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Australia: Changes to occupation lists and introduction of Temporary Skilled Shortage (TSS) visa

Overview

Following Australian Prime Minister Malcolm Turnbull's April 2017 announcement that the Temporary Work (Skilled) visa (subclass 457) visa program would be abolished, further clarification has been released on some key aspects of the upcoming changes.

While legislation is yet to be released, the following has been confirmed:

Updated occupation lists

The new occupation lists for temporary and permanent skilled visas took effect on January 17, 2018, and the changes to the lists are detailed below. The three occupations below that previously were unavailable on either list will be

added to the short-term skilled occupational list (details of caveats applicable to these three occupations also are provided).

Occupation	ANZSCO Code	Caveat from January 17, 2018
Property manager	612112	Excludes any of the following positions: <ul style="list-style-type: none"> • That have a nominated base salary of less than AUD 65,000 • With businesses that have fewer than five employees • With businesses that have an annual turnover of less than AUD 1 million • That are not located in regional Australia
Psychotherapist	272314	Nil
Real estate representative	612115	Excludes any of the following positions: <ul style="list-style-type: none"> • That have a nominated base salary of less than AUD 65,000 • With businesses that have fewer than five employees • With businesses that have an annual turnover of less than AUD 1 million • That are not located in regional Australia

The two occupations below have been moved from the short-term skilled occupation list (STSOL) to the medium and long-term strategic skills list (MTLSSL). Details of any caveats applicable to these occupations are also provided below.

Occupation	ANZSCO Code	Caveat from January 17, 2018
Horse breeder	121316	Excludes positions that: <ul style="list-style-type: none"> • Predominantly involve low-skilled tasks (e.g., fruit picking or packing, feeding of livestock or animals) • Are not located in regional Australia <p>Note: This caveat has not changed.</p>
Management consultant	224711	Excludes positions in businesses that: <ul style="list-style-type: none"> • Have an annual turnover of less than AUD 1M • In businesses that have fewer than five employees • Have a nominated base salary of less than AUD 90,000. <p>Note: Amended caveat – base salary requirement raised to \$90,000.</p>

The following two occupations have been completely removed from the lists of eligible skilled occupations for all skilled visa programs on January 17, 2018

Occupation	ANZSCO Code
Building associate	312112
Hair or beauty salon manager	142114

The following six occupations will remain on their existing lists. A new and/or amended caveat, however, is in effect as from January 17, 2018:

Occupation	ANZSCO Code	Caveat from January 17, 2018	Explanation of change
Accommodation and hospitality managers	141999	Excludes positions that are not located in regional Australia	New caveat

Occupation	ANZSCO Code	Caveat from January 17, 2018	Explanation of change
Management accountant	221112	Excludes any of the following positions: <ul style="list-style-type: none"> • Clerical, book keeper, and accounting clerk positions • Positions in businesses that have an annual turnover of less than AUD 1 million • Positions in businesses that have fewer than five employees • Have a nominated base salary of less than AUD 90,000 	New caveat – base salary requirement raised to \$90,000
Massage therapist	411611	Excludes any of the following positions: <ul style="list-style-type: none"> • Are non full-time • Are not based in a therapeutic setting • Involve the provision of non-medical relaxation massage • Are in a retail setting 	Caveat amended – clarification of wording only
Recruitment consultant	223112	Excludes any of the following positions: <ul style="list-style-type: none"> • That have a nominated base salary of less than AUD 90,000 • With businesses that have an annual turnover of less than AUD 1M • With businesses that have fewer than five employees 	Amended caveat – base salary requirement raised to \$90,000
Supply and distribution manager	133611	Excludes any of the following positions: <ul style="list-style-type: none"> • Based in a front-line retail setting • That predominately involve direct client transactional interaction on a regular basis • With businesses that have an annual turnover of less than AUD 1 million unless they involve an intracorporate transfer to which an international trade obligation applies • That have a nominated base salary of less than AUD 65,000 unless they involve an intracorporate transfer to which an international trade obligation applies 	Amended caveat – annual turnover requirement does not apply where international trade obligations apply
Taxation accountant	221113	Excludes any of the following positions: <ul style="list-style-type: none"> • Clerical, book keeper, and accounting clerk positions • Positions in businesses that have an annual turnover of less than AUD 1M • Positions in businesses that have fewer than five employees 	Amended caveat – size of business requirements added

