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Global Employment Solutions

Global InSight

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Australia:
Labor market testing and the 457 visa

Overview

From 23 November 2013, Australia employers who seek to access the 457 visa program may be required to show that they have tested the local labor market prior to lodging a nomination application.

Why is labor market testing being introduced?

The Australian Government has announced that the introduction of labor market testing is designed to ensure that Australian citizens and Australian permanent residents have the first opportunity to fill job vacancies. Therefore, employers in Australia who have an approved Standard Business Sponsorship with the Department of Immigration and Border Protection ("DIBP") must demonstrate that they have attempted to recruit suitably qualified and experienced Australian citizens and Australian permanent residents to the nominated position.

What evidence will be required?

Labor market testing ("LMT") needs to be undertaken during the 12 months prior to lodgment of the application nominating the position to be filled by an applicant for a Subclass 457 Visa.

Sponsors are required to provide mandatory evidence of their attempts to recruit a suitably qualified and experienced Australian citizen or Australian permanent resident to fill the nominated position, specifically, details of any advertising for the position or a similar position. Advertising can include both paid and unpaid.

The following mandatory evidence should be submitted with the visa application:

1. Third-party documentation does not need to be submitted with an application; however, a written and signed declaration can be submitted with the application that confirms the following:
   a. The mode or modes of advertising for the occupation, such as online, newspaper, publication;
   b. Details of where the advertisement took place (i.e., name of website/publication);
   c. The dates of the advertising;

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    d. Fees paid for recruitment/advertising (if applicable);
    e. Confirmation of whom the fees were paid to (if applicable);
    f. Geographical target audience;
    g. Number of applications received for the position;
    h. Number of applicants that were hired; and
    i. Reason that applicants were not successful.
2. Advertising fees
    a. If a sponsor has included evidence relating to advertising the nominated position, they must also provide details of the fees and any other expenses paid (or payable) for that advertising.
3. Other recruitment attempts
    a. The information relating to the sponsor's attempts to recruit an Australian worker may also include information about involvement in relevant job and career expositions, details of fees and expenses paid (or payable) for any other types of recruitment attempts, and details of the results of such recruitment attempts, including details of any positions filled as a result.

In addition to the mandatory evidence required to support an application, it is possible for a sponsor to include discretionary evidence as follows:

- Research – Claims with copies of, or references to, any research relating to labor market trends, generally, or in relation to the nominated occupation. Such research can only be taken into consideration if it has been released in the four months prior to the application.
- Expressions of support – Expressions of support from Commonwealth, State/Territory government authorities with responsibility for employment matters.

There is no specific time requirement for the length that the position was advertised. There is also no need to advertise for each individual position the business wishes to fill with a foreign national under the Subclass 457 Visa provisions if there are multiple similar positions to be filled.

Exemptions

There are some exemptions, outlined below.

Exemptions based on Australia's international trade obligations – The labor market-testing requirement will not apply where it would be inconsistent with Australia's international trade obligations in any of the following circumstances:

1. The nominated applicant is a current employee of an associated entity of your business located in an Association of South East Asian Nations (ASEAN) country. A list of the ASEAN countries can be found online.
   URL: http://go.deloitte.com.au/761IBL3280003HC002BSC00
2. The nominated applicant is a current employee of an associated entity of your business operating in a country that is a member of the World Trade Organization (WTO) and the nominated occupation relates to an executive or senior manager position. The nominated applicant must also be responsible for the entire or a substantial part of your company's operations in Australia. A list of WTO nations can be found online.
   URL: http://go.deloitte.com.au/761IBL3280003HD002BSC00
3. The nominated applicant is a citizen of a WTO member country and has been employed by your business in Australia on a full-time basis for the last two years.
4. Your business currently operates in a WTO member country and is seeking to establish a business in Australia where the nominated occupation relates to an executive or senior manager position.
5. The nominated applicant is a citizen of Chile or Thailand or is a Citizen/Permanent Resident of New Zealand.

Exemption based on occupations specified in a legislative instrument – The labor market-testing requirement may also not apply depending on the particular Australia and New Zealand Standard Classification of Occupations ("ANZSCO") occupation that your business nominates in its Subclass 457 Visa application.

