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In this issue:

Hong Kong:
Local recruitment information required for employment visa application

Overview

Starting on 1 July 2016, Hong Kong employers and visa sponsors are required to submit a new declaration relating to local recruitment information when applying for a Hong Kong employment visa under the General Employment Policy (GEP) and the Admission Scheme for Mainland Talent and Professionals (ASMTP). Specifically, the employer/visa sponsor in Hong Kong must provide information indicating whether efforts have been made to recruit locally for the job vacancy.

Although the new declaration form is currently attached to the original employment visa sponsorship Form ID990B, the Immigration Department has indicated that the declaration will be used only on a temporary basis, while they are revising Form ID990B. The revised Form ID990B will be released to the public at a later date.

The eligibility and assessment criteria for an employment visa application under the GEP and the ASMTP remains unchanged. The employer or visa sponsor has to demonstrate to the Immigration Department that the job vacancy cannot be readily filled by the local work force; provide local recruitment information, if any; and justify the hiring of a nonlocal to fill the position. While local recruitment information previously was requested only on an as-needed basis, it now is mandatory for all visa applications under the GEP and the ASMTP (the employer/visa sponsor can provide the information through the declaration form or can embed the local recruitment information in a company letter to the authorities).

The application processing time remains unchanged, i.e., four to six weeks from the date the application is submitted, provided the Immigration Department has received all the required documentation.

Deloitte's view

Although the Immigration Department introduced some measures in 2015 to attract and retain talent in Hong Kong, the Immigration Department now has tightened adherence to the assessment criteria process for all visa applications under the GEP and the ASMTP, regardless of industry or company size.

In light of this change in the process, companies that were rarely asked to provide information on local recruitment efforts may need to review their mobility workflow to avoid any issues.

Based on discussions with the immigration authorities, we understand that they will favourably consider employment visa applications for short-term project workers, internal transfers, relocations of senior executives, and short-term assignments even without local recruitment efforts, provided all other criteria are fulfilled. To facilitate the assessment process, the employer/visa sponsor can submit a company support letter that summarizes the fulfilment of the criteria.

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Malaysia:
Late notification penalties: Cessation of employment

Overview

Lately, the Malaysian Inland Revenue Board (MIRB) has been strictly imposing a penalty on the late notification for cessation of employment by the employer. This penalty can be a fine between RM200 and RM20,000, or imprisonment for a term of up to six (6) months, or both.

The legislation

Section 83(4) of the Income Tax Act, 1967 ("ITA") stipulates that an employer who knows that its employee is about to leave or is intending to leave Malaysia is required to notify the MIRB by way of a Leavers Form ("Form CP 21") *not less than one (1) month before the expected date of departure*. This notification applies to permanent departure from Malaysia as well as temporary departure from Malaysia which exceeds three (3) months.

This notification procedure does not apply to an individual who is required to leave Malaysia at frequent intervals in the course of his employment.

Consequences to non-compliance

Failure to comply with these provisions may subject an employer to prosecution under Section 120 of the ITA where upon conviction, the employer will be liable for a fine between RM200 and RM20,000, or imprisonment for a term of up to six (6) months, or both.

Deloitte's view

There is now increased scrutiny by the MIRB on late submissions of Forms CP21 by employers. Employers are being served with notices by the MIRB for justifications as to the reason(s) why they have failed to notify the MIRB pursuant to Section 83(4) of the ITA. Failure to respond to the MIRB's notice within the deadline stipulated in the notice will also be considered an offence under the ITA.

The employers should therefore:

1. Manage the timing to the issuance of Form CP21 with the impending departure of the employee from Malaysia carefully.
2. Mitigate the penalty by first submitting a provisional Form CP21 based on the latest available compensation and benefits within the stipulated notice period.
3. Submit the updated Form CP21 immediately when the complete compensation and benefit details are available.

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Malaysia:
Monthly tax deductions as final tax and mandatory e-filing of 2016 Form E: What is next on the list for employers?

Monthly tax deduction (MTD) as final tax – the saga continues

MTD as a final tax has been effected since 2014. Furthermore, if an employee qualifies to elect not to submit the annual individual income tax return, this implies that the employer will have to ensure the MTD is accurate and correct. Any error by the employer will affect the employee's deemed tax assessment.

The question remains who will be responsible for the shortfall in tax payment, if any, in the individual income tax return? The employee or employer?

Mandatory electronic filing of Form E

Effective from assessment year 2016, the annual employer's return (Form E) must be filed on an electronic medium or by way of electronic transmission. The employer will no longer have an option to file manually via a paper form.

How does this impact the employer?

Section 77C of the Income Tax Act, 1967 (the "Act") was gazetted on 24 December 2014 to enforce MTD as final tax. Section 152A of the Act states the requirement of electronic filing.

With this change, it is clear that the responsibility of ensuring correct reporting of employment income now rests primarily on the employer. For employees who qualify and can opt not to file the annual individual income tax return, their MTD should be the final tax. Electronic filing aims to promote more efficient tax filing process for the employer.

