



## NEWSLETTER 3 / 2018

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## Staff assignment in China

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In contrast to local employment, a number of additional aspects have to be taken into account with a project assignment or an international employee assignment. These aspects include mainly HR issues, cultural differences, work and residence permits, taxes, social insurance, remuneration and employment contract issues.

### Staff

A large number of companies investing in China have little experience in managing Chinese employees properly and are faced with turnover costs amounting to more than 20% of their total costs. It is worth mentioning that employee loyalty is generally relatively low and often complete teams are enticed to leave.

### Cultural differences

In the long and complicated development of their culture, the Chinese have learned to live with contradictions and apparent opposites – a culture that is spread throughout all of Asia. The Chinese point of view is divided into an outer and an inner world. The outer group corresponds to strangers e.g. everyday life on the streets, unknown people with whom there is no closer connection. The inner world includes family, friends, relatives and close colleagues. In this inner world, the Chinese turn into friendly, reliable and caring people who are extremely polite and committed.

For this reason, a good manager should run his business as if he were the “father”. There must be an absolute basis of trust in the staff, no distance. The relationship must allow criticism to be perceived as constructive.

Those who overcome this cultural divide are rewarded by employees who are much more loyal than in the West, for a Chinese father is responsible for his children – as children are responsible for their father.

### Work and residence permits

Every person needs a visa to enter China. An application must be submitted to the Chinese Embassy or Consulate in the home country. There are a variety of different visa categories (tourist visa, business travel visa, employment Z visa, etc.).

### Regulations of the Chinese authorities

In order to work in China, it is necessary to have a corresponding permit, usually an employment Z visa, which must always be applied for before entering China. Every year, each local Chinese authority reviews the situation to ensure that employers comply with the regulations in their region in China. If an employer does not comply with the authority’s regulations, the employment



contract with the foreign employee must be terminated by the employer. Furthermore, a penalty may be imposed on any employee or employer if they do not comply with the authority's regulations. For example, if an employer cannot obtain a work permit for a foreign worker, the employment contract must be terminated, otherwise the employer may be penalized and must ensure the employee's departure and cover the costs.

## Taxes

When determining in which state the income tax must be paid, the place of employment principle generally applies.

This means that, in principle, work-related earnings are taxable in the state in which the gainful employment is exercised. Deviations from this principle only exist on the basis of national regulations in the state of employment or on the basis of international regulations in accordance with the corresponding double taxation agreement.

### Tax liability

In principle, according to Chinese law, only natural persons who have been in China for more than 90 days are liable to pay taxes. Otherwise, the taxation of the country of residence will continue to apply.

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### Double taxation agreements exist between China, Germany, Austria and Switzerland.

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Due to the existing double taxation agreement, it is possible to deviate from taxation in the state of employment on the basis of the so-called 183 days rule. This means that if a person stays in China for less than 183 days per calendar year, the remuneration is not paid by a company in China and the remuneration costs are also not borne by a company or plant in China, then there is the possibility that the employment income is exempt from taxation in China and, accordingly, subject to taxation in the place of residence.

### Taxes in China

If a natural person becomes taxable in China, they must report to the local tax office and submit a monthly tax statement and pay the applicable taxes within the first seven days of the following month. As a rule, the employer pays the monthly tax on the salary and transfers it directly to the tax authorities.

Taxes on wages and salaries in China are taxed at a progressive tax rate between 5% and 45%. The tax rate of 45% applies if the annual taxable income exceeds CNY 80,000 (approximately CHF 12,000).

As a rule, foreigners working in China receive various allowances in addition to their basic salary. Under the Chinese income tax regulations, fringe benefits in cash form are subject to income tax for foreign employees. In contrast, there is a temporary or total income tax exemption for certain benefits in kind which do not involve cash or function as a refund.

The Chinese tax authorities are inexorably tracking down foreign workers who use their tourist visa for work purposes. They are also finding under-declared income increasingly often. At the same time, the penalties are perceptibly high: For example, convicted tax evaders must pay up to five times the amount due in addition to the taxes that are due. The authorities are also not afraid to withdraw the business owner's permission or even invalidate the residence permit.

## Social insurance

The place of employment principle also applies to social insurance. This also means that mandatory social insurance is submitted to the state in which gainful employment is actually exercised. Deviations from this social insurance imputation in accordance with the national law of the country of assignment are only possible if national regulations preclude social insurance imputations or if a social insurance agreement exists.

In 2011, a mandatory social insurance for foreign workers was introduced in China, although it was not implemented in every region (e.g. Shanghai). This mandatory social insurance in China includes a basic pension insurance, basic health insurance, as well as occupational, unemployment and maternity insurance.

Due to the fact that not every region has implemented this mandatory social insurance for foreign workers, there are difficulties in the exemption from the mandatory social insurance on the basis of an existing social insurance agreement.

