Deloitte.

Global Employment Solutions

Global InSight

17 July 2015

In this issue:

Australia:
Changes to the Temporary Work (Skilled) Visa (Subclass 457) Market Rate Income Threshold Disallowed

Background

The Australian federal government previously announced that from 18 April 2015 the income threshold relating to the Temporary Work (Skilled) visa (subclass 457) ("Subclass 457") nomination requirement for market rate assessment was to be lowered from AUD$250,000 to AUD$180,000 per annum. The changes announced by the government were subject to passage of the legislative change through the Australian Senate.

The effect of this change was to align the temporary and permanent visa income thresholds and reduce the administrative burden on sponsors by removing the need to provide evidence of the Australian market rate for nominated positions with guaranteed annual earnings above AUD$180,000.

Changes announced on 17 June 2015

The legislative instrument that reduced the income threshold issued on 18 April 2015 was disallowed in the Senate on 16 July 2015. This disallowance has resulted in the threshold reverting to AUD$250,000 as per the previous instrument with immediate effect.

The impetus behind the motion to disallow was the concern expressed in the Senate that lowering the market salary threshold worked against the integrity of the Subclass 457 program

© 2015. For information, contact Deloitte Touche Tohmatsu Limited.

objectives and would lead to foreign workers filling skilled roles at the expense of using local labor for positions where the remuneration fell between the AUD$180,000-AUD$250,000 salary range.

Deloitte's view

Until further notice, the Subclass 457 high-income threshold will remain at AUD$250,000 and all Subclass 457 nominations (including those lodged but not yet decided) will be assessed against this criteria.

The previous instrument that raised the threshold to AUD$250,000 came into effect on 1 July 2013 at a time when unemployment was 5.7% and the skills shortage was applying considerably more pressure to wages than they exist in the current market.

Our view is that lowering the income threshold to AUD$180,000 does not detract from the overall integrity of the Subclass 457 program in the current environment; however, it is unlikely that another legislative instrument that recommends a change to high-income threshold will be made in the foreseeable future.

— Mark Wright (Sydney)
Partner
Deloitte Australia
mawright@deloitte.com.au

Beth Fitzpatrick (Brisbane)
Director
Deloitte Australia
bfitzpatrick@deloitte.com.au

Fiona Webb (Melbourne)
Director
Deloitte Australia
fwebb@deloitte.com.au

Sasha Grimm (Perth)
Director
Deloitte Australia
sgrimm@deloitte.com.au

Meher Nariman (Sydney)
Manager
Deloitte Australia
mnariman@deloitte.com.au

Malaysia:
New Employment Pass (Category III)

Overview

The Ministry of Home Affairs (MOHA) will introduce a reclassification of the Employment Pass (EP) Categories I and II to include a Category III.

At present, EP applications are classified by the Immigration Department (ID) into:

- Category I:
    - Minimum basic salary of MYR5,000/month
    - Minimum employment contract period of 12 months

© 2015. For information,
contact Deloitte Touche Tohmatsu Limited.

- Category II:
    - Minimum basic salary of MYR3,500/month
    - Employment contract period of 12 months or shorter

Changes to note

With effect from 15 July 2015, a Category III will be added to the existing EP Categories I and II.

With this implementation, EP applications are now classified into the following:

- Category I:
    - Minimum basic salary of MYR5,000/month
    - Minimum employment contract period of 24 months
- Category II:
    - Minimum basic salary of MYR5,000/month
    - Employment contract period of 24 months or shorter
- Category III
    - Minimum basic salary of MYR2,500
    - Maximum employment contract period of 12 months

Unlike Categories I and II, applicants under Category III are not allowed to bring along any dependents or to hire foreign maids.

Other conditions to note:

- Companies that intend to apply for EPs under Category III must first obtain an approval from the MOHA for exemption of the minimum salary requirement of MYR5,000, before an application can be submitted to the Expatriate Committee for consideration.
- Category III EPs can only be renewed for a maximum of two times (at the discretion of the relevant Approving Agency and Expatriate Committee)
- For nationalities requiring visa to enter Malaysia, it is mandatory for successful applicants of EP Category III to enter Malaysia with a Visa with Reference.

Deloitte's view

The MOHA acknowledges the necessity in engaging foreign hires for certain positions that cannot be fulfilled by local talents. While the reclassification of the EP categories may accommodate the employers' needs, it is also important to note that the evaluation and approvals are solely at the discretion of the relevant Approving Agency and Expatriate Committee.

The priority concern of the MOHA and Expatriate Committee is ultimately to protect the local talent pool. Hence, concrete justification would have to be provided with every application to highlight the importance and relevance of employing a foreign talent against a local one.

© 2015. For information,
contact Deloitte Touche Tohmatsu Limited.

— Weina Ang (Kuala Lumpur)
Executive Director
Deloitte Malaysia
angweina@deloitte.com

Jehan Soraya Noriskandar (Kuala Lumpur)
Assistant Manager
Deloitte Malaysia
jnoriskandar@deloitte.com

Husna Abu Zarim (Kuala Lumpur)
Assistant Manager
Deloitte Malaysia
nabuzarim@deloitte.com

United Kingdom:
UK Tier 2 General Restricted Quota: Oversubscribed in June

Overview

The monthly Tier 2 General quota for restricted certificates of sponsorship has been oversubscribed for the first time since being introduced. This has led to any applications for a certificate that did not score 50 points being rejected. This relates to any requests with a salary of up to £45,999 that is not considered to be a PHD level or shortage occupation role.

June 2015 Restricted CoS Allocation

The annual cap was first introduced on 6 April 2011 and has been limited to 20,700 allocations per year running from April to April. The restricted category does not affect applications with a salary of over £155,300 or those individuals extending their visas or switching employers in the UK.

