

Changes on Individual Income Tax and Social Insurance Policies on Foreigners in China

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Jeanette Yu

Partner
Head of Employment & Pensions
CMS, China

Jeanette Yu is Partner and head of Employment & Pensions of CMS, China. She has more than 20 years' experience in providing legal advice for international companies on Chinese labour law issues and compliance management in China. Her extensive track record comprises international secondment, data privacy, non-competition, social security, trade union and labour disputes. She has also been involved in significant projects of business transactions and restructuring advising clients on employee transfer, relocation and lay-off of employees as well as negotiation of employment contracts and termination agreements.

Since 2017, Jeanette has been acting as the National Chair/Vice Chair of HR Working Group of European Chamber of Commerce in China.



Gilbert Shen

Counsel
Head of Tax Practice Area Group
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Gilbert Shen is Counsel and Head of Tax of CMS, China. He has been practicing PRC tax law and PRC-related international taxation law since 2006. He is particularly experienced in tax matters concerning the establishment of efficient holding structures, company mergers and restructurings, supply chain optimization, cross-border transactions, tax due diligence and Individual Income Tax advisory and planning.

Gilbert started his career with the tax department of a Big 4 accounting firm. He is a CICPA member, CFA charterholder and a Certified Tax Agent of China.

Changes of Individual Income Tax Policies on Foreigners in China

Gilbert Shen

Development of IIT Policies on Foreigners

**PRC Individual Income Tax Law
(released in Sep. 1980 and revised in
Oct. 1993, August 1999, Oct. 2005, Dec.
2007)**

- *Circular of the Ministry of Finance and the State Administration of Taxation on Issues concerning Individual Income Tax Policies (Cai Shui Zi [1994] No. 20)*
- *Circular of the State Administration of Taxation on Imposing and Exempting Individual Income Tax on Qualifying Subsidies Granted to Foreign Individuals (Guo Shui Fa [1997] No. 54)*
- *Circular of the State Administration of Taxation on Imposing and Exempting Individual Income Tax on Qualifying Subsidies Granted to Foreign Individuals Residing in Hong Kong and Mau Cao Administrative Areas (Cai Shui Zi [2004] No. 29)*
- *Circular of the State Administration of Taxation on Adjusting the Method of Calculating and Imposing Individual Income Tax on Annual One-off Bonuses and other Benefits Obtained by Individuals (Guo Shui Fa [2005] No. 9)*

**PRC Individual Income Tax Law
(effective from 1 Sep. 2011)**

**PRC Individual Income Tax Law
(effective from 1 Jan. 2019)**

- *Circular on Issues concerning the Connection of Relevant Preferential Policies after the Revision of the Law on Individual Income Tax (Caishui [2018] No. 164)*

Overview of the Current and the Changed Policies Benefits for Foreigners

Transitional Treatment of IIT Preferential Policy after the Revision of the IIT Law (Caishui [2018] No. 164) – Transitional Treatment (1 Jan. 2019 – 31 Dec. 2021)

❖ IIT - Exempted Benefits for Foreigners

- Foreigners who are PRC tax residents can choose to enjoy special extra deductions, or the existing IIT-exempted treatments for benefits, such as housing, language training, children education, but not both simultaneously.
- Once selected, it cannot be changed within a tax year.

From 1 Jan. 2022 onwards

❖ IIT - Benefits included in the taxable income for taxation

- Foreigners are no longer be entitled to the current preferential policies (i.e., IIT exemption) on housing, language training, children's education, but applicable to Special Extra Deduction if they are PRC tax residents

Special Extra Deduction Items ("SEDIs")

According to *Guo fa [2018] No.41*, SEDIs includes the expenses of :

01

Children's education: standard quota of RMB 1,000 per child per month

02

Continuing education: standard quota of RMB 400 per month for the duration of the continuing academic/degree education; standard quota of RMB 3,600 in the year when tax payer receives the continuing education for professional qualifications of skilled or professional workers

03

Medical treatment for critical illness: in excess of RMB 15,000, within RMB 80,000

04

Home mortgage interest: standard quota of RMB 1,000 per month

05

House rental: standard quota of RMB 800 or 1,100 or 1,500 per month

06

Elderly support: standard deduction quota of RMB 2,000 per month

Suggested Actions to be Taken for Currently Tax-exempted Benefits

from management's perspective

1

To find out the possibility for recovering the incremental tax cost from financial subsidies and to consider the potential changes to achieve the subsidies, if possible ("**Three-step method**" to be addressed)

2

To timely communicate with employees regarding the potential changes, manage their expectation of net pay and to reallocate the tax cost bearing

3

To re-visit company's overall remuneration policy and make corresponding adjustments in line with regulation changes

4

To closely follow policy developments, assess the effects of these policy adjustments and seek any tax efficient solutions

Overview of the Current and the Changed Policies Annual Bonus

Transitional Treatment of IIT Preferential Policy after the Revision of the IIT Law (Caishui [2018] No. 164) – Transitional Treatment (1 Jan. 2019 – 31 Dec. 2021)