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China has a social insurance agreement with the following eight countries: Denmark, Germany, Finland, Canada, Korea, the Netherlands, Switzerland and Spain. A social insurance agreement with France and Serbia is currently being drafted.

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It should be noted that not every branch of social insurance is covered in every social insurance agreement. It is, therefore, necessary to examine the individual insurance branches or insurances closely to ensure that the necessary and desired insurance coverage is available.

In China, there is no automatic exemption from the mandatory social insurance for employees sent to China. An exemption must be requested from the relevant regional social insurance authority. Even if the processes vary according to the region and the social insurance agreements cover different insurance branches or apply to different groups of people, the following is a kind of standard process: The Chinese employing company, in which the foreign employee is employed, must submit the original assignment certificate to the social insurance authority. This certificate will then be verified by the authority, which will keep a copy. Furthermore, a confirmation will be issued and sent to the Chinese employing company.

If this confirmation is not available, the Chinese authorities may request that the Chinese social insurance contributions be deducted. A verification revealing that this has not been done usually results in sanctions.

Regional disparities, as well as the differing knowledge of the procedures – especially in the area of social insurance exemption in China – are very high and should not be underestimated.

If there is a social insurance agreement, then the exemption from the mandatory insurance in accordance with the existing agreement is possible for a maximum of 5 years.

It is worth noting that employees should acquire an international supplemental health insurance for the period of their employment in China and that the costs of a possible repatriation in the event of illness are covered, as repatriation costs can accrue very quickly.

## Remuneration

Regardless of numerous published statistics, the widespread assumption that salaries in China correspond to only 1/3 of the salaries paid in countries in the West is incorrect. The labor market is complex and there are at least three different remuneration streams including remuneration for local nationals, assigned employees and returning highly qualified Chinese skilled workers.

In addition to the basic wage, the highest wage components include the absorption of the costs of tax equalization, rent and travel costs in China. As a rule, foreign employees are provided with a driver because driving a car in China involves a number of risks. Accidents caused by Chinese people with foreigners in order to receive financial compensation are increasingly common. To avoid exposure to this risk, foreign employees are advised to use public transport, a taxi or a car with a driver.

## Employment contract / labor law

Labor law in China was introduced in 1995. Furthermore, local regulations still must be observed.

From a permit law perspective, each assigned employee needs a local Chinese employment contract in order to take up gainful employment in China. As a rule, a short Chinese employment contract is created for foreign workers whereby the main points of the assignment in China are laid out in the assignment contract between the foreign company and the employee.





## USA - L-1 blanket approval

Author: Victoria Artiles Pflüger

### US immigration system

Starting a job in the United States is the object of rigorous verifications and regulated via a complex immigration system; essentially, all foreign employees must have a valid work permit to work in the United States.

Recently, the introduction of additional conditions and restrictions has aggravated the immigration system, making it more difficult to obtain a US work permit. Furthermore, the processing time of a work permit is usually five to six months. Short-term work assignments in the United States are therefore hardly feasible. However, this can be remedied with an L1 blanket or an e-blanket visa.

### US work permits

There are several US work permit categories available for assignments in the United States. Which work permit is best suited for the type of assignment and the employee is decided on the basis of, among other things, the person's nationality, professional experience, specialist knowledge and duration of employment in the employee's country of origin.

Furthermore, US work permits may be granted at the company level, providing the company with a permit allowing it to assign employees to the United States in the future. This type of permit provides the company with several benefits and a certain amount of flexibility. An example of this is the L-1 blanket approval, which is explained below.

### L-1 blanket approval

L-1 blanket approval falls under the L-1 work permit category. Essentially, an L-1 work permit is issued for a particular assignment and certain employees. As an exception, if certain conditions are met, there is also the possibility an L1 blanket approval be issued to the employing company.

L-1 blanket approval is a pre-approval based on the business relationship and the status of the US company issued by the United States Citizenship and Immigration Services, USCIS. This pre-approval can be used for an unlimited number of employees and allows employees to apply for their personal L-1 work permit at

the US Embassy overseas (or in their country of residence or work). If the Embassy grants this pre-approval, proof is provided that the employee qualifies for the L-1 work permit, thus facilitating the review of the application.

L-1 blanket approval is generally issued for three years and can be extended indefinitely. Furthermore, this pre-approval is valid for all US subsidiaries of the company. An adaptation of the L-1 blanket approval is only necessary if changes are made in the ownership structure or in the business relationship.



### Advantages

Generally speaking, the USCIS verification methodology is so strict that it regularly requires the submission of additional information/documents. The verifications of the US embassies, on the other hand, are more objective, taking the application in its entirety into consideration. This means that less time is lost if the application for the L approval of the future assigned employee is reviewed by the US Embassy and not USCIS.



