Agenda

1. Common employment arrangements for cross-border employees
2. Tax issues under different employment arrangements
3. Other considerations for cross-border employment
4. Establishment of best practice to manage tax risk
1. Common employment arrangements for cross-border employees
Common employment arrangements for cross-border employees

i. Frequent travelling arrangement

ii. Secondment arrangement

iii. Dual contract employment arrangement

<table>
<thead>
<tr>
<th></th>
<th>PRC IIT implication and reporting obligation</th>
<th>Permanent Establishment</th>
<th>Visa / Work Permit</th>
<th>Social Security</th>
<th>Salary payment and Forex issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequent travelling</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secondment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dual contract</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
i. Frequent travelling arrangement

Salaries

Hong Kong company

Legal employment contract

Business trips

PRC company

Hong Kong

China
ii. Secondment arrangement

Salary payment option 1: payment to HK a/c

Legal employment contract + secondment contract

Salary payment option 2: Direct salaries payment to HK a/c

Hong Kong company

Option 1: Salaries reimbursement

Pro-forma employment contract

PRC company
iii. Dual employment arrangement

- **Hong Kong company**
  - **Legal employment contract**
  - **Direct salaries payment to HK a/c**
  - **Only perform HK duties**

- **PRC company**
  - **Legal employment contract**
  - **Direct salaries payment to HK a/c or PRC a/c**
  - **Only perform PRC duties**

Hong Kong

China

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2. Tax issues under different employment arrangements
# PRC IIT implications for cross-border employees working in China

## Frequent travelers

**IIT position**
- Exempted if conditions under relevant DTA are fulfilled

**Reporting obligation**
- Monthly employer withholding or self reporting?

## Secondment

**IIT position**
- Full basis reporting

**Reporting obligation**
- Monthly employer’s withholding
- Annual individual filing by 31 March of the following year

## Dual Employment arrangement

**IIT position**
- Time apportionment

**Reporting obligation**
- Monthly employer withholding
- Annual individual filing by 31 March of the following year

---

- Exemption Criteria under PRC-HK DTA
  - The individual is present in the PRC for a period or periods not exceeding in aggregate 183 days in any 12-month period;
  - The individual’s remuneration is paid by, or on behalf of, an employer who is not a PRC resident; and
  - The individual’s remuneration is not borne by a Permanent Establishment (“PE”) which the employer has in the PRC.
Hong Kong Salaries tax (“HKST”) implication for cross-border employees working in China

- Certain relief could be claimed to exclude the portion of income already taxed in the PRC

Q: Any double tax issues?
Possible double taxed situation 1 – Bonus for HK employment with travel to China

Example 1

• An individual who is the Chief Representative of a SHRO, he will spend most of his time in Hong Kong but frequently travel to work in China.
• His annual bonus regarding his employment with the company is RMB1,000,000.
• In one calendar year, he has traveled to work in China each month and for 55 days in total.

<table>
<thead>
<tr>
<th>Percentage of bonus to be allocate</th>
<th>In Hong Kong</th>
<th>In China (prior to Announcement 16)</th>
<th>In China (after Announcement 16 adoption)</th>
</tr>
</thead>
<tbody>
<tr>
<td>365–55 days</td>
<td>365 days</td>
<td>12 months</td>
<td>IIT payable on bonus x 55 days</td>
</tr>
<tr>
<td>365 days</td>
<td></td>
<td>12 months</td>
<td>365 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>= 85%</td>
<td>= 100%</td>
</tr>
<tr>
<td>Bonus subject to tax</td>
<td>RMB1,000,000 x 85% = RMB850,000</td>
<td>RMB1,000,000 x 100% = RMB1,000,000</td>
<td>Effectively RMB1,000,000 x 15% = RMB150,000</td>
</tr>
<tr>
<td>Bonus being double taxed</td>
<td>RMB850,000 (85% of bonus)</td>
<td></td>
<td>No double taxation on bonus</td>
</tr>
</tbody>
</table>

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## Example 2

- An individual who is employed by a Hong Kong company and seconded to work in China on a full-time basis.
- His annual salary is RMB500K.
- In one calendar year, he stayed in Hong Kong for 90 days.

<table>
<thead>
<tr>
<th></th>
<th>In Hong Kong</th>
<th>In China (prior to Announcement 16)</th>
<th>In China (after Announcement 16 adoption)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of income to be allocated</td>
<td>90 days (\frac{365 \text{ days}}{365 \text{ days}}) = 25%</td>
<td>100%</td>
<td>275 days (\frac{365 \text{ days}}{365 \text{ days}}) = 75%</td>
</tr>
<tr>
<td>Employment income subject to tax</td>
<td>RMB500K x 25% = RMB125K</td>
<td>RMB500K x 100% = RMB500K</td>
<td>RMB500K x 75% = RMB375K</td>
</tr>
<tr>
<td>Employment income being double taxed</td>
<td>RMB125,000 (25% of employment income)</td>
<td></td>
<td>No double taxation on employment income</td>
</tr>
</tbody>
</table>
Possible double taxed situation 3 – Monthly salary for dual contract arrangement

Example 3

- An individual who is employed by a Hong Kong company and a PRC company (under dual contract arrangement).
- His annual employment income from Hong Kong company and PRC company are RMB100,000 and RMB800,000 respectively.
- In one calendar year, he stayed in the PRC and Hong Kong for 300 and 40 working days respectively.
- He spent 25 days in Hong Kong for holidays entitled from PRC employment.