Are you, as an employer, ready for this change?

- Are you keeping abreast of the changes to the tax legislations?
- Does your company have a system to track all categories of employee, who may or may not be under your payroll, include permanent employees, deemed employees (whom you have sponsored for immigration pass), directors, nonresident directors, subcontractors, etc.?
- Is your payroll system able to consolidate all income and benefits items other than cash emoluments (for example, split payroll arrangement, benefits in kind, off-payroll items, claims, etc.) for MTD compliance and income declaration on a timely basis?
- Are you implementing the mandatory Form TP1 procedures to your employees for MTD adjustments?
- More importantly, can your payroll system and HR process withstand a payroll audit by the Malaysian Inland Revenue Board (MIRB)?

Deloitte's view

MIRB will now have access to consolidated information of an individual taxpayer more efficiently. Undoubtedly, by pulling all relevant information with just a click of a button will facilitate them to identify any discrepancy and gap in tax reporting from both employer and employee more effectively. Henceforth, it is anticipated that more employer tax audits can be expected from the MIRB. The mandatory e-filing of Form E and implementation of Form TP1 procedures will put more strain on the employers to comply with the tax obligations.

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People's Republic of China: Guangdong relaxes immigration procedures to attract foreign talent

Overview

The Ministry of Public Security recently announced that new relaxed and simplified immigration policies took effect in Guangdong province (and in the Guangdong Free Trade Area (GDFTZ)) on 1 August 2016 as part of an effort to establish an efficient and innovative immigration reform. The 16 new policies are designed to attract qualified foreign nationals to the province (as employees or entrepreneurs), relax the eligibility criteria to obtain permanent residence status ("China green card"), and introduce simplified visa application procedures.

Highlights of the changes

Permanent residence permit: Under the new policy, the following foreign individuals may be eligible for China green card in China, regardless of the individual's job title or type of company involved:

- Highly skilled foreign individuals, along with their spouses and children under 18, provided the individual has been recognized by the office of the GDFTZ (applicable only in the GDFTZ);
- Foreign entrepreneurs in the GDFTZ and foreign technical professionals employed by enterprises in the GDFTZ that obtain a specific "score" under the scoring system (applicable only in the GDFTZ);
- Foreign individuals investing directly in the GDFTZ or individuals that are shareholders of a holding company for a company established in the GDFTZ, provided the total investment reaches USD 1 million (USD 500,000 for national encouraged industries) and both the individuals and company have good tax compliance records (applicable only in the GDFTZ);
- Overseas Chinese who have at least a doctoral degree or who have been working in the GDFTZ for at least four consecutive years and who have been residing in China for at least six months of each year (applicable only in the GDFTZ); and
- Foreign individuals working in Guangdong province for more than four consecutive years and residing in China for at least six months of each year, who have a means of support and good tax compliance record.

The processing period to obtain a permanent residence permit is reduced from 180 days to 90 business days.

Five-year residence permit: Under the new policy, the following individuals can request a five-year residence permit without any restrictions relating to the age of the individual:

- Overseas Chinese starting up employment or an entrepreneurial endeavor in the GDFTZ may apply based on an approved work permit and a guarantee letter issued by the employer or he/she may apply for a five year personal affairs residence permit (indicating a venture) based on a start-up business plan.
- After two renewals, foreign individuals working in Guangdong can request a five-year permit.
- Highly skilled foreign individuals who are 1) recognized by the Guangdong authorities; 2) employed and guaranteed by companies recognized by a relevant authority or office of the GDFTZ; 3) employed by colleges or universities in Guangdong; or 4) employed by scientific research institutions can apply for a five year work-type residence permit (indicating high skills). Such individuals will be eligible to apply for a permanent residence permit after working for three years, provided they receive a recommendation from the employer.
- A talent visa ("R visa") can be issued by the border immigration office when the individual arrives in China, provided he/she has sufficient supporting documentation. After entering China, an individual in possession of

an R visa may apply for a five-year work type residence permit based on the visa. If the individual arrives at the border with a different type of visa, he/she may change the visa to an R visa upon arrival and later apply for a five-year work-type residence permit based on the R visa.
- Chinese individuals living overseas but who were born in Guangdong or who had a household registration in Guangdong at any time can apply for a five-year multiple entry visa or a five-year residence permit.

Expedited visa application process: Before the pilot program, foreign individuals coming to work in China had to apply for a "Z visa" at a Chinese consulate in their home country before coming to China and had to enter China with that visa to apply for work-type residence permit. Under the new policy, foreign individuals who have an employment permit can apply for one-year work-type residence permit upon arrival in the country with a valid visa, or can apply for a Z visa with the border authorities and then subsequently apply for a work-type residence permit.

