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Global Employment Solutions

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Czech Republic: Immigration Update

Overview

Amendment of the Act on Residence of Foreigners in the Czech Republic No. 326/1999 Coll. came into force on 1 October 2015, and also includes some changes in the Employment Act No. 435/2004 Coll.

Section 47 par 2 states that, if the foreign national applies for extension of current long-term visa or long-term residence permit on time and the decision about the extension application is not issued yet, while the current visa or residence permit expires, the foreign national is allowed to stay and is legally residing on the territory of the Czech Republic until the decision about the extension application comes into force.

Unfortunately, this exception was not applicable in case of employment activities in the course of the stay in the Czech Republic. The Act on Residence of Foreigners forbid continuing with performance of legal employment after the dual employee card (based on local contract) or work permit (based on local contract or letter of secondment) expired and the foreign national had to temporarily terminate the employment.

The amendment of the Act allows for the performance of work as well.

Beginning 1 October 2015, the employment is allowed similarly as stay and, thus, allows the foreign national who applies for extension of the dual employee card (based on local contract) or extension of the long-term residence permit for the purpose of employment to employee card (based on work permit on local contract) on time to continue legally performing work activities even after the current employee card/work permit expires. Therefore, no interruption of employment is needed.

The fiction of employment is not applicable to foreign nationals who stay on the territory of the Czech Republic and perform employment based on letter of secondment. These foreign employees need to obtain work permit for assigned foreigner together with nondual employee card and in case of extension, they must obtain the extended work permit before the current one expires.

Deloitte's view

The employment structure of the foreign employees should always be considered as well as the period within which the extension application must be submitted at the respective authorities. Deloitte recommends starting extension process four months prior the expiration date of any permit.

Family members of EU citizens on the Czech labor market

Upon employing a family member of a European Union citizen, the situation can be considered from two perspectives: first, in terms of Act on the Residence of Foreigners in the Czech Republic and second, in terms of Act on Employment.

Pursuant to the Act on Employment, EU citizens and their family members as well as family members of a Czech citizen are not considered as foreigners. Nationals of other EU countries and their non-EU family members, as well as family members of Czech citizens, have the same legal status in legal relations governed by the Act on Employment as Czech citizens, unless the Act states otherwise.

Therefore, a family member of an EU citizen can enter the labor market freely, i.e., they are not limited by work permits. However, the Act on Employment does not specify what criteria the foreigner must meet so that they can be considered a family member of an EU citizen, for example, whether they need to have a residence permit. The integrated portal of the Ministry of Labor and Social Affairs features the following information in the 'Employment of EU Citizens' section: "A non-EU family member of an EU citizen can enter the labor market without a work permit, an employee card, or a blue card if they receive, from the Ministry of Interior, a temporary residence permit in the form of a residence card of an EU citizen's family member or if they prove, with an official document, that they have filed an application for a temporary residence permit of an EU citizen's family member in the territory of the Czech Republic." This information is not, however, based on any legislation. It merely reflects the current position of the Ministry of Labor and Social Affairs.

According to the Act on the Residence of Foreigners in the Czech Republic, a foreigner is anyone who is not a citizen of the Czech Republic, which includes EU nationals as well as their family members. The Act on the Residence of Foreigners does specify who is considered to be

a family member of an EU citizen. It is a family member of a citizen of any EU country, Switzerland, Iceland, Norway, or Lichtenstein, for example, a husband, child, parent, or other relative pursuant to the conditions set out by the said Act.

If the non-EU family member of an EU citizen intends to reside in the territory of the Czech Republic for more than three months, they are obliged to submit an application for a temporary residence permit. In line with the Act on the Residence of Foreigners, the status of an EU citizen's family member can be granted only to foreigners whose application for a temporary residence permit has been approved. From this point of view, it is not possible to employ an EU citizen's family member until they have received a temporary residence permit.

The Act on the Residence of Foreigners does not, however, cover the employment of foreigners. Therefore, it is not entirely clear which of the acts should be applied upon employing a family member of an EU citizen. If a supervisory body concludes that a foreigner (including an EU citizen's family members) is employed illegally, the employer faces a fine of up to CZK 10 million. The lower limit of the fine is not specified.

