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People's Republic of China: Talent ("R") Visa

Overview

Since January 1, 2018, nine provinces and cities have started the pilot rollout of the "Measures for the Implementation of the Foreign Talent Visa System," jointly issued by the State Administration of Foreign Experts Affairs (SAFEA), the Ministry of Foreign Affairs, and the Ministry of Public Security in November 2017.

The timeline to implement the foreign talent visa system throughout China is as follows:

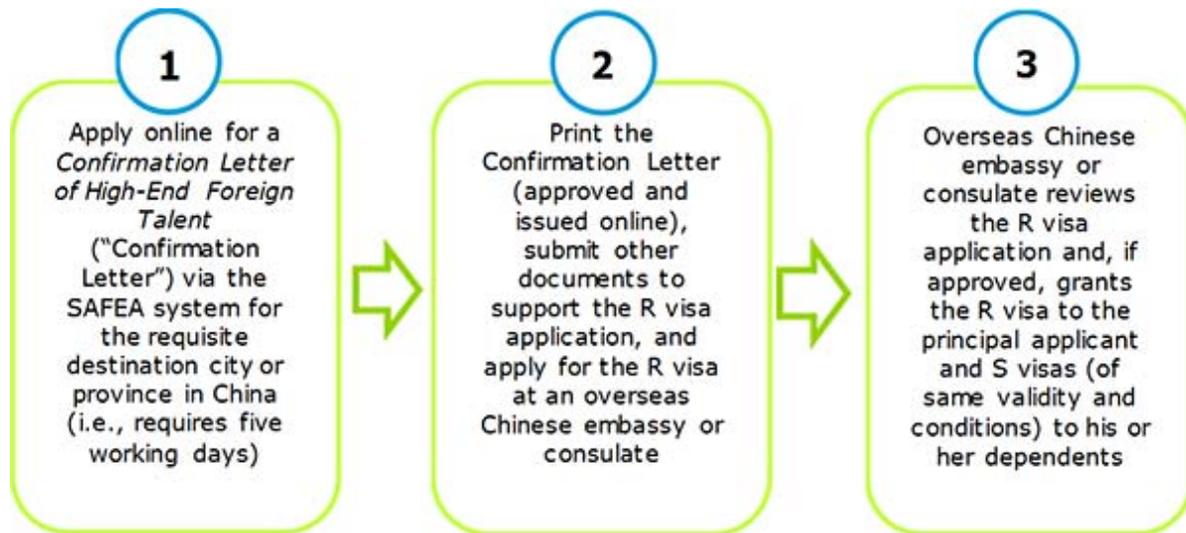
- **January 2018:** Roll out to pilot cities and provinces, including Anhui, Beijing, Guangdong, Hebei, Ningxia, Shaanxi, Shanghai, Sichuan, and Tianjin; and
- **March 2018:** Roll out to other areas.

The foreign talent visa, or "R" visa, is valid for 5 to 10 years. R visa holders are allowed multiple entries into China with stays lasting up to 180 days per entry.

Who can apply for an R visa?: High-end foreign talent, including scientists, leading talents in science and technology, international entrepreneurs, professional talents, and talents with specific high-level skills, meeting one of the following criteria would be able to apply for the R visa:

1. Selected candidates from China's talent introduction programs;
2. Individuals who meet internationally recognized standards of professional achievement;
3. Foreign professionals who meet the demand for market-oriented positions that are encouraged in China;
4. Innovative entrepreneurial talent;
5. Exceptional youth talent; and
6. Professionals who accumulate more than 85 points in China's work permit points system.

General application procedures and timeline



Foreigners who enter China with an R visa should register and apply for a work permit, should they work in China, and the R visa should be converted to a residence permit thereafter.

Advantages of R visa

- Compared to business ("M") visas, R visas are valid for 5 to 10 years and holders are allowed multiple entries into China with a maximum duration of 180 days per entry. In addition, the dependants of R visa holders are typically granted S visas with the same validity and conditions.
- A green channel is used to facilitate the application. The processing times for both the Confirmation Letter and the R visa are short compared to the time required to process other visa types.

The application is free of charge for both principals and their dependants.

