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Global Employment Solutions

Global InSight

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China:
Permanent residence rules relaxed, visa application procedures simplified for foreigners in Shanghai

Summary

In an effort to establish a global science and innovation center in Shanghai, new regulations designed to attract and retain foreign talent to the city relax the eligibility criteria to obtain permanent residence status and introduce simplified visa application procedures. The new rules apply from 1 July 2015.

Key implications

Permanent Residence and Long-term Residence Permits: Under the new regulations, foreign individuals that meet the following criteria will be eligible for a permanent residence permit, if they are recommended by their employers:

- Worked in Shanghai for more than four consecutive years and resided in China for at least six months of each of those years; and
- Earned a gross salary of at least RMB 600,000 (USD 97,000) and paid tax of more than RMB 120,000 (USD 19,000) each year. These thresholds will be adjusted based on the prior year's average annual salaries and taxes paid in Shanghai.

Highly skilled foreigners (including Hong Kong, Macao, and Taiwan residents) in certain fields and that possess a “proven talent certificate” issued by the municipal government, and individuals employed by high-tech and innovative businesses or institutions listed by the Shanghai Science and Technology Commission can apply for a five-year residence permit. Such individuals will be eligible to apply for a permanent residence permit after three years.

The processing time for a permanent residence permit currently is from six months to a year and the applicant must produce a noncriminal record certificate (with validity of six months) issued by the authorities of his/her home country.

Foreigners who already have extended their stay in Shanghai twice and have no legal violations, will be issued work-type residence permits of up to five years when applying for the third time.

“S” Type Residence Permit: Previously, foreigners were not permitted to be employed as domestic helper in China. The new regulation allows qualified foreigners who have secured permanent residence permits or work-type residence permits to apply for residence permits provided they have an employment contract and written guarantees (limited to one domestic helper per family).

Foreign students who have graduated from Chinese colleges and intend to stay in Shanghai to set up new business, can apply for a two-year S type residence permit.

Foreign investors and entrepreneurs without employment licenses, but with statements of their investments or business plans and source of funds, can apply for 30-day S visas with Shanghai’s border exit-entry authorities and further apply for S-type residence permits before visas expire.

Simplified Visa Application Procedures: Foreigner residing overseas now can apply for a 30-day work visa with the Shanghai border exit-entry authorities provided the individual holds and appropriate alien employment license’ and they can apply for work permits and residence permits within the visa validity period.

Foreigners employed in Shanghai after entering the country on a nonwork visa can apply for a one-year work-type residence permit with the exit-entry administration bureau of Shanghai and complete the requested work permit application or expert permit at a later time.

Simplifying visa procedures are also introduced for individuals from Hong Kong, Macau, and Taiwan and their dependents who work and reside in Shanghai.

144-hour Visa Waiver Program: Tourists from certain countries can stay in Shanghai for 144 hours without a visa; this is an extension of 72 hours from under previous rules.

Foreigners’ exit-entry documents services: To accelerate the examination and approval process, the government will offer the following services for foreigners at designated locations:

- Naturalization, resumption, and renunciation of Chinese nationality;
- Processing of Chinese permanent residence permit application;

- Processing a loss of a passport; and
- Port visa services for “pre-accepted” and “designated” applications.

New services have also been introduced for Chinese nationals, including residents of Hong Kong, Macau, and Taiwan to facilitate the processing of various travel documents.

Deloitte’s view

The relaxation of the rules for permanent residence permits should make it easier for foreign individuals in Shanghai to establish permanent residence in the city and enjoy the same rights as Chinese citizens. However, the new regulations do not address all issues (e.g., rights in investment, Chinese social security contributions, and personal income tax implications), so affected parties should make comprehensive assessments of the implications of a change in residence status, including liability to tax, social benefits, financial planning, etc.

