

EXPATRIATE NEWSLETTER

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CHINA

STRENGTHENED INDIVIDUAL INCOME TAX (IIT) ADMINISTRATION AND COLLECTION OVER BENEFITS-IN-KIND OFFERED TO FOREIGN EMPLOYEES

Chinese tax authorities in main cities have been strengthening IIT administration and collection on benefits-in-kind offered to foreign employees in the past few months. These changes include new reporting measures as required by Golden Tax III and closer scrutiny by random tax inspections/audits.

Trends and challenges

All employment income received by an individual, no matter if it is paid in cash or in kind, is subject to IIT in China, except for certain benefits-in-kind received by non-PRC national employees working in China when certain criteria are met. In general, such non-taxable benefits include:

- Housing accommodation;
- Meals and laundry;
- Relocation;
- Home leave;
- Language training; and
- Education costs for children.

Basically, certain criteria have to be met simultaneously for such benefits-in-kind to be claimed as qualified non-taxable benefits-in-kind. In practice however we have seen many companies and foreign employees that are not fully aware of the relevant compliance requirements, which may lead to underpaid taxes together with late payment surcharges and non-compliance penalties.

Please note that non-compliance identified in tax inspections/audits may lead to not only potential extra financial loss but also reputational risks, because local in-charge tax authorities can downgrade companies' tax credit ratings and publish companies' names, which will definitely have an impact on the companies' daily operation as well as reputation.

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EDITOR'S LETTER

The BDO Expatriate Newsletter provides a brief overview of issues affecting international assignees, predominantly, but not exclusively, from a tax and social security perspective.

This newsletter brings together individual country updates over recent months. As you will appreciate, the wealth of changes across multiple jurisdictions is significant so to provide easily digestible information we have kept it to the key developments that are likely to affect your business and international assignees.

For more detailed information on any of the issues or how BDO can help, please contact me or the country contributors direct.

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The articles contained in this newsletter have been prepared for your general information only and should not be acted or relied upon without first seeking appropriate professional advice for your circumstances.

New reporting measures

The Third Phase of the Golden Tax Project (Golden Tax III) was rolled out nationwide in 2016 and is continuously being updated in year 2017. Along with the wide use of Golden Tax III, a detailed breakdown of the non-taxable benefits-in-kind offered to foreign employees has to be reported via the online monthly filing system of Golden Tax III, as required by the local tax authorities in the main cities (e.g. Shanghai, Beijing, Suzhou and Guangzhou).

By collecting such information on a regular basis, local tax authorities would have a complete picture of foreign employees' entire employment income, including both the taxable part and the non-taxable part.

Closer scrutiny

More and more local tax authorities are paying special attention to the benefits-in-kind offered to foreign employees. Random tax inspections and/or tax audits have been frequently taken.

In Beijing, recently a special tax audit over the benefits-in-kind offered by a multinational company to its foreign employees has been published. In this case, approximately CNY 16 million of tax underpaid has been identified and CNY 12 million of non-compliance penalties have been imposed by the local tax bureau.



BDO comment

We highly recommend that companies discuss this immediately with their tax consultants. With the assistance of professional tax consultants, companies can take necessary actions to make sure they are in compliance with the tax law, tax regulations and changing local practices. The following are key points for reference:

- Review the impact of the new reporting measures of benefits-in-kind in Golden Tax III;
- Review the 'compliance' and 'reasonableness' of the 'benefits-in-kind' currently offered;
- Ensure there is an appropriate internal control procedure and review its implementations;
- Review if there is sufficient resources to collect and review supporting documentation;
- Re-evaluate the tax planning strategy on benefits-in-kind and make necessary adjustments.

More importantly, professional explanation and proactive communication with tax authorities is efficient in reducing the potential tax risks. Meanwhile, skilful negotiations with tax authorities are essential to resolve disputes in practice. Generally, in practice tax payers can deal with tax issues by themselves or involve professional tax consultants to handle them.

BDO China International Tax Service team is experienced in this regard. We will follow up the rapid changes in the Chinese tax environment, keep you posted and share our latest thinking with you accordingly.

For further information in relation to above topic, please do not hesitate to contact us.

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BELGIUM

UPDATE – EXEMPT FOREIGN INCOME AND TAX FREE ALLOWANCES FOR DEPENDENTS

In the Expatriate Newsletter of June 2017, we already mentioned that the Belgian tax authorities were working on a solution to eliminate the discrimination of the allocation of the tax free allowances for children and other dependents where the parents were married or legally cohabitants and actual cohabitants.