Deloitte's view

In general, the newly introduced R visa is designed to attract high-end international talent to China who can support the development of innovative industries.

Foreign executives and management teams who must make urgent or frequent business visits to China should also consider applying for the R visa to ease the immigration application process.

We recommend that R visa holders who work on long-term projects in China or who require frequent travel into the country properly manage their R visa eligibility. For instance, in consideration of R visa holders' possible long stays in China, they should evaluate applicable Chinese individual income tax and social security issues, as well as the potential risk of permanent establishment in China to ensure compliance with the relevant regimes.

Additionally, given that sponsoring companies in China are responsible for the domestic activities of their R visa holder, SAFEA is implementing a credibility system to evaluate the eligibility of companies to sponsor visa and work permits.

Besides, in consideration of R visa holders' possible long stay in China, their Chinese individual income tax and social security issues, as well as the potential risk of permanent establishments in China, should carefully be assessed to ensure compliance in the relevant regime.

If you have any questions, please contact one of the following immigration specialists.

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Global Rewards Updates: Luxembourg: New Tax Regime for Stock Options/Warrants

Key points to know

- Clarifications on required grant notifications required for certain award types have been issued by the Luxembourg tax authority, including penalties for failure to comply with the notification requirements.
- The taxable basis for irrevocable options (*i.e.*, options that are fully vested at grant increased from 17.5% to 30%) took effect January 2018.
- Conditional awards, such as stock options or restricted stock unit awards subject to vesting conditions, are not impacted by the Circular.

Background

On November 29, 2017, the Director of the Luxembourg Tax Authorities issued a revised Circular 104/2 (hereafter "the Circular") which introduced several revisions for option and warrant plans in Luxembourg, including:

1. Clarification on required grant notifications, including penalties for non-compliance
2. Change in calculation of taxable basis for irrevocable options

Grant notification requirements

Grant notification timing: The Circular states that a "grant notification" must be provided to Luxembourg Tax Authorities in a "timely" manner following grant of option/warrant plans taxable at grant (*i.e.*, irrevocable options and eligible warrant plans), and should include the estimated yearly gross salary of the beneficiary, excluding the options/warrants.

The Circular does not specify what is considered "timely" for purposes of the grant notification, though it is expected that Luxembourg Tax Authorities will consider a grant notification to be "timely" provided that it is made within the 4-5 days following the grant of date.

Further, the Circular eliminates the requirement to provide notification two months prior to the grant of options / warrants, as defined under Circular 104/2bis dated December 28, 2015.

Note that conditional options (*i.e.*, options subject to vesting conditions) are not impacted by the Circular, and remain subject to tax / tax reporting at the point of exercise.

Impact of failure to file grant notification: In the event an employer fails to comply with the grant notification requirements, the Luxembourg Tax Authorities reserve the right to subject the full value of the shares underlying the option/warrant at grant to tax, without the application of the lump sum valuation percentage (as discussed below) or any other potential discounts.

Change in taxable basis at grant

Option/warrant plans taxable at grant (*i.e.*, irrevocable options and eligible warrant plans) are subject to tax and reporting at the time of grant, based on a percentage of the value of the shares underlying the option/warrant at grant.

For example, if an employee was granted 10 options over shares with a value of EUR 10 each, the gross benefit-in-kind at grant would be equal to EUR 100.

Historically, the taxable benefit at grant was equal to 17.5% of this gross benefit-in-kind, or EUR 17.50.

However, the Circular increased the taxable basis to 30% of the gross benefit-in-kind, or EUR 30.00.

Options granted on or after January 1, 2018 will be subject to tax and reporting in accordance with the new basis. As noted above, failure to comply with the grant notification requirements may result in the Luxembourg Tax Authorities disallowing the application of the lump sum valuation percentage at grant. Using the example, this means that potentially the full EUR 100 gross benefit-in-kind would be subject to tax at grant.

Deloitte's view

For companies granting options/warrants subject to taxation at grant, it is important to ensure that proper procedures are in place to ensure that the Luxembourg entity is aware of the grant (assuming it is not the granting entity) and has a proper reporting structure in place as failure to comply with the requirements may have a significant impact on taxation of the awards.

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