Most ANZSCO skill level 1 and 2 occupations (Managers and Professionals), with the exception of engineering and nursing occupations, will be exempt from the labor market-testing requirement. Furthermore, almost 100 other skilled occupations from ANZSCO groups 3, 4, and 5 will be exempt, with the exception of many trade occupations.

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Exemption based on major disasters – If a major disaster has occurred in Australia, the Minister for Immigration and Border Protection may grant an exemption in writing in order to assist in disaster relief or recovery.

Deloitte's view

Deloitte notes that intra-company transfers falling outside the specific exemptions detailed above are not exempt from LMT. Our view is that this is a missed opportunity to mitigate the impacts of the time taken to secure a 457 visa for a significant proportion of inbound skilled foreign labor.

Intra-company transfers are often undertaken to facilitate the transfer of proprietary knowledge and expertise to local staff. Furthermore, at a time of the growing importance of deploying suitably qualified project staff quickly and efficiently to maximize an employer's return on project and infrastructure investment, the exclusion of intra-company transfers from LMT exemption is regrettable.

Deloitte encourages employers to consider the implications of LMT for their workforce beyond the lodgment of the Subclass 457 Visa application. With the earlier announcement from the Australian Government of an increase in the number of workplace inspectors with powers under the Migration Act, we anticipate that compliance with LMT requirements will be a key focus area with respect to employer compliance.

Deloitte will continue to work closely with the Government on behalf of our clients to reduce the negative impact of LMT, while maintaining the integrity of the Subclass 457 Visa program. In the meantime, we encourage you to work with our immigration team in determining if the LMT requirement will apply in your circumstances and how your organization can best meet it.

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Japan:
New foreign asset reporting

Overview

Over the past few years, we have seen tax authorities around the world increasing the amount of information being requested from tax residents to help them verify the income reported to them. From January 1, 2013, Japan has introduced an extensive asset reporting requirement, not just limited to financial assets held by individuals who are permanent residents for tax purposes in Japan, if the aggregate value of assets held outside of Japan exceeds JPY50 million (approximately USD500,000) at year-end.

Who is required to file this report?

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Individuals who are permanent residents for tax purposes in Japan (foreign nationals who are residents in and have had a domicile in Japan for more than five years in the preceding 10 years or Japanese nationals who are tax residents), are required to file the report when the total value of their foreign assets (assets located outside of Japan) exceeds JPY50 million as of December 31 of that year.

This is a separate form from the income tax return and individuals are required to submit it even if they do not have a Japan individual income tax return filing requirement or any taxable income in Japan.

If the individual is deceased or permanently left Japan before the filing due date, the report is not required to be filed.

Deloitte's view

As this reporting requirement falls upon a permanent resident for tax purposes, even if they do not have reportable income in Japan or a tax return filing requirement, there are many individuals who may not even realize that this reporting requirement applies. An example might be a nonworking trailing spouse who has been living in Japan for over five years, with his or her spouse who is on assignment. Even if the trailing spouse has no income for himself or herself, there may be a requirement to file the report depending on overseas asset holdings.

What is the due date?

Generally, the due date is March 15 following the December 31 on which the assets have been valued.

This reporting requirement was introduced as of January 1, 2013; therefore, the first reports are due March 17, 2014 (March 15, 2014, falls on a Saturday), for reports on assets held at December 31, 2013.

Scope of reporting

The tax authorities take the view that foreign assets include any assets located outside of Japan that have an economic value.

The Foreign Assets Report is a two-page form consisting of a report and a summary table. The details requested are the type of asset, purpose of use, quantity, value, and location of the asset. All assets held overseas are required to be disclosed and the value of each type of asset should be aggregated. The value of assets to be reported should either be the fair value or appraisal estimated value as of December 31 of that year. As the reporting should be done in Japanese yen, assets of foreign currencies should be converted to Japanese yen using the Telegraphic Transfer Buying (TTB) rate as of December 31 of that year.

The table below provides guidelines on how the value of certain common classes of assets should be determined, but should not be considered an exhaustive list of the assets covered by this reporting requirement.