- The new occupation lists will not be applied to applications already submitted to the authorities and awaiting decision.
- Further new occupation list instruments will be released in March 2018 that will apply to the Temporary Skilled Shortage (TSS) visa, the Employer Nomination Scheme (ENS) permanent residence (subclass 186) and the Regional Skilled Migration Scheme (RSMS) permanent residence (subclass 187) visas.

Introduction of TSS visa

- Introduction of the new TSS visa will be in “early” March 2018, although the exact date of implementation has not been identified.
- Any 457 nominations lodged or approved without a corresponding 457 visa application lodged at the time the TSS regime commences will be void (*i.e.*, a TSS visa cannot be linked to a 457 position nomination).
- A TSS nomination can be used to transfer employment and visa sponsorship of an existing 457 visa holder (*i.e.*, a TSS nomination can be linked to a 457 visa).
- The TSS nomination will require employers to select the employment period of up to:
 - One or two years for the short-term stream (unless an international trade obligation applies)
 - One, two, three, or four years for the medium-term or labour agreement streams.
- Automatic approval of low-risk nominations for accredited sponsors will be introduced.
- Labour market testing (LMT) exemptions will be removed and a higher threshold of evidence will be required for a TSS, except where international trade obligations apply. Details of the LMT changes are expected to be released in February 2018.

Australian Taxation Office data-matching and sanctioned sponsors

The collection of tax file numbers for data matching and the publishing of sanctioned sponsor (employer) names that previously were announced as starting on December 31, 2017 has been delayed, and now is expected to be implemented in March 2018.

Permanent residence

- As from March 1, 2018, nominees for the 186 ENS and the 187 RSMS must be in an occupation on the medium-long-term strategic skills list, unless:
 - The nominee can access the transitional arrangements by having held a 457 visa or had a 457 application lodged and pending decision at April 18, 2017
 - The employer is in a regional area and the nominee is in one of the additional specified occupations.
- The temporary residence transition (TRT) stream eligibility period will increase from two to three years, unless transitional arrangements apply to the individual.
- All applicants will have to be under the age of 45 to be eligible to apply for either the ENS or the RSMS stream beginning March 1, 2018, unless transitional arrangements apply to the individual.
- A minimum of three years’ work experience (in Australia or overseas) relevant to the nominated occupation will be required in all cases.

Further updates

- With the legalization of same-sex marriage in Australia, beginning December 9, 2017, applicants in same-sex relationships can include their partner as a spouse, and not as a de facto partner on the visa.
- The Singapore-Australia Free Trade Agreement (SAFTA), which was amended on December 1, 2017, exempts sponsors from labor market testing for nominees who are Singaporean citizens, nationals, or permanent residents.
- System enhancements are being planned that will allow some of the notifications required under the sponsorship obligation regulations to be made directly from within the Department of Home Affairs ImmiAccount platform.
- The introduction of the Skilling Australia Fund training levy to TSS and 186/187 nominations still is planned for implementation in March 2018. Previous announcements indicated the levy would be calculated for the TSS nomination based on the size of the business and period of proposed employment, and a flat AUD 5,000 per 186/187 nomination. However, no legislation or further clarification has been released.

Deloitte’s view

These significant and ongoing changes to Australia’s work visa framework continue to present challenges to business planning, talent attraction, and retention.

With the occupation list releases and significant details of the labor market testing and training levy changes still to be confirmed, businesses should mitigate potential disruption or delays by mobilizing foreign nationals under the existing visa rules, where required.

The most recent release of the occupational lists reflects the feedback provided to government on skilled labor needs. With these lists being reviewed every six months, it is important that the business community ensure that an ongoing dialogue with government is maintained to ensure that the periodic review of occupational lists reflects the business environment of the day.

