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EU Immigration: What Bulgaria's Presidency of the Council Means

Overview

The council presidency rotates among EU member states every six months. Bulgaria takes over the presidency from Estonia on January 1, 2018, and will in turn hand it over to Austria six months later.

Three consecutive presidencies collectively agree on the areas that will be examined at the European level. This ensures that important topics remain in focus over the course of 18 months.

Bulgaria will continue to build on defined focus points and has set specific concrete goals. The following, within the area of Justice and Home Affairs, are of interest for mobility specialists:

1. Internal security and protecting Europe's external borders;
2. Interoperability and the exchange of information; and
3. A holistic approach to legal and illegal migration.

Concluding negotiations on SIS and ETIAS?

A safe and secure Europe means that Bulgaria will strengthen internal security and protect Europe's external borders by improving cooperation and using cutting-edge information systems. This translates into reaching an agreement in the Council on amending the Schengen Borders Code and Visa Code (then trilogues will follow), and conclude the negotiations with the European Parliament on reforming the Schengen Information System (SIS) and introducing ETIAS.

Foreigners who do not require a visa will need to log onto a website and provide basic information. All of this information is then checked across several databases, and when there is a "no hit," the traveler receives an approval. This is the so-called ETIAS (immigration alert of July 1, 2017).

The entry-exit system is an EU-wide database whereby travelers scan their passports and fingerprints when they enter and leave the Schengen area (immigration alert of July 7, 2017). The Estonia presidency created an agreement and Bulgaria will now oversee the start of the implementation, which should be finalized by the end of next year.

Interoperability is the new buzzword

A key priority is achieving the interoperability of information systems and databases. The optimum use of information will help tackle migration issues, terrorist threats, organized crime, and cyberattacks. A new architecture for the exchange of information will be created. Bulgaria will strive to reach an agreement in the council on the interoperability regulation and to have a political agreement with the European parliament on the extension of the mandate of eu-LISA, the European Agency managing large-scale information systems. Bulgaria will oversee the implementation of the Passenger Name Record Directive.

The Blue Card Directive

Regarding migration management, Bulgaria will focus on the return policy, defining the rules on returning illegal immigrants to their country of origin and on concluding the trilogue stage on the Common European Asylum System. To improve the channels of legal migration, Bulgaria says it will "strive to achieve progress" on the Blue Card Directive. A cautious approach that indicates that an agreement will probably not be reached during the Bulgarian presidency.

With security currently a hot topic and a planned focus point in Bulgaria's presidency, many changes affecting immigration into Europe are likely. Deloitte will continue to monitor changes at the European level affecting employers and employees, and will provide updates.

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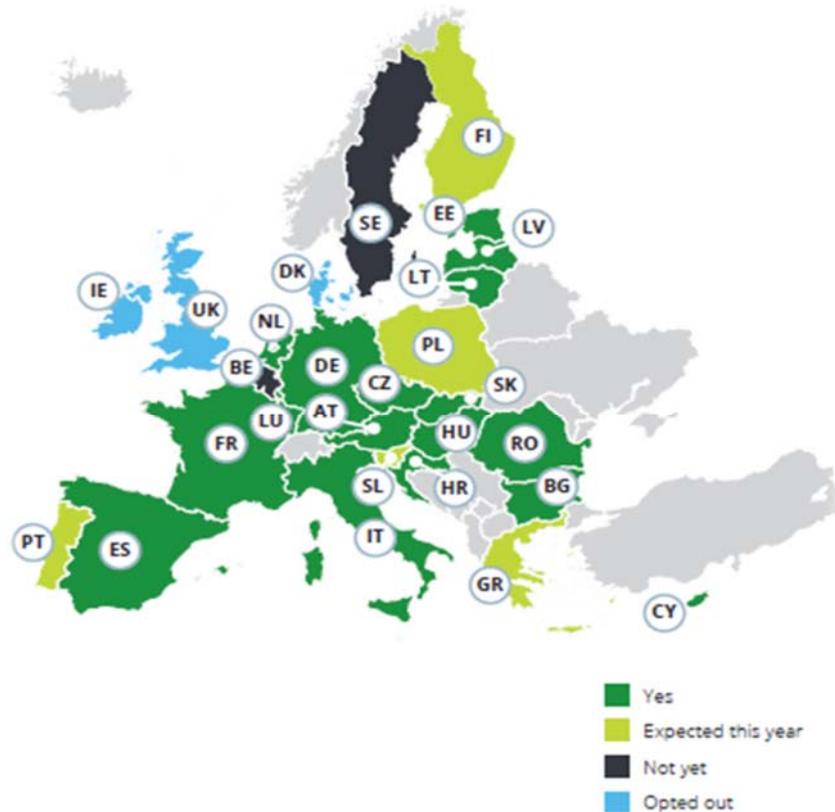
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EU Immigration: Update on the Intra-Corporate Transfers Directive

