

Foreigners and Taxation in China

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Recently, there have been 3 changes to China's tax administration, the impact of which foreigners should be aware of. Broadly, these changes are to: the treatment of employer contributions to overseas statutory social security and pensions; greater scrutiny over documents concerning non-taxable benefits in kind; and China's social security contributions for foreigners working in China.

For the first issue, its roots date back to the Guoshuifa [1998] No. 101 Circular (Circular 101) that regarded an employer's contribution to overseas social security and pension schemes. Originally, it was possible for the local Chinese tax bureaus to classify money filed this way as non-taxable income providing that they met the requirements – that such payments were mandated by the original home country and that they were not claimed as tax deductions by any Chinese company.

What has caused an issue was a notice issued by the State Administration for Taxation (SAT) that Circular 101 had become invalid. Coupled with this was the fact that no new guidelines were put in place, leaving the water slightly murky. The effect of this has generally been for local tax bureaus to declare such contributions as taxable – however there still exist some which maintain the old system, that given the right criteria it is non-taxable income. Of course, without regulation backing up such practices, it can easily change without notice.

Based on our consultation with local tax bureau in Beijing, there is currently no substitute for Circular 101 which clearly regulated individual income tax (IIT) treatment for foreigners' mandatory social security contributed outside China. However, with invalidity of Circular 101, there is no legitimate footing for IIT exemption treatment of overseas social security payment. Therefore in practice, such mandatory social security is generally not allowed for IIT deduction in Beijing.

Regarding the administration of non-taxable benefits enjoyed by foreigners, from our observation, the tax authority tends to focus on the authenticity of documentation, such as Fapiao and agreement, to ensure that the actual expenses have been occurred by the foreigners in China. In practice, the Fapiao's contents such as payer's name, the covering period and the items etc. shall draw tax officer's attention.

In respect of China's social security scheme for foreigners, foreigners have been required to participate into China social security system since September 2011 and such contributions are allowed to be deducted for IIT purpose. Currently, there are still some foreigners as well as their employers who fail to make social security contributions, partly due to lack of local level implementation rules. However in the long run, with more detailed and strict policy being issued and penalty executed on those who do not follow the regulation, more foreigners working in China are anticipated to be covered in the Chinese social security net.