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Czech Republic: Effects of the amended Foreigners' Residence Act on immigration processes in the Czech Republic

Overview

As mentioned in an earlier NewsFlash, the amendment to Act No. 326/1999 Coll. on foreigners' residence in the Czech Republic, effective since August 15, 2017, has come into force.

The main changes introduced by the amendment relate to the transposition of European Union (EU) directives into Czech law. The majority of EU member states have already transposed the directives into their legal systems, yet the practical applicability of the EU directives in the Czech Republic has so far been limited.

ICT Cards and Mobile ICT Cards

The Intra-Corporate Transfer Card ("ICT Card") makes it possible to assign a non-EU country employee to the territory of the EU/EEA or Switzerland as part of the corporate group. In the Czech Republic, the ICT Card entitles the holder to residence and performance of work.

The advantage of the ICT Card is that it allows the holder to be transferred from a non-EU country to the territory of other EU/EEA countries or Switzerland without a residence or work permit for up to three months. If the holder is assigned to the other country for more than three months, he or she must apply for a Mobile ICT Card – a residence and work permit – as part of the simplified immigration process.

But the ICT Card has a couple of disadvantages. First, it takes up to 90 days to the Ministry of Interior of the Czech Republic to approve an ICT Card that is submitted by the individual. Second, the total duration of the assignment from a non-EU country to the territory of the EU/EEA or Switzerland must not exceed three years (in the case of managers and specialists). However, during the period of the assignment, it is possible to file an application with the Czech Republic Ministry of the Interior for a change in the purpose of residency (*e.g.*, to an Employee Card), thereby ensuring continuity of the assignment after the end of the third year.

Family members of an ICT Card holder may apply for long-term residence for the purpose of family reunification, which grants them access to the Czech labor market without the need to obtain a work permit. The applications should be approved within 90 days.

Deloitte's view

Compared to the traditional Czech Republic Employee Card, the ICT Card does not bring any advantages in terms of the length of the approval process. Furthermore, it is limited to the temporary assignment of foreigners within a corporate group. Therefore, we believe the ICT Card will be used primarily in situations in which the foreigner is assigned to several EU/EEA countries or Switzerland at once. Furthermore, please note that obtaining the ICT Card is not obligatory in the Czech Republic, even if the conditions are met.

Investor Cards

Furthermore, the amendment introduces a new residence institute: the Investor Card, designed for entrepreneurs planning to stay in the Czech Republic for more than 90 days and intending to make a major investment in the Czech Republic (*i.e.*, a minimum of CZK 75 million) and create at least 20 jobs for Czech and EU citizens.

A major advantage of the permit is its short processing time (*i.e.*, 45 days). The Investor Card is issued for the duration of the major investment; however, the holder must extend its validity every two years.

A disadvantage of the permit is that it requires the applicant to submit a business plan to the relevant ministry for assessment not only when filing the first application, but also when extending the validity of the permit.

Family members of Investor Card holders may apply for long-term residence for the purpose of family reunification, which grants them access to the Czech labor market without the need to obtain a work permit. The applications should be approved within 90 days.

Deloitte's view

This kind of permit requires the holder to meet highly specific conditions; nevertheless, we are pleased that permit applications are processed in such a prompt manner.

Statutory bodies

It is no longer possible to issue or extend an Employee Card to a foreigner who is in the position of a statutory executive, statutory body member, or association member and who performs tasks arising from the principal activities of the entity. Thus, such foreigners must have newly acquired visas/residence permits for business purposes, as well as work permits. They may apply for these permits in the Czech Republic only if they have resided within the country for more than five years. However, foreigners residing in the Czech Republic for the purposes of family reunification are exempted.

Deloitte's view

In the context of changing the purpose of the permit to business, we are not yet aware of whether the Czech authorities will be willing to grant exceptions to foreigners who have resided in the Czech Republic for, say, as long as 4.5 years. An effective yet impractical solution may be a timely application for a business visa at a representative office of the Czech Republic.

