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## China: New requirement for work permit application in Shanghai

### Overview

Effective 18 July 2016, a foreign individual seeking an employment license, work permit or expert permit in Shanghai must include an original work reference letter to the Shanghai Labor Bureau or Foreign Expert Bureau in the following cases:

- The individual is applying for a work permit or expert permit in Shanghai for the first time; or
- The individual is transferring a previously granted employment authorization to Shanghai from another city in Mainland China.

It is likely that, in the near futures, the authorities also will require foreign individuals to submit original diplomas with their permit applications.

### Deloitte's view

Although the Shanghai government introduced simplified visa application procedures in July 2015 to attract and retain foreign talent to Shanghai, the authorities have heightened their scrutiny of the visa status of foreigners in the city. The requirement to submit original work reference letters will create an additional burden for foreign individuals.

The enhanced supervision regulations likely will result in more audits carried out by the immigration authorities to discover illegal employment and unlawful residence of foreign nationals working/living in Shanghai.

In light of the above changes, employees should have sufficient documentation for visa applications in order to avoid delays in the process. Employers should pay close attention to any foreigners working on their premises and take steps to ensure such individuals are in possession of proper and valid visas to work and reside in China.

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## Indonesia: Immigration Update: Change in validity period for Multiple Visit Visa and introduction of billing codes for Skill Development Fund Payment

### Background

- People's mobility across borders is becoming more dynamic in this globalization era and the Indonesian Government deems it necessary to have a policy which will ease foreigners to visit Indonesia. The Government has provided a free-visa facility for foreigners coming from 169 countries, for which the last regulation was issued in March 2016, and at the end of June 2016 the President of Indonesia, Joko Widodo, has again issued Government Regulation No. 26 of 2016 ("GR 26") to extend the validity period for foreigners to visit Indonesia using the multiple visit visa. This new regulation also provides convenience for former Indonesian citizens and their families in the form of extension of residence permit.

- GR 26 is effective from 28 June 2016 and it is to amend several articles in Government Regulation No. 31 of 2013 (“GR 31”) and both of these regulations are the implementation regulations for Immigration Law No. 6 of 2011.
- There is also an announcement from the Ministry of Manpower (“MoM”) in regard to the use of billing code for payment of Skill Development Fund (“SDF” or Dana Pengembangan Keahlian dan Keterampilan / DPKK), which is a contribution imposed by the Government on every work permit application calculated based on the number of working months approved. (i.e. USD100/month) With this new billing code system, the Government intends to improve the payment process and make it more time-efficient, easy to monitor, and transparent.

### Changes in the Implementation Regulation

Summarized below are the changes:

No.	Description	New regulation/GR 26	Old regulation/GR 31
1.	Validity Period of Visa	<ul style="list-style-type: none"> <li>• Multiple Exit Re-entry Permit for Visit Visa (“Visa Kunjungan”) is valid for 5 years from the date of issuance.</li> <li>• The validity period of Multiple Exit Re-entry Permit for Diplomatic Visa (“Visa Diplomatik”) and Official Visa (“Visa Dinas”) remains the same, i.e. 12 months from the date of issuance.</li> </ul>	<ul style="list-style-type: none"> <li>• Multiple Exit Re-entry Permit for Diplomatic Visa (“Visa Diplomatik”), Official Visa (“Visa Dinas”), and Visit Visa (“Visa Kunjungan”) are valid for 12 months from the date of issuance.</li> </ul>
2.	Stay Permit Extension	<ul style="list-style-type: none"> <li>• Stay permit for Multiple Exit Re-entry Permit for Visit Visa holder cannot be extended, unless the foreigner is a former Indonesian citizen (Ex WNI) and his/her family.</li> <li>• Stay permit for foreigner who is a former Indonesian citizen and the related family can be extended for maximum two times and the period for each extension is maximum 60 days.</li> <li>• Further details on the extension procedure for the above stay permit will be regulated by the relevant Ministry.</li> </ul>	Stay permit for Multiple Exit Re-entry Permit for Visit Visa holder cannot be extended.
3.	Transition Period based on GR 26	<p>When this regulation becomes effective on 28 June 2016:</p> <ul style="list-style-type: none"> <li>• Visit Visa which has been obtained by a foreign national and stay permit for former Indonesian Citizen (Ex WNI) will remain valid until it expires; and</li> <li>• The validity for Visit Visas and Stay Permits for which applications were submitted and processed but not yet completed, will follow this new regulation.</li> </ul>	