Deloitte's view

Given the threat of a sanction for illegally employing an EU citizen's family member if, in breach of the law, they do not prove that they are a family member of the EU citizen, and given the differing perspectives of the Act on Employment and the Act on the Residence of Foreigners as to who is an EU citizen's family member, it is recommended to employ only those family members of EU citizens who have been granted a temporary residence permit.

EU citizens' family members who have proved that they have been granted a temporary residence permit are considered to be EU citizens' family members in terms of both the Acts, and no sanctions for illegal employment apply.

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France:
Alignment of French Social Surtaxes with EC Regulations

Overview

In order to make French social surtaxes levied on investment income compliant with EC regulations, the State secretary for the Budget has announced last week that the Social security financing Act for 2016 would change their allocation in the French budget. He also confirmed that the necessary steps had been taken to ensure the refund of additional social taxes incorrectly levied in the past.

Social surtaxes under French law

Taxpayers subject to French income tax (residents or non-residents on their French source income) are currently are liable to social surtaxes at a flat 15.5% tax rate on investment income, in particular, interests and dividends, rental income and some capital gains.

Contradiction with EU law: CJEU case law and its recognition by the French "Conseil d'Etat"

On February 26, 2015 The European Court of Justice (CJEU) stated that investment income should not be subject to French social surtaxes when the taxpayer is affiliated to a non-French EU social security scheme.

The French "Conseil d'Etat" (Administrative Supreme Court) has already recognised this ruling in French tax law. It confirmed that the principles highlighted by the EU Court must be applied, and that as a consequence, no social surtaxes should be levied in France on investment income whose beneficiaries benefit from another EU social security scheme.

The Government response

Although the French tax authorities had initially informed taxpayers that social surtaxes would remain payable while the Government was still considering its position (The 2015 French income tax bills were therefore all issued with social surtaxes included), the announcement last week set out that the necessary steps have finally been taken to ensure that social surtaxes unduly levied could be refunded.

In addition, and in order to make the provision compliant with EU regulations going forward, the Social Security Financing Act for 2016 should provide for the reallocation of these social surtaxes to the financing of non-contribution based state benefits.

Deloitte's view

We recommend that taxpayers who have suffered the social surcharge but who remain liable to a non-French EU social security system keep filing refund claims. Given the applicable statute of limitations, the tax years 2012, 2013, and 2014 are still open. This case law is applicable not only to all EU citizens, but also to those from the European Economic Area and Switzerland.allocation of these social surtaxes to the financing of non-contribution based state benefits.

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Ireland:
Budget 2016 and other updates

Budget 2016

The Minister for Finance introduced Budget 2016 on 13 October against a backdrop of continued reasonable growth in the Irish economy. The tax measures introduced from a personal tax perspective see the much anticipated and significant cuts to the Universal Social Charge (USC) rates along with measures to align the treatment of self-employed individuals with employees. Funding is also being made available for increased revenue audit and investigation activities.

Universal Social Charge (USC): In a much-publicized move, cuts were made to the USC rates that benefit individuals with income up to €70,044. The 7% rate of USC is being reduced to 5.5% while the 3.5% and 1.5% rates will be reduced to 3% and 1% respectively. No USC will apply to individuals earning less than €13,000. The new rates and bands for employment income are as follows:

USC Band	USC Rate
First €12,012	1%
Next €6,656	3%
Next €51,376	5.5%
Balance	8%

For self-employed individuals, income in excess of €100,000 will continue to be liable to USC at the higher 11% rate.

Pay Related Social Security (PRSI): For income level at which the higher rate of PRSI (10.75%) applies for employer PRSI contributions is being raised to €376 per week while the PRSI burden on low income workers is being relieved with the introduction of a tapering exemption of up to €12 per week.

Local Property Tax (LPT): In a welcome move, the 2013 valuation basis for LPT will be extended to 2019 giving certainty to homeowners in a fluctuating property market.

Self-employed individuals: Self-employed individuals will benefit from the introduction of a new earned Income Tax Credit of €550 which is a positive step in aligning the tax treatment of self-employed individuals with employees.

Revenue audits and investigations: In a significant move, funding of €75m is being made available to Revenue to enable increased audit and investigation activities. In addition, Revenue will have a new debt analysis tool to assist with these audits leading to greater and more in-depth data analytics. This should sound a warning bell to employers to expect an increase in Revenue audits especially if your organization has not had one for some time. In order to be in a position to deal with an audit and to avail of the lesser penalties available under the voluntary disclosure regime, we recommend organizations undertake regular Tax Health Checks.