<table>
<thead>
<tr>
<th>Percentage of income to be allocated</th>
<th>In Hong Kong (prior to Announcement 16)</th>
<th>In Hong Kong (after Announcement 16 adoption)</th>
<th>In China (after Announcement 16 adoption)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>![Equation](40 + 25 \text{ days}) \div 365 \text{ days} = 18%</td>
<td>![Equation](300 + 25 \text{ days}) \div 365 \text{ days} = 89%</td>
<td>![Equation](300 \text{ days}) \div 365 \text{ days} = 82%</td>
</tr>
<tr>
<td>Employment income subject to tax</td>
<td>![Equation](RMB900,000 \times 18% = RMB162,000)</td>
<td>![Equation](RMB900,000 \times 89% = RMB801,000)</td>
<td>![Equation](RMB900,000 \times 82% = RMB738,000)</td>
</tr>
<tr>
<td>Employment income being double taxed</td>
<td><img src="RMB63,000" alt="Equation" title="7% of employment income" /></td>
<td></td>
<td>![Equation](No double taxation on employment income)</td>
</tr>
</tbody>
</table>
Possible solution to solve the double taxation issue – application of Announcement 16

Highlights of Announcement 16

- For the purpose of addressing the double taxation issue on Hong Kong and Macau tax residents working across Mainland China, Hong Kong and Macau. The changes are:-

Rules of counting days in the IIT calculation formula- adoption of no. of physical presence day rather than no. of working day

IIT calculation method for bonus-calculated based on number of days in China rather than on number of month working in China
Possible solution to solve the double taxation issue – application of Announcement 16

Conditions for application of Announcement 16

• Applicable to Hong Kong or Macau tax residents employed in Hong Kong or Macau
• Applicable to Hong Kong or Macau tax residents under dual employment arrangement in Hong Kong or Macau and China
• Applicable to employment income received on or after 1 June 2012
• Request a recordal filing

Uncertainties of Announcement 16

• What is the meaning of employed in Hong Kong?
• Will secondment be covered?
• Will equity award be covered?
3. Other considerations for cross-border employment arrangements
• PRC Social Insurance Law
  ➢ Passed on 28 October 2010
  ➢ Effective 1 July 2011
  ➢ Mandatory contribution required

<table>
<thead>
<tr>
<th></th>
<th>Employers</th>
<th>Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Medical</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Unemployment</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Work injury</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Maternity</td>
<td>✓</td>
<td>✗</td>
</tr>
</tbody>
</table>
Implementation rules for foreigners working in China

Scope of application for foreign nationals

- Exercising employment legally in China
- Holding valid PRC work permits or permanent resident permits
- Locally hired or hired by overseas employer and seconded to China
- Contributions by employee/assignee and employer/host entity in China required for all five social insurance funds
- Exemption possible if any totalisation agreement is in place

Q: Is it mandatory for foreign nationals/Hong Kong/Macau/Taiwan people to make social insurance contribution? Any local variance?
### 2015 Contribution rates – Shanghai

<table>
<thead>
<tr>
<th>Social Fund</th>
<th>Employee Rates</th>
<th>Employee Contribution (RMB)</th>
<th>Employer Rates</th>
<th>Employer Contribution (RMB)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension</td>
<td>8%</td>
<td>1,308</td>
<td>21%</td>
<td>3,434</td>
</tr>
<tr>
<td>Medical</td>
<td>2%</td>
<td>327</td>
<td>11%</td>
<td>1,799</td>
</tr>
<tr>
<td>Unemployment</td>
<td>0.5%</td>
<td>82</td>
<td>1.5%</td>
<td>245</td>
</tr>
<tr>
<td>Maternity</td>
<td>-</td>
<td>-</td>
<td>1%</td>
<td>164</td>
</tr>
<tr>
<td>Work injury</td>
<td>-</td>
<td>-</td>
<td>0.5%</td>
<td>82</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10.5%</strong></td>
<td><strong>1,717</strong></td>
<td><strong>37.3%</strong></td>
<td><strong>5,724</strong></td>
</tr>
</tbody>
</table>

Contributions capped at 300 percent of the average monthly wages in Shanghai, which is RMB 16,353 currently (RMB5,451 x 3)
## 2015 Contribution rates – Beijing

