Global Employment Solutions

Global InSight

16 August 2013

In this issue:

China:
The New PRC Administration Rules on Entry-Exit of Foreigners

Summary

On 12 July 2013, the 15th Executive Meeting of the State Council passed the PRC administrative rules applicable to the entry and exit of foreigners ("Rules"). The Rules, which were drafted in line with the new PRC Exit-Entry Administration Law ("New Law") that became effective on 1 July 2013, are designed to interpret and clarify various aspects of the visa and residence permit aspects of the New Law. The Rules will apply as from 1 September 2013.

Key implications

The Rules revise and expand the types of visas that will be issued to foreigners:

"M" visa – The "M" visa will replace the original business "F" visa and will be issued to foreign individuals who come to the PRC for commercial and trade missions. The "F" visa has been re-defined for purposes of short-term exchange activities and visits and for researchers.

"R" visa – The "R" visa (which was introduced in the New Law) will be issued to highly skilled foreigners and professionals in short supply in the PRC. The Rules do not specifically define "highly skilled" or set out any specific criteria to qualify for such status; these are expected to be addressed in future guidance.

"Q" visa – The "Q" visa will be issued to individuals who come to the PRC for family reunions with Chinese relatives and those who come to the PRC for adoption purposes. There are two types of "Q" visa: a "Q1" visa that will enable the visa holder to reside in China and a "Q2" visa that will enable the foreigner to stay in the country on a short-term (less than 180 days) basis.

"S" visa – The "S" visa will be issued to the immediate family members (i.e., spouses, parents, minor children, and in-laws) of foreigners who are residing in the PRC for work or study purposes. There are two types of "S" visa: an "S1" visa that will enable the visa holder to reside in China and an "S2" visa that will enable the foreigner to stay in the country on a short-term basis.

Work-study program/internship – Foreign students who hold a student residence permit and who wish to participate in a work-study program or an internship off campus must obtain the consent of the school and submit details of the program/internship (e.g., location, duration, etc.) to the Public Security Bureau (PSB). The government will be providing details of specific documents that must be submitted at a later stage.

Clarification of terms "stay" and "reside:" Foreigners who enter the PRC under a "Z" work visa, "X" study visa, "J" journalist visa, "Q" family reunion visa, or an "S" private affairs visa are eligible to have the visa converted into a "residence permit" that will allow the individual to reside in the PRC. Individuals holding other types of visas will be permitted to stay in the PRC only for the period designated in the visa. A request for an extension of a visa must be submitted to the PSB, along with relevant supporting documentation.

Illegal residence – The following will constitute illegal residence in the PRC under the Rules:

- Staying or residing in the PRC for a period that exceeds the term stated in the visa, stay permit, or residence permit;
- Staying in the PRC for a period that exceeds the stipulated visa-free period without applying for a stay/resident permit;
- Foreigners exceeding the stipulated areas for stay or residence; or
- Other circumstances evidencing illegal residence.

Processing time for residence permit – For residence permit applications, the PSB shall process and make a decision on visa approval by no more than 15 working days upon submission of sufficient documents. In practice, upon effectiveness of the New Law on 1 July 2013, the PSB has been extending the processing time of residence permit (initial, renewal, or amendment) to 15 working days, instead of the previous processing time of 5 working days.

Biometric data – Foreigners must provide their fingerprints or other valid biometric data to the PSB when applying for a residence permit.

Deloitte's view

The PRC is refining the rules governing the entry and exit of foreigners and expanding the types of visas to better delineate the basis on which a visa will be granted to stay or reside in the PRC. Since the New Law entered into effect, local PSBs have adopted a more stringent approach to visa applications by extending the processing time, enhancing penalties for noncompliance, requesting that employers report any changes in visa status in a timely manner, etc. For example, both Beijing and Shanghai have introduced new requirements:

Beijing – Applicants must provide the original business license to the PSB for visa applications. Copies will not be accepted.

For dependent residence permit applications (i.e., the initial application or an application for an extension, amendment, or de-registration), the original marriage certificate of the spouse and all children's birth certificates must be presented.

Shanghai – Applicants must provide a copy of the original invitation letter to the PSB to obtain an extension of a business visa.

Only one 30-day extension will be granted for a tourist visa extension (previously, a tourist visa could be extended twice, for a total of 60 days).

It is likely that more rules will be issued on the visa and residence permit applications and that the authorities will be conducting stringent compliance audits. HR and mobility departments of multinational companies in the PRC should familiarize themselves with the New Law and the Rules to ensure that all foreign employees are in compliance.

The Foreign Affairs Office, together with the Ministry of Human Resource and Social Security and the PSB, will be issuing further enforcement instructions to the public and clarifying areas that have not been addressed in the Rules (e.g., qualification for the "R" highly skilled personnel visa, required documentation for foreign students who wish to participate in a work-study program or an internship off campus, etc.).

