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Global Employment Solutions

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Indonesia:
The New Manpower Regulation on Employing Foreign Employees

Overview

The Indonesian Ministry of Manpower (MoM) recently issued a new Regulation No. 16/2015 replacing the previous MoM Regulation No. 12/2013, regarding General Procedures and Requirements for Employing Expatriates in Indonesia. This new regulation provides a more detailed list of the types of activities that require a work permit, which was not stipulated under the previous regulation.

In addition, the ratio of expatriate employees to Indonesian national employees is now formally regulated by the MoM.

Points to note

Summarized below are the salient points of MoM No. 16/2015 as compared to MoM No. 12/2013:

NO	DESCRIPTION	MoM No. 12/2013	MoM No. 16/2015
1.	Expatriate to national employee ratio	Not specifically regulated by MoM.	Need to have at least 10 Indonesian national employees for every 1 expatriate employee. The above requirement is not applicable for certain positions and/or circumstances, such as: • Directors, Commissioners • Expatriate who is employed for urgent and emergency work • Expatriate who is employed for temporary work **Note:** Urgent and emergency work is work that requires immediate action and if it is not handled urgently, it will cause fatal losses for the company and/or the general public.

NO	DESCRIPTION	MoM No. 12/2013	MoM No. 16/2015
2.	Foreigner Manpower Utilization Plan or Rencana Penggunaan Tenaga Kerja Asing (RPTKA) for Work under temporary classification	The RPTKA is granted for the following work circumstances: 1. One-time job only; or 2. Work related to machine installation, electrical, after sales services, or for product under assessment period.	The RPTKA is granted for the following work circumstances: 1. Providing guidance, counseling, and training in the application and innovation of technology for the purpose of improving the quality and design of products for the export market; or 2. Commercial film production which has been granted approval by the relevant government agencies; or 3. Giving a lecture; or 4. Attending meeting with representative/branch office in Indonesia; or 5. Conducting audit or inspection of a branch in Indonesia; or 6. Expatriate who is still under probation period with the company; or 7. One-time job; or 8. Work related to machine installation, electrical, after sales services, or for product under trial period.

NO	DESCRIPTION	MoM No. 12/2013	MoM No. 16/2015
3.	Qualifications and requirements of expatriates	1. Education background that is relevant to the position applied for; 2. Holding certificate of competency or having at least five years of working experience; 3. A statement letter for transfer of knowledge to the local understudy; and 4. Able to communicate in Bahasa Indonesia.	1. Education background that is relevant to the position applied for; 2. Holding certificate of competency or having at least five years of working experience; 3. A statement letter for transfer of knowledge to the local understudy, which should be supported by a report on implementation of education and training; 4. Tax ID registration for expatriate who has worked more than six months in Indonesia; 5. Expatriate must undertake insurance coverage with an insurance company in Indonesia; and 6. Enroll with Indonesia social security program for those expatriates who have worked in Indonesia for more than six months.
4.	Work Permit or Ijin Mempekerjakan Tenaga Kerja Asing (IMTA) for nonresident directors and commissioners	Not regulated	• Must apply for IMTA for the nonresident directors and /or commissioners of the Indonesian company. • IMTA for members of the board of directors, commissioners, or management can be granted for a maximum of two years and is renewable.
5.	IMTA for expatriate working under temporary classification or urgent and emergency role	Not regulated	The company must first obtain an approved RPTKA for the specific purpose and then proceed to apply for the respective IMTA.

This regulation does not specify any transitional period; hence, it should be in force immediately as of the issuance date of 29 June 2015. However, based on informal information

from the MoM, this regulation will be implemented after the MoM has conducted a socialization event with the employers.

Deloitte's view

It is important to note that the ratio of expatriate employees to Indonesian national employees is now formally regulated by the MoM, i.e., a company should employ at least 10 local Indonesian national for every foreign employee. The MoM regulation does not provide further clarification on this ratio and, therefore, it is assumed that the ratio is applicable for all types of industry, business sectors, or companies. In practice, however, certain types of company, such as trade representative offices will find it difficult to meet this new ratio requirement, as generally a representative office only needs a limited number of employees.

