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Hong Kong, Macau, Taiwan residents to participate in social insurance program in mainland China

What is the change?

On 29 November 2019, China's Ministry of Human Resources and Social Security and the National Healthcare Security Administration issued Order No. 41, providing guidance for Hong Kong, Macau, and Taiwan (HMT) residents to participate in the social insurance program in mainland China beginning 1 January 2020.

As of 1 January 2020, HMT residents employed in mainland China must participate in the mainland China mandatory social insurance program. In our experience, HMT residents seconded from foreign companies to work in mainland China also may be considered to be "employed in mainland China" and, therefore, may be required to participate in the program, although Order No. 41 is unclear on this point. Individuals who continue to make social insurance contributions in their home location may choose not to enroll in the basic pension or unemployment insurance schemes. HMT resident individuals living in mainland China who are not employed may participate in the social insurance program on a voluntary basis.

What does the change mean?

These are the key implications for HMT residents employed in mainland China.

Types of social insurance scheme: The program includes five types of scheme:

1. Basic pension
2. Basic medical insurance
3. Work-related injury insurance
4. Unemployment insurance
5. Maternity insurance

Registration process:

Employers must register social insurance accounts for HMT employees. If an employee relocates from one province to another, the basic pension account should be transferred to the new location.

The general registration process is the same as it would be for employees who are Chinese nationals. Once registered, employees may obtain Chinese social security numbers and social security cards. A number of documents are required to register, including a valid ID certificate and an employment contract.

Pension and medical benefits:

- **Pension distribution:** Employees who have made basic pension contributions for at least 15 years in total at retirement age may qualify for a pension on retirement. If the contribution period is less than 15 years, employees may continue to make contributions to reach this threshold. Employees also may make a lump-sum contribution where they started to participate in the social insurance program before 1 July 2011 but cannot meet the 15-year requirement by making contributions for a further five years post-retirement.
- **Medical coverage:** Employees may enjoy medical coverage if they have contributed for the required minimum number of years at retirement age. They may continue to make contributions postretirement if the threshold is not met. The threshold depends on local regulations (*e.g.*, in Beijing, it is 25 years for men and 20 years for women).

Implications of leaving mainland China before retirement: Employees may choose either to maintain or deregister their social insurance accounts upon departure from mainland China. When an employee opts to maintain the account, the previous years of contributions will be aggregated with any future years if the employee returns to mainland China for employment in the future.

An employee who chooses to deregister his or her account may make a lump-sum withdrawal from the personal pension account, but if the employee returns to work in mainland China in the future, the period of contribution years will recommence.

Order No. 41 also addresses other practical situations such as where to apply for a pension if an employee relocates to another province.

Deloitte's view

Before the issuance of the order, the social security requirements for HMT employees in mainland China and their employers were ambiguous. The new rule clearly sets out the obligation for mainland-China employers to enroll their HMT employees in the Chinese social insurance schemes. Companies with HMT employees working in mainland China must be aware of local implementation rules and possible changes in local practice, review their employees' current social insurance enrollment status, and ensure that they have made the necessary preparations in good time, including appropriate budget projections and employee communications, when required. If multinational enterprises second HMT residents from foreign entities to work in mainland China, both the secondees and the relevant entities should closely monitor local implementation procedures to determine whether mandatory participation in the social insurance program would apply.

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The Netherlands:
Posted Workers Directive: Online notification obligation as of 1 March 2020

What is the change?

Online notification obligation for the Posted Workers Directive: Having implemented the requirements of the Posted Workers Directive into Dutch legislation, the Dutch authorities recently announced the online notification obligation for workers traveling to the Netherlands.

As of 1 March 2020, any employer, service provider, or self-employed worker from the European Union (EU), the European Economic Area, and Switzerland who temporarily posts workers into the Netherlands is required to notify Dutch authorities of such assignments via an online portal.

The contractor or recipient of the posted worker's services in the Netherlands is required to access the online notification within two weeks and accept, refuse, or request a correction of the report.

The online notification portal will be accessible as of 1 February 2020, and we recommend that employers posting workers to the Netherlands begin making the appropriate online notifications starting on this date for any postings to the Netherlands due to take place after 1 March 2020.

The online notification portal can be found at www.postedworkers.nl.

