

DEWIT
LAW OFFICE

NEWS LETTER

BEIJING REPRESENTATIVE OFFICE
ISSUE 5

FROM THE HEART OF EUROPE
TO THE HEART OF CHINA
A RELIABLE CONSULTANT AT YOUR SIDE

DEWIT LAW OFFICE

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NEW SOCIAL INSURANCE
LAW IMPACTING ON FOREIGN
EMPLOYEES

CHANGES TO THE CATALOGUE
FOR THE GUIDANCE
OF FOREIGN INVESTMENT
INDUSTRIES

ENTERPRISE INCOME TAX FOR
NON-RESIDENT ENTERPRISES

SUPPORT MORNING TEARS



Dear Reader,

A question most of you may have to deal with when moving to China is the overseas extension of your social insurance package. From 1 July this year China's new Social Insurance Law applicable to foreigners 'by analogy' must be taken into account. The main story in this newsletter introduces the highlights of this new piece of legislation. Equally important for your overseas business are the proposed revisions to the Catalogue for the Guidance of Foreign Investment Industries. The Catalogue is the main reference for every starting business in China, dividing foreign investments into encouraged, restricted and prohibited activities.

In addition we briefly discuss an important recent notice issued by the State Administration of Taxation on enterprise income taxation of non-resident enterprises.

Finally we are happy to introduce to you the charity work

of Morning Tears, a non-profit organisation founded in Belgium and aiming to offer shelter to the children of convicts. Through this we hope to draw attention to the invaluable work of Morning Tears.

With this extra large edition of our newsletter, we are providing you with sufficient reading material to cover both July and August, months during which Dewit Law Office's editing team will be off duty. We will come back to you with further legal news on China in the month of September. In the meantime Dewit Law Office wishes all of you a refreshing summer holiday!

Best regards,
Bernard Dewit



ON LINKEDIN VIA
DEWIT LAW OFFICE - CHINA

NEW SOCIAL INSURANCE LAW IMPACTING ON FOREIGN EMPLOYEES

A question most of you may have to face when moving to China is the overseas extension of your social insurance package. Most European countries have well-developed public social security programmes and you may not want to lose these benefits when moving to China and a system which is still premature. It may be an option to buy social security from a private provider which is either an international company present in China or a domestic one. As of July this year China's new Social Insurance Law must also be taken into account by foreigners employed in China, either on its own or in combination with the package chosen by you.

Generally speaking, there are five mandatory social insurance funds in China for employees: namely basic pension insurance, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance. Although they will be unified in the long term, the amounts to be contributed by the employer and employee currently vary from city to city. The table below shows the rates at present applicable in Beijing.

transfer to other insurance schemes. While an early drawdown is not allowed, the amount in the individual account can be inherited.

Basic medical insurance

Benefits under the basic medical insurance fund include the provision of medicines and services according to published catalogues and standards, as well as direct settlement between insurance companies and hospitals and pharmacies. Provided contributions have been paid for a cumulative period of 15 years when reaching the statutory retirement age, no further contribution is required to continue enjoying the basic medical insurance once retired.

Work-related injury insurance

This insurance comes into play when an employee is injured by an accident arising from work or when he or she suffers an occupational disease. In such a case, the employee may be compensated for the recognition and assessment of the injury as such, medical treatment, recovery expenses, installation of devices for disabled, transportation and accommodation costs, nursing expenses, etc. The employer remains responsible for paying salaries during the period of medical treatment and for paying a monthly disability allowance for a 5th or 6th grade of disability. If the labour contract has been ended or terminated, the employer will have to pay a lump sum disability and employment subsidy.

Requirements for unemployment insurance

To enjoy these benefits the following conditions need to be met:
 (1) premiums have been paid for more than one year;
 (2) unemployment may not be the employee's intention;
 (3) the employee must have registered with the local labour bureau;

(4) the employee intends to seek and find employment.

If all conditions are met the person may enjoy unemployment allowances for a period based on the length of the period contributions have been made, ranging from 12 months up to 24 months. Each province may determine its own standards but the allowances should not be lower than the local minimum living standards.

