China: Collection of Trade Union Contribution to be enforced

The Chinese local tax authorities have taken steps to ensure that companies comply with their obligation to make a Trade Union Contribution. The enforcement of this obligation will increase the operating costs of affected companies.

According to the Trade Union Law and related regulations, companies in China are required to contribute 2% of the total salary costs for the creation of primary trade unions. Until recently, collection of the Trade Union Contribution was enforced in practice (particularly for private companies and including foreign-invested enterprises (FIEs)), with the result that the contribution used to be a “voluntary” payment, with most FIEs not making the payment.

In early 2010, the Beijing municipal government announced a pilot program under which the local tax authorities in certain districts (e.g. Xicheng, Changping and Fengtai) would assist with the collection of the trade union contribution as from 1 July 2010. On 29 June 2011, the Beijing Federation of Trade Unions and the Beijing Local Tax Bureau jointly issued a notice that expands the collection program to Dongcheng, Xicheng, Chaoyang, Mentougou and Shunyi with effect from 1 October 2011 and requiring a retroactive payment as from 1 July 2011. In addition, all districts in Beijing will fall within the scope of the collection program on 1 January 2012.

The following rules apply under the Trade Union Law and recent notices:

- All entities and organizations (including branches and representative offices) set up in the relevant districts must pay the contribution.
- The contribution will be collected by the local tax bureau on behalf of the municipal trade unions.
- The contribution is equal to 2% of the total wages and salaries of all employees (including foreign employees). Payment of the contribution is mandatory even if the company has not set up a trade union.
- The scope of salaries and wages for purposes of the contribution is determined based on the definition provided by the Statistics Bureau. According to guidance issued by the Bureau in 1990, that amount includes the base salary, bonuses, allowances and subsidies paid directly to employees, but excluding expenses for labor insurance and employee benefits, such as pension costs, health care or public health care costs, subsidies for collective welfare causes, culture and education costs of trade unions and collective welfare payments, etc.
- The contribution must be paid on a quarterly basis by the 15th day of the month following the end of the quarter, with a late payment interest surcharge assessed on the overdue amount at 0.5% per day. The quarterly filing can be made through the on-line filing system or an on-site visit to the local tax bureaus. Currently, payment cannot be made through the on-line system of the local tax bureaus but rather through an actual payment at the bank.
- Companies must register with the local tax authorities in advance of making the first payment of the contribution.
- The contribution is deductible for corporate income tax purposes, provided the company can substantiate payment with a valid receipt issued by the local tax authorities. Once an employer sets up a trade union, 60% of the contribution will be refunded.

Comments

In determining the total wages and salaries, the prevailing regulations do not provide clear guidance on whether tax-exempt benefits provided to foreign employees (e.g. housing, education, home leave expenses, etc.) and salary costs for expatriates not charged back to the Chinese entity should be included. Based on an informal confirmation with some of the trade union authorities, such expenses paid on a non-cash or reimbursement basis may be excluded. These authorities also were of the opinion that salary costs for expatriates without recharge to the Chinese local entity may not be included. However, companies should obtain confirmation of the position to be taken with the relevant district trade union authorities.

It also appears that some provinces and cities will follow suit and may institute the mandatory collection of the contribution via the local tax authorities. Companies in China should carefully monitor future developments.

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