Travel and subsistence – public consultation on travel and subsistence

The public consultation on the tax treatment of travel and subsistence expenses closed on 21 August 2015, and Deloitte took the opportunity to make a submission to the Department of Finance on this important topic. We hope to see some updates on this in the forthcoming Finance Bill.

We have suggested the following recommendations:

Place of work: An employee's normal place of work should be determined based on the facts. The normal place of work should be the place where the employee or office holders perform most of the duties of their employment or office, irrespective of whether that is their home or an employer's office/workspace. This would remove the unnecessary complexity around this area. Currently, Revenue recognizes an employee or office holder's home as a normal place of work only in very exceptional circumstances. Furthermore, this suggested change would realign the tax treatment of expenses of travel and subsistence with modern working patterns and commercial reality.

Board meetings and nonexecutive directors (NEDs): Where an individual is traveling from their normal place of work, be it their home or other location, to board meetings on which they are serving as a NED, such expenses of travel should be reimbursed tax free. This should apply equally to both resident and non-resident NEDs. For Irish companies to demonstrate that they are implementing the best-in-class standards of corporate governance and regulation, the composition of NEDs who sit on Irish corporate boards must also be aligned to this concept of 'best-in-class'. Therefore, our tax system should recognize this essential function and not deter highly skilled and knowledgeable individuals from sitting on boards.

Temporary workplaces: A workplace should be recognized as a temporary workplace for up to two years' absence from the normal place of work. Implementing a 24-month rule in respect of temporary assignments would allow for the alignment of both tax-free travel and subsistence expenses with other foreign jurisdictions. This would enhance Ireland's position in respect of

foreign direct investment on the global stage and thus continue domestic economic growth by helping to attract the necessary foreign skilled workforce.

Personal public service number (PPSN) – new procedure to assist PPSN applications

The Department of Social Protection has recently launched MyWelfare.ie, a new website that can be used to book and manage online appointments for allocation of PPSNs.

The online booking system allows individuals to select the date and time for which they wish to present themselves at a social welfare office for application of a PPSN. The website informs applicants of the documents they are required to present on application for a PPSN. It also allows applicants to book an appointment for their family members.

These changes should help to reduce waiting time in the social welfare office for individuals seeking to obtain PPSNs on arrival in Ireland.

Professional subscriptions – revenue focus on payment of professional subscriptions

Irish Revenue is focusing on the issue of professional subscriptions, particularly in an audit scenario. In 2011, the rules in relation to the tax-free payment/reimbursement of professional subscriptions were tightened to effectively treat such payments/reimbursements as a 'Benefit in Kind' (BIK), unless certain criteria were met that would exempt it from the BIK rules. The criteria center on there being a statutory requirement to hold the membership or there being a requirement to hold a practicing certificate/license or the membership being an indispensable condition of the employment.

Revenue's focus on this area should prompt employers to revisit the payment of professional subscriptions to ensure that where such payments are being made tax free that at least one of the criteria has been met. As part of the Budget measures announced on October 13th, a review of the tax treatment of payments to professional bodies will be undertaken next year.

Special Assignee Relief Program (SARP) – reminder on certification with Revenue

As a reminder, for employees who wish to claim SARP, employers are required to certify to Revenue that an employee meets the relevant conditions. This certification must be made within 30 days of arrival in Ireland for individuals who arrive in 2015, 2016, or 2017, and Revenue is applying this rule strictly.

In addition, for each year in which an employee claims SARP, the employer must deliver an annual return to the Irish Revenue by 15 February of the following tax year setting out the following in respect of the relevant employees:

- Name and PPSN, and
- The amount of income, profits, or gains in respect of which PAYE was not deducted.

In addition, the employer must provide details of the increase in the number of employees, or details of the number of employees retained by the company as a result of the operation of SARP relief.

Tax return filing deadline – due date fast approaching

As a reminder, the filing deadline for 2014 Irish income tax returns is 31 October 2015.

Where a tax return can be filed on Revenue's Online System (ROS), and payment of the tax liability is also paid through ROS, the deadline for filing and payment is 12 November 2015.