Maternity insurance benefits

This insurance covers birth-related medical expenses incurred either when giving birth to a child or in the context of family planning (i.e. abortion). It further includes maternity allowances calculated and paid to an employee

as per the average monthly wages of the employee paid in the previous year. Note that the basic pension, basic medical and unemployment insurances are transferable location-wise. Where payments are not sufficient or are delayed, the social security administrative department can require rectification and impose moratorium interest of 0.05% per day on arrears.

PARTICIPATION OF FOREIGN EMPLOYEES

As far as foreign employees' participation in the public social security system was concerned prior to this law, only few cities allowed foreigners to participate on a voluntary basis, while some foreigners could additionally benefit from the conditions agreed upon in bilateral agreements concluded with China (e.g. Germany), which concluded a social insurance agreement with China in 2002).

As of 1 July this year the system will be streamlined. While the law itself remains vague, restricting itself to announcing an 'analogical approach' to foreigners, the Interim Measures for the Participation in Social Insurance of Foreigners Employed in China was released on 10 June.

These Measures explicitly state that foreigners who are legally employed by enterprises, public institutions, social groups, privately owned non-enterprise units, foundations, law firms and accounting firms that have been registered in accordance with the laws in China, are required to participate in all five social insurances. Contributions shall be paid in accordance with the relevant rules. The same rules apply to expatriates dispatched to branch or representative offices registered in China.

Additionally, the Measures include an answer to some practical questions:

1. Pension: If the foreign employee leaves China before the stipulated age for retirement, the employee may choose to retain the account in case he/she returns to China. Alternatively, he/she can file a written application requesting the social insurance agency to pay a lump sum, thereby closing the account. The due amounts can be inherited;
2. Citizens of Hong Kong, Macao and Taiwan are also subject to the rules provided under the Interim Measures;
3. Deviating provisions in bilateral or multilateral treaties prevail.

Moving away from a country with an advanced social security system to a country such as China and a system that is yet to come of age, is a tough challenge you will need to deal with.

BENEFITS UNDER THE NEW SOCIAL INSURANCE



ceive a basic /she has reached ent in China and s to the pension as not yet paid for 15 years, the employee may choose to continue paying up to a total of 15 years or

CHANGES TO THE CATALOGUE FOR THE GUIDANCE OF FOREIGN INVESTMENT INDUSTRIES

The Catalogue for the Guidance of Foreign Investment Industries was introduced by the National Development and Reform Commission and the Ministry of Commerce in 1995. The Catalogue divides foreign investments into three categories, namely encouraged industries, restricted industries and those prohibited. After four revisions, the currently applicable version dates back to 2007. The new revisions follow the publication of China's 12th Five Year Plan.

Encouraged industries

Adding environmental friendly and high-end projects to the encouraged category, China remains committed to its engagements under the Kyoto Protocol, e.g. by encouraging the establishment of Sino-foreign cooperative joint ventures in the field of unconventional natural gas resource exploration and exploitation. New energy industries, including high-tech green battery manufacturing and the operation of renewable water plants, are also listed in the proposed revision of encouraged industries. As long as the foreign investment does not exceed 50%, cooperation for the production of key components for new energy cars, including high energy batteries, anode battery materials, battery separators, battery management systems, motor management systems, is also added to the encouraged category. The production of new light-weight and environmental friendly materials for aerospace use is also listed.

China further seeks to attract more foreign investors for high-end manufacturing and high-tech cooperation, as illustrated by the suggestion to add such projects as:
 > gear transmission manufacturing used for wind power, nuclear power or high speed rail;
 > production equipment designing and manufacturing for automobile batteries;
 > development and manufacturing of next generation internet system equipment, terminal equipment, testing equipment, software, and chips based on IPv6; and
 > construction and operation of vehicle charging as well as battery replacement stations.

It is interesting to note that this is the first time foreign investment in venture capital

companies and IPR services has been encouraged. Additionally, financial leasing and the operation of medical institutions with foreign participation are no longer considered restricted.

Restricted industries

China emphasises its concerns about environmental protection by restricting foreign investments in any industry or project that might cause pollution.