❖ Annual Bonus - Applicable to Residents

- Not to include the annual bonus in the annual comprehensive income and calculate IIT separately
- Bonus amount /12months → determine the applicable tax rate and quick deduction based on the monthly tax rate table.
- May choose to include the annual bonus in the comprehensive income, or choose the above preferential treatment

From 1 Jan. 2022 onwards

❖ IIT - Bonus included in the annual taxable income for taxation

- Included in the normal comprehensive income received in that year for IIT calculation purpose

Suggested Actions to be Taken for Annual Bonus

from management's perspective

1

To find out the possibility for recovering the incremental tax cost from financial subsidies

2

To consider the possibility of giving the employee dual position arrangement and keeping him / her as a non-PRC tax resident

3

To timely communicate with employees regarding the potential changes, manage their expectation of net pay and to reallocate the tax cost bearing

4

To re-visit company's overall remuneration policy and make corresponding adjustments in line with regulation changes

Suggested Actions to be Taken for Foreign Employees

from a legal perspective

1

To check the agreement on IIT in employment documents of foreign employees

- ✓ Foreign employees working in China based on international secondment
- ✓ Foreign employees signing local employment contracts

2

To change the agreement on IIT based on the company's new policies if necessary

Foreigners' Participation in the Chinese Social Insurance Scheme

Jeanette Yu

Foreigners' participation in the Chinese Social Insurance Scheme

• Development of Laws and Regulations

National Laws and Regulations

- PRC Social Security Law (effective on 1 Jul 2011)
- Interim Measures for the Participation of Foreigners Working in China in Social Insurance Scheme (effective on 15 Oct 2011)
- Interim Measures for the Participation of Residents of Hong Kong and Macao, Taiwan in Social Insurance Scheme in Mainland China (effective on 1 Jan 2020)

Shanghai Local Regulations

- Notice on Several Issues Concerning the Participation of Foreign nationals, Persons with Overseas Permanent (long-term) Residence and Residents of Hong Kong and Macao, Taiwan working in Shanghai in Social Insurance for Urban Workers (effective on 10 Oct 2009 until 15 Aug 2021)
- Notice on Relevant Issues Concerning the Participation of Foreign nationals, Persons with Overseas Permanent (long-term) Residence and Residents of Hong Kong and Macao, Taiwan working in Shanghai in Social Insurance for Urban Workers (effective on 16 Aug 2021)

Foreigners' Participation in the Chinese Social Insurance Scheme

- **Statutory Requirements**

All foreigners working in China must participate in the Chinese social insurance scheme

Basic Pension Insurance



Medical Insurance



Unemployment Insurance



Work-related Injury Insurance



Maternity Insurance



Foreigners' Participation in the Chinese Social Insurance Scheme

• Who shall Participate?

Work Status		Statutory Requirements	In Practice
Foreigners working in China holding	if hired by Chinese company, institution or organization ("Chinese Employer")	Yes	Yes
<ul style="list-style-type: none"> ✓ permanent residence permit ✓ work permit ✓ other permits for work purpose 	if hired by overseas employer and seconded to work for Chinese company, institution or organization ("Chinese Employer")	Yes	In many locations not strictly required
	if hired by overseas employer and seconded to work for the branch or representative office of the overseas employer in China	Yes	Not implementable yet

Foreigners' Participation in the Chinese Social Insurance Scheme

• Who can be exempted from the Chinese Social Insurance

- Foreigners working in China surpassing Chinese statutory retiring age

- Foreigners working in China and paying statutory social insurance in their home country can be exempted from part of social insurances if their home country signs a bilateral social insurance agreement with Chinese government

- ✓ those subject to Chinese social insurance
- ✓ whose home country signs a bilateral social insurance agreement with Chinese government
- ✓ only part of insurances can be exempted subject to the approval of competent Chinese authority

Foreigners' Participation in the Chinese Social Insurance Scheme

• How to participate

- Chinese Employer makes social insurance registration for the employee within 30 days after the employment starts
- Chinese Employer pays the insurance premium for the employee by itself and also on behalf of the employee on monthly basis

• How to calculate the insurance premium

- The insurance premium is calculated at the rates provided by the local government at provincial level
- The calculation base is the average monthly salary of the employee for the previous year within the minimum and maximum amounts as decided by the local government every year
- The insurance premium of an employee is reviewed and adjusted every year

Foreigners' Participation in the Chinese Social Insurance Scheme

- Shanghai Social Insurance Contribution Rates and Standard 2021

	Calculation Base	Contribution Rate of Employer	Contribution Amount payable by Employer	Contribution Rate of Employee	Contribution Amount payable Employee
Pension	Min RMB 5,975 (EUR 825.75) ~ Max RMB 31,014 (EUR 4286.13)	16%	RMB 956 ~ RMB 4,962.24	8%	RMB 478 ~ RMB 2481.12
Medical Insurance & Maternity Insurance		10.5%	RMB 627.38 ~ RMB 3,256.47	2%	RMB 119.5 ~ RMB 620.28
Unemployment Insurance		0.5%	RMB 29.88 ~ RMB 155.07	0.5%	RMB 29.88 ~ RMB 155.07
Work-related Injury Insurance		0.16%-1.52% (depending on industry)	RMB 9.56 ~ RMB 471.41	0%	RMB 0
Total Rate/Amount		27.16% ~ 28.52%	RMB 1,622.81 (EUR 226.29) ~ RMB 8,845.19 (EUR 1233.51)	10.5%	RMB 627.38 (EUR 87.49) ~ RMB 3,256.47 (EUR 454.11)