— Gus Kang (Beijing)
Partner
Deloitte People's Republic of China
+86 (10) 8520 7600
gukang@deloitte.com.cn

Huan Wang (Beijing)
Partner
Deloitte People's Republic of China
+86 (10) 8520 7510
huawang@deloitte.com.cn

Mona Mak (Hong Kong)
Partner/Principal
Deloitte People's Republic of China
+(852) 2852 1051
monmak@deloitte.com.hk

Tony Jasper (Hong Kong)
Partner
Deloitte People's Republic of China
+(852) 2238 7499
tojasper@deloitte.com.hk

Mark Ni (Shanghai)
Partner
Deloitte People's Republic of China
+86 (21) 6141 1458
mni@deloitte.com.cn

Joyce W. Xu (Shanghai)
Partner
Deloitte People's Republic of China
+86 (21) 6141 1178
joycewxu@deloitte.com.cn

Sandy Cheung (Shanghai)
Partner
Deloitte People's Republic of China
+86 (21) 6141 1156
sancheung@deloitte.com.cn

Isabel Liu (Shenzhen)
Director
Deloitte People's Republic of China
+86 (755) 3353 8382
isliu@deloitte.com.cn

Feifei Li (Shenzhen)
Director
Deloitte People's Republic of China
+86 (755) 3353 8160
ffli@deloitte.com.cn

Czech Republic:
New Project to Encourage Investment Launched

Welcome package for investors

The Ministry of Industry and Trade of the Czech Republic, together with CzechInvest, the Investment and Business Development Agency, have prepared a new project with the working title "Welcome Package for Investors". The goal of the new project is to increase the efficiency of the immigration procedure for the key group of foreigners, who need to gain the necessary permits (residence and work permits) as fast and as easily as possible in order to make investments in the Czech Republic. The project seeks to create a favorable visa environment for potential investors, facilitate the inflow of foreign direct investments, and increase the competiveness of the whole Czech Republic. The project has already been approved and investors have had the opportunity to participate since 1 July 2013.

Who will be the target group of the project?

The project is aimed at non-European Union (EU) foreigners, who are citizens of countries that are exempt from visa obligations within the EU for the period of 90 days (e.g., Japan, Canada, the USA, Taiwan, etc.) and who belong to one of the following groups:

1. Statutory bodies, managers, and key specialists of companies that have been formally founded in the Czech Republic but need to move their activity know-how from the country of origin to the Czech Republic.
2. Statutory bodies of business companies already established in the Czech Republic.

The criteria for the participation in the project predominantly consist of an application for investment incentives approved by CzechInvest, the number of employees, or, as the case may be, the amount invested in fixed assets or employee payroll costs. The project is aimed mainly at companies focusing on production, information technology/software development, and strategic services.

What are the advantages?

There are several advantages of being involved in the project: the period for issuing the work permit will be shortened to 10 working days (as opposed to the current period of between 40 and 60 days) and the period for issuing a long-term visa will be shortened to 30 calendar days (compared to the current period of 90 days or more). At the same time, the obligation of the so-called 'recognition' of the applicant's education will be abolished.

Deloitte's view

There are several advantages of being involved in the project: the period for issuing the work permit will be shortened to 10 working days (as opposed to the current period of between 40 and 60 days) and the period for issuing a long-term visa will be shortened to 30 calendar days (compared to the current period of 90 days or more). At the same time, the obligation of the so-called 'recognition' of the applicant's education, which is required in standard procedure, will be abolished.

— Miroslav Mejtsky (Prague)
Manager
Deloitte Czech Republic
+(420) 246 042 347
mmejtsky@deloittece.com

Tomas Petyovsky (Brno)
Manager
Deloitte Czech Republic
+(420) 246 043 156
tpetyovsky@deloittece.com

Malta:
Global Residence Programme Rules, 2013 for individuals who are non-EU/non-EEA/non-Swiss nationals

Introduction

A Global Residence Programme ("GRP Rules") has been introduced with effect from 1 July, 2013, for individuals who are not nationals of the EU, EEA, or Switzerland in terms of Legal Notice 167 of 2013 and Article 56(23) of the (Malta) Income Tax Act, Chapter 123 of the Laws of Malta (ITA) and for successful applicants on whom the GRP Rules confer a special tax status.

The GRP Rules replace the Residence Scheme for High Net Worth Individuals (HNWIs) applicable to non-EU/non-EEA/non-Swiss Nationals with effect from 1 July, 2013, and the scope of the GRP Rules is to set out more favourable conditions under the new programme. Guidelines have been issued by the Malta Inland Revenue that set out further detail with regard to the application and interpretation of the GRP Rules.

Who is eligible to apply?