Prohibited industries

The proposed revisions of the prohibited section are mostly related to the Government's social concerns and national interests. In trying to control and cool down the real estate industry, for example, China is considering moving foreign investment in the construction and operation of villas away from the restricted category and into the list with prohibited industries. In addition, new foreign investors will also be excluded from China's domestic express mail delivery business.

> For more information on specific projects, contact us on info@dewitlawoffice.cn

The Catalogue is the main reference for every starting business in China, dividing foreign investments into encouraged, restricted and prohibited activities. China's National Development and Reform Commission recently proposed some revisions to the classification of foreign investments.

NEWS FROM CHINA

Hong Kong Becomes More Attractive for Arbitration

On 1 June this year the Hong Kong Arbitration Ordinance entered into force. With the newly introduced unitary arbitration regime, the Special Administrative Region hopes to further promote Hong Kong as the preferred location for arbitration. The new Ordinance abolishes the difference between international and domestic arbitration and was influenced by the UNCITRAL Model Law on International Commercial Arbitration that offers an internationally accepted framework for arbitration. Emphasis is placed on maximum party autonomy and minimal court intervention. The arbitration tribunal can issue interim orders in case of non-compliance that may lead to potential adverse consequences.

In addition, the parties' obligation to respect the confidentiality of both hearings and arbitration awards is emphasised. Alternative dispute resolution is further encouraged in the form of mediation. As far as the enforcement of arbitral awards is concerned, distinction is made between (1) awards rendered in Mainland China, (2) those rendered in member states of the 1958 New York Convention (UN Convention on the Recognition and Enforcement of Foreign Arbitration Awards), and (3) other awards.

Goods Production Certificate Required

On 1 May 2011 new measures of the State Administration of Taxation entered into force to avoid double taxation imposed on taxpayers who sell their own products and render construction services at the same time. Indeed, the sales of goods are subject to VAT imposed by the state tax bureau, while the local tax bureau levies business tax on construction services. With the SAT announcement, the so-called "Goods Production Certificate" was introduced to avoid this double taxation by state and local tax authorities. Taxpayers can apply for this certificate at the state tax bureau of the region where they are registered and submit it to the local tax bureau.

Liao Liqiang, New Chinese Ambassador to Belgium

Liao Liqiang was appointed Ambassador to Belgium, replacing Zhang Yuanyuan who held a farewell reception on 11 May in Brussels. The new ambassador is expected to further encourage and support the deepening of Sino-Belgian relations.

Chongqing and Chengdu Move from Competition to Cooperation

The tense competition between Chengdu and Chongqing may shift to a more constructive cooperation in the future thanks to the State Council's recently approved Regional Planning for the Chengdu-Chongqing Economic Area. The development plan aims to turn the region into a major economic centre of the west by 2015 and of the whole of China by 2020. The area will serve as a national modern industrial base where the government can experiment with its domestic open policy and where urban and rural development are coordinated into a whole.

Cigarettes Banned from Public Areas in China

To protect public health, the Chinese Ministry of Health has prohibited smoking in enclosed public areas. As of 1 May this year smoking is no longer allowed in such spaces as hotels, restaurants, bars, cinemas, parks, exhibition halls, airports and public transportation vehicles. China had previously banned smoking in hospitals on a national basis, while many Chinese cities had their own regulations in force.

It remains to be seen how the Chinese Government will implement this new regulation in practice. China is the world's largest cigarette market with an estimated 300-350 million smokers.

NEWS FROM BELGIUM



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For principal
d in Belgium
are considered residents and taxed on their

worldwide income. Much to the contrary, non-residents pay tax only on Belgian-sourced income. Foreign executives on a temporary assignment in Belgium may apply for a special expatriate regime provided both the company and the employee meet a number of conditions. The application should be filed with the competent authorities within six months. Basically, the company should be part of an international group, while the employee should be a foreigner holding a position as executive. He or she should maintain personal and economic interests outside Belgium and have a temporary assignment in Belgium only. Recently Belgian tax authorities have become more vigilant about this last condition, reviewing files of those expatriates who have enjoyed the beneficial regime for more than 10 years.