Type of Asset	Valuation method
Land	1. Taxable value for the property tax assessment. 2. Acquisition price reasonably adjusted by price fluctuations after the purchase. 3. Selling price if the property was sold between January 1 of the following year and the filing due date of the Foreign Assets Report.
Building	4. Method used for determining the value of land. 5. Acquisition price, less depreciation through December 31 (for a partial year, one year is used for the depreciation calculation).
Deposits and savings	Aggregated balance in the account(s) as of December 31.
Securities (unlisted)	Selling price of the same type of securities as of December 31.
Stock options*	Price as of December 31, less exercise price.
Partnership interest	Net asset value as of December 31 multiplied by percentage of ownership. If the net asset value data is not available, the initial capital contribution can be used.
Insurance money	Amount of mid-term (cancelation) refund as of December 31.
* Only vested stock options as of December 31 are required to be reported.	

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The tax authorities have not disclosed a minimum value for assets that can be excluded from this reporting requirement.

Deloitte's view

The inclusion of vested but unexercised stock options in the above list may be surprising to readers. However, based on the currently available guidelines for completing this report, we expect these to be classified as "assets" for this purpose.

Valuation of assets is likely to be one of the biggest challenges facing permanent residents who will need to determine if they meet the threshold for filing. Therefore, we recommend that individuals start collating the information and completing valuations as soon as possible in order to be able to file the report on a timely basis.

Penalties for noncompliance

In cases of fraudulent reporting or nonfiling, an individual may face a prison sentence of not more than one year and a fine of not more than JPY500,000. This is applicable from the second reporting year onwards, i.e., January 1, 2015. For reports that are voluntarily submitted after the due date, these will be deemed to have been filed before the due date.

Where penalty taxes arise due to underreported income in the tax return, the authorities have introduced mitigating measures associated with the foreign assets report. If the underreported income is declared on the foreign assets report, penalties are reduced by 5%. Conversely, if the underreported income is not declared on the foreign assets report, penalties are increased by 5%. These measures will be implemented for reports submitted on or after January 1, 2014.

Statement of assets and liabilities

Currently, all resident (permanent and nonpermanent) taxpayers in receipt of earned income over JPY20 million are required to file a Statement of Assets and Liabilities, reporting on a worldwide basis.

This new asset-reporting requirement is in addition to and not a replacement for the Statement of Assets and Liabilities; however, if the asset has been reported on the Foreign Assets Report, it is not necessary to duplicate the reporting on the Statement of Assets and Liabilities.

Deloitte's view

As this is the first year that the foreign assets reporting requirement is being introduced, the National Tax Agency is in the process of issuing clearer and more specific guidelines on the reporting of certain classes of assets. With such detailed collection of information, the authorities are clearly tightening their control over income and inheritances of foreign assets that goes unreported. The additional requirement has certainly not come without any burden on tax residents, particularly with the need to value assets, which might not be a straightforward process.

Notwithstanding the cumbersome process, permanent resident individuals should ensure that they are compliant with the new legislation to avoid the penalties that might otherwise be imposed.

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Malaysia: Budget news

Background

This NewsFlash on the 2014 National Budget announced by Minister of Finance Malaysia on 25 October 2013, and the Finance Bill issued on 6 November 2013, represents the following relevant issues from the individual tax perspective:

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Reduction in income tax rates for residents and nonresidents

Currently the income tax of a resident individual is calculated based on scale rates ranging from 0% to 26%. The highest rate of 26% is applicable to chargeable income exceeding RM 100,000.

To enhance the competitiveness of the nation as well as to retain and attract talent and skilled workers into the country, it is proposed that the resident individuals' personal income tax bands and rates be revised as follows:

Chargeable income (RM)	Existing rates (%)	Proposed rates (%)
1 – 5,000	0	0
5,001 – 20,000	2	1
20,001 – 35,000	6	5
35,001 – 50,000	11	10
50,001 – 70,000	19	16
70,001 – 100,000	24	21
100,001 – 250,000	26	24
250,001 – 400,00	26	24.5
Exceeding 400,000	26	25

The income tax rate for nonresident individuals is reduced by 1% from 26% to 25%.

Effective date: Year of assessment 2015

Relief for middle income tax payers

To increase the disposable income of the middle income group and to help them cope with the higher cost of living, it is proposed that a special relief of RM 2,000 be given to resident individuals earning up to RM 8,000 a month (aggregate income of up to RM96,000 a year) for the year of assessment 2013.

This special one-off personal tax relief of RM 2,000 is given for one year, i.e. year of assessment 2013 only. The resident individuals may deduct this special tax relief when they are submitting their 2013 Malaysian tax returns by 30 April 2014.

