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## Italy: Assignment of personnel to Italy from foreign countries

### Overview

On 17 July 2016, the Italian government issued legislative decree No. 136/2016 to implement European Parliament Directive 2014/67/EU concerning the posting of foreign workers in accordance with the EU's provision of services framework. The decree was published in *Gazzetta Ufficiale della Repubblica Italiana*, the official journal of the Italian government, on 21 July 2016, and entered in force on 22 July 2016.

### Main provisions

The decree applies to EU-based companies and temporary work agencies that assign their employees to Italy (collectively, "foreign seconding companies"). Some rules are also applicable to non-EU-based companies.

The decree sets forth certain requirements to ensure the assignment of foreign workers may be regarded as genuine from the Italian perspective.

In particular:

- The foreign seconding company must:
  - Ensure the assignment is in compliance with applicable Italian laws; specifically, Italian provisions pertaining to minimum salary, working hours, annual vacation leave, and sickness, as well as provisions aimed at avoiding discrimination between men and women. (Please Note: This requirement is also applicable to non-EU-based companies.)
  - At least 24 hours before the start of the assignment, send the Italian Ministry of Labor all the information related to the assignment, including details regarding the foreign seconding company, the Italian hosting company, and the posted workers.
- The Italian hosting company will be co-responsible, together with the foreign seconding company, for the payment of the salaries and social security contributions of the posted foreign workers.

## Penalties

In case of breach of the obligations pertaining to the authenticity of the assignment, the decree introduced significant penalties ranging from EUR 5.000,00 up to EUR 50.000,00 per each seconded employee, as well as up to EUR 150.000,00 if the information sent to the Italian Ministry of Labor regarding the assignment is incomplete, incorrect, or not submitted in the time required.

## Deloitte's view

Italian legislative decree No. 136/2016 introduced new obligations that could have an important impact on the secondment of personnel to Italy, including:

- Specific requirements to authenticate and validate the assignment of employees from foreign seconding companies.
- Compliance with Italian provisions related to employment, including minimum salary, working hours, annual vacation leave, and sickness.
- The joint liability of the Italian hosting company and the foreign seconding company for payment of the salaries and social security contributions of the posted employees.

The Italian government will adopt an additional act to clarify the procedures that foreign sending companies must follow when informing the Italian Ministry of Labor of new assignments.

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## People's Republic of China: Work permit and foreign expert work permit to be consolidated

### Overview

Foreigners who wish to work in China currently can apply for a work permit or a foreign expert work permit issued by the Ministry of Human Resources and Social Security or the Ministry of Foreign Experts Affairs, respectively.

Beginning on 1 October 2016, the two types of work permit will be consolidated into a single permit under a reform initiated by the State Council. The primary aims of the reform are to centralize the management of foreign employment in China and facilitate data sharing among the authorities.

The integrated mechanism will be launched on 1 October in nine pilot provinces/cities (Anhui, Beijing, Guangdong, Hebei, Ningxia, Shandong, Sichuan, Shanghai and Tianjin) and expanded nationwide on 1 April 2017. Once the new system takes effect, foreigners will have the option to either retain their current work permit or foreign expert work permit for the remainder of the period of validity, or replace the existing permit with the integrated work permit.

A new work permit application procedure will allow applicants to download forms from the internet and submit them electronically. A permanent code will be assigned to the application that will enable the tracking of the individual's personal information. The modified application procedure will significantly reduce the amount of required documentation to eliminate the need for repetitive checks by the authorities and expedite approval processing time.

Under the integrated system, foreign individuals working in China will be categorized into one of three groups (A, B and C) that will identify the holder as high-end personnel, professional personnel, or temporary and seasonal personnel in the service or non-technical sectors. Criteria such as salary, educational background, length of time services are provided, Chinese language proficiency, age and work experience will be evaluated in determining the applicable group. The total "scores" will be added, with a score of below 60 for group C, 60 and over for group B and 85 and over for group A. The government will highly encourage group A, while limiting group B and restricting group C applicants. A "green channel" also will be available to high-end personnel.

The authorities are expected to issue more detailed implementation rules in the near future.

### Deloitte's view

To attract foreign talent to China, the authorities have developed an evaluation system to identify highly skilled professionals, while streamlining immigration application procedures across the Ministry of Human Resources and Social Security, the Ministry of Foreign Experts Affairs and the Ministry of Public Security. The integrated work permit also will facilitate data sharing by authorities across the country and will enable the authorities to scrutinize the employment of temporary or seasonal workers working in the service or non-technical sectors.

In light of the above changes, employers should ensure that their foreign employees are in possession of proper and valid visas to work and reside in China.

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## United States: Update on legislation impacting domestic short-term business travellers

### Overview

On September 21, the US House of Representatives passed the Mobile Workforce State Income Tax Simplification Act ("the Act"), which would restrict states from imposing income tax on nonresidents, unless the individual works in that state for more than 30 days during the year. A similar version of this legislation passed the House in May 2012, but ultimately was not brought to a vote in the Senate and was not enacted.

Although a companion bill in the Senate (which is identical to the House-passed legislation) appears to have more support than its 2012 predecessor, roadblocks remain, especially from senators whose states may lose tax revenue under the proposed regime. The Act currently has 46 cosponsoring senators, but would require support from at least 60 to overcome likely procedural hurdles in that chamber.

### **Current law**

Under current law, each state in the United States that imposes an income tax has its own set of rules to determine when nonresidents become taxable. Many states tax an individual starting on his/her first day of presence. Others impose a de minimis threshold either based on number of days or level of income. In some cases, the de minimis thresholds serve only to exempt an employer from state withholding requirements and in others, they also exempt an individual from the requirement to file a tax return.

### **The Act**

Under the Act, all states would apply the same standard to taxing a nonresident taxpayer. The bill provides that no wages paid to an employee would be subject to income tax in any state, except for the state of the employee's residence, unless that employee works in that other state for more than 30 days during the calendar year. Consistent with this rule, withholding in that other state would not be required by the employer until that employee crosses the 30-day threshold. Further, in regard to potential penalties for not withholding, the employer would be allowed to rely on the employee's annual determination of the time expected to be spent in each state.

### **Deloitte's view**

Due to different and changing state income tax reporting requirements, business travel can create significant compliance obligations for both the employer and the employee. The Act is designed to address this complexity by creating a uniform threshold across states that employers and employees can rely on for purposes of determining when an employee is subject to a state's income tax as a nonresident.

While the bill's recent passage in the House represents a significant achievement, the legislation still faces resistance in the Senate that may be difficult to overcome in the limited time on the legislative calendar remaining in 2016. The outcome of the presidential and congressional elections on November 8 – and their potential to deliver a new balance of power in Congress in 2017 – could also impact the Senate's appetite, positively or negatively, for taking up the bill later this year. (If the Senate does not pass and/or the president does not sign the bill by the end of 2016, the legislative process will have to restart in 2017, with new bills being introduced and moved through committee, etc.)

In addition, even if the Act is signed into law, its constitutionality could be challenged on the basis that the current patchwork of state laws in this area does not impose an undue burden on interstate commerce (and, therefore, is not within Congress' authority to regulate).

Given the potential uphill battle for the legislation in the Senate, the possible impact of the November elections, and the potential for a court challenge, the future of the Act is still uncertain. In the meantime, employers should continue to remain diligent in monitoring and tracking mobile employees based on the current requirements of each state.

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