Overview

One of the key topics in European Union (EU) corporate immigration today is the impact of the EU Directive on Intra-Corporate Transfers (the "ICT Directive") on the entry and mobility of third-country nationals in the EU. Deloitte is currently conducting a study on this subject. What follows is an overview of the implementation status of the ICT Directive, a year since the official transposition deadline

Implementation status of the ICT Directive in the EU Member States



The ICT Directive needed to be transposed into the national law of 25 EU Member States by November 29, 2016 (Member States Denmark, Ireland, and the United Kingdom have opted out of the directive).

Most of the 25 Member States have already proceeded with implementation; however, Finland, Greece, Poland, Portugal, and Slovenia are expected to implement the ICT Directive this year. Belgium and Sweden are expected to implement next year.

It should be noted that implementation does not mean that all of the ICT Directive's benefits are already applicable in practice.

Background

The ICT Directive, adopted in 2014, sets out a common framework for non-EU nationals to move to an EU Member State in the framework of an intracompany transfer. The ICT Directive complements previous harmonization initiatives, such as the EU Blue Card and Single Permit Directive.

The ICT Directive facilitates the transfer of managers, specialists, and trainees from outside of the EU to an entity within the same group in an EU Member State. Furthermore, it facilitates the mobility of these intracorporate transferees between Member States during their assignments. The ICT Directive includes harmonized conditions for entry, residence and work, intra-EU mobility and certain guarantees to uphold labor, and social security standards for the intracorporate transferees.

Deloitte's view

Upcoming EU-wide webinar: The study Deloitte is currently conducting focuses on the process details and practicalities of the implementation of the ICT Directive in each EU Member State. An EU-wide webinar, which will highlight recent and upcoming changes regarding EU corporate immigration, will accompany Deloitte's study.

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Finland: Update on the Intra-Corporate Transfers Directive

Overview

In accordance with the Posted Workers Act, an obligation to submit advance notifications of posted workers has been in force in Finland since September 1, 2017.

The legal interpretation of the new act, and especially the definition of posted workers, regarding whom the notification is to be submitted, has raised questions. At the moment, there is no legal praxis based on the recently enforced legislation.

According to the Posted Workers Act, posted workers are employees who normally carry out their work in a country other than Finland and are sent by an employer running a business in said country to work in Finland on a temporary basis, and whilst the employment between the employee and the foreign employer continues. However, the notification obligation only exists if the posting of the employee is related to the employer offering cross-border services to Finland by means of subcontracting, by internal transfer within a group of undertakings, or by hiring workforce.

In addition, if according to Finnish employment law the employer of the posted worker is the Finnish entity instead of the foreign entity, there would be no obligation to submit a notification. Consequently, if, for example, the employee is considered to be a posted worker in social security and has been granted an A1-certificate, he or she is still not necessarily a posted worker according to the Posted Workers Act.

The occupational safety and health administration acknowledge the ambiguity of the wording of the new act. Therefore, as there is no sanction on filing an unnecessary notification, the authorities have, in unclear situations, advised employers to submit notifications on posted workers to avoid any potential monetary negligence sanctions.

According to the Posted Workers Act, an employer posting a worker to Finland is obliged to name a representative in Finland. This representative must have an address in Finland and must be competent to receive summons from Finnish courts on behalf of the employer. The representative must also keep available relevant documents as described in the Posted Workers Act.

Deloitte's view

The interpretation and boundaries of the new reporting obligation has raised questions. While the Finnish occupational safety and health administration are not competent to give binding guidance or written statements on the interpretation of the new law, they have recommended that employers in unclear situations submit a notification to avoid any potential monetary negligence sanctions.

The reporting obligation is fulfilled by filling an electronic form on the occupational safety and health administration's web page. The notification is contractor- and workplace-specific (not employee-specific); therefore, if the work is done in several different locations, or for several contractors, a separate notification must be filed for each of them.

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Kuwait: Immigration update

Kuwait to halt recruitment of foreign workers under the age of 30

From January 1, 2018, the Kuwaiti immigration and labor authorities will not issue any new work permits to 'professional' foreign nationals under the age of 30.

This ruling, issued by the Public Authority for Manpower (PAM) is expected to apply across the entire private sector and also includes certain areas of the public sector. It is not expected to impact unskilled workers at present.

Kuwait will instead be looking to prioritize the employment of young local nationals and utilize the skillset they hold. Expatriates currently make up around 70% of the entire Kuwaiti workforce and the intention is to lower this figure considerably in the coming years. This measure should be viewed as part of a wider program to promote Kuwaitisation.