Effective date: Only applicable for the year of assessment 2013

Monthly tax deduction (MTD) as final tax

With effect from the year of assessment 2014, employees whose total income tax is equivalent to the amount of tax deducted under the Monthly Tax Deduction (MTD) System, may elect not to submit a tax return provided that:

1. The employee only receives cash remuneration under employment income other than gains/profits in respect of the use or enjoyment of benefits provided by his employer;
2. Tax is deducted on that income and remitted under the MTD system;
3. The employee is employed by the same employer for a period of 12 months in that year of assessment;
4. His/her income tax is not borne by employer; and
5. For husband and wife, no election for joint assessment has been made.

Where tax return is not submitted to the Malaysian Inland Revenue Board (MIRB) for a year of assessment:

1. The individual is deemed to have made an election;
2. The total amount deducted shall be deemed to be the amount of tax payable of that individual for that year of assessment; and
3. No assessment shall be made by the MIRB in respect of that individual for that year of assessment.

Notwithstanding the aforementioned, the MIRB shall have the power to make an assessment for any year of assessment. Where an assessment is made by the MIRB, the amount that was deemed to be the tax payable shall be disregarded.

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Effective date: Year of assessment 2014

Real Property Gains Tax (RPGT)

Currently the RPGT rates for the disposal of properties and shares in real property companies are as follows:

	Tax Rates	
	Citizens and Permanent Resident	Noncitizens
Disposed within 2 years	15%	15%
Disposed after 2 & up to 5 years	10%	10%
Disposed after 5 years	0%	0%

As part of the effort in reducing the speculative activities in the property market, it was proposed under Budget 2014 that with effect from 1 January 2014, the (RPGT) will be revised as follows:

	Tax Rates	
	Citizens and Permanent Resident	Noncitizens
Disposed within 3 years	30%	30%
Disposed in 4th year	20%	30%
Disposed in 5th year	15%	30%
Disposed after 5 years	0%	5%

The minimum price of properties that can be purchased by foreigners will be increased from RM 500,000 to RM 1,000,000.

Effective date: While it is proposed for the RPGT revised rate to be effective 1 January 2014, we are pending further clarification to the effective date on the revised threshold to the purchase price for foreigner buyers of properties.

Deloitte's comments

To ensure that the economy continues to expand at a strong pace and to reduce the fiscal deficit, the 2014 budget focuses on economic revival and fiscal consolidation to help boost Malaysia's appeal as an attractive investment destination as well as improve the people's well-being especially for women, low- and middle-income earners, students, small and medium enterprises (SMEs), and pensioners.

With the proposed implementation of the broad-based consumption tax, i.e., goods and service tax from 1 April 2015, and to ensure a more progressive tax structure, the government has further reduced the personal income tax rates and widened income tax bands for individuals.

The simplified system, i.e., monthly tax deduction as final tax would allow the Malaysian Inland Revenue Board (MIRB) to redirect resources to improving tax compliance and enforcement, and individuals will not need to worry about the annual filing in April. However, it is likely that this facility will be available only to those with only employment income with other conditions attached. Tax return filing for expatriate employees will remain status quo.

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Norway:
Budget news

Overview

The Norwegian government published on October 14th their proposed national budget for 2014. Norway's new government was appointed October 16th and the new government published revisions to the original budget proposal November 8th. As the new government is a minority government, some revisions to the proposed budget is expected. This newsflash presents the relevant issues for employers and employees in Norway.

Tax rates

The revised budget for 2014 has recently been presented by the government. Some of the suggested changes are expected due to the general increase in salary level, but there are also suggested changes in the wealth tax rates, the social security rates, the tax brackets, and the Inheritance tax. The budget will be finalized by the Norwegian Parliament in December.

The tax rates on regular income will change from 2013 to 2014, and the tax rate for combined national and municipal tax is suggested to be reduced from 28% to 27%.

The threshold for top tax level one will increase from NOK 509,600 to NOK 527,400, and the threshold for top tax level two will increase from 828,300 to NOK 857,300.

9% top tax applies to income between NOK 527,400 and 857,300, and the marginal top tax rate for income above NOK 857,300 is 12%.

