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The Bilateral Agreement on social security between China and Spain has come into force

Employment Legal Flash

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The Agreement on social security between China and Spain ("the Agreement"), which partially avoids double social security contributions, has entered into force.

Here is a brief summary of the effects of the Agreement on the transfer of employees from Spain to China and China to Spain.

Key points

- The Agreement applies to individuals who work in the territory of one of the contracting parties for an employer whose place of activity is in that territory, and who are sent by their employer to the territory of the other contracting party under their employment relationship to provide services for the employer.
- The Agreement allows the employee to maintain social security contributions in the country of origin for six years.
- Double social security contributions are avoided for insurance regimes for which it is mandatory to contribute to both social security systems.

Entry into force and scope of application

- The bilateral Agreement entered into force on March 20, 2018.
- It applies to individuals who work in the territory of one of the contracting parties for an employer whose place of activity is in that territory, and who are sent by their employer to the territory of the other contracting party under their employment relationship to provide services for the employer[1].
- It allows individuals to maintain contributions in the country of origin for 72 months (6 years), with an authorization issued by the relevant authority in that country (in Spain, the Ministry of Employment and Social Security; in China, the Ministry of Human Resources and Social Security). This period can be extended by application at least three months prior to its expiration with the relevant authority.

  For employees who were transferred before the Agreement entered into force, the six-year period will start on the date the Agreement entered into force.
- The Agreement applies to legislation related to the following social regimes:
  - (a) China:
    - Pension insurance
    - Unemployment insurance
  - (b) Spain:
    - Employees' social security contributory pensions, except those resulting from work-related accidents and illnesses
    - Employees' unemployment social security contributions and pensions

[1] It remains to be clarified by the Ministry of Human Resources and Social Security whether the Agreement will be applicable to all employees dispatched from Spain to China or only to those who do not conclude a local contract in China and continue to be paid solely by the Spanish company.

Practical implementation

Mobility from Spain to China

- Employees transferred to China will be able maintain social security contributions in Spain for a period of six years.
- For the employee to maintain these contributions, the employer will have to request an ES/CN.1 certificate by presenting a TA.300 application, which proves that contributions are being made in Spain. The employee will have to submit the ES/CN-1 certificate to the local subsidiary of the Ministry of Human Resources and Social Security in China for record filing. The exemption will be effective for the period stated in the ES/CN.1 certificate.
- Although the Agreement establishes a contribution exemption for the pension insurance and the unemployment insurance, it will still be necessary to contribute in China for medical insurance, (ii) maternity insurance, (iii) work-related injury insurance, and (iv) the housing fund.
- In China, local authorities manage social security, so savings resulting from the exemption applicable to the two insurances vary, depending on the region.
- For instance, in Shanghai, the company's social security contribution is 38.2-39.52% of the contribution base, and the employee's is 17.5%.
- By applying the exemption under the Agreement, companies that transfer employees to provide services in China will save 20.5% on their social security contribution for China, and employees will save 8.5%. Companies' social security contributions will be reduced to 17.7-19.02%, and employees' contributions will be reduced to 9%.
- In China, under the Individual Income Tax Law, the company and personal mandatory contributions to social security according to Chinese domestic regulations are not taxable income. Therefore, foreign social security contributions, mandatory or voluntary, are considered taxable income for foreign expatriates. For instance, this is the practice in Shanghai. We will need more clarification from the State Administration of Taxation on the mandatory social security contributions exempt under a bilateral Agreement on social security.
- In practice, some tax authorities may relax on the company contributions to the foreign social securities, provided (i) they are statutorily required in the home country; (ii) they are not deducted by the Chinese company as its own salary expenses for enterprise income tax purposes; and (iii) it is approved by the in charge tax authorities. Therefore, it is advisable to discuss with the local tax authorities how to treat foreign social security contributions in their jurisdictions.

Mobility from China to Spain.

- Employees transferred to Spain will be able to maintain social security contributions in China for a period of six years.
- They will need the CN/ES-1 certificate issued by the Ministry of Human Resources and Social Security by submitting the application for certificate of coverage, which proves that contributions are being made in China.
- The company in Spain will need to (i) request a specific CCC, (ii) request a NAF for the transferred employee, (iii) send a copy of the CN/ES-1 certificate issued by the Chinese authority, and (iv) register the employee with the CCC, effective on the initial date stated in the CN/ES-1 certificate.
- They will be exempt from contributing to Spanish social security for contributory pensions, except for those resulting from work-related accidents and illnesses, and unemployment contributions and pensions. However, they will be subject to social security contributions for the remaining contingencies.

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