This change will impact a large number of companies with respect to their recruitment and planning schedules for the coming year and employers are advised to review their recruitment strategies in the wake of this development.

It is unknown whether this measure will be indefinite in its nature or if it will only be applied for a specified period of time.

University degree obligatory for residency renewal

The Kuwaiti Ministry of Social Affairs and Labor (MOSAL) and Ministry of State for Economic Development have declared that expatriate workers will have to evidence their original attested education certificates in order to renew their residency visas. This rule applies even if no qualification was required at the time of the original application.

If expats are unable to provide their attested qualification documentation, it is possible that their visa will not be renewed and they could be asked to leave Kuwait.

This now places added emphasis on both the individual and their Kuwaiti sponsor in terms of future documentary compliance.

Expatriates who may not be able to comply with the new regulation are encouraged to bring the matter to the attention of their sponsor, so all possible alternatives can be explored at the earliest.

Deloitte's view

The future of the workforce is changing and we are operating in a more global environment. Among the most serious challenges businesses face today is compliance with the multifaceted tax and labor laws and regulations that impact their global mobility, talent, and rewards programs.

Deloitte Global Employer Services (GES) work with clients to provide efficient solutions to today's global mobility challenges that drive strategic growth and alignment with business goals and priorities. Through innovation built on experience, we consider processes that support human resource goals, provide operational and cost improvements, and contribute to overall risk management while aligning with the global goals and strategies of the enterprise.

Mongolia: Immigration: Government approves foreign worker quotas for 2018

Overview

The Mongolian government issued a resolution (Resolution No. 317) on November 24, 2017, in which it approved the foreign worker quota for 2018.

Details of the 2018 quotas are as follows:

1. Business enterprises that have between five and 20 Mongolian employees can have one foreign employee, irrespective of the industry in which the enterprise operates.
2. Business enterprises with foreign investments can have up to three foreign nationals from the management team of the foreign investor entity to act as representatives of the foreign investor. If an individual is the foreign investor, that individual can obtain a visa in Mongolia as an investor. An investor's visa can be obtained with the approval of the Legal Entity Registration Office, the government agency in charge of foreign investment.
3. The percentage of permissible foreign workers for various industries is as follows:

Industry	Total number of workers				
	15-30	31-50	51-100	101-200	201+
Percentage of workers that may be foreign nationals					
Agriculture, forestry, fishing, and hunting					
Growing of nonperennial crops	10	15	20	25	30
Support activities for animal production	10	15	20	25	30
Mining and Quarrying					
Extraction of crude petroleum and natural gas	10	20	30	40	50
Crude petroleum and natural gas exploration	10	20	30	45	50
Support activities for other mining and quarrying	10	20	25	30	35
Manufacturing					
Textile manufacturing	20	20	20	25	25
Chemical and chemical product manufacturing	15	15	15	15	15
Other nonmetallic mineral product manufacturing	15	15	15	15	15
Basic metals manufacturing	15	15	15	15	15
Other manufacturing	15	15	15	15	15
Repair and installation of machinery and equipment	10	15	20	25	25
SUPPLY OF Electricity, gas, steam, and air conditioning	10	20	30	35	40
Water supply; sewage, waste management, and remediation activities	10	15	20	25	30
Construction					
Building construction	10	30	35	45	60

Industry	Total number of workers				
	15-30	31-50	51-100	101-200	201+
	Percentage of workers that may be foreign nationals				
Road and railway construction	10	30	35	45	60
Wholesale and retail trade; repair of motor vehicles and motorcycles					
Wholesale, retail trade, and repair of motor vehicles and motorcycles	10	10	10	10	10
Transportation and storage	25	25	25	25	25
Accommodation and food service activities					
Hotel and accommodation services	15	15	15	15	15
Professional, scientific and technical activities					
Scientific research and development	30	30	30	30	30
Administrative and support service activities					
Travel agency and tour operator activities	10	15	20	20	20
Education					
Preprimary and primary education, secondary education, and other education	40	40	40	40	40
Technical and vocational secondary education and higher education	30	30	30	30	30
Educational institution that provides education in accordance with international programs	80	80	80	80	80
Human health and social work activities					
Human health activities	10	10	15	15	15
Residential nursing care facilities	10	10	15	15	15
Arts, entertainment and recreation					
Creative, arts, and entertainment activities	10	10	10	10	10
Sports activities and amusement and recreation activities	10	10	10	10	10
Other service activities					
Repair of computers and personal and household goods	10	10	15	15	15
Other personal activities	10	10	15	15	15
Activities of extraterritorial organizations and bodies					
Activities of extraterritorial organizations and bodies	40	40	40	40	40
Activities of foreign and local nongovernmental organizations authorized to carry on humanitarian activities	30	30	30	30	30

Deloitte's view

The Mongolian government has increased the foreign worker quota for the mining and quarrying, electricity, gas, steam and air conditioning supply, and construction sectors, which should have a positive impact on these industries.

