Deloitte.

Global Employment Solutions

Global InSight

18 December 2015

In this issue:

Australia: Changes to health assessment requirements

Overview

Effective from 20 November 2015, the Australian Federal Government will introduce a revised medical assessment regime. The new health matrix will impact visa applicants, as well as employers who sponsor Temporary Work (Skilled) visa (subclass 457) applicants.

The health matrix will govern the requirement for and reuse of health testing. Effective 20 November 2015, the current three risk levels (low, medium, and high) will be reduced to two – categorizing a country's health profile as either 'safe' or 'higher risk'. Visa applicants whose country of citizenship is not a prescribed safe country, or applicants who have spent three consecutive months or more in a country that is not a prescribed safe country, will be required to undertake full medical examinations for temporary stays in Australia of six months or more.

Impact for employment of sponsored workers

Once the changes are introduced, subclass 457 visa applicants will no longer be subject to streamlined health arrangements. In a large number of cases, a full medical examination, as well as a chest x-ray, will be required, including all subclass 457 visa applicants making an

application for longer than six months from India, China, Singapore, and Malaysia among others.

Other key changes also include:

- Removal of the ‘classroom situation’ (a teacher or student in Australia for more than three months) from the Special Significance requirement;
- Increase from three to six months the temporary stay threshold, without the need to do health, for all countries (unless Special Significance applies); and
- Mandatory tuberculosis (TB) testing for children between the ages of two and 10 applying for a temporary visa with a declared close family contact with TB or from higher risk countries applying for provisional or permanent visas.

Reuse of medical checks

Effective 20 November 2015, ‘automated reuse’ arrangements will be in place for applicants who have previously completed all necessary health checks and can provide a health case identifier (HAP ID). In cases where additional testing is required, only those additional checks will be requested with all other valid medical checks being deemed automatically complete.

Importantly, should an applicant reach an ‘age milestone’ that would result in changes to the required checks prior to lodging of their application, reuse will not be available. Due to public health risks, Health Undertakings will also not be eligible for reuse.

Deloitte’s view

The changes to the health matrix effectively abolish the concept of streamlined health processing for subclass 457 visa applications. This is likely to result in not only additional costs for visa applicants and employers, but also potentially considerable delays in applications being finalized as the number of applicants undertaking the testing increases.

Whilst the Department of Immigration and Border Protection expects the expanded list of ‘safe’ countries and changes to the temporary stay threshold will result in up to 40,000 less temporary applicants needing to complete any testing at all, an estimated 180,000 applicants will now need a medical check in addition to the existing chest x-ray requirement. Approximately 30,000 children under 11 are now also expected to be tested for TB during the visa application process.

Deloitte does, however, welcome the enhanced arrangements concerning the reuse of health checks and clearances and looks forward to further consideration of existing health arrangements as a whole.

— 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

Australia:
Changes to the working holiday maker visa programs

Overview

The Australian Federal Government has announced wide-ranging changes to the Working Holiday (Subclass 417) and Work and Holiday (Subclass 462) visa categories. The changes complement earlier changes to both programs in July 2015.

Au pair work limitations

Effective 21 July 2015, both Subclass 417 and 462 visa holders working as au pairs have been permitted to seek an extension to the usual six-month work limitation. Visa holders eligible for a second 12-month stay could potentially be employed with the one family for the bulk of their time in Australia.

Evidence of paid employment

Effective 31 August 2015, all applicants for a second Subclass 417 visa have been required to provide payslips as evidence of appropriate remuneration with their application. Payslips need to clearly demonstrate the worker's employment was paid and in accordance with both basic entitlements and rates of pay.

Although transitional arrangements are in place until 30 November 2015, an intended consequence of this change is completion of specified volunteer and/or World Wide Opportunities on Organic Farms (WWOOF) work will no longer qualify a visa holder for second 12-month stay.

Developing Northern Australia

Effective 21 November 2015, both Subclass 417 and 462 visa holders will be eligible to apply for an extension to the usual six-month work limitation if they can show employment in a range of key industries across Northern Australia. Defined as the entire Northern Territory and those areas of Western Australia and Queensland North of the Tropic of Capricorn, the changes will also enable Subclass 462 visa holders to apply for a second 12-month stay upon completion of at least three months employment in the region's agricultural or tourism sectors.