### Introduction of Billing Code for SDF Payment

The Government introduced the use of billing codes in paying the Skill Development Fund on 1 July 2016. This billing code will be issued by the Ministry of Manpower at the following time:

- For a new long-term work permit application (7-12 months), the billing code will be provided at the time the application is approved.
- For emergency work permit/short-term work permit, work permit for Director/Commissioner, and renewal work permit: the billing code will be provided at the time the receipt for submission is issued by the Ministry of Manpower.

After obtaining the billing code, the employer can pay the SDF by giving the code to the appointed State-owned banks: BNI 1946, Bank Mandiri, or BRI. Payment can be made in cash or by transfer, but there is a possibility that the appointed Bank may no longer receive transfers from accounts in other banks in the near future.

There is no change to the SDF amount of USD 100/month. The fee can be paid in either USD or IDR, but be mindful of the exchange rate conversion applied by the Bank if the payment is made in currency other than USD.

It is expected that the Ministry of Manpower will issue further regulation or process about this.

### **Deloitte's view**

This new GR 26 is good news for business travellers who previously only obtained a maximum 12-month multiple business visit visa to Indonesia. The new visa validity period, which is 5 years, will minimise the administrative hassle for the individual and the cost for the company to obtain the visa, as well as reducing cost and time to monitor the visa validity.

It is very important to reiterate that the business visit visa is not valid for working, and therefore companies should continue to monitor their business travellers to ensure that they are using the right visa to enter Indonesia. From the authority side, the Government will also have to control and monitor this new facility to avoid inappropriate use of visas.

The use of billing codes is expected to provide a better monitoring process for the Government as well as transparency. As there is a possibility that the appointed bank may not accept transfers from accounts in other banks, clients that do not have accounts at BNI 1946, Bank Mandiri, or BRI may consider an alternative approach for paying the SDF, such as by way of cash payment (internal risk management consideration needs to be taken into account) or by opening an account in one of the appointed banks.

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## **Korea: Proposed 2017 tax law revisions**

### **Overview**

On July 28, 2016, the Korean Ministry of Strategy and Finance (MOSF) released its proposed 2017 tax law revisions. The following is a selection of proposed 2017 tax law revisions relevant to global employer services. The proposed 2017 tax law revisions will be deliberated by the Korean National Assembly, which may approve the revisions in late December 2016.

### **Changes to the application of flat income tax rate applicable to foreign employees**

Under the Tax Incentives Limitation Law, foreigners are allowed a flat income tax rate election as an alternative to the regular progressive income tax rates when calculating individual income tax liability on earned income. If elected, a flat rate of tax may be applied to gross earned income, with no deductions, income exclusions, or tax credits allowed, in lieu of the regular progressive individual income tax rates, which range from 6% to 38% (6.6% to 41.8% including local income tax surcharge).

Effective January 1, 2017:

**Change to the applicable tax rate:** In connection with numerous tax laws revisions designed to achieve fair and equal taxation, MOSF has proposed to increase the flat income tax rate to 20.9% (including local income tax surcharge of 1.9%) from 18.7% to decrease the taxation disparity between Korean nationals and foreign taxpayers.

**Limited period to application of flat income tax rate election:** Application of the flat income tax rate election is limited to a maximum of five (5) years from the Korean employment start date (only applicable through December 31, 2019), if started prior to December 31, 2019.