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United States: Payroll implications of US tax reform

The employment tax impact of US tax reform

December 22, 2017 saw the passage of the US tax reform legislation (formally referred to as "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018") ("the Act"), following successful reconciliation of the House and Senate versions of the bill. As the changes come into effect on January 1, 2018, employers must understand what they need to address beginning in 2018 and develop a plan of action.

This NewsFlash provides a consolidated summary of the changes impacting payroll based on known legislation and guidance as of December 29, 2017.

What's changing?

The Act is expected to impact the following payroll items:

- Withholding amounts (personal exemptions eliminated, standard deductions doubled and tax rates, both supplemental and brackets, adjusted); and
- Repeal of the exclusion from income tax for certain non-cash fringe benefits, the most significant (by dollar amount) being the change in the tax treatment of employer paid or reimbursed moving expenses.

Employers will initially be most concerned with the withholding changes they need to adopt and when they need to adopt them. The Internal Revenue Service (IRS) has stated that it will issue withholding guidance in early January which employers will be expected to implement by February. Pending this guidance being issued, existing 2017 withholding tables and systems should continue to be used, according to a late-December statement provided by the IRS.

Impact to Forms W-4

The Act repealed individual income tax exemptions effective from January 1, 2018. The withholding regime takes these exemptions into account through the use of Forms W-4 in order to arrive at the correct amount of withholding each pay period.

The withholding guidance to be issued by the IRS in early January (to reflect the US tax reform changes) will be designed to work with the existing Forms W-4 that employees have previously provided to employers. Employees will not need to complete new Forms W-4 for 2018 to accommodate the US tax reform changes.

Impact to supplemental rates

US tax reform includes revisions to individual income tax rates, and this has a direct impact to supplemental wage tax rates.

The mandatory flat rate of withholding for supplemental wage payments exceeding \$1 million USD will be reduced to the highest rate of 37%, effective January 1, 2018. However, the issue of rate for supplemental wage payments which are less than \$1 million USD requires further clarification from the IRS.

The Act, by virtue of how it amends the Internal Revenue Code as of its date of enactment, returns the sub-\$1 million USD wage supplemental withholding rate to its prior 28% from 25%. However, there is speculation in the tax community at large that this may be an unintended consequence rather than actual intent and that the IRS may issue official guidance in January 2018 to set the supplemental rate for wages less than \$1 million USD. For instance, the IRS has previously set the rate at the third individual tax bracket, which would correspond to 22% under the new individual tax regime.

Pending further clarification, employers are reminded that the IRS has stated no deviation from current practice is required until guidance is released in early 2018. In the interim, employers need to decide if they will continue to use the 25% rate or apply the 28% withholding to the first \$1 million USD of supplemental wages and 37% thereafter, recognizing that the 28% rate may be reduced by guidance in early 2018 and that the 25% rate could result in under withholding depending on final IRS guidance.

Impact to fringe benefits and expenses

US tax reform has repealed the exclusion from income tax for employer-paid or reimbursed moving expenses for employees (with an exception for members of the armed forces on active duty), as well as the exclusion for bicycle commuting expenses.

Beginning January 1, 2018, employers should include in income relocation costs paid on behalf of employees as well as any reimbursement for bicycle commuting expenses. This will require payroll departments to:

1. Adjust payroll codes for taxable earnings and apply withholding taxes (with or without gross up, depending on how the tax costs will be met).
2. Create processes to capture the compensation as it is earned and process to payroll (either as manual payments or via an interface).
3. Consider if any new imputed wages should be considered for 401K deferral purposes under qualified plan rules.
4. Discuss with HR/International Mobility departments how the tax and FICA costs on these reimbursements will be withheld from employee wages and/or grossed up by the Company. These discussions should also include an employee communications strategy in the event questions arise when employees receive their paychecks.

Deloitte's view

Following the passing of the Act, the most important steps for employers to take immediately include:

- Implement withholding guidance for normal wages once issued by the IRS in January of 2018.
- Adjust supplemental withholding rates and determine your company's withholding position for supplemental wages of less than \$1 million USD, pending clarification to be issued by the IRS.
- Implement a strategy for relocation expenses and other fringe benefit items no longer exempt from income tax. Make adjustments to payroll wage codes for items that are no longer exempt from income or employment taxes.

You can read more about Deloitte Tax LLP's insights on US tax reform for human resources and global mobility and also view upcoming events [here](#).

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