the employer's contribution is not taxable (within a specified limit only, extra contribution gets taxed).

Program Registration

An employer must register foreign employees to the security program, under his/her name, as an individual is not allowed to be registered in their own name. The registration should take place within 30 days after applying for a working permit for the foreign employee. A unique and permanent social security number is assigned to the foreign employee as well as a social security card. In Beijing (cities and rural districts), retrospective payments have been implemented back dated to October 2011, none have been mentioned in other cities.

Reporting and Payment

The payment system follows the practice applied to Chinese nationals. A foreign employee's contribution is to be paid via a withholding system by their employer, following monthly reporting and payment, on or before the 15th of the following month. However, actual payments via auto debit are around the 20th of each month. Furthermore, if the employer fails to register their foreign employees, they are subject to a fine equivalent to 1-3 times more than the owing social insurance contribution. Those directly responsible for the incompliance may be subject to a fine of RMB500 – RMB3,000. Also, a fine is imposed on late payments or underpayment of contribution (interest charge (0.05% per day) plus fine). The potential penalty is 1-3 times the amount of overdue contribution.

Pension

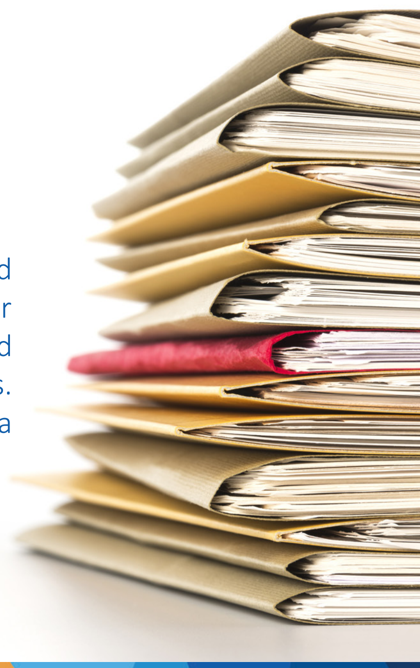
Expatriates aged 46 or over would be short of the 15 years of contribution record to enjoy the pension benefits, however, there are discussions over raising the retirement age (male 65, female 60). It is difficult for expatriates over 60 to obtain a working Visa in China. Still, this solves the years' work or the 15 years issue, if locals can pay their difference at once. Expatriates can receive pension overseas as long as they are still living but no announcement has been made about this re: foreign currency.

Medical

Expatriates are to register with 4 hospitals, it can be any within the list (usually a First Class facility or one closer to your location), as they can claim at any first class or one on the list, if visited or wherever they have registered. There are 19 first class and traditional facilities in Beijing. The first RMB 1,800 is excluded, and then 70% is taken off of the bill (first class) and 90% (3rd class normal hospital). For an in-patient, the first RMB 1,300 is excluded. When travelling, expatriates need to get "Emergency" marked on their receipt, and be at a covered hospital. They would need to pay first and be reimbursed later. A health card, which was issued in Beijing in 2012, is to be obtained. If registered for health welfare, the Beijing Commercial Bank will deposit 2.8% from the payment baseline (under 35, (for example, an expatriate paid base on RMB 17,379 per month, will get 17,379*0.028)), 3% (35-45) and 3.5% (over 45) refund in their bank account every month for withdrawal.

There are no announcements at present for expatriates, in terms of Work related injury, maternity and unemployment. A foreigner cannot be unemployed when they have a work visa. In addition, more countries are expected to conclude a totalisation agreement with China. The Impact on foreign employees will be better protection of rights and interests in certain cases, however, for majority of the foreign employees, there will be negative impact from a cash flow perspective and junior expatriate employees become less competitive due to cost consideration.

This article was prepared by LehmanBrown International Accountants.



Contact Us 联系我们

For further information about how we can add value and support your individual or business needs, please contact us.
如您希望获得更多信息或者得到我们的支持，请联系我们：

Beijing 北京

6/F, Dongwai Diplomatic Building, 23 Dongzhimenwai Dajie, Beijing 100600, China
中国北京市朝阳区东直门外大街 23 号，东外外交办公大楼 602
Tel: +86 10 8532 1720
Fax: + 86 10 6532 3270
E-mail: beijing@lehmanbrown.com

Shenzhen 深圳

Room 3206, News Building 2, Shennan Middle Road, Shenzhen 518027, China
中国深圳市深南中路 2 号新闻大厦 3206
Tel: +86 755 8209 1244
Fax: + 86 755 8209 0672
E-mail: shenzhen@lehmanbrown.com

Hong Kong 香港

Unit 1902, 19/F, Asia Orient Tower, 33 Lockhart Road, Wanchai,HongKong
中国香港湾仔骆克道 33 号中央广场汇汉大厦 19 楼 1902 室
Tel: + 852 2426 6426
Fax: + 852 2426 6427
E-mail: hongkong@lehmanbrown.com

Shanghai 上海

Room 1501 & 1504, WanTai International Building, No. 480 North Urumqi Road, Shanghai 200040, China
中国上海市静安区乌鲁木齐北路（华山路）480 号 1501 ＆ 1504
Tel: +86 21 6249 0055
Fax: +86 21 6288 1636
E-mail: shanghai@lehmanbrown.com

Tianjin 天津

Unit 2901-04, The Exchange Tower 2 189 Nanjing Road, Heping District Tianjin 300051, China
中国天津市和平区南京路 189 号 津汇广场 2 座 29 层 2901-104 室
Tel: + 86 22 2318 5056
Fax: + 86 22 2318 5001
E-mail: tianjin@lehmanbrown.com

Macau 澳门

No. 367, Avenida da Praia Grande, “Keng Ou” Commercial Building #16, A & B, Macau
中国澳门南湾大马路 367 号京澳商业大厦 16 楼 AB 座
Tel: + 853 2835 5015
Fax: +853 2837 1884
E-mail: macau@lehmanbrown.com

Guangzhou 广州

Room 3317, China Shine Plaza, 9 Lin He Xi Road, Guangzhou 510610, China
中国广州市林和西路 9 号耀中广场 3317 室
Tel: + 86 20 2205 7883
Fax: +86 20 2205 7880
E-mail: guangzhou@lehmanbrown.com