To apply under the GRP Rules, an individual must be a "third country national" (i.e., a person who is not an EU, EEA, or Swiss national). Such person must also not be a "long-term resident" of Malta and consequently must not have long-term resident status under the Status of Long-term Residents (Third Country Nationals) Regulations and must not have resided legally and continuously in Malta for five years.

Conditions for application

An individual who is eligible to apply under the GRP Rules must prove to the satisfaction of the Commissioner for Revenue (the "Commissioner") that such individual satisfies all of the conditions set out below:

- The applicant holds a "Qualifying Property Holding," which is defined as immovable property situated in the Maltese islands that was either (i) purchased in Malta for a consideration of not less than €275,000 or in Gozo or the South of Malta for a consideration of not less than €220,000; or (ii) rented for not less than €9,600 per annum for a property situated in Malta or €8,750 for a property situated in Gozo or the South of Malta. In all cases, the said property must be occupied as the primary place of residence;
- The applicant does not benefit under the Residents Scheme Regulations, the High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, the High Net Worth Individuals – Non-EU/EEA/Swiss Nationals Rules, the Malta Retirement Programme Rules, the Qualifying Employment in Innovation and Creativity Rules, or the Highly Qualified Persons Rules;
- The applicant is in receipt of stable and regular resources that are sufficient to maintain himself/herself and his/her dependents without recourse to the social assistance system in Malta;
- The applicant is in possession of a valid travel document;
- The applicant is in possession of sickness insurance that covers himself/herself and his/her dependents in respect of all risks across the whole of the EU normally covered for Maltese nationals;
- The applicant is a fit and proper person; and
- The applicant is fluent in Maltese or English.

The above noted conditions must be satisfied on an ongoing basis.

The application by the individual may also cover the dependents and special carer, under certain conditions, of the said individual.

Tax treatment

An individual in possession of the relevant special tax status certificate issued in terms of the GRP Rules would be subject to the following tax treatment in Malta:

- Income from foreign sources would be chargeable to Malta income tax only if remitted to Malta ("remittance basis" of taxation) and at a flat rate of 15% with the possibility of claiming double taxation relief but subject to the minimum annual tax liability referred to below.
- The income of a beneficiary, his/her spouse, and children not chargeable at the rate of 15% is chargeable at the rate of 35%. Consequently, no separate tax computation is provided for.
- Any other realised income that is not charged at the 15% income tax rate above and including realised capital gains arising in Malta on the transfer of a capital asset (other than immovable property situated in Malta) would be chargeable to Malta income tax at the rate of 35%.

In terms of the ITA, any realised capital gain arising in Malta on the transfer of immovable property situated in Malta would be subject to a final withholding tax of 12% of the transfer value (an exemption applies in special circumstances, including the disposal of immovable property occupied as an individual's "own residence" for a period of three years). An individual may opt for the 35% tax rate on the capital gain if the property being transferred was acquired less than 12 years prior to the sale.

Any realised capital gain arising outside of Malta, even if remitted to Malta, would be exempt from Malta tax in view of the non-Malta domicile of the individual.

A minimum annual Malta income tax payment payable by the individual amounting to €15,000 in respect of income from foreign sources and remitted to Malta, inclusive of the number of dependents of the individual, applies in terms of the GRP Rules. This minimum tax is due for payment by not later than 30 April of the year in which the income is received in Malta and must be accompanied by a return made to the Commissioner confirming that all the conditions of the scheme have been satisfied.

Procedure for application

An application for special tax status in terms of the GRP Rules may only be submitted to the Commissioner through the services of a person that qualifies as an Authorised Registered Mandatory (Deloitte Malta is an Authorised Registered Mandatory in terms of the scheme) and on the prescribed application form.

A nonrefundable administrative fee of €6,000 is payable to the Commissioner on application. In the event that the qualifying owned property is situated in the South of Malta, the administrative fee is reduced to €5,500. A list of localities has been published for the purpose of identifying towns and villages defined in the rules as the "South of Malta" and is set out at the end of this NewsFlash.

Minimum residence period

There is no minimum residence period. However, an individual in possession of the relevant special tax status certificate may not reside in any other tax jurisdiction for more than 183 days in any calendar year.

Grandfathering of HNWI non-EU/EEA/Swiss Nationals Rules

As a result of the introduction of the GRP Rules and, in terms of Legal Notice 178 of 2013, "grandfathering" provisions have been introduced in respect of the HNWI non-EU/EEA/Swiss Nationals Rules. In terms of these "grandfathering" provisions, a person in possession of or having a pending application in respect of special tax status in terms of the above referred HNWI Rules may request the Commissioner, through an Authorised Registered Mandatory, for a determination in writing that the special tax status be migrated to that in terms of the GRP Rules or that the application in terms of the above referred HNWI Rules be considered as an application in terms of the GRP Rules.