The other important point, which is introduced in this new regulation, is the work permit requirement for temporary work, such as attending meetings. Prior to the issuance of this new regulation, attending meetings was not within the definition of working and, therefore, foreigners coming to Indonesia to attend meetings were able to use business visas.

The last new point, which is also important to note, is the requirement for nonresident directors and commissioners to hold work permits for a period of up to two years and its tax implications. From the tax side, the Tax Authority defines a tax resident as an individual who has the intention to stay in Indonesia. Among the documents which can show this intention is a work visa or stay permit valid for more than six months.

With this change of rules, we believe that a work permit should no longer be considered as an indication of an individual's intention to stay in Indonesia, especially for nonresident directors and commissioners. Generally, nonresident directors and commissioners do not have intention to stay in Indonesia and only occasionally come to Indonesia for board meetings and are present in Indonesia for less than 183 days within 12 months, and therefore, they should still be regarded as nontax residents despite holding work permits. However, until the issuance of a new regulation from the Tax Authority to clarify this matter, we would advise that clients prepare additional documents which support that their nonresident directors and commissioners are not present and do not have the intention to stay in Indonesia.

Based on our recent discussion with the MoM, we understand that MoM will conduct socialization events about this new rule and there will be further implementing regulations, which hopefully will help to answer the questions on this new regulation.

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Korea:
Proposed 2016 Tax Law Revisions

Overview

On August 6, 2015, the Korean Ministry of Strategy and Finance released its proposed 2016 tax law revisions. The following is a selection of proposed 2016 tax law revisions relevant to global employer services. The proposed 2016 tax law revisions will be deliberated by the Korean National Assembly, which may approve the revisions in late December 2015.

Domestic companies to be required to withhold income taxes for foreign assignee high-income earners

Currently, foreign assignees paid from a foreign company outside Korea, where the relevant employment costs are not borne by a Korean entity, are not subject to monthly income tax withholding. In this case, the foreign assignee should either file an annual income tax return to report the income and pay the corresponding income tax, or voluntarily pay monthly income tax withholding through a taxpayers' association and enjoy a 10% tax credit.

According to the proposed new tax law to be effective starting January 1, 2016, Korean entities having foreign assignees, where the relevant employment costs are not borne by the Korean entity, will be required to operate monthly income tax withholding at 17% (18.7%, including local income tax surcharge) when the Korean entity pays the service fee to the foreign company. The amount subject to income tax withholding will be the amount of the service fee identified as attributable to the earned income of the foreign assignee.

The new withholding requirement will be applicable to high-income earning assignees whose income exceeds a certain income threshold, and excess monthly income tax withholding shall be refunded upon filing of the year-end income tax settlement.

Tighten the residency requirement for being exempt from foreign financial account reporting

Currently, Korean nationals who have resided in Korea for less than one year in the previous two years are not subject to foreign financial account reporting.

According to the proposed tax law revision, the time required to qualify for exemption from foreign financial account reporting is to be decreased from 1 year to 183 days.

The new residency requirement is to be effective for foreign financial account reporting for 2016 to be reported in June 2017.

Deloitte's view

There were no details given for the proposed new monthly income tax withholding requirement, and further details should be announced with the proposed revisions to the Presidential Decree. However, foreign companies with assignees dispatched to Korea under a

service agreement, where the income to the assignee is distinguishable in the service fee calculation, should be prepared to account for this new withholding requirement if it is finally approved by the Korean National Assembly in December 2015.

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United Kingdom: HMRC Release the New PAYE Special Arrangement for Short-Term Business Visitors Liable to UK Tax

Overview

On 19 August 2015, HM Revenue & Customs (HMRC) released the final wording of the new Pay As You Earn (PAYE) special arrangement for short-term business visitors (STBVs) who are unable to claim exemption from UK tax under the provisions of a relevant Double Tax Treaty (DTT).