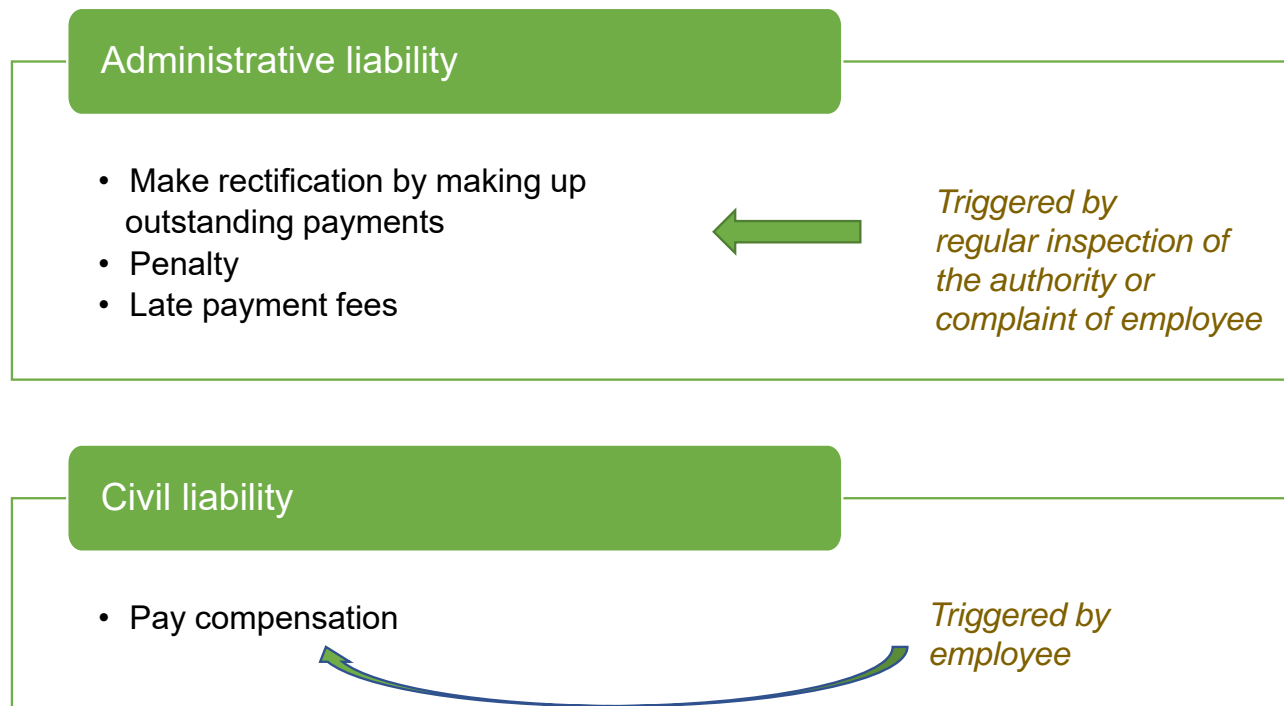
Foreigners' Participation in the Chinese Social Insurance Scheme

• What are the benefits

Pension	Medical Insurance	Unemployment Insurance	Work-related Injury Insurance	Maternity Insurance
<ul style="list-style-type: none">•Employee may enjoy pension benefits if (i) reaching statutory retirement age (ii) having accumulatively paid pension fund for 15 years•Employee may get the part of the pension fund payable by the employee if he/she leaves China before starting to enjoy pension benefits	<ul style="list-style-type: none">•Employee may enjoy the insurance benefits when going to public hospitals at the location starting from the following month after paying the insurance premium	<ul style="list-style-type: none">•Employee may enjoy the insurance benefits if (i) having paid the insurance premium for one year or more (ii) the employment is terminated due to the reasons not attributable to the employee (iii) having made unemployment registration and having requests of employment	<ul style="list-style-type: none">•Employee may enjoy the insurance benefits only after the injury is verified as work-related by the competent labor authority. The verification can be applied by the employer or employee within one year after the occurrence of accident	<ul style="list-style-type: none">•Female employee may obtain the insurance benefits for expense of birth of child and maternity allowance during maternity leave•Male employee may obtain a certain amount of medical subsidy for the expenses of birth of child of his wife

Foreigners' Participation in the Chinese Social Insurance Scheme

• Legal Risks of Non-participation





Q & A

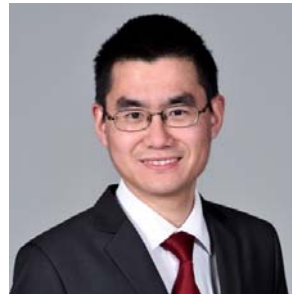


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