Covering an extensive range of industries, the amendments will affect those in the following sectors:

- Aged and disability care
- Aged care residential services

- Disabilities assistance services
- Aged care assistance services
- Career for the aged or disabled

Agriculture

- Plant and animal cultivation
- Fishing and pearling
- Tree farming and felling

Construction

- Residential and nonresidential construction
- Heavy and civil engineering construction
- Land development and site preparation
- Building structure, installation, and completion services

Mining

- Oil and gas extraction
- Metal ore and construction material mining
- Nonmetallic mineral mining and quarrying
- Exploration and mining support services

Tourism and Hospitality

- Tour guides and operators, outdoor adventure or activity instructors, and tourist transport services
- Gallery or museum managers, curators, or guides
- Hospitality workers, including hotel, restaurant, café, bar, or casino workers
- Conference and event organizers

Please note the above is not an exhaustive list. If you require further details, please contact one of the Deloitte contacts below.

Deloitte's view

The opportunity for qualifying visa holders to spend longer periods with one employer will make a considerable contribution to increasing the supply of workers and reducing vital skill gaps in regional and remote Australia.

With limited uptake of the Northern Territory Designated Area Migration Agreement (DAMA), particularly in the retail and hospitality sectors, it is to be hoped these changes will aid employers in attracting and retaining skilled and semiskilled workers as part of a broader 'Developing Northern Australia' initiative.

Removal of the volunteer aspect of the program may adversely impact organizations with a legitimate reliance upon volunteer labor and indirectly limit opportunities for visa holders.

— 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

Korea: 2016 tax law revisions

Overview

Several tax law revisions effective for the 2016 tax year were approved by Korea's National Assembly on December 2, 2015. The following is a summary of the tax law revisions relevant to global employer services.

Domestic companies 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 new tax law effective starting July 1, 2016, Korean entities having high-income earning foreign assignees, where the relevant employment costs are not borne directly 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. The domestic Korean entity may file year-end income tax settlements on behalf of the foreign company in order to claim a refund of overpaid withholding taxes or pay additional income taxes due.

Detailed scope and procedures will be announced in the revision of the relevant article in the Presidential Decree of the Individual Income Tax Law.

Residency definition tightened for exemption from foreign financial account reporting for Korean nationals

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

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

Deloitte's view

There were no details given for the new income tax withholding requirement, and further details should be announced with the revisions to the Presidential Decree. In the meantime, 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.

— Kyung Su Han (Seoul)
Partner
Deloitte Korea
kyungsuhan@deloitte.com

Min Soo Seo (Seoul)
Director
Deloitte Korea
mseo@deloitte.com

Jeffrey Trageser (Seoul)
Senior Manager
Deloitte Korea
jtrageser@deloitte.com

People's Republic of China: SAT clarifies new IIT incentives for qualifying employees and shareholders of HNTEs

Overview

China's Ministry of Finance and the State Administration of Taxation (SAT) issued guidance on 23 October 2015 (Circular 116) that extends two individual income tax (IIT) incentives nationwide from 1 January 2016, with a view to stimulating technological innovation. The incentives, which currently are available only in National Innovation Demonstration Zones, will allow a deferred IIT payment for qualifying employees and individual shareholders of "high-new technology enterprises" (HNTEs) for stock awards or the capitalization of undistributed profits/reserves. The SAT issued Bulletin 80 on 16 November 2015 to provide additional guidance on the calculation of taxable income/tax and administration issues of the incentives. Bulletin 80 also will apply from 1 January 2016.

Circular 116 will allow the IIT to be paid in instalments over a five-year period if the relevant individual taxpayer is unable to settle his/her tax liabilities immediately in either of the following two situations:

- Stock awards are granted to qualifying employees by an employer with HNTE status or
- A qualifying small- or medium-sized HNTE (SMHNTE) converts its undistributed profits or reserves (including capital surplus) to capital (such a conversion generally is considered a dividend distribution by that enterprise to its shareholders for IIT purposes).

Key implications

Stock awards – Taxable income: The taxable income from stock awards granted to qualifying employees by HNTEs will be determined based on the fair market value (FMV) of the stock on the date of the grant:

- For listed HNTEs, FMV refers to the stock's closing price on the grant date, or the last trading date if the grant date is not a trading day, and
- For unlisted HNTEs, FMV refers to the assessed value by using the following methods (in the following order):
    - Net asset method, i.e., the FMV assessed by reference to the net asset value in proportion to the shares;
    - Comparable method, i.e., the FMV assessed by reference to the reasonable price of comparable stock sales in a recent period; or
    - Other reasonable method, as agreed upon by the tax authorities.

Stock awards – Tax calculation: Circular 116 will allow the IIT on stock awards to be calculated by reference to the preferential method available for employee stock options offered by listed companies, where the income may be divided by the "number of stipulated months" to determine the applicable tax bracket. When using this method to calculate the IIT on stock awards, Bulletin 80 clarifies that the number of stipulated months refers to the number of the employee's actual working months for the HNTE, capped at 12 months.

Capitalization of undistributed profits or reserves: Bulletin 80 emphasizes that the deferred payment option for the capitalization of undistributed profits or reserves may be applied only where the SMHNTE is unlisted and its stock is not quoted on the National Equities Exchange and Quotations.