When the taxpayer is married or legally cohabited, the increase of the tax free amount for children goes to the partner with the highest taxable income. Actual cohabitants may choose which partner will receive the increase of the tax free allowance for dependents. When the partner with the highest taxable income also has foreign income, the partner will receive the tax free allowance, but it will be of no use if that partner pays no taxes in Belgium.

A new circular of May 2017 modified the tax calculation method. The Belgian tax authorities will automatically make two calculations if a Belgian resident is married or legally cohabiting and receives foreign income that is exempt from Belgian taxes:

- A standard calculation: the increase of the tax free amount for dependents will be allocated to the partner with the highest taxable income;
- A second calculation: the increase of the tax free amount for dependents will be allocated to the partner with the lowest taxable income;
- The tax assessment will be based on the outcome that is more favourable to the couple.

The new circular is applicable for Belgian income tax returns as of year of income 2016.

The term to object against the tax bills for income years prior to 2016 is six months. The extraordinary five-year period is also applicable due to a 'new evidentiary fact'.

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INDIA

SOCIAL SECURITY – RECENT UPDATES



The Employees' Provident Fund Organisation (EPFO) has launched a new online software application for generation of a Certificate of Coverage (CoC).

An employee moving to/from another country with which India has a Social Security Agreement (SSA) can obtain a CoC to be exempt from participation in the host country's social security scheme.

The new online system would enable Indian workers (having an Indian passport) going to work in a country with which India has a SSA to apply for a CoC online.

With the launch of the online CoC system, the physical CoC application will be discontinued as per the recent notification issued by the EPFO.

Quoting/linking of the AADHAAR number with tax id number (PAN) – Key considerations

In the annual Budget, the Government made it mandatory for an individual to quote the AADHAAR number/enrolment ID (unique ID number) at the time of obtaining their tax ID number (Permanent Account Number – PAN) and filing the income-tax return. Further, the individual has to link his PAN to his AADHAAR number online by the due date to be specified by the Government.

Hence, individual taxpayers who were eligible to obtain the AADHAAR number were required to quote this in the income-tax return as well as linking the PAN with the AADHAAR number online.

Online linking to keep the PAN active

The online linking of the PAN with the AADHAAR number did pose certain practical challenges such as a mismatch in names or other details. It was also later announced that certain classes of taxpayers were exempted from quoting/linking of the AADHAAR with the PAN. These exceptions included the below taxpayers:

- Very senior citizens (more than 80 years of age);
- Non-Indian citizens;
- Non-residents; and
- Residents of certain listed States of India.

However, quoting and linking of the AADHAAR number for other cases remains applicable.

Due date to link PAN with AADHAAR

The Government has recently announced a temporary relief to taxpayers by allowing them to electronically file the tax return for FY 2016-17 without linking the PAN with the AADHAAR number. However, quoting of the AADHAAR number or enrolment ID in the return was still mandatory. Such temporary relief was provided by allowing the taxpayers to link the PAN with the AADHAAR by 31 August 2017. The returns will not be processed until the linkage of the AADHAAR with the PAN is done.

The Government has now stated an extended period until 31 December 2017 to link the PAN with the AADHAAR.

BDO comment

With the recent announcements around the AADHAAR number, it is imperative that globally mobile employees ensure they are compliant.

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INDONESIA

CHANGE IN INDONESIA LAW – SALARY STRUCTURE DOCUMENTATION

According to the Regulation of the Ministry of Manpower Number 1 Year 2017, each Company must prepare a Salary Structure documentation with regards to the grouping of positions, duration of employment, employee education level and employee competence. The Salary Structure shall be set by the management of the Company in the form of Management Decision Letter.

What is the use of salary structure documentation?

It is required to be:

1. Communicated to all employees in person; and
2. Submitted to the Officials in the Ministry or Provincial/District/Municipal.

Employment Service when the Company is applying for:

- a) The Authentication and Renewal of Company's regulation; or
- b) The Registration, Extension and Renewal of Employment Contracts.

Deadline for submission

The Company shall arrange, implement and communicate the Salary Structure documentation to its employees and submit them to the Officials no later than 23 October 2017.

What type of company should comply with this rule?

01

Every form of legal or non-legal entity that is owned by individuals(s), joint venture(s) or legal association(s). This covers both privately-owned and government-owned entities;

OR

02

Charitable organisation and other types of entity that has a manager.

AND

Employs employee who receives salary or other forms of consideration.