<table>
<thead>
<tr>
<th>Social Fund</th>
<th>Employee Rates</th>
<th>Employee Contribution (RMB)</th>
<th>Employer Rates</th>
<th>Employer Contribution (RMB)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension</td>
<td>8%</td>
<td>1,551</td>
<td>20%</td>
<td>3,878</td>
</tr>
<tr>
<td>Medical</td>
<td>2%+RMB3</td>
<td>391</td>
<td>10%</td>
<td>1,939</td>
</tr>
<tr>
<td>Unemployment</td>
<td>0.2%</td>
<td>39</td>
<td>1%</td>
<td>194</td>
</tr>
<tr>
<td>Maternity</td>
<td>-</td>
<td>-</td>
<td>0.8%</td>
<td>155</td>
</tr>
<tr>
<td>Work injury</td>
<td>-</td>
<td>-</td>
<td>0.2% – 3%</td>
<td>39 – 582</td>
</tr>
<tr>
<td>Total</td>
<td>10.2%+RMB3</td>
<td>1,981</td>
<td>32% – 34.8%</td>
<td>6,205 – 6,748</td>
</tr>
</tbody>
</table>

Contributions capped at 300 percent of the average monthly wages in Beijing, which is RMB 19,389 currently (RMB6,463 x 3)
### 2015 Contribution rates – Shenzhen

<table>
<thead>
<tr>
<th>Social Fund</th>
<th>Employee Rates</th>
<th>Employee Contribution (RMB)</th>
<th>Employer Rates</th>
<th>Employer Contribution (RMB)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension</td>
<td>8%</td>
<td>1,453</td>
<td>14%</td>
<td>2,543</td>
</tr>
<tr>
<td>Medical</td>
<td>2%</td>
<td>363</td>
<td>6.2%</td>
<td>1,126</td>
</tr>
<tr>
<td>Unemployment</td>
<td>1%</td>
<td>182</td>
<td>2%</td>
<td>363</td>
</tr>
<tr>
<td>Maternity</td>
<td>-</td>
<td>-</td>
<td>1%</td>
<td>182</td>
</tr>
<tr>
<td>Work injury</td>
<td>-</td>
<td>-</td>
<td>0.4%</td>
<td>73</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11%</strong></td>
<td><strong>1,998</strong></td>
<td><strong>23.6%</strong></td>
<td><strong>4,287</strong></td>
</tr>
</tbody>
</table>

Contributions capped at 300 percent of the average monthly wages in Shenzhen, which is RMB 18,162 currently (RMB6,054 x 3)
Common PRC visa types

- Foreign passport holders must obtain the permission of Chinese Government in order to enter, transit or reside in China
- Common PRC visa types

<table>
<thead>
<tr>
<th>Visa types</th>
<th>People of entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>D visa</td>
<td>Permanent residence immigrants</td>
</tr>
<tr>
<td>F visa</td>
<td>Persons who enter China to engage in exchange, visit and study activities</td>
</tr>
<tr>
<td>L visa</td>
<td>Tourists who visit China; tourists on a group tour may be issued group L visas</td>
</tr>
<tr>
<td>M visa</td>
<td>Persons who visit China for commercial and trade activities</td>
</tr>
<tr>
<td>R visa</td>
<td>High-level foreign talents and urgently needed specialised talents sought-after by China</td>
</tr>
<tr>
<td>Z visa</td>
<td>Persons working in China</td>
</tr>
</tbody>
</table>
China work permit requirement

• Foreigners, Hong Kong and Macau individuals should apply for work permit if:-
  ➢ PRC employment
  ➢ Assigned to work in a PRC entity for over 3 months in a calendar year
Payroll remittance issues

**Option 1:** Hong Kong company makes payment to employees’ Hong Kong bank a/c and seek reimbursement from PRC company

**Option 2:** Salary paid by PRC company to PRC bank a/c + individual remit the fund to bank a/c in Hong Kong

**Option 3:** Remittance by PRC company to individual’s bank a/c in Hong Kong

- Foreign exchange control in the PRC ➔ any implications?

- Documents requested?
4. Establishment of best practice to manage tax risk
Tax administration of cross-border employees

- Permanent establishment (PE) risk
- Cost projection
- Equity compensation tracking
- Payroll / withholding reporting
- Travel and workday tracking
- Employment contracts and taxpayer documents
- Relocation / work permit / visa
- Compliance Management
- Human Resources Department
Cross-border employees assignment cycle

Phase 1: Preparation

1. Selection of Assignees and locations
2. Negotiation of Assignment terms

Phase 2: Implementation

3. Preparation to go
4. Settling-in assistance

Phase 3: Performance

5. Ongoing compliance
6. Periodical review and updates

Phase 4: Repatriation

7. Assignees repatriation
8. Retrospective filings
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Thank you