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Hong Kong:
Taxpayers given suspended jail sentences, but fined for filing incorrect tax returns

Overview

On 7 July 2015, a Hong Kong magistrates’ court convicted a married couple of evading tax by making false statements in connection with deductions of self-education expenses claimed in their tax returns, and assigned the couple suspended jail sentences in addition to monetary penalties.

The husband claimed a total of HKD 440,000 of deductions for self-education expenses over nine years (at the statutory ceiling of HKD 40,000 for years of assessment 2002/03 to 2006/07, and of HKD 60,000 for years of assessments 2007/08 to 2010/11). The total tax involved (i.e. the amount of tax avoided due to the deductions) was HKD 78,407.

The wife claimed a total of HKD 251,600 of deductions for self-education expenses over nine years (at the statutory ceiling of HKD 40,000 for years of assessment 2002/03 to 2006/07, and in the amounts of HKD 29,600 and HKD 22,000 for 2007/08 and 2010/11, respectively). The total tax involved (i.e. the amount of tax avoided due to the deductions) was HKD 42,456.

An investigation by the authority revealed that both taxpayers failed to produce any details or evidence in support of the deductions they claimed for self-education expenses; they claimed that the expenses were paid for personal or private tuition fees and they did not know that such fees were not deductible. The court concluded that the claims were false statements and convicted both taxpayers of tax evasion.

The husband was convicted on nine charges of evading salaries tax. He was sentenced to two months' imprisonment, with the sentence suspended for three years, and fined HKD 90,000 (HKD 10,000 for each charge). The wife was convicted on seven charges of evading salaries tax. She also was sentenced to two months' imprisonment, with the sentence suspended for three years, and was fined HKD 70,000 (HKD 10,000 for each charge).

Points to note

Tax evasion is a criminal offense. Upon conviction, the maximum penalty for each charge is three years' imprisonment and a fine of HKD 50,000, plus an additional fine of three times the amount of tax evaded. Hence, it is imperative that correct information is reported in the tax return and any other documents provided to the Inland Revenue Department (IRD). The IRD has published information on cases in which taxpayers have been prosecuted and convicted of offenses on its website.
URL: http://www.ird.gov.hk/eng/ppr/pca.htm

Depending on the nature of the offense and/or the degree of culpability of the taxpayer, the Commissioner of the IRD may choose to initiate prosecution, or compound or assess additional tax (which is a form of penalty) in respect of the offense. Factors that may affect the course of action to be taken include the strength of evidence against the taxpayer, the amount of tax undercharged and the period of time over which the offense was committed.

Comments

There have been a number of prosecuted cases involving false statements in connection with claims for deductions of self-education expenses in recent years.

The Inland Revenue Ordinance (IRO) provides that self-education expenses paid for prescribed courses or examination fees paid to specified education providers or associations to gain or maintain qualifications for use in either current or planned employment are tax deductible.

However, payments to a private tutor are not deductible (whether or not supported by receipts) because a private tutor is not a specified education provider and the fees are not paid in connection with a prescribed course of education.

Under the current compliance requirements, taxpayers are not required to submit documentary evidence in support of their deduction or allowance claims along with the tax returns filed with the IRD. However, they are required to retain this supporting evidence for six years after the end of the relevant assessment year. If a tax return is selected for review, the IRD will request the taxpayers to provide the evidence. Based on observations, the IRD likely may request evidence to support claims for the following deductions if they reach or exceed the statutory limits:

Deduction	Current maximum limit
Expenses for self-education	HKD 80,000
Residential care expenses for the elderly	HKD 80,000
Approved charitable donations	35% of income

In addition to claims for deductions, it also is likely that the IRD will request taxpayers to furnish evidence to support claims for a full or partial tax exemption for income on the grounds that services generating the income are rendered outside Hong Kong and/or taxes similar to the salaries tax are paid elsewhere.

Deloitte's view

While Hong Kong's tax system and tax rates are relatively simple and low compared to other jurisdictions, the IRD has been investigating the accuracy of individual tax returns in detail and the number of reported cases of prosecution due to incorrect tax returns has been increasing. Individuals filing tax returns should exercise due and reasonable care, and seek professional advice where needed. In addition, individuals claiming deductions and allowances in their tax returns should retain supporting documentation for six years.