For more information on how BDO can help you in planning and navigate this major changes, please contact our technical team at:

BDO INDONESIA

corsec.helpdesk@bdo.co.id



THE NETHERLANDS

AMENDMENT OF WORKING CONDITIONS ACT FROM 1 JULY 2017

The Working Conditions Act (*Arbeidsomstandighedenwet*) has been amended with effect from 1 July 2017. These amendments may entail significant changes for you as an employer. Health and safety provisions often fall within the scope of the work-related expenses scheme (*Werkkostenregeling*), which was amended effective from 1 January 2015 in respect of such expenses as well. In this update, we will therefore address the current situation.

Amendments to working conditions act

The purpose of the amendments is to improve the functioning of occupational healthcare. In order to achieve this, the act contains provisions intended to optimise prevention (and prevention measures) at the company and to extend the duties and powers of the company doctor. Below we will set out the principal changes.

Basic contract

As an employer, you are now obliged to record certain issues with your occupational health and welfare provider/company doctor in a contract known as the 'basic contract for occupational health and welfare provision'. For example, the employer must record that the occupational health and welfare provider will be involved in assessing the risk inventory and evaluation (RI&E) and in the provision of expert support in the event of illness. Employers must have such a basic contract in place with effect from 1 July 2017. Any existing contract with the occupational health and welfare provider will therefore have to be checked against the new statutory regulations and be amended if necessary. Employers are free, for that matter, to include additional duties in the contract with the occupational health and welfare provider. Such a contract is known as a 'basic-plus contract' and may, for example, contain rules on access to a confidential advisor.

Rights and obligations of a company doctor

The act provides for various rights and obligations for company doctors. Employers are (jointly) responsible for compliance with these provisions. For example, as an employer you are obliged to enable the company doctor to visit every workplace. A new and significant element is the company doctor's obligation to offer an employee the option to obtain a second opinion, from a company doctor associated with a different occupational health and welfare provider. The company doctor also has the obligation to offer a complaints procedure, the obligation to report occupational illnesses and the right to hold consultations with the works council, the employee representative body or, if no such council or body exists, with the employees involved. Employers must therefore take account of these augmented powers and obligations.

Walk-in surgery

Since 1 July 2017, employees are also entitled to unimpeded and effective access to the company doctor. This means that they can consult the company doctor on their own initiative on individual personal health issues in relation to their work even if they haven't reported in sick. Various occupational health and welfare providers already offer some sort of 'walk-in surgery'. You must actively bring the existence of this right to your employees' attention. Employees who consult the company doctor on their own initiative will remain anonymous, and the employer will not be informed of the consultation.

Prevention worker and employee participation

Because of the amendments to the Working Conditions Act, a new right of approval for the participation body (the works council/employee representative body) has been added to the Works Councils Act (*Wet op de ondernemingsraden*). Under the Working Conditions Act, each organisation must have at least one prevention worker. The works council or employee representative body now also has a right of approval regarding the choice of a prevention worker and his/her positioning within a company and the collaboration with the occupational health and welfare provider(s). The prevention worker is also entitled by law to hold consultations with the occupational health and welfare provider and the company doctor. Finally, the participation body also has a right of approval regarding (the contents of) the basic contract.

The Ministry of Social Affairs and Employment (SZW) has added an online toolkit to its website that lists the amendments to the Working Conditions Act. This toolkit can be found on <https://www.arboportaal.nl/actueel/arbozorg/digitale-toolbox>.

Although, as stated above, the new Working Conditions Act has been in force since 1 July 2017, a one-year transitional period applies. This means that employers and occupational health and welfare providers have until 1 July 2018 to adjust the contracts. However, any new contracts already have to comply with the new statutory requirements.

The Inspectorate SZW will impose sanctions on employers, occupational health and welfare providers and company doctors if they fail to comply with the new regulations and the basic contract. For example, the Inspectorate SZW may impose a fine immediately, therefore without prior warning. It is therefore of vital importance that employers implement the changes in time.

Health and safety provisions and work-related expenses scheme

On 1 January 2015, the rules on the tax treatment of health and safety provisions were drastically amended (relaxed). From that moment, payments, benefits in kind and facilities made available as part of the employer's obligations under the Working Conditions Act are specifically tax exempt. These obligations relate to aspects such as illness prevention, absence management, working conditions consultation hours, periodic occupational health examinations and pre-employment medical checks.

Until 2015, for that matter, zero valuation applied only to health and safety provisions made available at the workplace. However, since 2015 payments and benefits in kind may also be provided free of tax via the specific exemption regime.