Localities for the purposes of the definition of the South of Malta

Birzebbugia, Cospicua, Fgura, Ghaxaq, Gudja, Kalkara, Kirkop, Luqa, Marsascala, Marsaxlokk, Mqabba, Paola, Qrendi, Safi, Sta. Lucija, Senglea, Siggiewi, Tarxien, Vittoriosa, Xghajra

— Andrew Manduca (Malta)
Director
Deloitte Malta
+(356) 2343 2443
amanduca@deloitte.com.mt

Chris Curmi (Malta)
Director
Deloitte Malta
+(356) 2343 2000
ccurmi@deloitte.com.mt

Anna Gatt (Malta)
Senior Manager
Deloitte Malta
+(356) 2343 2756
agatt@deloitte.com.mt

James Bonavia (Malta)
Senior Manager
Deloitte Malta
+(356) 2343 2754
jbonavia@deloitte.com.mt

Global Rewards Updates:
2013 Global Share Plan Survey: Sharing Success

Background

There continues to be an enormous level of interest in share plans throughout the world, as evidenced by the very high level of participation in our 2013 Global Share Plan Survey which was run earlier this year. The survey covered all aspects of global share plans, looking at the features of the plans operated by global companies, at how the plans are implemented and operated on a global basis, how companies ensure they remain compliant everywhere and more.

130 companies participated. These companies were headquartered in 21 different countries, which make our survey a truly global survey. The participants operated, between them, 340 different share plans and these share plans extended to over 90 countries around the world.

The full results of the survey are only available to participants and we would therefore encourage you to participate to have access to these.

Highlights

Encouragingly share plans continue to be recognised by global companies as an effective remuneration tool. At the executive level our participants reported that share plans not only can be used to help drive performance, but they can also help with retention. Also, when combined with clawbacks and maluses, they can help contribute to the management of risk. From our participants' feedback it is clear that the purposes behind broad-based plans are more nuanced. This is a consequence of the smaller amounts that are involved per person, which are then extended to a very broad population. For most companies broad-based plans are about creating "a culture of ownership" and helping to forge a feeling of "group identity".

In the last twelve months there has been a significant amount of noise from the media, politicians and the general public, about the failings of some executive remuneration structures. What there has been a lot less coverage of, has been the success story of broad-based employee share ownership. What we therefore found particularly encouraging in this year's results is the prevalence of broad-based arrangements. Of the respondents to our survey, 66% operated such arrangements and over 45% extended them to over 75% of the countries in which they operate.

In terms of interesting findings, this year's survey has many but here are three that do deserve a special mention.

The first is the very noticeable regional differences in share plan operations between the United States and the rest of the world. US companies tend to operate more plans per company, and at the executive level tend to operate both performance related and non-performance related awards. Outside the US, executive plans without performance conditions are far less common. Secondly is the share purchase plans, overtaking the share options by some margin, as the vehicle of choice for broad-based plans. Thirdly, is the interest in China. Not many years ago China was virtually a closed shop for global share plans. This year 47% of the respondents of the respondents present in China had extended at least one share plan there.

Other topics remain on the agenda for many companies, such as how to achieve tax compliance for the internationally mobile employees participating in global share plans. Our survey shows that tax authorities around the globe are focused on share plans as a number of respondents had tax inquiries recently. If needed be, this is a good reminder that the risk is not only academic and companies need to ensure they have processes in place, not only to calculate what the correct amount of tax to be withheld in each country would be, but also work with their local payroll teams to loop the loop and ensure the reporting and payments to the tax authorities happen.

— Sean Trotman (New York)
Partner
Deloitte Tax LLP
+1 (212) 436 2211
strotman@deloitte.com

Rive Rutke (Chicago)
Director
Deloitte Tax LLP
+1 (312) 486 3483
rrutke@deloitte.com

Kate Forsyth (Los Angeles)
Senior Manager
Deloitte Tax LLP
+1 (213) 593 4279
kforsyth@deloitte.com

Mark I. Miller (San Jose)
Senior Manager
Deloitte Tax LLP
+1 (408) 704 4308
mamiller@deloitte.com

Michael Prewitt (Houston)
Senior Manager
Deloitte Tax LLP
+1 (713) 982 4273
mprewitt@deloitte.com

Peter Simeonidis (New York)
Senior Manager
Deloitte Tax LLP
+1 (212) 436 3092
psimeonidis@deloitte.com

Have a question?
If you have needs specifically related to this newsletter's content, send us an email at **clientsandmarketsdeloittetax@deloitte.com** to have a Deloitte Tax professional contact you.

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about<http://www.deloitte.com/about> for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte has in the regions of 200,000 professionals worldwide all committed to becoming the standard of excellence.