When applying for a personal L-1 work permit without pre-approval (L-1 blanket approval), the employee must present the original I-797 permit issued by USCIS at the embassy appointment. Shipping from the United States may take some time, which will be adjusted under the already existing L-1 blanket approval.

It is also economically advantageous to have the US Embassy review the application. Each application submitted to USCIS incurs a fee of \$1,685 (as of 2018). These fees are not due if the application is submitted directly to a US embassy.

### Requirements for applying for L-1 blanket approval

The key requirement for applying for an L-1 blanket approval is to have at least \$25 million in sales in the United States.

Furthermore, the following prerequisites must be met in order to apply for an L-1 blanket approval:

1. The foreign company exercises a business activity.
2. The company has an office in the United States that has been active for at least one year.
3. The company has three or more domestic and foreign branches, subsidiaries or affiliates.
4. The company must also meet one of the following requirements:
  - In the past 12 months, at least 10 L-1 approvals have already been issued to the company or employees of the company or
  - The US branches, subsidiaries and affiliates combined have generated at least \$25 million in annual sales in the United States or
  - The company employs at least 1,000 people in the United States.

If the above-mentioned requirements are met by the company, it is highly recommended, from a cost and planning point of view, to apply for L-1 blanket approval. This petition is usually very time consuming but, in the long term, this pre-approval will give the company more flexibility and make short-term assignments in the United States possible. Furthermore, the one-time higher legal and licensing fees for US work permits are saved. Instead, only the visa fees have to be paid.

## An analysis: Are balance sheet calculations still in keeping with the times?

*Author: Norma Moller*

Hardly any company can proceed with assignments without balance sheet calculations. But are they a necessary evil to determine foreign remuneration or a useful tool for designing the assignment package? The following article discusses the advantages and disadvantages of balance sheet calculations in detail so HR managers can make informed decisions about the appropriate use of balance sheet calculations.

### What are balance sheet calculations?

In the context of overseas assignments, balance sheet calculations are a long-established method to fairly and transparently define employee remuneration abroad.

Based on the employee's current gross remuneration, the net income is determined on the basis of personal information (marital status, place of residence, age, etc.). This net income is then extrapolated using the corresponding cost of living, tax and social insurance data of the country of assignment to obtain the new gross income.

Balance sheet calculations (also called "net-to-net calculations") allow the remuneration for both local transfers as well as assignments to be determined clearly and understandably.

### Application of balance sheet calculations

The basis for this calculation approach goes back to the 1950s when the so-called "tax protection" for foreign employee assignments was developed (see Newsletter 2/2018). Since then, this calculation system has evolved steadily, becoming so well-established decades ago that balance sheet calculations are now used by more than 80% of companies sending employees abroad.

With increasing globalization and the associated international orientation of companies, the different country combinations of assignments have continuously increased. Balance sheet calculations are also a popular remuneration tool for assignments because they can be created for all country combinations in any variation.



Balance sheet calculations are still best suited for traditional long-term assignments of middle to senior management. For “younger talent”, there are more cost-effective remuneration elements for assignments abroad and top management often requires an internationally competitive remuneration policy for which balance sheet calculations would fall short.



## Advantages of balance sheet calculations

### Transparent and cost-effective

Balance sheet calculations show clearly and understandably how the foreign remuneration of the assigned employee was determined. If the company can fall back on an assignment policy that also defines expatriation allowances, this significantly reduces the need for lengthy negotiations with the assigned employees and costly concessions.

### Facilitated mobility and reintegration

The basis of balance sheet calculations is the remuneration in the home country of the employee. This should not be financially better or worse than if the employee had not gone abroad, regardless of the destination of the assignment. The separately stated allowances for the employee's stay abroad allow that employee to be relatively easily re-integrated into the remuneration structure of the home country.

### Flexible negotiation tool

In practice, balance sheet calculations are increasingly used as a basis for negotiations to determine the foreign remuneration

or to show the employee how his former remuneration can be compared with the destination of the assignment.

Within a certain framework, balance sheet calculations offer the flexibility of at least approximately achieving the desired remuneration result through allowances and deductions. Furthermore, depending on the importance of the assignment for the company, certain parameters, such as the cost of housing and living, can be adjusted to better achieve the desired target remuneration.

## Disadvantages of balance sheet calculations

### Complexity

Balance sheet calculations are not self-explanatory for inexperienced people. Furthermore, they require a relatively high number of assignments per year to make the development of know-how to create balance sheet calculations in the company worthwhile. Otherwise, the calculations must be purchased externally. Both these aspects are associated with corresponding costs.

### Dependence on data providers

Cost of living indices (and tax calculations) usually need to be purchased externally. The correctness of the indices is regularly questioned and compared with the personal feeling of the price level in the country of assignment; this can lead to the balance sheet calculation being perceived as unbalanced.

