



In this issue:

Korea: Change in law for Korean nationals residing abroad.....	1
Switzerland: Work permit quotas.....	2
Global Rewards Updates: European Union: Consultation on Prospectus Directive exemption for share schemes	5
Global Rewards Updates: United Kingdom: New share plan reporting – are you ready for the change?.....	6

Korea: Change in law for Korean nationals residing abroad

Overview

When a Korean national leaves Korea to reside permanently in another country (“Korean nationals residing abroad”), such Korean national should give up their resident registration card. Previously, Korean nationals residing abroad (defined as ‘Korean nationals who have attained permanent residency status in foreign countries, or who are residing in a foreign country with the aim of attaining permanent residency status’), visiting Korea for business, working as an employee, etc., were required to file a domestic residence report with the Korean Immigration Office and issued a Local Residency ID Card (similar to the Residential Registration ID Card issued to the normal Korean nationals).

Summary of law change

The Act on the Immigration and Legal Status of Overseas Koreans and the Resident Registration Act were amended, and effective January 22, 2015, Korean nationals residing abroad who have Local Residency ID Cards (which were issued by the Korean Immigration Office) should apply for a Residential Registration ID Card to be issued by the local governmental authorities (not the Immigration Office) no later than June 30, 2016, and current Local Residency ID Cards shall not be valid after June 30, 2016.

Korean nationals residing overseas who enter into Korea after January 22, 2015, intending to stay in Korea longer than 30 days, should apply for a Residential Registration ID Card to the appropriate local governmental authorities.

The Residential Registration ID Card for Korean nationals residing abroad shall contain a distinguishing mark to identify the individual as a Korean national residing abroad.

Obtaining the Korean Residential Registration ID Card

To obtain the Korean Resident Registration ID Card, individuals should visit the relevant local “Dong” office and submit an application form along with original passport having “permanent resident overseas” mark or Certified Certificate of “Korean national residing abroad” Registration issued by the Ministry of Foreign Affairs. In addition, the original Local Residency ID Card (issued by the Immigration Office) should be turned in with the application.

Generally, the applicant should visit the relevant local “Dong” office in person; however, if unable to do so, the application may be submitted by an immediate family member on behalf of the applicant.

If an applicant has not already registered fingerprints with the local government office, the applicant must visit the local “Dong” office in person to have fingerprints registered.

The Residential Registration ID Card will be issued approximately three weeks after submission of application and all required documents.

Deloitte’s view

Korean nationals residing abroad currently holding the Local Residency ID Card issued by the immigration office should apply for a Residential Registration ID Card at the relevant local Dong office prior to June 30, 2016.

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Switzerland: Work permit quotas

Overview

On 28 November 2014, the Swiss government made the decision to reduce the number of work permit quotas available Swiss-wide for non-EU/EFTA nationals and for assignees from EU/EFTA member states, effective 1 January 2015.

The quotas are now limited to the following numbers:

- 4'000 L permits for non-EU/EFTA nationals
- 2'500 B permits for non-EU/EFTA nationals
- 2'000 L permits for EU/EFTA nationals
- 250 B permits for EU/EFTA nationals

The cantonal quota entitlement is subject to a yearly review released by the Federal Council. Each canton has a different quota entitlement. The annual quota is divided and released on a quarterly basis and is expected to be full by the middle to end of each quarter, which means applications can be delayed until the quotas for the next quarter are released.

Current impact

In a number of cantons, there are currently no more L permit quotas for this quarter, i.e., until 1 April 2015. Note however that this only applies to the L permit, and although the quota for B permits has been reduced for 2015 as well, they are currently still available.

In certain cantons, such as Zurich, it will not be possible to extend L permits for EU/EFTA assignees that will expire between now and 1 April 2015. In other cantons, such as Basel and Geneva, an extension should still be possible.

There has been no official statement from the State Secretariat for Migration (the former Federal Office for Migration) on this point as this will not be an issue for many organisations with expatriate populations coming into Switzerland. The L permit is not as favourably used due to the limited duration, with the B permit being preferred for longer international assignments, and the 120-day work permit being preferred for short-term business visits. G permits (applicable for commuters) are not impacted by this.

Recommendations on how to deal with the current situation

- Organisations should strategically consider what their current employment needs are and if there are local resources available in Switzerland instead of international assignees.
- As EU/EFTA work permits for local hires are not falling under the quotas, where possible, companies may try to offer local Swiss employment contracts.
- For senior/strategic roles that need to be filled by assignees, it may be worth delaying the start of assignments that were due to begin in quarter 1, 2015 to the following quarter.
- Consideration of commuter or cross-border employees who require a G permit where there is no quota attached.
- In Zurich and in other cantons where the quota has been reached, it may be possible to request 120-day work permits and file an extension application for a longer term work permit approximately one month prior to the release of the new quota.
- In other cantons where no quota is used for permit extensions, permits can be extended normally.