1. In the case where a foreign employee began working in Korea prior to January 1 of 2014, the flat income tax rate election will be allowed until the end of 2018, even if five (5) years have elapsed from the date of their commencement of work in Korea.

### **New exit tax introduced**

The new tax law revision also introduced an exit tax, effective of January 1, 2018, in an effort to prevent offshore tax avoidance by tax residents who are going to breaking tax residency through permanent departure from Korea (i.e., immigration). Please see below for more details:

1. The exit tax is applicable to the following Korean tax resident leaving Korea permanently:
  - a. Who's had permanent residence in Korea for minimum of five (5) years in the ten (10) years leading up to the date of permanent leave and
  - b. Is considered a major shareholder of a domestic company, owning more than 1% of all shares valued at 2.5 billion KRW or more at the end of preceding business year.
2. When a tax resident meeting above conditions, breaks residency, the taxpayer is deemed to have disposed of relevant domestic shares on the final day of residence and the deemed gain is subject to tax rate of 22% (including local income tax surcharge).
3. For the time being, only the shares of domestic companies are subject to exit tax (this may change in the future).
4. The exit tax needs to be reported and paid within three months, starting from the last day of the month of expatriation. 20% of non-reporting penalty may be assessed, if not compliant.
5. The exit tax assessment can be deferred for five years, if a tax agent is appointed or collateral is posted.
6. Tax credits are available if any foreign taxes are paid on the gain or any loss is subsequently realized pursuant to the disposition of the shares.
7. If the taxpayer returns to Korea to establish tax residency within five years of departure, any exit taxes paid will be refunded.

### **Deloitte's view**

- Companies should consider relevant tax reimbursement cost increase for the expatriates working in Korea and also should be very careful to withhold relevant income tax using increased flat income tax rate from year 2017.
- Exit tax may not have apparent impact for many of foreign nationals assigned to Korea, but it is advisable for expatriating Korean nationals and foreigners, who had spent significant amount of time in Korea, to check to see if they have filing requirement.

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## Malaysia: New immigration update

### Overview

At present, it is a practice by the Malaysian Immigration Department (MID) to issue a Visa with Reference (VWR) letter to approved work pass applications. The VWR letter is meant for applying a single entry visa application into Malaysia for a specific purpose e.g. employment, accompanying dependent, etc. upon approval from the MID. The VWR letter is not required for applicants who are nationals from Commonwealth countries.

The MID has been lenient on the type of entry visa used by applicants when entering Malaysia to endorse the work pass subsequent to obtaining its approval. In practice, applicants of non-Commonwealth countries may enter Malaysia via Visa on Arrival or business/tourist visa without having to apply for VWR from Malaysian embassies / consulates in their respective home countries. The alternative to paying an additional immigration fee called Journey Performed is acceptable when endorsing the work pass.

### Changes to note

Effective 1 August 2016, the MID has implemented new regulations for foreigner (professional) entering Malaysia for employment.

The following are some notable changes:

**Employment Pass (Category I and II) and Professional Visit Pass (PVP):** For applicants whose work pass application have been approved, they are required to produce their work pass approval letters upon arrival at the Malaysian Immigration Checkpoint. Where the applicants (from non-Commonwealth countries) are issued with VWR letters, it is mandatory for them to enter Malaysia only via VWR. This means that they would first need to visit Malaysia embassy / consulate in their home countries. It is only upon obtaining the VWR from the embassy / consulate that they can only enter Malaysia.