What does the change mean?

Business impact: Employers will need to review their existing populations to understand who may be affected by the changes.

Failure to comply with the directive may result in fines of up to EUR 12,000 per breach. Other obligations under the Terms of Employment Posted Workers in the European Union Act ("WagwEU") such as documentation and information obligations are also enforceable, and noncompliance with these can lead to fines.

Which groups will be affected?: In principle, online notifications should be filed for the following groups:

- Posted workers carrying out services in the Netherlands
- Temporary agency workers
- Intra-group workers
- Self-employed workers (in certain industries)
- Posted workers of foreign employers consisting of fewer than 10 employees, under certain circumstances.

Exemptions: A number of exemptions exist for some types of visitors, including:

- Short-term visitors attending meetings or negotiating and concluding contracts, depending on length of stay
- EU service providers in the transport sector, unless it concerns transport by road
- Posted workers carrying out the initial installation and assembly of machinery, unless their work activities exceed eight days
- Posted workers carrying out urgent maintenance or repairs on tools, machines, and equipment, depending on length of stay
- Guest lecturers, artists, musicians, and international athletes, depending on length of stay
- Third country nationals in specific cases.

Further clarification on the precise nature of the exemptions should be available soon.

Next steps: Deloitte can help you review the status of your internationally mobile employee population to assess your obligations under these new rules and assist you in managing immediate compliance tasks. We can help you optimize in-house solutions, create automated processes, or outsource the online filing requirement itself, both in the Netherlands more broadly across the EU.

Deloitte's view

All employers posting workers into the Netherlands after 1 March 2020 should be aware of the increased administrative workload involved with the upcoming online filing obligations under the Posted Worker Directive. The online notification obligation applies to a number of different types of mobile workers and should be filed prior to commencement of travel.

To ensure compliance with this new rule, companies should identify their international assignees and other business travellers and make appropriate adjustments to their mobility policies to meet the WagwEU requirements.

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Global Reward Updates:
Canada: Delayed implementation of proposal to introduce an annual cap on beneficial stock options treatment

On 19 December 2019, the Canadian government announced that the proposed changes to the taxation of stock options would not come into force on 1 January 2020 as originally planned.

Background

For many years, stock options have attracted preferential tax treatment in Canada, provided certain conditions are met. Individuals have been able to claim a deduction equal to 50% of the option gain at exercise, effectively leading to stock options being taxed at a rate equal to one half of the normal personal tax rate (the same rate that is applicable to capital gains).

Following Budget 2016, the Canadian government committed to reviewing federal tax expenditures and the fairness of Canada's tax system, including stock option benefits.

Budget 2019 proposal

As previously communicated in our April 2019 update, on 19 March 2019, the federal government announced its plan to limit the current 50% stock option deduction for high-income individuals employed at large, long-established, mature firms by introducing an annual CA$200,000 cap on employee stock option deductions. This limit is intended to make the regime more equitable for Canadians, while ensuring that start-ups and emerging Canadian businesses that are creating jobs maintain the ability to use employee stock options as an effective tool to attract and reward employees, and to accelerate their growth in a tax-efficient manner.

Draft legislative proposals released June 2019

Further details were announced when the federal government released draft legislation on 17 June 2019. Highlights of the draft legislation are as follows:

- A CA$200,000 annual cap on employee stock option grants that may receive tax-preferred treatment (applicable for each vesting year and based on fair market value of underlying shares at grant) is introduced;
- The new limit will not apply to stock options granted by Canadian-controlled private corporations (CCPCs) and some non-CCPCs, such as start-ups, emerging and scaleup companies that meet prescribed conditions; and
- Employers will be able to claim a corporate tax deduction for the non-qualifying options.

The federal government held a consultation period until 16 September 2019, during which comments were provided on the draft legislation in general and also specifically on the characteristics of companies that should be considered "start-up, emerging, or scale-up companies" for the purposes of determining the conditions that will be prescribed in the regulations.

Implementation delay

The June 2019 legislation was scheduled to come into force on 1 January 2020, and apply to stock options granted on or after that date. However, on 19 December 2019, the government announced that the proposed changes would be delayed.