### Assumptions

Balance sheet calculations inevitably have to work on the basis of simplifications and assumptions (e.g. employee spending behavior, tax deductions, spouse's earnings, etc.). The actual financial situation of the employee can (and should) only be determined approximately.

## Personal evaluation

Despite their complexity, balance sheet calculations continue to be the method of choice for efficiently and understandably determining the remuneration for an assignment. They continue to play an important role in the comparability of local salaries in relation to different taxes and cost of living standards and are therefore an indispensable tool for determining the remuneration of cross-border employees.



## Maintaining the quantitative limits for Bulgarians and Romanians until May 31, 2019

Author: Thomas Asemota

On April 18, 2018, the Swiss Federal Council decided to restrict the residence permits for workers from Bulgaria and Romania (EU2 citizens) for another year until May 31, 2019. This decision concerns only residence permits (B permit) and not short-term residence permits (L permit). The quota system, however, is definitively limited to May 31, 2019. This means that EU citizens will have full freedom of movement again from June 1, 2019 (see the latest circular of the State Secretariat for Migration [SEM] dated May 16, 2018).

On May 16, 2018, the Federal Council approved the amendment to the Ordinance on the Introduction of the Free Movement of Persons (OLCP; see Art. 38 Para. 8 OLCP). According to the new Art. 38 Para. 8 OLCP, which came into force on June 1, 2018, the quantitative limit for residence permits for workers from Bulgaria and Romania who are working in Switzerland (with an employment contract of more than 364 days or of indefinite duration) as well as self-employed workers from Bulgaria and Romania is 996 contingent units in application of Art. 10 Para. 4c Sentence 1 of the Agreement on the Free Movement of Persons (AFMP). This quantitative limit of 996 units will be split quarterly into 249-unit groups during the quota period (June 1, 2018 to May 31, 2019) and will be released every three months on the following dates at 8:30 am: June 1, 2018, September 1, 2018, December 1, 2018, and March 1, 2019.

If a quarterly quota is exhausted prematurely, no residence permits can be issued until the end of the quarter in question. The granting of the requested authorization will therefore be postponed to the next quarter pending the release of the quotas. A special function in the Central Migration Information System (CEMIS) allows the cantons to view the exhaustion status of the quota. This allows each canton to check the maximum number of quota units available and how many of them have already been claimed. If a permanent employment contract or a fixed-term contract exists for more than one year, the residence permit will only be issued if a corresponding contingent unit is available.

EU2 citizens, however, have the right to convert their short-stay permit into a residence permit if they were admitted to the Swiss labor market before June 1, 2017 and if they have been working in Switzerland for at least 30 months as short-term residents

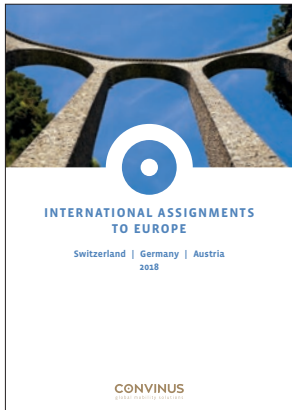
with short-term employment permits. In order to benefit from this conversion, employees must demonstrate that they have at least a one-year fixed-term employment contract or a permanent employment contract. A confirmation of employment or an employment certificate from the employer is sufficient. The conversion does not affect the quantitative limits (see paragraph 4 of the OLCP Regulations of the State Secretariat for Migration [SEM] published in June 2018).

### Conclusion:

Until May 31, 2019, Bulgarians and Romanians employed in Switzerland may only receive a short-term residence permit. The date the employment commences should, therefore, be of particular note until May 31, 2019, in order to avoid this. The short-term residence permit generally includes the same rights as a residence permit, but with two disadvantages in practice: entitlement to unemployment benefits and the taking up of gainful employment of a spouse who is not an EU/EFTA national.



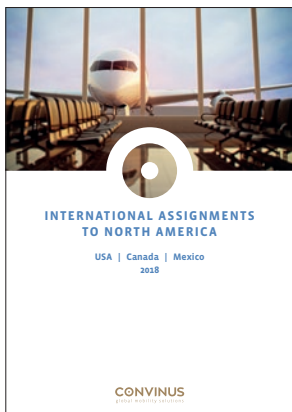
## GUIDELINES 2018



Guideline:  
International Assignments to Europe  
Switzerland – Germany – Austria, 2018

This guideline is intended to provide clear, succinct and practical information on international employee assignments in Switzerland, Germany and Austria. It also contains general information about global mobility.

ISBN: 978-3-9523193-2-1  
Price: CHF 35



Guideline:  
International Assignments to North America  
USA – Canada – Mexico, 2018

This guideline is intended to provide clear, succinct and practical information on international employee assignments in the United States, Canada and Mexico. It also contains general information about global mobility.

ISBN: 978-3-9523193-3-8  
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