**Employment Pass (Category III):** There are two new rules affecting applicants applying under this category:

1. Upon receiving the approval of the work pass application, it will be mandatory for all applicants (non-Commonwealth countries) the applicant to apply for a VWR at the Malaysian embassy / consulate in their home country prior to travelling into Malaysia to endorse the work pass. Both work pass approval letter and the VWR is must be presented upon arrival into Malaysia at the Malaysian Immigration Checkpoint.
2. Health and Medical Checkup documents are required for applications in construction, manufacturing and mining sectors of the following nationalities:
  - a. Thailand
  - b. Cambodia
  - c. Nepal
  - d. Myanmar
  - e. Laos
  - f. Vietnam
  - g. Philippines
  - h. Pakistan
  - i. Sri Lanka
  - j. Turkmenistan
  - k. Uzbekistan
  - l. Kazakhstan
  - m. India
  - n. Indonesia
  - o. Bangladesh

## Deloitte's view

The implementation on the above regulations would have a serious impact on the time scheduling to the assignment start date in Malaysia. For all approved work pass applications (except for applicants of Commonwealth countries) , they would now be required to apply for a VWR at the Malaysian embassies / consulate) at their home countries prior to travelling into Malaysia to endorse the work pass. With this, Visa On Arrival option is no longer available.

The VWR application can be time consuming especially when the Malaysian embassy / consulate may not be located in the exact location where the applicant resides.

Overall, the timing to the start date of assignment in Malaysia must take into account the additional time required in meeting the VWR requirements. All approved work pass applicants (except for Commonwealth countries) will no longer be allowed to enter Malaysia without the VWR.

The additional requirements of health and medical check-up documents from approved applicants of specific nationalities and specific industries must also be adhered.

We expect further developments on the above new regulations by the MID.

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## Malaysia: Amendments to the Employee's Social Security Act, 1969

### Overview

Currently, social security (SOCSO) only applies to workers who are Malaysian citizens or permanent resident, earning up to RM 3,000 per month. For employees earning above the threshold, but already have a SOCSO account before, he/she has to continue to contribute.

Effective 1 June 2016, the Employees' Social Security Act, 1969, has been amended as below:

- All employees who are Malaysian citizens and permanent resident in the private sector and all contract and/or temporary staff within the federal/state government, as well as federal/state statutory bodies must be registered with and contribute to SOCSO with the maximum rate of contribution to be fixed based on a maximum monthly wage of RM 4,000, notwithstanding the fact that his/her actual monthly wage exceeds RM 4,000.
  - Under the new amendment, all employees will now be subject to SOCSO, regardless of the amount of wages and the contribution rate will be capped at the monthly remuneration of RM 4,000.
  - Unregistered employers with employees, who have never paid SOCSO contributions, must now register themselves and their workers at the nearest SOCSO office.
- The ceiling of wage to be insured shall be increased from RM 3,000 per month to RM 4,000 per month together with the contribution limit.

### Deloitte's view

**Implications:** The amendment has extended the SOCSO coverage to all employees (as defined above) irrespective of their salary level.

In line with the increase in the total maximum monthly contributions as below, the employees will be able to benefit from increased payout in the event of employment injury/invalidity:

- From RM 66.40 to RM 88.80 for employees below 60 years of age; and
- From RM 36.90 to RM 49.40 (employer's contributions only) for employees aged 60 years and above.

**Immediate action required:**

- Unregistered employers or registered employers with employees, who have never paid SOCSO contributions, must now register themselves and their workers at the nearest SOCSO office immediately before the contribution due date for the month of June 2016 (15 July 2016); and
- There are changes in the rate of contribution due to the increased in monthly remuneration cap. Employer should verify the correctness of contribution amount based on the latest contribution rate table issued by the SOCSO Board.

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## The Netherlands: Changes in sanctions for violations of the Foreign Nationals Employment Act

### Changes to note

As of July 15, 2016 the fines for violations of the Dutch Foreign Nationals Employment Act (in Dutch: WAV) have been amended. The new set of fines provides the Labour Inspectorate (in Dutch: Inspectie SZW) the possibility to impose differentiated fines in line with the severity of the violation. The basic fine is now set at EUR 8,000 per violation. This fine can however be increased with an additional 50% in case of a severe violation. This increased fine of EUR 12,000 can be imposed in case of one of the following circumstances:

- The employer has deliberately failed to comply with the law;
- The foreign national has worked without the correct work authorization documentation and without the correct residence authorization for the Netherlands;
- In the last five years before the violation, the employer has been sanctioned for violation of the WAV before; and
- The violation concerns three or more foreign nationals.