Surcharges apply where tax returns are filed late based on the liability owing and the date by which the tax return is eventually filed.

Immigration update – employment Permits Act (Amendment) Regulations 2015

The Employment Permits Act (Amendment) Regulations 2015 came into force on 1 September 2015. The 2015 regulations have amended the lists of Highly Skilled Occupations and the Ineligible Categories of Employments to keep in line with changes to the skill shortages being experienced in Ireland.

Radiation therapists, orthotists, and prosthetists have now been added to the Highly Skilled Occupations list and health care practice managers and social services managers have been removed from this list. Certain manager roles have also been added to the Ineligible Categories of Employment (e.g. betting shop managers, graphic design managers, production managers and estate managers), while telecommunications engineers, IT engineers, registered chiropractors, mobility instructors for the visually impaired, and meat boners have been removed from this list and are now eligible for employment permits.

New application forms for employment permits: The application forms for employment permits have been revised as of 1 September 2015 to take account of changes to requirements for supporting documents. Only applications made on the revised forms will be accepted by the Department of Jobs, Enterprise, and Innovation. Scanned signatures continue to be acceptable.

Investment in funds under the Immigrant Investor Program (IIP): The Department of Justice has published its guidelines in relation to investments in Enterprise Investment Funds, which are eligible investment options under the IIP. The IIP was established with the view to incentivise foreign direct investment in Irish enterprises and thus encourage Irish job creation and economic development. Applications under the IIP for investments in funds will continue to be assessed against these principles.

Deloitte's view

Budget 2016 sees the second of a multi-year reform aimed at raising disposable income and rewording work. While we welcome the changes introduced especially for middle-income families, Ireland remains one of the countries in the OECD with the highest marginal tax rates and these changes only go some way to increase Ireland's attractiveness to skilled foreign workers. The increased funding for Revenue audits will see more organizations selected for audits/investigation and we will see a move away from sampling to big data analytics as part of this.

The above gives a high-level overview of the issues facing employers in Ireland today. We are expecting to see some clarity on the tax treatment of travel and subsistence payments in the forthcoming Finance Bill and will issue further updates as developments happen.

We welcome the changes to the PPSN application process that will assist individuals with registering for tax and social security purposes. Given the approaching tax year-end, and in advance of any Revenue audit, now is a good time to take a look at how payments of professional subscriptions have been treated, while we await the outcome of the review of these next year.

Where individuals are coming to Ireland, the SARP regulations require employers to certify that the individual meets the relevant criteria within 30 days of arrival in Ireland, so employers need to be mindful of this obligation.

A reminder that the 2014 tax return-filing deadline is 31 October; or for online filing and payments, the deadline is 12 November.

Finally, we have provided an update on immigration issues concerning new regulations and application forms and the latest from the Department of Justice on the Immigrant Investor Program.

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The Netherlands: New Visa ‘MVV’ Exemptions

Overview

A long-term entry visa (MVV) is necessary for non-EEA* nationals (with the exception of nationals of the following countries Switzerland, Australia, Canada, Japan, Monaco, New Zealand, South Korea, United States of America or Vatican City) intending to reside in the Netherlands for more than 90 days.

*EEA countries: EU member states, including Liechtenstein, Iceland and Norway.

As of October 1, 2015, certain categories of foreign employees no longer need to obtain a MVV prior to their arrival in the Netherlands. Main reason for this revision in law is to attract Highly Skilled Migrants to the Netherlands and to stimulate the Dutch economy.

Changes to note

The following non-EEA nationals have been exempted from the MVV requirement:

1. Non-EEA nationals who meet the conditions for a Dutch residence permit as a Highly Skilled Migrant and who are the holders of a valid residence permit issued by a Schengen country.*
2. Non-EEA nationals who are holder of a valid residence permit issued by an EU member state and who are working (on behalf of or independently) as a service provider for a period of 90 days or longer in the Netherlands.

*Schengen countries: EU member states (except UK, Ireland, Cyprus, Romania, Bulgaria, Croatia) Switzerland, Liechtenstein, Iceland, Norway.

Deloitte's view

The advantages are:

1. The admission procedure to the Netherlands will be reduced with a couple of weeks.
2. Foreign nationals meeting the above requirements will no longer need to hand over their passport for a couple of days or weeks to the Embassy/Consulate for MVV purposes, thus they can still travel during the residence permit procedure.