Key features of the new agreement

The key features of the new agreement are as follows:

- The new agreement is available for use for the 2015/16 tax year and all future UK tax years.
- It is intended to apply where the UK employer has a PAYE-reporting obligation, the STBV is performing substantive duties in the UK, and exemption under a DTT is not available.
- Once the PAYE Manual has been updated, the new agreement will be available for download at PAYE81950.
- The new agreement applies to STBVs who work in the UK for the benefit of a UK employer on no more than 30 days during a UK tax year.
- HMRC is clear that the 30-day limit will not be relaxed with the result that in the event an STBV has more than 30 UK workdays in a tax year, any PAYE due will need to be accounted for under regular PAYE or any EP Appendix 6 modified PAYE agreement that might be in place.
- Days on which the only duties performed in the UK are merely incidental to the main duties performed outside of the UK do not count toward the 30-day limit, but days on which an individual travels to and from the UK may need to be taken into account.

- The agreement applies for tax only and will not apply for the purposes of National Insurance Contributions (NICs).
- It cannot be used for UK nonresident directors of UK companies.
- A 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 19 April after the end of the relevant tax year unless paid by an approved method of electronic communication in which case the tax due will need to be paid by 22 April after the end of the tax year.
- Late filing and late payment penalties will be imposed if the above deadlines are not met.
- There will be no need to gross up the tax due on cash payments unless the STBV is specifically entitled to net pay.
- However, the tax due on any benefits in kind will need to be grossed up unless the tax due is recovered from the STBV.
- Forms P11D will not be required.
- The STBVs covered by the new agreement will not usually be required to file annual UK tax returns.

Deloitte's view

Despite its limitations, the new agreement is likely to be viewed as a welcome addition to the existing suite of PAYE agreements available in connection with internationally mobile employees. The agreement should help employers manage their PAYE obligations in relation to STBVs who work in the UK for the benefit of a UK employer for no more than 30 days per tax year but cannot claim exemption from UK tax under the provisions of a relevant DTT. 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.

Next steps

Employers who wish to enter into a new special arrangement with HMRC can do so from today onwards. Such employers should take steps to identify which STBVs are expected to meet the requirements outlined above. A key consideration is whether the STBVs are expected to work in the UK for no more than 30 days during the tax year. Some STBVs will clearly fall within the 30-day limit but in other cases a careful assessment will need to be made of whether duties are incidental or substantive and, separately, how travel days should be assessed.

Where an employer enters into a new special arrangement for 2015/16 but has already included eligible STBVs in their regular PAYE scheme, the STBVs can be removed from the regular PAYE scheme and included in the new agreement instead.

Employers should bear in mind that HMRC has made clear that the new agreement cannot be used for STBVs who work in the UK for more than 30 days during the UK tax year. STBVs for whom a PAYE obligation exists and who work in the UK for more than 30 days during the UK tax year should be included on the UK employer's regular payroll or, if the requirements are met, any EP Appendix 6 modified PAYE agreement between the employer and HMRC. HMRC has made clear that the UK tax cannot be accounted for via a PAYE settlement agreement (PSA).

Deloitte's view

Employers who enter into one of the new special arrangements with HMRC should be mindful of the tight deadlines for filing the end-of-year report and paying over the full amount of tax due on both cash and any relevant benefits. If these deadlines are missed, late filing and late payment penalties will be imposed and HMRC has reserved the right to terminate the agreement should it wish to do so. With this in mind, Deloitte anticipates that employers will wish to keep contemporaneous records, including all relevant travel information, details of both UK and non-UK workdays so that earnings can be apportioned as appropriate, and whether the STBV is tax equalized or not. Employers may also wish to ensure that relevant compensation data is collated in real time or that processes are in place for it to be collated immediately after the tax year-end so that the amount of tax due can be calculated quickly and easily.

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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.