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Indonesia: Uplift of nontaxable income for individual taxpayer and the pension security scheme

Uplift of nontaxable income for individual taxpayer

Considering current economic conditions in Indonesia, the government has recently issued a new regulation to increase non-taxable income for individual taxpayers. Based on the regulation, which is dated 29 June 2015, the new non-taxable income is effective as of the 2015 tax year. More detailed guideline regarding the calculation and implementation process is yet to be issued.

The below table provides a comparison between the previous and new non-taxable income.

Description	Amount per Annum (IDR)	
	Previous amount	New amount for 2015 tax year
Taxpayer	24.300.000	36.000.000
Spouse	2.025.000	3.000.000
Spouse (additional for a wife whose income is combined with her husband’s)	24.300.000	36.000.000
Each additional dependent maximum of three individuals related by blood or marriage	2.025.000	3.000.000

Indonesia pension scheme

Overview: Following the introduction of the National Healthcare security system (under BPJS Kesehatan), and the transformation of the old Manpower social security system (Jamsostek) to the current National Manpower Security Agency (BPJS Ketenagakerjaan), the Indonesian government has now setup a new pension security scheme. This pension security scheme is in addition to the existing schemes that are managed by the BPJS Ketenagakerjaan, namely the occupational accident security scheme; old-age security scheme; and death (life insurance) security scheme.

What is the pension security scheme?: The pension security scheme provides a “defined pre-established benefit” to its participants in which the pension benefit is payable when the participant reaches retirement age, or becomes permanently and totally disabled, or passes away.

By introducing this program, the Indonesian government intends to provide a guaranteed social security system that is aimed at maintaining a decent standard of living for participants and/or their heirs by providing income when any of the above events occur.

Who should participate?: All workers in Indonesia must participate in the pension security scheme. Those who have been participating in the BPJS Ketenagakerjaan scheme will be automatically registered to the pension security scheme.

Employers are obligated to ensure that all of their employees are registered to the scheme, as well as to facilitate the payment and reporting of the monthly contributions to the BPJS Ketenagakerjaan.

Effective date: The pension security scheme effectively starts from 1 July 2015.

The mandatory monthly contributions for each employee are calculated on the employee's regular/fixed gross wages (subject to a cap of monthly wages of IDR 7.000.000 for 2015), and are made up of 2% employer contribution and 1% employee contribution. The contribution amounts will increase gradually, until they reach the targeted combined monthly contributions of 8%.

The employee contribution portion can be deducted from the employee's gross income when calculating their employment income tax (article 21), while the contribution made by the employer is non-taxable to the employee, and is deductible for the company's corporate income tax purposes.

Payment of the pension benefits: Pension benefits will be payable monthly to a qualified participant who has reached retirement age, becomes permanently and totally disabled, or passes away (in which case the payment of the benefits will be to the participant's heirs).

For the purpose of this scheme, the retirement age is currently set at 56 years, which will be adjusted gradually until it reaches the maximum retirement age of 65. If the participant passes away, then the pension benefits will be payable to their heirs as registered in the scheme, subject to certain conditions.

Deloitte's view

The Indonesian government intends to improve the welfare of the people in Indonesia.

With the establishment of the full national social security system, it may create double social security coverage in respect to mobile employees. As of now, Indonesia has not executed any totalization agreement with any countries to eliminate double coverage of social security, and there is no public announcement regarding discussions on this topic.

Companies will need to make sure that they facilitate the employee and employer contributions to the BPJS pension scheme from July 2015 onwards. Companies should also consider communication to their employees concerning the implications for their net pay as a result of the pension contributions, as well as the benefits of participating in the pension scheme.