Bulletin 80 confirms that companies that do not fulfil the above conditions must withhold the relevant IIT in a timely manner when the capitalization was made.

Registration and withholding requirements: Qualifying enterprises and individuals have discretion to determine an installment payment plan, although the plan must be reported to the tax authorities within 15 days of the month following the month in which the stock awards were granted or the capitalization was made. The following documentation also must be reported:

- HNTE certificate of the enterprise;
- Relevant resolution of the shareholders' meeting or the board of directors' meeting;

- Reporting form for IIT installment payments (Reporting Form);
- Information on the relevant technology-related activities and achievements by qualifying employees, the stock awards plan, the stock price, and the latest financial statements (for stock awards only); and
- Financial statements of the last year and the month in which the capitalization was made, and information on the capitalization (for capitalization of undistributed profits or reserves only).

The Reporting Form must be updated and resubmitted if the individual taxpayer subsequently makes any change to the original installment payment plan.

Bulletin 80 also suggests that, where the relevant individual has applied to make deferred IIT payments and then derives cash proceeds from dividend declarations or the sale of the relevant stock/shares, the relevant enterprise must withhold any outstanding IIT from the proceeds and file a return with the tax authorities within 15 days following the month in which the event occurred.

Deloitte's view

- Bulletin 80 offers clear guidance on the deferred IIT payments provided for in Circular 116, and the corresponding reporting and withholding requirements to claim the incentives.
- Before the issuance of Circular 116 and Bulletin 80, limited IIT incentives were offered to unlisted companies in terms of stock awards. The new rules provide an opportunity for qualified HNTEs and individuals to enjoy preferential tax treatment.
- Companies that potentially may benefit from the tax incentives should conduct an internal assessment or seek professional advice on how to qualify for the incentives, and comply with the reporting and withholding requirements.

— Gus Kang (Beijing)
Partner
Deloitte People's Republic of China
gukang@deloitte.com.cn

Huan Wang (Beijing)
Partner
Deloitte People's Republic of China
huawang@deloitte.com.cn

Mona Mak (Hong Kong)
Partner/Principal
Deloitte People's Republic of China
monmak@deloitte.com.hk

Tony Jasper (Hong Kong)
Partner
Deloitte People's Republic of China
tojasper@deloitte.com.hk

Sandy Cheung (Shanghai)
Partner
Deloitte People's Republic of China
sancheung@deloitte.com.cn

Joyce W. Xu (Shanghai)
Partner
Deloitte People's Republic of China
joycewxu@deloitte.com.cn

Fei Fei Li (Shenzhen)
Director
Deloitte People's Republic of China
ffli@deloitte.com.cn

Irene Yu (Shanghai)
Deloitte People's Republic of China
Partner
iryu@deloitte.com.cn

United States:
New law allows revocation of a US passport for individuals with "seriously delinquent" tax liability

Overview

On December 4, 2015, the President signed Fixing America's Surface Transportation Act (the "Act"), into law, which is primarily a highway bill to fund repairs and infrastructure. The Act contains an important revenue provision which allows the US State Department to revoke existing passports or deny new passport applications for individuals with an outstanding US tax debt in excess of $50,000 beginning January 1, 2016. The State Department is also permitted to deny applications which do not include a valid social security number. The Act allows exceptions for humanitarian reasons, including a possible allowance of short-term use of the passport to return to the United States.

Seriously delinquent tax debt

The Act allows the State Department to deny an application for a new passport or revoke a current passport for any individual with a tax debt which is considered seriously delinquent. The definition of seriously delinquent includes any liability in excess of $50,000, including interest and penalties, for which the Internal Revenue Service (IRS) has issued a notice of levy or lien for the debt. It does not include debt which is being paid through an installment plan or which is currently under due process hearing. The $50,000 threshold will be indexed annually for inflation.

Valid social security number

Currently, an application for a passport does not require an individual to provide a social security number or taxpayer identification number (TIN), but an application submitted without such number may incur a fine. Under the provisions of the Act, the State Department is now permitted to deny applications submitted without a social security number or TIN, or which intentionally include an invalid number.

Deloitte's view

Under current law, the IRS and the State Department do not share information for purposes of issuing passports; the Act represents the first time these departments will work in a coordinated effort to ensure compliance with the US system of taxation for individuals holding a US passport. Americans living abroad rely on their passports for many day-to-day activities, such as opening a bank account, traveling, or registering their children for local schools. As maintenance of a valid passport is critical for this group of individuals, it will be increasingly important for expatriates to stay current on their tax liabilities and be aware of any notices which are issued. Expatriates are more susceptible to receiving notices from the IRS due to the complexity of their tax returns. Many expatriates struggle with receiving mail from the IRS while abroad due to IRS system limitations in the number of characters permitted to be listed with an address, which are often not compatible with foreign addresses. Expatriates should

consider reviewing the address which is on file with the IRS to ensure it is complete and accurate since receiving notices from the IRS will be critical to remaining compliant.