Until this month, the restricted CoS allocations cap had not been reached. The Home Office has now released the figures for the number of certificates approved in the June quota. The available allocation was 1658, of which 1215 were granted and 394 were carried over to July 2015. The Home Office will approve all RCOS applications that score the same number of points if this means that the monthly allocation limit is exceeded by 100 or less.

Therefore, the allocation for July will now be 2049.

Migration Advisory Committee Consultation: The government has commissioned the Migration Advisory Committee (MAC) to review the Tier 2 category with a view to making recommendations about reducing net migration to the UK. This shows an indication the government is unlikely to increase the annual Tier 2 General cap of 20,700 which has already been met. The MAC consultation will focus on the below key areas:

- Restricting work visas to genuine skills shortages and highly specialist experts
- Putting a time limit on how long a sector can claim to have a skills shortage
- A new skills levy on Tier 2 visas to boost funding to UK apprenticeships
- Raising salary thresholds to stop businesses using foreign workers to undercut wages
- Restrictions on the automatic right of Tier 2 dependants to work

© 2015. For information,
contact Deloitte Touche Tohmatsu Limited.

- Tightening up of the intracompany transfer (ICT) route, including applying the immigration health surcharge to ICTs
- Raising the minimum salary levels that economic migrants have to be paid

MAC has been asked to fast track its proposals on raising the salary thresholds of Tier 2 in time for the changes to the Immigration Rules in Autumn. Submission needs to be in by 3rd July 2015. The wider review of the Tier 2 category will be published in July 2015.

Deloitte's view

This is the peak of the graduate season for many businesses. This is likely to be a contributing factor to recent increased demand. Sponsors may re-submit requests that were not approved in June but with the addition to new requests planned by employers for the July quota, there is a likelihood that we may see a repeat of June.

We would therefore expect a similar situation in the July quota. Sponsors should account for potential delays to start dates for affected employees. The salary of applicants under this category will, going forward, become an ever more important consideration when planning moves to the UK.

— Jurga McCluskey (London)
Partner
Deloitte United Kingdom
jmccluskey@deloitte.co.uk

Tsveta Bogdanova (London)
Senior Manager
Deloitte United Kingdom
tbogdanova@deloitte.co.uk

Anthony Michael (London)
Senior Manager
Deloitte United Kingdom
anthmichael@deloitte.co.uk

Global Rewards Updates:
United Kingdom: Income tax and social security treatment of RSUs and conditional share awards from 6 April 2015

Background

Significant changes to the UK taxation of share awards for internationally mobile employees (IMEs) took effect from 6 April 2015.

While these changes impacted a number of areas, one particular point of uncertainty has been the treatment of Restricted Share Units (RSUs) and other "conditional share awards".

Deloitte have recently discussed this with HM Revenue & Customs (HMRC) and the output of those discussions is summarised below.

© 2015. For information,
contact Deloitte Touche Tohmatsu Limited.

RSUs typically taxable as “general earnings”

HMRC has confirmed that their view is that RSUs will be typically taxable at vest as “general earnings” under UK legislation. The amount liable to UK income tax at vest will normally be calculated by time-apportioning the total value of the shares received at vest by reference to the period(s) the employee was UK resident/liable to UK tax on UK workdays during the earnings period of the RSU (which will generally be from grant to vest).

In HMRC’s view, the general earnings charge, where applicable, takes precedence over any charge arising under the specific provisions in the legislation which deal with the taxation of employee securities.

Impact on National Insurance position

Where companies tax RSUs as “general earnings”, whether or not NIC is due will be determined in the same way as for a cash bonus, i.e. broadly whether the employee is UK insured at receipt. NIC will be due in full or not at all – there will be no apportionment.

As a result, the new NIC apportionment rules for options and restricted shares which came into effect from 6 April 2015 will not apply.

National Insurance elections

A National Insurance election (or agreement) allows employers to pass on, to employees, the employer National Insurance cost arising on vesting/exercise.

Based on a technical reading of the relevant legislation, an NIC election can only be operated where an award is taxed as securities income rather than “general earnings”. HMRC have confirmed that they do not wish to disadvantage companies that have entered into NIC elections. As such, provided that an RSU represents a “right to acquire securities” (i.e. a “securities option” within the relevant legislation) and is taxed as such, they will permit companies to continue to operate NIC elections.

However, in this case as (by concession) HMRC is accepting the securities income charge as the primary point of taxation, they will also expect the National Insurance charge to be calculated on this (apportioned) basis.

This means that any company operating an NIC election on RSU income that wishes to continue to do so after 5 April 2015 will also be expected to operate NIC on the “new” apportioned basis. Provided that this position is applied consistently for all employees this should be acceptable to HMRC even though, as noted above, s62 is the default charging position.

Action

As noted above, these rules came into effect for vestings on or after 6 April 2015 so companies operating RSU plans will need to review the basis on which they are operating RSU plans, particularly where NIC elections are in place for UK employees. Companies that

© 2015. For information,
contact Deloitte Touche Tohmatsu Limited.

wish to continue to operate NIC elections will need to ensure that they have appropriate processes in place to ensure full NIC compliance going forward.

— Mark I. Miller (San Jose)
Senior Manager
Deloitte Tax LLP
mamiller@deloitte.com

Rive Rutke (Chicago)
Director
Deloitte Tax LLP
rrutke@deloitte.com

Peter Simeonidis (New York)
Principal
Deloitte Tax LLP
psimeonidis@deloitte.com

Sean Trotman (New York)
Principal
Deloitte Tax LLP
strotman@deloitte.com

Have a question?
If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see http://www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Disclaimer
This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2015. For information, contact Deloitte Touche Tohmatsu Limited.