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United Kingdom:
New PAYE agreement for short term business visitors liable to UK tax

Overview

UK resident employers may be required to operate Pay As You Earn (PAYE) tax withholding in respect of short-term business visitors (STBVs) to the UK. Many such STBVs will be exempt from UK tax under the provisions of a relevant Double Tax Treaty (DTT) and can be included on any STBV agreement (otherwise known as an EP Appendix 4 agreement) the UK employer may have with HM Revenue & Customs (HMRC).

However, some STBVs cannot claim exemption from UK tax under a DTT. In this case, where the UK employer is required to operate PAYE, HMRC has normally insisted that PAYE should be operated in real time from Day 1.

Given the challenges employers have faced in operating PAYE in real time for STBVs, Deloitte has discussed with HMRC the possibility of agreeing a more relaxed approach to PAYE. HMRC has now confirmed that a new agreement will be made available that will allow UK employers to account for whatever UK tax may be due in relation to certain STBVs via a single end-of-year payment.

The final wording of the agreement is not yet available, but is expected to be published shortly. We have outlined below the key features of this new agreement as we understand them, and have summarized how the new agreement fits in with the other PAYE agreements an employer may be able to enter into in order to ease their PAYE obligations in relation to STBVs.

Key features of the new agreement

Deloitte expects the new agreement to include the following:

- The new agreement will apply to STBVs who work in the UK for the benefit of a UK employer for no more than 30 days during a UK tax year (6 April to 5 April).
- It will apply for tax only and will not apply for the purposes of National Insurance Contributions.
- An end-of-year report covering all STBVs covered by the agreement will need to be submitted by 19 April after the end of the relevant tax year using an approved method of electronic communication.
- The amount of tax due for the year will need to be paid in full by 22 April after the end of the relevant tax year.
- The amount of tax due will need to include any UK tax due on benefits in kind, calculated on a grossed-up basis, but no Forms P11D will be required.

- There will be no need to gross up the tax due on cash payments, unless the STBV is specifically entitled to net pay.
- HMRC is considering whether or not UK non-resident directors will be covered by the arrangement, but it seems likely that HMRC will conclude that such individuals cannot be included.
- The STBVs covered by the new agreement will not be required to file annual UK tax returns.
- The UK employer will need to enter into a formal, signed agreement with HMRC before it can be used.
- The agreement will be available for use from 6 April 2015, i.e., from the beginning of the current UK tax year.

Deloitte's view

The new agreement is likely to be welcomed by employers who have PAYE obligations in relation to STBVs who cannot claim exemption from UK tax under the provisions of a relevant DTT and work in the UK for the benefit of a UK employer for no more than 30 days per tax year. The STBVs to whom the agreement is expected to apply will include:

- STBVs who are employed by the overseas branch of a UK company,
- STBVs who are resident in a country with which the UK does not have a comprehensive DTT, and
- STBVs who, while resident in a country with which the UK has a comprehensive DTT, do not meet the conditions to claim exemption from UK tax under the relevant DTT. This could, for example, include STBVs who cannot make use of the 60-day rule because, although they are present in the UK for fewer than 60 days in a single tax year, they are present for 60 days or more when linked periods are taken into account.

Employers may be disappointed that the new agreement is limited to STBVs who work in the UK for no more than 30 days. Where this is the case, other options may be available as outlined below.

How the new agreement fits in with other agreements available in relation to STBVs

The new agreement supplements other existing agreements available to UK employers in relation to STBVs.

STBV agreement (EP Appendix 4 agreement): As noted above, this agreement applies to STBVs who are resident in a country with which the UK has a comprehensive DTT and who meet the conditions to be exempt from UK tax under the provisions of the relevant DTT. While this agreement provides a relaxation of the PAYE reporting requirements only where the employment costs are not borne in the UK, employers may seek written permission from HMRC to extend the scope of these arrangements to STBVs whose employment costs are borne in the UK where this has no impact on the availability of DTT exemption.

No tax needs to be accounted for in relation to STBVs included in an EP Appendix 4 agreement and the STBVs are not required to file annual UK tax returns.

