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New Leadership in China

The Plenary Session of the National People's Congress (NPC), China's parliament, and the Annual Meeting of the National Committee of the Chinese People's Political Consultative Conference (CPPCC), China's top political advisory body, were held in Beijing in early March, 2013.

Xi Jinping was elected Chairman of the Central Military Commission of the PRC (CMC) and President of China at the plenary session of the NPC. At the same meeting, Li Keqiang was elected Premier of the Country. The two sessions are of particular importance this year because they underlie a new government and a new cabinet which will lead the economic reform and development of the Country, currently the second-largest economic power and perhaps the largest trading partner in the world, for the next five years.

Changes to the System of Labor Dispatching

From the perspective of the employer, labor dispatching is attractive to the Medium & Small sized Enterprises for the advantages of lower enterprise costs, more convenient human resource management and the avoidance of dealing with labor disputes directly. Especially to Foreign Invested

Enterprises (FIEs), when they start to enter the Chinese market labor dispatching is widely used because of their small scale and lack of experience in human resource management. Many FIEs even engage all their employees through labor dispatching.

However, with the amendment of the Labor Contract Law, the above mentioned labor dispatching system will be significantly changed. The two rules below will particularly affect the enterprises.

1. Labor dispatching can only be used for temporary, auxiliary or substitute positions. The general conditions are that the position underlying the relevant labor dispatching arrangement should last no longer than 6 months, is of an auxiliary nature, or requires filling on a substitute basis pending the return of the relevant staff from his/her leave.
2. Furthermore, the proportion of employees to be engaged through the dispatched system will be restricted and so the use of the dispatched arrangement for the employment of all employees will not be allowed.

The new law will be effective from 1 July, 2013. It is therefore a matter of urgency for FIEs who have dispatched arrangements to review the current situation with a view to taking necessary actions in good time to be in compliance with it. To this end, we will be most pleased to offer help to our CBA readers to see them through the changes.

New regulation on withholding tax on cross-border royalties and rents

Based on a previous regulation effective from 1 January, 2008, cross-border royalties and rents were subject to Business Tax (BT) which was not allowed to be deducted when calculating Corporate Income Tax (CIT) payable on such income. With the VAT reform pilot program launched in Shanghai on 1 January 2012, such BT has been replaced by VAT. Since then there have been arguments against including VAT as part of the 'total income' for the CIT calculation. In the absence of a national announcement from the State Administration of Taxation (SAT), local practices may vary.

In this regard SAT issued an "Announcement concerning the CIT issues for non-residents under the VAT Pilot Program". Based on the new announcement, if a non-resident enterprise derives certain China-sourced passive income that falls within the scope of the value added tax (VAT) reform pilot program, the VAT arising on such passive income is not to be included in the taxable base for calculating CIT that should be withheld for the non-resident recipient. As a result, the CIT burden for the non-resident enterprise is effectively reduced.

Social security contributions by Koreans working in China

The "Social Security Treaty" (the Treaty) and "Social Security Agreement Protocol between the governments of the People's Republic of China and the Republic of Korea" (the Protocol) were announced by the Ministry of Human Resources and Society Security on 28 December 2012. The Treaty and the Protocol took effect from 16 January 2013 replacing the China – Korea Provisional Measures of Mutual Exemption on Pension ('the Provisional Measures'), signed on 28 February 2003.

The Treaty and Protocol expand the scope of social insurance exemptions, and will effectively reduce the cost of social security contributions for corporations and individuals of both countries.
The main content of the Treaty and Protocol is as follows:

1. **Expansion of exemptions from social insurance.**
   Korean individuals working in China can be provisionally exempt from the requirement to contribute to Chinese basic medical insurance on the condition that commercial health insurance coverage has been provided. The Protocol does not affect the requirement for Chinese individuals working in Korea to participate in Korean national health insurance.
2. **Expansion of coverage for particular individuals**
   In addition to expatriate assignees, locally hired employees and self-employed individuals covered under the Provisional Measures, the Treaty has extended the coverage to also include employees working on sailing vessels, aircraft and for diplomatic and consular authorities of both countries.
3. **Exemption period for relevant insurances defined**
   - For pension and unemployment, employees, who participate in domestic social insurance and are assigned to an entity or institution established in the other country, are exempt for a period of up to 60 months (five years). Further extension can be applied for a maximum period of 156 months (13 years).
   - Korean individuals working in China who are eligible for provisional exemption from

the requirement to make contributions to Chinese basic medical insurance are not required to make contributions during the period between 16 January 2013 to 31 December 2014. All Korean individuals working in China must participate in Chinese basic medical insurance after 31 December 2014.

Service Highlight

It is our mission to provide useful information to foreign companies who operate in China and help them to succeed in China leveraging our experience in China. For any assistance you may need from us, you are encouraged to contact our Marketing Executive, Ms Mary Li, on +852 3579 8745 or email her at maryli@sinobridge-consulting.com.

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