Multinational companies should also consider this legislation and the impact it may have to their globally mobile employees who will need to remain compliant with US tax law to maintain a passport; this population may include individuals such as short-term business travelers who are not part of the company's formal mobility program.

— Kent Klaus (Chicago)
Partner
Deloitte Tax LLP
kklaus@deloitte.com

Michael Loskove (Chicago)
Director
Deloitte Tax LLP
mloskove@deloitte.com

Greg LaBorde (New Orleans)
Senior Manager
Deloitte Tax LLP
glaborde@deloitte.com

Elizabeth McCoy (Milwaukee)
Manager
Deloitte Tax LLP
emccoy@deloitte.com

Global Rewards Updates:
United Kingdom: Income tax and social security treatment of RSUs from 6 April 2016

Background

Over the last few years significant changes to the UK taxation of share awards for internationally mobile employees have taken place. These changes have been enacted as part of the Government's effort to simplify the UK tax legislation. However, the tax treatment of certain awards has become uncertain.

Under the current UK tax rules, Restricted Share Units (RSUs) and other "conditional share awards" can potentially be subject to income tax under two sets of rules. These rules are the "general earnings" rules, or if the RSU confers on an employee a 'right to acquire securities', the "securities options" rules.

In our Global Reward Update, July 2015, we discussed HM Revenue & Customs' (HMRC) view that, based on plans they see, RSUs and other "conditional share awards" would normally be subject to income tax under the "general earnings" provisions.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-gru-unitedkingdom-9-july-2015.pdf

On 9 December 2015, HMRC issued new draft legislation which will change this position for certain RSUs and "conditional share awards" currently taxed under the "general earnings" rules. A copy of the draft legislation can be found online.
URL: https://www.gov.uk/government/publications/employee-share-schemes-simplification-of-the-rules/employee-share-schemes-simplification-of-the-rules

Draft legislation

The draft legislation, which is proposed to take effect from 6 April 2016, seeks to remove RSUs and similar awards from the charge to "general earnings". Instead, awards would be subject to the securities option legislation only. If enacted, this change is expected to have minimal impact on employers and employees where the employee is UK resident throughout the vesting period and liable to UK tax and National Insurance Contributions (NICs) on all their earnings. However, the change could have a significant impact for employers and employees where an employee is internationally mobile.

Whilst the income tax position is broadly the same for internationally mobile employees regardless of whether RSUs are taxed as "general earnings" or "securities options", there is a substantial difference in the National Insurance (NIC) position. There may also be an impact on non-UK domiciled employees who claim the remittance basis of taxation and on all employees who are liable to UK capital gains tax when they dispose of their shares.

Although HMRC's intention is that these rules will apply to all RSUs, the legislation as drafted would only apply to awards which confer a 'right to acquire securities'. If awards do not confer this right, (which might the case where, for example the employer has and uses discretion to settle an award in either shares or cash), the draft legislation does not appear to change the previous position. In these circumstances, such awards would continue to be subject to income tax under the "general earnings" provisions.

Impact on National Insurance position

If companies determine that their RSUs and "conditional share awards" do not confer a right to acquire shares (and therefore follow the "general earnings" provisions), NIC will be determined in the same way as for a cash bonus (i.e. in full or not at all depending whether the employee is UK insured at receipt).

If, however, the RSUs do confer a right to acquire shares, NIC will instead be due on an apportioned basis, based on the amount of time during the earnings period for which the employee is insured for social security in the UK. This is regardless of the employee's social security position at award or vesting of the award.

Deloitte's view

Although it is HMRC's stated intention that these changes will apply to all RSUs, the legislation as drafted does not apply to RSUs which do not confer a 'right to acquire securities'. Employers with internationally mobile employees may need to refresh their understanding of where the borderline falls between securities option and general earnings treatment, and further HMRC guidance may be necessary.

In the meantime, companies will need to again review their plans and determine whether their RSU awards confer a right to acquire shares, and if they do, consider the impact of this change. Companies may want to:

- Analyse whether the company's costs could increase due to the change in NIC treatment, and if necessary provide for these additional costs;
- Consider the personal tax impact from a capital gains tax and remittance basis perspective;
- Communicate with employees impacted by any changes; and
- Ensure that payroll teams are notified and can manage their withholding and reporting obligations, particularly where a NIC liability is due on an apportioned basis.

— Mark I. Miller (San Jose)
Principal
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.