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People's Republic of China: New Visa Policy to Benefit Foreigners Working in Beijing

Overview

The Beijing Public Security Bureau recently introduced new measures to expedite the processing of residence permits with a view to attracting and retaining foreign talent in Beijing.

Previously, foreign nationals in Beijing had to wait 15 business days to secure a residence permit once they had submitted the required documents to the Public Security Bureau (based on the 2012 Exit-Entry Administration Law).

The following applies under the new policy:

- **Reduced residence permit processing time:** As from 1 August, 2015, the waiting period for residence permits is reduced from 15 business days to 10 business days.
- **Long-term residence permits and stay permits:** Foreign individuals may be eligible for a residence permit that will be valid for two to five years for employment purposes, or two to five years for multiple entries (for F business or R talent categories), with a limit

of 180 days per visit. To qualify for one of these permits, one of the following requirements must be met:

- The individual must hold a position higher than vice president in an overseas enterprise;
- The individual must be considered a "technology expert" by the Administrative Committee of Zhongguancun Haidian Science Park; or
- The individual must be a member of the government-backed "Recruitment Program for Global Experts "or the "Sea Poly Project for Beijing Overseas Talent."

Deloitte's view

Foreign applicants should be aware of the changes to the residence permit processing time and arrange their residence permit applications accordingly in order to accommodate their travel schedules.

Human resources personnel should seek advice from immigration professionals with regard to long-term valid residence and stay permits. Because the Beijing Public Security Bureau is very strict about verifying qualifications for such permits and detailed implementation rules for the new policy have not yet been released, future developments should be monitored closely and action taken, where appropriate.

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Sweden:
Ruling from the Administrative Court of Appeal Determining Whether Benefits and Allowances Could Be Considered When Applying for the Expert Tax Relief, and Whether They Must Be Provided from the Start of the Work

Overview

On 14 November 2015, the Administrative Court of Appeal published 30 different cases, all concerning if benefits and allowances could be considered when applying for a tax relief for foreign experts based on the salary level, if these were not explicitly stated in an assignment letter or other relevant documentation. The Administrative Court of Appeal's decision shows the importance of clearly documenting benefits and other allowances when applying for tax relief for foreign experts.

Background

Under the rules for tax relief for foreign experts and key personnel, an individual with a monthly remuneration above SEK 89,000 for 2015 and SEK 88,600 for 2016 will qualify as an expert or key personnel. According to a recent ruling by the Supreme Administrative Court on 26 November 2014, a net salary must be converted to a gross salary taking the tax relief for foreign experts into consideration when determining whether the gross salary meets the requirements of the salary level for the expert tax relief.

Key statements in the rulings from the Administrative Court of Appeal

According to the Administrative Court of Appeal, only the benefits and allowances that are stated at fixed values or amounts at the time of the application, and which are paid or available at the start of work, can be taken into consideration when determining whether the gross salary meets the requirement of the salary level for the expert tax relief. The Administrative Court of Appeal based this ruling on legislative history and an article in the legislation, stating that an application of tax relief for foreign experts needs to contain all the information that the Taxation of Research Workers Board needs to be able to process the application.

Deloitte's view

The rulings from the Administrative Court of Appeal may impact cases where the employer applied for expert taxation before the Supreme Administrative Court published the ruling on the method for calculating the qualifying gross salary.

If the qualifying salary, calculated in accordance with the Supreme Administrative Court ruling is not sufficient, the taxpayer could still reach the required remuneration level if benefits and other compensation were included, given that these were not considered previously.

However, the rulings from the Administrative Court of Appeal limit this possibility if the benefits and allowances were not explicitly stated in the employment contract or in any policy documents included in the application to the Taxation of Research Workers Board (Sw. Forskarskattenämnden).

Furthermore, the Administrative Court's decisions also establish that it is crucial to explicitly state the value of benefits and other remuneration in the employment contacts and/or other policy documents submitted to the Taxation of Research Workers Board, to avoid the risk that these will not be taken into account when considering whether the threshold is reached. The decisions may also result in reassessments of old decisions by the Swedish Tax Agency where the remuneration criteria is not met, resulting in significantly higher costs for tax and social security charges.

It should be noted that these rulings may still be overruled by the Supreme Administrative Court, should they be appealed against.

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