A second new element of the changes in the law is that the law makes differentiation in the imposed fines taking into consideration what type of company/employer it concerns. For the majority of companies/employers the standard fine of EUR 8,000 will be applicable. The maximum fine for single proprietors and foundations or associations with public benefit goals has been lowered to EUR 4,000 per violation. For violations in a private setting the fine has been maximized at EUR 2,000. This fine can be increased with 50% in case of one of the circumstances outlined above.

A final new element in the amended law is the possibility for the Labour Inspectorate to issue a written warning in case of one of the following minor violations:

- A student who has occasionally worked more hours than authorized;
- The required permit has been received and entered into force within 2 days after the violation;

- An employer who has notified a possible violation to the Labour Inspectorate himself after having ended the illegal employment; and
- Incidental illegal working activities performed in a family business context.

A written warning can only be given by the authorities instead of a fine in case:

- The employer has not been sanctioned for any violations in the last five years;
- The violation involves only one foreign national employee; and
- None of the circumstances occur that would implicate an imposition of the maximum fine (i.e. an increase of the fine with 50%).

### Deloitte's view

The amended scheme of sanctions reinstates the maximum fine of EUR 12,000 for certain violations of the WAV. The differentiated set of fines enables the Labour Inspectorate to impose higher fines for employers that deliberately fail to comply with the law or who have foreign nationals working for them without the required work authorization documents after having been sanctioned in this regard on an earlier occasion (recidivism).

Under the amended sanctions scheme, minor, first violations of the WAV might be sanctioned with a written warning instead of a fine.

Employers should make sure that their foreign national employees not only have the correct work authorization documentation but also the correct residence authorization for the Netherlands.

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## Singapore: Immigration Update

### Update to Employment Pass Salary Criteria – 1 January 2017

From 1 January 2017, the qualifying salary requirement for a new Employment Pass (EP) application will be increased from SGD 3,300 to SGD 3,600. You may wish to note that the last revision was made on 1 January 2014 when the salary requirement was raised from SGD 3,000 to SGD 3,300. When approving EP applications, the Ministry of Manpower (MOM) will continue to assess the applicants based on their merits; with experienced applicants generally expected to have higher salaries that commensurate with their work experiences and qualifications.

In order to allow impacted businesses to manage their workforce requirements, the MOM has provided the following guidelines on EP renewals:

1. Before 1 January 2017, businesses may apply for the renewal of EPs for a period of up to three years, based on the existing EP salary criteria of SGD 3,300;
2. Between 1 January and 30 June 2017 (both dates inclusive), the renewal of EPs may be made for a duration of up to one year, based on the existing EP salary criteria; and
3. From 1 July 2017 onwards, the renewal of EPs must be based on the new salary criteria and may be granted for a duration of up to three years.

## Deloitte's view

The MOM reviews the EP application criteria regularly to ensure that foreigners who are considered for employment in Singapore possess the qualifications and quality to contribute to the workforce. In addition, the MOM has increased its scrutiny of EP applications for selected businesses that appear to have a higher proportion of foreigners to Singaporeans; and the MOM may request for information to verify that such businesses have given fair consideration to Singaporeans for these positions. The MOM does not generally disclose the guidelines or the basis of the selection of the businesses for review and will contact the businesses directly.

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## United States: Changes to the Individual Taxpayer Identification Number (ITIN) renewal process

### Overview

In late 2015, the United States (US) Congress passed legislation stipulating that all ITINs not used on a tax return within the past three years as well as those issued prior to 2013 would expire on a graduated schedule, beginning January 1, 2017. Last week the US Internal Revenue Service (IRS) released guidance on the renewal process for these ITINs. Individuals seeking to renew an existing ITIN will have two options:

- Submit Form W-7 and required documentation to the IRS beginning October 1, 2016, or
- Attach Form W-7 and required documentation to their individual 2016 US tax return, due April 17, 2017.