Institute of an unreliable employer

The amended act has introduced what is referred to as the institute of an unreliable employer. An employer may be designated as unreliable if, for example, it runs a debt with Czech authorities, its activities are not compliant with those registered in the Register of Companies, or its registered office is fictitious.

Deloitte's view

As the Ministry of Interior has stated, no regularly updated list of unreliable employers exists. Employers referred to as unreliable will not be informed of this fact by the Ministry of Interior, but this designation may constitute grounds for rejecting a foreigner's application filed in relation to the employer.

The fact that an employer was previously designated as unreliable is not a reason for designating the employer as generally unreliable in the future as well. Therefore, the assessment as to the employer's unreliability is always performed as part of the specific immigration process.

Filing applications at representative offices of the Czech Republic abroad

The amended Foreigners' Residence Act gives Czech representative offices more responsibility in accepting visa and residence permit applications. The applications must be filed in full and with no flaws; otherwise, they may not be accepted. An appointment must be arranged in advance along with the application for a specific date according to the instructions of the representative office of the Czech Republic. As of October 31, 2017, the Visapoint system (online appointment booking system) was discontinued. The new method of arranging appointments to accept applications is available on the website of the respective representative office.

Deloitte's view

The amended act has given Czech representative offices more power in the application acceptance process, and as a result, we have recorded an increase in the number of calls issued by them to provide various missing documents. In our view, the calls often seem unjustified; nevertheless, each requested document needs to be submitted in order to speed up the process.

Given the discontinuation of the Visapoint system and the high volume of applications at representative offices, lengthy delays need to be expected when filing applications – namely in Russia, India, and Ukraine. We generally recommend that appointments be arranged as much in advance as possible. Projects of the Ministry of Industry and Trade may provide a certain guarantee of a timely date for filing an application at a representative office of the Czech Republic. All projects had their capacities renewed in 2018.

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Indonesia: Further implementation following Tax Amnesty program

Overview

The Minister of Finance (MoF) has issued Regulation Number 165/PMK.03/2017 ("PMK-165"), dated November 17, 2017, regarding implementation of the Tax Amnesty program. PMK-165 is effectively in force as of November 20, 2017, and amends the previously issued regulation, MoF Regulation Number PMK-118/PMK.03/2016 ("PMK-118"), as most recently amended through MoF Regulation Number 141/PMK.03/2016. The main updates are:

Income tax exemption letter

PMK-165 provides an alternative document to claim the income tax exemption in relation to the transfer of land and/or building titles from a nominee to the actual owner. Under PMK-118, the taxpayer is required to obtain a tax exemption letter ("Surat Keterangan Bebas" or "SKB") to claim the tax exemption provided under the Tax Amnesty program. PMK-165 allows the taxpayer to use a legalized copy of the Tax Amnesty certificate to process the transfer of the land and/or building title without waiting for the SKB.

Tax amnesty annual reporting requirement

Under PMK-118, a taxpayer who fails to fulfil the annual reporting requirements will be considered as violating his or her obligation to repatriate offshore assets to Indonesia or maintain onshore assets in Indonesia. The Directorate General of Taxation (DGT) will impose a tax assessment on this violation. However, PMK-165 indicates that the tax assessment can only be issued if the DGT has confirmed that such a violation actually occurred.

Voluntary declaration

Eligibility: Through this PMK-165, a taxpayer can voluntarily disclose his or undeclared assets, as long as the DGT has not discovered the undeclared assets. These undeclared assets include the following:

1. Underdeclared assets disclosed in the Tax Amnesty declaration letter (“Surat Pernyataan Kepemilikan Harta”) for taxpayers who participated in the Tax Amnesty program; and
2. Underdeclared assets disclosed in the 2015 annual tax return for taxpayers who did not participate in the Tax Amnesty program.

These underdeclared assets will be treated as taxable income for the period when the taxpayer submits the additional declaration, and subject to the following applicable final tax rates:

1. 25% for corporate taxpayers
2. 30% for individual taxpayers
3. 12.5% for certain other taxpayers.