The provisions (which may also be part of a prevention and health programme) must have been identified as such in the health and safety policy, as laid down in a health and safety plan, based on a prior risk inventory and evaluation (RI&E). In practice, we often see that the Dutch Tax and Customs Administration does indeed assess this policy in order for health and safety (related) provisions to be classified as a specific exemption. We therefore recommend that the health and safety policy at your organisation be properly recorded (in writing), whereby the aforesaid recent legislative changes are taken into account. Of course our specialists would be happy to help you with this process.

The tax exemption for payments, benefits in kind and facilities made available is subject to the conditions that the employer makes these provisions within reason and that the employee actually makes use of them. This will depend on the facts and circumstances of the individual case. Another condition is that the employer should not be required to pay a personal contribution in this respect.

According to the 2017 Payroll Tax Manual (*Handboek Loonheffingen*), the following are examples of health and safety provisions:

- Safety goggles with prescription lenses for a laboratory technician or welder;
- Sunglasses for a driver or pilot, or specific computer glasses;
- Special insulating or protective clothing;
- A compulsory medical check;
- A pre-employment medical check and a medical or occupational health examination;
- A second opinion or a flu jab in the context of prevention and absence policy;
- A first aid course which is included within reason in the health and safety plan, and for which the employee should not be required to pay a personal contribution. This also applies to refresher courses and further training in connection with the first aid certificate;
- A chair massage is permitted, provided that the employer has a health and safety plan that includes the chair massage within reason; this should not involve a considerable personal saving on the employee's part. The chair massage should be provided during working hours and the employee should not be required to pay a personal contribution; and
- A stop-smoking course will be free of tax if it is part of the employer's health and safety plan.

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SWEDEN

GOVERNMENT BILL FOR HIGHER TAX RATE FOR SWEDISH NON-RESIDENTS

The Swedish government has put forward a bill to change the Swedish special income tax for non-residents to 25% from the previous tax rate of 20%. The bill has been included into the Budget Bill for 2018 and needs to be approved by the Swedish parliament before entering into force. Should the proposal be approved by the Swedish parliament, the new legislation with the updated tax rate will be applicable from 1 January 2018.

Current domestic legislation

Generally, an individual can either be considered to be resident or a non-resident for tax purposes in Sweden. Hence, a Swedish tax resident is an individual who permanently resides in Sweden, visits Sweden on a regular basis, or who has essential ties to Sweden. A person who is not considered as a Swedish resident for tax purposes is instead considered a Swedish non-resident. Foreign nationals who spend less than 6 months in Sweden, or have ended their ties to Sweden, are usually considered as Swedish non-residents.

Under Swedish internal legislation, an individual who is considered as a Swedish non-resident for tax purposes is taxable in Sweden only for income relating to work performed in Sweden. As of now, Swedish non-residents pay a flat rate tax of 20% without having to file an income tax return.

In order to be taxed under the rules for the Swedish special tax for non-residents the employer must file an application to the Swedish Tax Agency, prior to the payments of the salary.

Proposed change

In the 2018 Budget Bill the Swedish government has put forward a proposal to increase the tax rate for the Swedish special income tax for non-residents from 20% to 25%. The change of legislation is suggested to be taken into force by the 1 January 2018. The Budget Bill must be approved by the Swedish parliament before the new legislation is approved. The bill for the amended tax rate for Swedish non-residents is a step back to the same tax rate as in 2014.

BDO comment

The new higher tax rate for Swedish non-residents highlights the importance of reviewing whether it may be more beneficial to be taxed at the standard tax rate. The standard tax rules can be advantageous in the following scenario:

- The individual receives an income of SEK 100,000 that is taxable in Sweden.
- The individual fulfils the requirements for Swedish expert tax relief.
- The individual has deductible home trips of SEK 5,000.

The difference between being tax with the rules for Swedish non-residents and the standard Swedish taxation rules are as follows:

Swedish non-resident taxation		Standard Swedish taxation	
Gross income	SEK 100,000	Gross income	SEK 100,000
Tax rate	25%	Expert tax relief	25%
Tax amount	SEK 25,000	Deductible home trips	SEK 5,000
Net income	SEK 75,000	Taxable income	SEK 70,000
		Tax rate (average)	32%
		Tax amount	SEK 22,400
		Net income	SEK 77,600

The example above highlights the importance of taking into consideration which tax rules are most beneficial for the individual.

Please do not hesitate to get in touch with us if you have any questions.

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CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 18 September 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Chinese Yuan Reminbi (CNY)	0.12140	0.14496
Swedish Krona (SEK)	0.09978	0.11913

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