Organise Your Business Trip to Belgium

By Royal Decree of 13 March 2011, the Belgian Government placed the system of registration of foreign employees known as 'LIMOSA' in line with the regulation of work permits. LIMOSA exempts foreign nationals who are employed abroad and come to Belgium to either attend scientific congresses or to join meetings, from the obligation to register. Previously, however, the maximum duration of stay in Belgium differed from the duration of the exemption of work permits. With the changes introduced by the new Royal Decree, these anomalies have been abolished. As of now:

- > the exemption for scientific congresses is limited to the duration of the concerned congresses;
- > as far as meetings are concerned, the exemption is limited to a maximum of 60 days per calendar year with a maximum of 20 consecutive calendar days per meeting.

ENTERPRISE INCOME TAX FOR NON-RESIDENT ENTERPRISES

On 1 April this year the 'Announcement on Several Issues Concerning the Administration of Non-resident Enterprise Income Tax' entered into force. These measures of the State Administration of Taxation (SAT) clarify non-resident enterprises' tax liability on China-derived incomes from the following sources:

1. A non-resident enterprise concluded a contract with a domestic company generating income such as interest, rent or royalties;
2. A non-resident enterprise engaged in activities such as loan borrowing, sales, transportation of goods, processing, rental, and construction contracting, receives a security fee paid by a domestic enterprise, organisation or individual in accepting security provided by the non-resident enterprise;
3. A non-resident enterprise having no presence in China transfers its domestic land use rights, or a non-resident enterprise being present in China does so while the income received from the transfer of the land use right has no actual connection with such organisation and venue;
4. A non-resident enterprise leases equipments or other items to domestic companies in the form of financial leasing or normal rent;
5. A non-resident enterprise receives equity investment income (such as dividends and bonuses) distributed by a domestic company.

Note that all outstanding tax liabilities incurred before the effective date are also subject to this new announcement.

> For more detailed information, please visit:
<http://202.108.90.178/guoshui/action/GetArticleView1.do?id=155915&flag=1>



The term «non-resident enterprise» as mentioned in this law refers to an enterprise established under the law of a foreign country (region), whose actual institution of management is not inside China but which has offices or establishments inside China; or which does not have any offices or establishments inside China but has incomes sourced in China.

- China's Enterprise Income Tax Law of 16 March 2007 -

SUPPORT MORNING TEARS

Founded in 1999 Morning Tears is a Belgian non-profit organisation which rebuilds the world for children who have suffered heavy emotional pain, such as those whose parents are in prison, whose parents have been sentenced to death, or those who have been abused or neglected; children who have not been registered at birth, and thus have no rights, and street children. Morning Tears has been working in close cooperation with the Chinese Government since 2001. In 2009 the Chinese authorities granted the International Friendship Award to the organisation, and in April last year Morning Tears received the prestigious China Charity Award 2010 as a reward for more than 10 years of protecting and assisting children in China.

Rebuilding a world implies rebuilding all areas of life and society. Morning Tears:

- > assures that children receive coverage of basic needs, but also provides psychological and administrative help in order to encourage reintegration into society;
- > pushes local governments to take up their responsibility to take care of and protect these children;
- > improves the quality of psychological care for the children;
- > lobbies with and advises authorities to improve the legal framework for the protection of vulnerable children;
- > advocates the 'rights of the child' as adopted by the United Nations.

Morning Tears is run almost entirely by volunteers. You can contribute to their

valuable work by donating. The running costs of Morning Tears are kept very low, so that your donations go almost entirely to the children in need.



morning tears

> For more information, visit
<http://www.morningtears.org.cn>

YOUR CHINA EXPERIENCE-OUR JOB

Our philosophy...

...To facilitate your China experience

As an experienced law firm with an in-depth knowledge of both Chinese and European law, we understand your concerns and aim to provide assistance of the highest quality. In order to achieve our goals, we believe in...

- Providing high-quality language assistance
- Providing legal services at European standards
- Bridging the gap between Chinese and European culture
- Protecting your intellectual property
- Offering in-depth analysis of your potential business partner(s)
- Maintaining a stable and trustworthy Chinese and European network
- Guaranteeing a follow-up service during your absence
- Ensuring a double presence within both Europe and China, thereby providing 24 hour, round-the-clock assistance.