Determining the value of asset: The tax base for calculating the final tax is categorized based on the asset qualification, as follows:

Type of asset	Tax base	Reference
Cash and cash equivalent	Nominal value	-
Land and/or building	The taxable value for land and building tax (NJOP)	Government
Motor vehicles	The taxable value for car tax (NJKP)	Government
Gold and silver bullion	Sale value	PT Aneka Tambang Tbk
Listed company's shares and warrants	Shares/ warrant price	PT Bursa Efek Indonesia
Government or corporate bonds	Bonds price	PT Penilai Harga Efek Indonesia

In a situation where there is no reference for the asset's value, a taxpayer may opt for the following alternatives:

- Use the value determined by a registered independent appraiser; or
- Request that DGT performs a valuation.

Reporting procedures: The taxpayer should submit the voluntary declaration using an Article 4(2) Final Withholding Tax Return form, accompanied by a tax payment slip (Tax code: 411128, payment code: 422). The submission period should refer to the period when the taxpayer makes the declaration. The DGT will issue further implementing regulations to accommodate this matter.

Tax dispute mechanism

The new regulation stipulates a new dispute resolution mechanism for disputes on tax assessment letters issued in connection with the provisions contained in PMK-165. Such tax assessment letters should be processed according to the prevailing general tax administration regulations

Deloitte's view

With this regulation, the government provides an opportunity for taxpayers to ensure complete reporting of their assets without having to bear the significant penalties as outlined in the tax amnesty law. Similar opportunity is provided for both tax amnesty and nontax amnesty participants.

Taxpayers are recommended to thoroughly review their assets reporting in the tax return and determine whether this opportunity will be beneficial to their situation

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UAE: Immigration requirement for good conduct and behavior certificate

Overview

Beginning February 4, 2018, all expatriates seeking work and residence authorization for the United Arab Emirates (UAE) will need to secure a “good conduct and behavior” certificate before being granted approval.

According to a decision from the UAE’s Council of Ministers (No. (1/8) 2017), an applicant must obtain certification from all of the countries in which he or she has resided throughout the five years prior to applying.

Once issued, the UAE embassy/missions in the issuing country and the Ministry of Foreign Affairs in the UAE must attest to the certificate before it can be used.

The certificate will only be required for expats seeking initial work authorization and not for current residents seeking to renew their employment residence permit.

Furthermore, any accompanying dependents are currently exempt from this requirement. Individuals coming to the UAE on visit or tourist visas will also not require the certificate.

This new measure will add additional lead time to the relocation process (see below). Accordingly, employers should be aware of the process involved in the countries to which relocate employees, as the time frames and steps required may vary greatly from country to country.

In addition, where personal representation and/or fingerprinting is required, employers should ensure that the prospective employee obtains his or her certificate prior to travelling to the UAE, or the employee may have to return home in order to complete the necessary steps.

Brief country summary

A sample range of mid-high volume countries for illustrative purposes only:

Country	Governing body	Process overview	Processing time (business days)
Australia	Federal or state police (depends on location)	<ul style="list-style-type: none"> Online or postal application to federal police. In-person submission to state/territory police. 	15 – 30
France	Ministry of Justice	<ul style="list-style-type: none"> Online application. 	10 – 15
India	Ministry of External Affairs (MEA) or local police station	<ul style="list-style-type: none"> Online application (MEA) followed by personal submission of documents. Some states will require a personal submission at the local police station. 	10 – 15 if online option available 4 – 8 weeks if manual process selected
UAE	Criminal Investigation Department of Police (CID)	<ul style="list-style-type: none"> Online application. Personal representation can also be requested. 	2 – 4

Country	Governing body	Process overview	Processing time (business days)
United Kingdom	ACRO (Criminal Records Office)	<ul style="list-style-type: none"> Online or postal application. 	2 – 10
United States	State police or Federal Bureau of Investigation (FBI) depends on the state and if the applicant is a citizen or resident.	<ul style="list-style-type: none"> State police clearance is usually completed in person. For FBI clearance, a written request along with fingerprints (certified) is sent to the Criminal Justice Information Services division of the FBI. 	5 – 10 FBI requests can take up to 60 days

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 laws and regulations that impact their global mobility, talent, and rewards programs.