Modified PAYE (EP Appendix 6 agreement): This agreement may include any inbound assignee to the UK who cannot claim exemption from UK tax, provided they are tax equalized on all of their cash remuneration and any benefits in kind.

All individuals included in an EP Appendix 6 agreement are required to file annual UK tax returns.

STBV-only schemes: This agreement, which is not a published agreement in the same way as the above, can be used with HMRC agreement by employers who have significant numbers of STBVs working in the UK who cannot claim exemption from UK tax.

STBV-only schemes operate in a similar way to EP Appendix 6 schemes, although STBVs covered by the scheme are not normally required to file annual UK tax returns. When deciding whether or not to allow an employer to use an STBV-only scheme, HMRC will typically consider its costs associated with the opening and administration of a separate PAYE scheme balanced against the savings related to the reduction in the numbers of UK tax returns it must handle.

Deloitte's view

The new STBV agreement is a welcome addition to the existing suite of agreements available in relation to STBVs. Some employers will be able to use STBV-only agreements for taxable STBVs who fall outside the scope of the new agreement. However, where a PAYE requirement exists, but the number of STBVs is not significant, the only options available are an EP Appendix 6 agreement or regular PAYE operated in real time.

Next steps

Employers who consider that the new agreement may help them better manage their PAYE obligations in relation to their STBV population may wish to take steps now in preparation for the agreement going live. To this end, employers may wish to review their STBV population to identify which STBVs are likely to be exempt from UK tax under the provisions of a relevant DTT and which are not.

For those STBVs who are not expected to qualify for exemption, employers wishing to use the new agreement will need to consider which STBVs are likely to work in the UK for no more than 30 days and which are expected to work in the UK for more than 30 days. Only those STBVs who are expected to work in the UK for no more than 30 days can be included in the new agreement, and so employers who expect taxable STBVs to work in the UK for more than 30 days may wish to explore whether or not HMRC is likely to agree to an STBV-only agreement.

Where the number of taxable STBVs is not significant, with the result that HMRC is unwilling to agree to an STBV-only arrangement, employers should ensure that PAYE is operated from Day 1. In this case, it may be possible to agree with HMRC that PAYE should be operated on a fixed proportion of pay only.

Deloitte's view

Deloitte anticipates that in the event an employer applies to HMRC for one of the new agreements, HMRC will check that an EP Appendix 4 agreement is in place already. As such, employers may wish to take the opportunity to review their STBV population in the round and ensure that it is meeting all relevant obligations.

We will issue a further GES NewsFlash once the wording of the new STBV agreement is published.

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United States:
Tax treaty updates

Overview

Two new treaties were recently negotiated and signed by the United States with countries with expanding business opportunities of interest to the United States. One is an income tax treaty with Vietnam and the other is a social security treaty with Brazil.

Income tax treaty

A new income tax treaty was signed between the United States and Vietnam on July 7th. This is the first treaty between these two countries and, as announced by the United States, represents an expansion of the economic relations between the two countries.

The treaty mostly follows the US model income tax treaty, with some modifications. One of the modifications is an expanded definition of a permanent establishment (PE), including the provision of a services PE if services, including consultancy services, are provided for more than six months in any 12-month period.

This treaty still requires ratification by both countries. There is currently a backlog of income tax treaties awaiting ratification by the United States, so it is not known when this treaty will become effective.

Social security treaty

A social security treaty (Totalization Agreement) was signed between the United States and Brazil on June 30th. While the United States does not have an income tax treaty with Brazil, this treaty is designed to ease the burden on companies with dual social security obligations in order to facilitate job creation and growth between the two countries.

This treaty also requires ratification by both countries before it becomes effective. Social security treaties have been ratified more quickly by the United States, but it still may take a year or longer before this agreement becomes effective.

Deloitte's view

Although both of these treaties are not yet ratified, they represent a focus of the United States to expand economic development and cooperation with emerging market countries and may create potential market opportunities for US businesses.

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