What should you do going forward?

Due to the lower quotas, the immigration authorities have tightened application practices, such as closer scrutiny of applications, increased salary requirements (wage equalisation), and stricter extension rules. The authorities are also assessing applications in more detail and are responding with additional questions or a refusal but typically with the right to be heard (this trend has been already recognised).

These measures have made obtaining work permits slightly more difficult, but getting a Swiss work permit is still possible for those that meet the conditions or work in a shortage industry. In order to mitigate this issue, organisations should ensure that they:

- First check resources available within the Swiss labour market before filling the position with an assignee.
- Adopt a forward-looking staffing/work permit application plan in order to avoid delays as best possible, as the authorities will treat applications according to the first received, first processed principle.
- Draft application letters carefully, focusing on clear explanations and evidence of applicants' skills and their link to the planned activities in Switzerland.
- Respect the minimum salary requirements imposed by the Swiss authorities (Swiss peer-level salaries and additional payments/allowances for housing/meals).

Deloitte's view

The changes to the work permit quotas for 2015 will see the immigration authorities more closely monitor all work permit applications made.

Alternative solutions are available, as mentioned above, by transferring employees with an EU/EFTA nationality on a local Swiss employment contract or by implementing commuter or cross-border working arrangements.

We recommend that companies review their workforce planning strategy to assess the need for assignees coming into Switzerland and take care when drafting applications for future work permits, ensuring they meet all the legal requirements.

Deloitte can support you with your workforce planning and international assignment strategy and policies.

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Global Rewards Updates: European Union: Consultation on Prospectus Directive exemption for share schemes

Background

The European Union Prospectus Directive (EUPD) provides a specific exemption from the requirement to publish a prospectus for offers of securities by a company to its employees or those of its affiliates. This exemption is only available to EU companies (whether or not listed) or non-EU companies whose securities are listed on an EU regulated market or third-country market designated by the European Commission (the "Commission") as equivalent to EU markets. Although the EUPD has provided for an exemption for third country 'equivalent' markets since 2010, none have yet been designated as such by the Commission. If the exemption is available, certain information regarding the offer must be provided to the employees in order to qualify for the exemption, but this is brief.

For companies that do not qualify for the employee offer exemption described above (or who do not want to provide the information required to rely on it), the offer may still be exempt from the requirement to publish a prospectus. An offer of securities with a consideration below €5,000,000 (across the whole of the EU) falls outside the scope of the EUPD. Similarly an offer to fewer than 150 persons (per member state) is exempted from the requirement to publish a prospectus.

Review of the Prospectus Directive – consultation open

The Commission has commenced a public consultation on all areas of the Prospectus Directive with responses due by 13 May 2015 at the latest.

The key points from a share plans perspective are:

Increasing the thresholds: The limits referred to above (i.e. €5,000,000 and 150 persons) were raised in 2010 (from their original levels of €2,500,000 and 100 persons respectively) and the consultation paper is seeking to assess whether the current thresholds remain appropriate. The consultation also seeks to address the issue of harmonisation as EU member states are currently free to set different rules (e.g. impose disclosure requirements) at a local level for offers below the €5,000,000 threshold.

Employee offer exemption (possible extension to private companies): Currently a private company incorporated outside the EU would not qualify for the exemption. The consultation is designed to assess whether there is a need to extend the scope of the exemption to non-EU private companies and is asking for reasons and supporting evidence.

Deloitte view

The proposed extension of the exemption to cover non-EU private companies is welcome but we would not expect it to be of benefit to many companies. In our experience, most offers of shares to employees by private companies already fall within either or both of the €5,000,000 or 150 person limits.

In our view, it would be of greater benefit to companies if there was:

- No flexibility for member states to take individual positions for offers below the €5,000,000 threshold; and
- An acceleration of the process for determining which non-EU markets are equivalent to EU markets for the purposes of the employee offer exemption (unfortunately this is not within the scope of the consultation).

We intend to respond to the consultation so please do contact us if you would like to contribute to our response. The full consultation document can be found at http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf.

URL: http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf

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Global Rewards Updates:

United Kingdom: New share plan reporting – are you ready for the change?

Background

On 3 March 2015, HM Revenue and Customs (HMRC) published the final share plan reporting templates for the 2014/15 tax year. These templates replace the paper annual returns (Forms 34, 35, 39, 40, and 42) and must be filed by companies that operate share plans in the UK by 6 July 2015.

URL: <https://www.gov.uk/government/collections/employment-related-securities#forms>

In order to file the new annual returns, companies must have firstly pre-registered with HMRC via the PAYE Online Service, and where a tax advantaged plan is operated (such as a CSOP, SAYE or SIP), companies must also have self-certified that the plan meets the requirements of the relevant legislation. The registration (and self-certification) requirement must be completed well in advance of 6 July 2015 to ensure the annual returns can be filed successfully before the deadline.

