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Global Reward Update

China

People's Republic of China: New employer reporting requirements for employee incentive plans

November 2021

Background

Many employers offering equity-based incentive plans in China are already subject to tax registration and reporting requirements for local tax authorities/bureaus and State Administration of Foreign Exchange ('SAFE'). This usually involves employer reporting at the implementation of the plan, granting of awards, the vesting/delivery of awards and ongoing quarterly reporting.

These reporting requirements can vary depending on the local tax authority/bureau and so it is recommended that employers keep the requirements under review and keep in contact with the local tax bureau on a regular basis.

What has changed

China's State Administration of Taxation have announced new employer reporting requirements impacting equity incentive plans.

This is a national requirement for companies offering equity-based incentive plans in China to provide details of their plans using a new equity incentive report (a sample of this report can be found here), and other relevant documents, to the applicable tax authority.

Employers should make this submission by the following deadlines:

- For employers with outstanding grants at the end of 2021 (i.e., any previously implemented plan where awards have been granted but not all awards have vested/exercised), this should be submitted **by 31 December 2021**.
- For employers implementing a new equity-based incentive plan, this should be submitted **by the 15th of the month following the decision to implement such a plan**.

The domestic Chinese company is responsible for submitting the form and withholding Chinese income tax accordingly, including where the underlying shares are in a company listed outside of China.

Deloitte's view

It is broadly understood that the Chinese authorities would like to strengthen the administration of incentive plans. Previously the tax registration process differed between local tax authorities and this announcement provides a consistent national-wide format and timeline for employers to make a tax registration for their plans.

We understand local tax authorities have taken different interpretations of this national announcement. This has been seen in recent correspondence with the Shanghai, Beijing, Guangzhou and Shenzhen tax authorities. Therefore, unless additional guidance is published, we recommend employers work with their tax adviser to review the status of their plan registration and tax reporting and consider how the latest requirements are being applied by their local tax authorities.

For many local tax authorities, the new equity incentive report requests similar information requested through existing tax registration processes. Therefore, where employers have already completed tax registration and are otherwise up to date with their tax reporting for their active plans, there may not be a need to submit additional information before the end of the year. However, we suggest this is considered with your tax adviser.

For any employers not up to date with their tax registration and tax reporting, we suggest they rectify this as soon as possible. It is important to note that Chinese preferential tax treatment can only be applied to income derived from equity plans that are successfully registered with tax authorities.

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