Visa relaxation for foreign students:

- Foreign students who have graduated from Chinese colleges or universities (including institutions in Hong Kong and Macau) and who intend to launch their own businesses in Guangdong can apply for a personal affairs residence permit (indicating a venture) that will be valid for two years. Such individuals can reapply for a work-type residence permit if they are employed by any company during this period.
- Foreign students graduating from overseas colleges or universities and who are invited by enterprises within the GDFTZ that are registered with the exit-entry administration of the Public Security Bureau can apply for a short-term personal affairs residence permit (indicating internship) with the border authorities. Other visa holders can apply to convert the visa to a short term personal affairs residence permit (indicating internship) to carry out the internship (applicable only in the GDFTZ).
- Foreign students recruited by Chinese primary or middle schools that have urgent needs can apply for an "X1 visa" at the border authorities and later apply for a study residence permit. Other visa holders can apply for a study residence permit provided they have a letter of admission and other substantiating documents.

Accommodating housekeeping expectations: Previously, foreign individuals were not permitted to be employed as domestic housekeepers in China. The new rules allow qualified foreigners who have permanent residence permits or work-type residence permits to apply for a personal affairs resident permit (indicating housekeeping services) provided there is an employment contract and written guarantees between a qualified foreign employer and the domestic housekeeper.

144-hour visa waiver: Foreign individuals from 51 countries now can remain in Guangdong for 144 hours without a visa (previously 72 hours).

Deloitte's view

Shanghai introduced 12 new immigration policies in July 2015, but the 16 policies now in effect in Guangdong are broader and more flexible.

The new policies will make it easier for foreign individuals, as well as overseas Chinese, to establish permanent residence and enjoy the same rights as Chinese citizens. However, the new policies do not provide details on implementation; these are expected to be based on the actual practices of the relevant authorities.

Affected parties should make comprehensive assessments of the implications of a change in residence status, including liability to tax (i.e., tax on world-wide income in China), social benefits, financial planning, etc.

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Global Reward Updates:
Vietnam: Changes to the operation of employee share plans in Vietnam

Further to our update in February 2016, the State Bank of Vietnam ("SBV") has now officially published a circular.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-rewards-update-vietnam-18-february-2016.pdf

("Circular 10") providing detailed guidance on the conditions and requirements which must be met in order for Vietnamese nationals to participate in overseas employee share plans.

Circular 10 will take effect from 13 August 2016 and the key conditions that must be met are set out below.

Conditions to allow participation of Vietnamese nationals in employee share plans

- The Circular provides that the plan must offer employees the possibility to acquire shares free of charge or share options with "preferable conditions" attached. It is expected that the SBV will provide clarification on the specific types of awards that are covered by Circular 10.
- The plan must be registered with the SBV by the "legal representative" of the overseas company. In practice, it is expected that the "legal representative" will be a local subsidiary of the foreign parent company which operates the plan. The "legal representative" is also responsible for ensuring compliance with other SBV requirements in relation to the implementation and operation of the plan (see below for further details on the "legal representative's" obligations).
- Any proceeds from the sale of shares and any dividends paid on the shares must be transferred to Vietnamese national participants through a bank account specifically set up by the "legal representative" for the purpose of operating the share plan.
- The plan must comply with exchange control regulations. Additionally, Circular 10 provides that the plan should comply with "other relevant regulations" which, although not specified in the circular, are likely to include regulations relating to deductible expenses for corporate tax purposes and securities and banking laws. Participants and the local employer must also comply with income tax obligations in relation to awards made under the plan.

Rights of Vietnamese nationals participating in employee share plans

- Vietnamese nationals can now receive share awards and share options, and own and sell shares. They can also receive other income arising from the shares (e.g. dividends).
- Vietnamese nationals can use foreign currency which they hold in personal bank accounts to acquire shares. They can also use salary, bonuses or other income denominated in Vietnamese Dong in order to purchase foreign currency to acquire shares.
- Vietnamese nationals can receive in foreign currency any proceeds derived from selling foreign shares acquired as a result of participating in an employee share plan.

Requirements for the legal representative of the foreign company

- The foreign company must appoint a “legal representative” to represent the foreign company in Vietnam in relation to the SBV’s requirements.
- The “legal representative” must submit the share plans’ registration reports to the SBV prior to the grant of awards to Vietnamese nationals under the plan. It is expected that this registration would only be required ahead of the first grant of awards under each plan.
- The “legal representative” must set up a bank account through which remittances in and out of Vietnam in relation to the plan would be made.
- The “legal representative” is responsible for submitting quarterly reports to the SBV, providing details of any shares acquired and/or sold under the plan and on any remittances into or out of Vietnam in relation to the plan.

Deloitte’s view

Circular 10 has provided clearer guidance on how share plans may be implemented and operated in Vietnam. The key factor is that the foreign company must appoint a “legal representative” through which the SBV will implement several requirements for management purposes.

It is expected that specific guidance on the type of awards which may be granted and on applicable foreign exchange controls, personal income tax and other relevant regulations will be issued shortly.

Companies operating in Vietnam may wish to consider making changes to their current share arrangements in order to offer participation to Vietnamese nationals. Where doing so, companies should ensure they are compliant with the SBV’s requirements in respect of both the initial implementation and the ongoing operation of their arrangements in Vietnam.

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