Automatic penalties will apply for the late submission of the annual returns. It is therefore important to ensure that companies are fully prepared for submitting the annual returns correctly and on time.

The final templates are broadly similar to the draft templates published last year, however some questions have been clarified and some guidance is provided on which questions are mandatory. It is likely that HMRC will provide some fuller guidance on completing the templates in the coming weeks. In the meantime companies can now download, populate and test the template annual returns.

The new templates

The format of the new templates is significantly different from the old paper annual returns. HMRC's systems have been designed to only accept completed returns within the set format. Companies will have to preserve the formatting when populating the new templates. This includes:

- Not making changes to the name of the files or the format of the template (such as adding, hiding or removing columns).
- Not adding data to cells outside the template area.
- Ensuring that dates are in the correct format (YYYY-MM-DD), monetary values are in pound sterling up to 4 decimal places, and other numbers only have up to 2 decimal places.
- Ensuring that there are no formulas in the template when it is uploaded for submission.

The new templates also contain a number of changes to the questions asked when compared to the paper returns. Some of these changes seek to clarify what information is reportable, or split existing reportable information into multiple columns. However, there are also a number of entirely new questions asked. Whilst we would expect that most of the new reportable information is readily available, companies should identify where this information is stored. Some of the key changes are highlighted below.

Changes affecting all templates: One particular theme is that companies will need to include additional information in respect of share valuations – for example:

- Whether shares being acquired are listed on a recognised stock exchange (which does not include, for example, the UK Alternative Investment Market).
- Whether valuations were agreed with HMRC.
- Potentially providing both the 'actual market value' (AMV) and the 'unrestricted market value' (UMV) of shares when a chargeable event occurs.

Other schemes and arrangements template (formerly Form 42 – used to report non-tax advantaged share plans):

- HMRC now require companies to report conditional rights and RSUs in the same way as options are reported. Therefore both the grant and the subsequent vest of the awards must be reported. Previously some companies would not have reported the grant of these awards but only the acquisition of the shares at vesting.
- When HMRC published the draft templates last year it appeared that companies would need to report options that lapsed for nil-consideration. HMRC have now clarified that this is not the case.

- Information such as addresses and company reference numbers are required for the entity that granted the awards as well as the employer and company whose securities are acquired.
- Where restricted securities are reportable, companies are required not only to identify the nature of the restriction (e.g. a risk of forfeiture, a restriction on sale) but also the period for which the restriction applies. The extent to which the market value of the shares is impacted by the restriction should also be detailed.
- Where a NIC agreement or election is entered into, employers are no longer required to declare the amount of employer NICs paid by the employee and when the payment was made.
- Disclosure of Tax Avoidance Schemes (DOTAS) – HMRC now require companies to disclose whether awards are made under a scheme which has a DOTAS reference. Where this question is answered yes, the relevant DOTAS reference number must also be provided.

SAYE and CSOP template (formerly Form 34 and Form 35):

- Where options are exercised, companies must report both the AMV and UMV of the shares.
- Companies must state whether an employee sold all their shares under option at exercise.
- Companies were previously required to provide a summary of the share plan activity during the year on the paper returns. This requirement has now been removed.

SIP template (formerly Form 39):

- There has been an overall simplification of the format in which SIP information is to be reported when compared with the paper returns. For the 2014/15 tax year, two schedules will need to be completed, the first covering awards made under the SIP and the second dealing with shares withdrawn from the SIP. Considerable amounts of information must, however, be provided on each of the schedules.

EMI template (formerly Form 40):

- As with the SAYE and CSOP templates, companies must state whether an employee sold all their shares under option at exercise.
- There is no longer a separate section relating to disqualifying events. Such events must, however, be reported elsewhere on the template.

File Check Service

HMRC have developed a File Check Service as part of the online reporting changes. Using the File Check Service, companies can upload their template or annual returns and get an error report detailing any formatting issues with the template or return.

As the successful submission of the annual returns is dependent on their format, this service will be useful to test and fix any issues before submission.

Access to the File Check Service is only available once the plans have been registered with HMRC.

URL: <https://www.gov.uk/spreadsheet-checking-service-employment-related-securities-ers>

Action

These are the most substantial changes to the UK reporting regime around share plans for a number of years. Companies will need to invest additional time and potentially resource to meet these obligations. We therefore advise companies to start the process of completing their share plan annual returns earlier than in previous years, and seek early assistance where needed.

In particular companies should:

- Ensure they have registered their share plans online with HMRC (and if necessary self-certified tax advantaged plans).
- Review the templates and consider whether they have captured all the necessary data in the correct format. This may require a discussion with share plan administrators to ensure all the necessary information can be provided, and that this information can be manipulated into the correct format for submission.
- Ensure that they are comfortable with the fiscal valuations reported.
- Check their returns prior to submission using the File Check Service, and ensure that a copy of the final return is saved as it will not be available to download from HMRC after submission.

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Have a question?

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