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URL: <https://www2.deloitte.com/ae/en/pages/tax/solutions/employee-mobility-middle-east.html?id=us:2sm:3na:gjs:awa:tax:020918>

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United States: Tax reform: Paid Family and Medical Leave

Overview

The Family and Medical Leave Act (FMLA) requires employers to allow employees to take up to 12 weeks of leave each year for certain qualified medical and family reasons. Qualifying leave includes leave taken for pregnancy, adoption, foster care placement of a child, personal or family illness, or family military leave. Employees have the right to continue health benefits during FMLA leave, and are afforded other job-related protections. However, there is no requirement for employers to pay employees when taking FMLA leave.

New Law

Recent legislation (P.L. 115-97), commonly referred to as The 2017 Tax Reform Act (the "Act") was enacted on December 22, 2017. The Act added new Section 45S to the Code, providing an additional tax credit. Under the Act, employers are provided an incentive to offer FMLA leave on a paid basis. The Act did not mandate that employers provide FMLA leave on a paid basis, nor did it change any other aspect of FMLA. Instead, the Act provides certain employers with a tax credit as an incentive to provide FMLA leave on a paid basis.

In order to be eligible to receive the tax incentive employers must:

- Establish a written paid family and medical leave policy.
- Have the policy provide certain benefits. In particular, the policy must:

- o Offer not less than 2 weeks of paid family and medical leave to full-time employees and a commensurate amount of pro-rated paid family and medical leave to part-time employees. Leave paid for by the state or local government is not counted in this two week measurement period or the amount of credit available to the employer.
- o The paid leave must be available to all employees who have been employed by the employer for one year or more, and who for the preceding year, had compensation not in excess of 60 percent of the compensation threshold for highly compensated employees (\$72,000 for 2018).
- o The rate of payment under the paid family and medical leave policy must be no less than 50 percent of wages normally paid to an employee.

As a condition for receiving the credit, all employees (as defined in section 3(e) of the Fair Labor Standards Act of 1938) who earn less than 60% of the highly compensated employee threshold for the year (*i.e.*, \$72,000 during 2018) must be offered paid FMLA leave in order for the employer to be eligible for the credit. Nothing prohibits offering paid FMLA leave to employees who make more than this threshold, but there is no credit available for any of these employees.

Family and medical leave is defined by cross-reference to the FMLA; it specifically does not include paid vacation, personal, or other medical or sick leave. However, the credit is available even to those employers not subject to FMLA, so long as they offer certain FMLA-like protections to employees taking paid family and medical leave. The credit does not apply with respect to paid leave that is mandated under state or local law. For those employers who do not offer leave under FMLA the leave policy must include a non-retaliation provision in the policy that would not penalize employees for taking the paid leave.

The Act would allow eligible employers to claim a general business credit equal to 12.5 percent of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave if the rate of payment under the program is 50 percent of the wages normally paid to an employee. Employers that replace a higher percentage of wages will be able to claim a larger credit. For each point over 50 percent that the employer replaces wages, the credit will increase by a quarter of a point, up to a maximum credit of 25 percent for employers who pay employees 100 percent of pay during family and medical leave. The credit may not be claimed with respect to an employee for more than 12 weeks of paid leave during a taxable year.

The new credit is effective for wages paid in taxable years beginning after December 31, 2017 and is scheduled to expire after December 31, 2019.

Deloitte’s view

As a next step, employers should:

- Consider tax incentives provided under the new regulations.
- If you already provide pay during FMLA leave, review current policies and determine if the company is eligible for the tax credit.
- If you do not provide pay during FMLA, consider the tax benefits of implementing a paid family and medical leave policy.

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