Our competitive advantages...

...To suit all your needs

Specializing in SMEs, we also provide additional services to meet all your needs:

- Offering special fees for SMEs
- Proposing services in English, French, Dutch or Chinese
- Providing one-stop services for: Translation and interpretation Location and relocation



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Our services...

...To offer expert legal advice

In cooperation with our Chinese partners, our services consist of:

- Analysing the feasibility of your project
- Contacting and negotiating directly with local administrations
- Contacting and negotiating directly with your business partner(s)
- Offering assistance with your business setup: J/V, FIE, RO
- Ensuring optimal use of local incentives
- Drafting and reviewing your legal documents:
 - Articles of association
 - Commercial and labour contracts
 - Confidentiality agreements etc.
- Offering alternative dispute resolutions (arbitration/mediation)
- Assisting in litigation

DEWIT LAW OFFICE CHINA

Who are we ?

Established in 1945, Dewit Law Office has always maintained a close relationship with its clients. A team of thirteen lawyers and four secretaries, supported by a small group of additional external staff, process a number of cases dealing with a variety of issues from all domestic judicial districts. DLO has permanent correspondents based in East-Asia and a network of correspondents throughout the European Union.

Bernard Dewit's interest in China and 27 year-long involvement in Chinese business, have helped him to gain the necessary experience to both understand and facilitate Chinese investments in Europe and vice versa. Having forged close ties with Chinese law firms in Beijing, Shanghai, Chengdu and Hong Kong, Dewit Law Office is the first Belgian law firm to have obtained a license to open a Representative Office in Beijing, with a branch in Chengdu to cover Western China.

Dewit Law Office is the first Belgian law firm to have obtained a license to open a Representative Office in Beijing. The main strength of Dewit Law Office is its line-up of multilingual, multicultural and multidisciplinary team members.

Dewit Law office is the founding partner of Tian Ping Law Firms, with offices in Brussels and Antwerp, and is a member of SILFA, the Staubach International Lawfirm Alliance, a network and alliance among renowned, independent mid-sized law firms throughout Europe and in the United Arab Emirates



Where are we ?

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USEFUL LINKS

Wallonia Export and Foreign Investment Agency (AWEX)
<http://www.wallonia-export.be>
Flanders Investment and Trade (FIT)
<http://www.investinflanderstrade.com>
China Council for the Promotion of International Trade (CCPIT)
<http://english.ccpit.org>

Chambers of Commerce
Belgian-Chinese Chamber of Commerce (BCECC)
<http://www.bcecc.be>

European Chamber of Commerce in China (EUCCC)
<http://www.eurochamber.com.cn>

Benelux Chamber of Commerce in China (BenCham)
<http://www.bencham.org>

Diplomatic Instances

Chinese Embassy in Belgium
<http://www.chinaembassy-org.be>
Belgian Embassy in Beijing
<http://www.diplomatie.be/beijing>
Consulate General of Belgium in Shanghai
<http://www.diplomatie.be/shanghai>
Consulate General of Belgium in Guangzhou
<http://www.diplomatie.be/guangzhou>
Consulate General of Belgium in Hong Kong and Macau
<http://www.diplomatie.be/hongkong>

Export and Investment Services
Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation
<http://www.diplomatie.belgium.be>
Brussels Export
<http://www.brussels-export.be>

Legislative Information

Supreme Court of PRC
<http://www.court.gov.cn/qwfb/>
China International Economic and Trade Arbitration Commission (CIETAC)
<http://www.cietac.org>
China and EU Reach
<http://www.reach24h.com>
http://echa.europa.eu/home_en.asp

Law Firms

Tian Ping Law Firms
<http://tianpinglaw.com>
Staubach International Lawfirm Association (SILFA)
<http://www.staubach-alliance.com>

Touristic Information

Belgium
Wallonia and Brussels tourist office
<http://www.wallonie-tourisme.be>
Flanders tourist office
<http://www.visitflanders.com>

China

China International Travel Service
<http://www.cits.cn>