Under either option, an individual will need to attach the newest version of Form W-7. At this time, the IRS has not published the new form and has indicated that it will be available in September. The new form will include a checkbox to indicate that an ITIN is being renewed.

The first set of ITINs that will expire are those with middle digits of 78 or 79 (e.g., 9XX-78-XXXX or 9XX-79-XXXX). ITINs with these digits will no longer be effective as of January 1, 2017. However, individuals in this group may still choose to wait and renew their ITIN with their 2016 tax return.

Further guidance can be found in the IRS release IR-2016-100 and also IRS Notice 2016-48.

URL: <https://www.irs.gov/uac/irs-works-to-help-taxpayers-affected-by-itin-changes-renewals-begin-in-october>

URL: <https://www.irs.gov/pub/irs-drop/n-16-48.pdf>

### US date of entry required for dependents

Beginning October 1, 2016, dependents applying for an ITIN may only use a passport as supporting documentation if that passport also contains a date of entry into the US. If date of entry is not available, the dependent's application must include, in addition to the passport, US medical records for children under age six, US school records for dependents under age 18, or a rental or bank statement for dependents over age 18.

Applications for dependents from Canada and Mexico will not require a date of entry.

## FAQs

- Who should consider renewing under option #1 above, rather than with the tax return?
  - An individual who will not be required to file a tax return in 2016 should submit his/her renewal application after the renewal period opens on October 1, 2016. A tax return is not required to be attached.
- What documentation is required for a renewal?
  - The documentation required for renewal is the same as that required for an initial application and must include the individual's name, foreign status, and photograph; a passport is the only document which may be submitted as a standalone document. The IRS will only accept original documents or copies certified by the issuing agency. Additionally, taxpayers may apply in-person at certain IRS Taxpayer Assistance Centers or through community-based Certified Acceptance Agents (CAAs). Until the IRS releases details about community-based CAAs, individuals may continue to use existing CAA's (see <https://www.irs.gov/individuals/acceptance-agent-program>).
- Is there an option to renew an ITIN other than one that contains 78 and 79 as the middle digits?
  - An ITIN which is expiring due to nonuse in the prior three years may be renewed. In addition, if any individual in a family has an ITIN expiring, the entire family may renew their ITINs together. A family includes the tax filer, spouse, and any dependents.
- When will other ITINs issued prior to 2013 expire?
  - The renewal schedule for ITINs that do not contain 78 or 79 as middle digits will be announced at a later date and is expected to take place over the next few years.
- What happens if an individual files a tax return with an expired ITIN and does not attach the documentation required for renewal?
  - These returns will be accepted by the IRS, but will result in a delay in processing and certain credits may be disallowed unless the ITIN is renewed. The IRS will notify these taxpayers of the delay and provide instructions for renewing the ITIN by submitting Form W-7.
- Will the IRS notify individuals when it is time to renew?
  - The IRS will send Letter 5821 to all such individuals later this year, based on the most recent address that is on-file with the IRS. This letter should be attached to the Form W-7 when the individual renews their ITIN.
- What should an individual do if they have since obtained a social security number?
  - If the individual now has a social security number, there is no need to renew the ITIN. Rather, the individual should request that the IRS combine their past tax records under the current social security number. Further information will be provided by the IRS on these procedures.

## Deloitte's view

The guidance from the IRS provides highly-anticipated clarification around how the renewal requirements passed in late 2015 will be implemented. However, additional changes are possible in the coming weeks as the Form W-7 is finalized. Individuals should wait until the release of the updated form before taking action on renewal. In addition, many taxpayers will find it beneficial to submit their application for renewal with their 2016 tax return in early 2017, rather than going through a separate process solely for renewal.

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