The government indicated that it will provide details on how it intends to move forward with the stock option measures in the 2020 budget, which is expected to be tabled in Parliament during February or March. Further, the new coming-into-force date will provide sufficient time for individuals and businesses to review and adjust to the new rules.

The ministry of finance of Quebec has stated that it is currently reviewing Quebec's stock option legislation and will announce its position at a later date. The Quebec legislation currently provides for a stock option deduction of 25% or 50% on qualifying options for Quebec taxpayers.

Deloitte's view

This announcement postponing the implementation of changes to the stock option regime comes as a relief to taxpayers, given the ambiguity around categorising certain companies as start-ups and emerging Canadian businesses. It will also be welcomed by employers, given the complexity of implementing processes to properly track stock option grants with different tax attributes over different vesting periods.
This delay indicates that the federal government is carefully reviewing the input received during the consultation period and wants to ensure that the amendments meet its key objectives. Our comments on the draft legislative proposals identify important technical and administrative issues that will need to be addressed and clarified.
URL:
https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/tax/ca_en_deloitte_submission_stock_option_consultation_2019_AODA.pdf

If the proposals in the 2020 budget contain no material changes from the original proposals, the majority of employees receiving employee stock option benefits should be unaffected. However, companies should carefully consider the changes, *i.e.*, whether future grants of stock options to executives and high-earning employees could be subject to the limitation on preferential treatment under the new rules. Alternatives to granting stock options to these individuals and a broader review of a company's executive compensation framework should be considered.

It is welcome news for employers that a corporate tax deduction will be available for any options not qualifying for the preferential income tax treatment.

Global Reward Updates:
Greece: Tax favorable treatment for shares acquired under stock option plans

Key points to know

- New tax laws effective January 2020 introduce preferential tax rates for benefits earned under stock option plans, if certain conditions are met.
- Benefits earned from the exercise of stock options which are held for a period of at least 24 months will be subject to capital gains tax rather than income tax.
- Different rules apply for benefits earned from stock options granted over unlisted shares of new small startups. In this case, the holding period is 36 months and the rate of tax is 5%.
- Further clarification is expected from the Ministry of Finance on many areas of the new law; including whether this would apply to other forms of equity compensation (*e.g.* free share awards).

Background

Effective 1 January 2020, the Income Tax Code (ITC) introduces changes to several tax provisions, including the taxation of stock option plans.

Any gains made on the exercise of stock options granted to an employee, partner or shareholder will only be treated as a benefit in kind if the participant disposes of the shares within 24 months of acquisition. The relevant period is 36 months in the case of unlisted shares of newly established start-ups. It is currently not clear whether this period starts on the date of grant of the option or on the exercise and acquisition of the shares.

If considered a benefit in kind, the gain on exercise would be taxed as employment income at progressive tax rates from 9% to 44%, plus special solidarity tax.

Any capital gain made from the subsequent disposal of shares would be subject to tax at a flat rate of 15% subject to certain conditions (or 5% for unlisted shares of new small start-ups).

However, if the shares are transferred more than 24 (or 36) months, then the benefit in kind from stock options will not be considered employment income. Instead any gain arising will be considered a capital gain taxed at a flat rate of 15% (or 5% for unlisted stock of new small start-ups) plus special solidarity tax.

Further clarification from the Ministry of Finance in relation to the application of this new position to free share awards, as well as its applicability to options and awards already granted is expected in the new year.

Cash Settled awards: If share options are settled in cash, the cash amount paid to the employee is considered taxable income. The lower tax rates applicable to share settled options would not apply.

Employer withholding and reporting obligations

There is no obligation for the employer to withhold income tax in relation to share settled awards.

However, if the awards are settled in cash, tax withholding and reporting will be required.

Further clarifications from the Ministry of Finance are expected with regard to the reporting obligations that employers may have after the recent amendments in the ITC.

Social Security

Social security contributions are due on any type of employment income, either in cash or in kind. Any gains made on the exercise of stock options which constitute taxable income remain subject to social security, subject to the relevant thresholds.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards adviser or email us at globalequity@deloitte.com, and a global rewards adviser will contact you.
URL: mailto:globalequity@deloitte.com

Deloitte's view

Companies may want to consider providing employees with general guidance on the changes set out above.

However, given the lack of clarity around a number of points, employers may want to wait until further guidance is issued before formally updating any employee communications.