The wealth tax rate is suggested to be reduced from 1.1% to 1.0 %. Net wealth exceeding NOK 1.000,000 will be taxed with the 1.0% flat rate. In 2013 net wealth exceeding NOK 870,000 was taxable, and the limit is increased by 15%.

With the suggested changes, marginal tax rate for employees will be reduced from 47.8% to 47.2%.

Social security rates

The budget proposes an increase in the social security contribution rate for members of the Norwegian National Insurance Scheme as permanent residents or employees in Norway. The employee's contribution rates proposed are increased by 0.4% for all four contribution categories, i.e. for ordinary wage income, for income derived from fishing, hunting and child care, for income from self-employment, and for pension income. If the budget is approved by the Norwegian Parliament in December, the social security contribution rates will increase to 8.2 % for ordinary wage income and income derived from fishing, hunting and child care. The social security contribution rate for income from self-employment will be 11.4% and 5.1% for pension income. The threshold for paying employee's contributions is proposed unchanged for 2014; however income below NOK 39,600 will not be subject to employee's contribution.

At present, there are not any proposed changes to the current employer's contribution rate. The Norwegian Parliament will probably leave this contribution unchanged on the existing 2013 level with a contribution rate at 14.1% for zone 1. Please note that recent European Union (EU)/European Economic Community (EEC) legislation on regional state aid will enter into force on July 1st 2014 and that one may expect that the legislation of employer's contribution will most likely be changed during 2014.

Deductions and allowances

The personal allowance will increase by 3.5% according to the expected salary increase in 2013. The personal allowance increases from NOK 47,150 to NOK 48,800, tax class 2 abolished.

The basic tax allowance will be increased from 40% to 43%. The upper limit was NOK 81,300 in 2013 and will be NOK 84,150 in 2014. The adjustment of the upper limit is also 3.5 %.

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Tax class 2 deduction

The Norwegian government suggested in the original and revised budget to abolish tax class 2. Currently tax class 2 is a benefit for married individuals in which only one of the individuals is working. A personal allowance of NOK 48,800 (suggested 2014 rate) that is not utilized for the individual who is not working is currently taken into account in a joint assessment resulting in an overall tax reduction of up to NOK 13,176 (with suggested 2014 rate).

Recent negotiations between the minority government and other parties, has resulted in a revision of the original proposal. The personal allowance in tax class 2 is reduced to 72,000. This would give an overall tax reduction of Norwegian kroner 6,264.

Inheritance tax is abolished

The government proposes a significant change in the inheritance taxation seeing as it is suggested to abolish inheritance tax from 1st January 2014. With the current legislation, inheritance tax is payable on inheritance with an inheritance tax free bracket based on receivers family relation to the deceased/testator. It is suggested that no inheritance tax would be due for gifts provided from 1st January 2014 and for inheritance where death occurred in 2014.

The abolishment of inheritance has also resulted in a suggested change where the inheritor also adopts the historical cost of the testator for noncash items. A principle of continuity is introduced for noncash inheritance. An exception is suggested for personal residence, vacation homes, and certain farms where the testator could sell tax free according to domestic legislation. In such cases, the inheritor will receive a new cost price as the current market value of the property.

Deduction for employer financed electronic communication

The government suggests a simplification of the current valuation of employer financed electronic communication. Currently, employer provided electronic communication is valued to NOK 4,000/6,000 per annum based on one or more subscriptions provided (usually mobile phone and broad band subscription). It is suggested that the current rates should be replaced with one annual value rate of NOK 4,400.

Commuter deductions work related travel and home visits

The government suggests that non EEA commuters should be eligible for commuter deductions for home travel and that a ceiling is set to avoid high commuter deductions for long-distance commuters. The background is to avoid eligibility for deduction that is higher than the actual costs.

Within EEA – Suggested maximum travel distance per year: 75,000 kilometers. No deduction for travel distance exceeding this distance. Maximum annual deduction for commuter travel would be limited to NOK 78,500 (including deduction for personal contribution that reduce the deductible part included in the tax assessment).

Outside EEA – The government suggests introducing eligibility to claim deduction for commuter travel to non EEA states and also set a ceiling for this deduction. The maximum deduction amount would be limited to NOK 92,500 per year and maximum deduction in a tax assessment would be limited to NOK 78,550 (taking into account a NOK 13,950 personal contribution). The commuter deduction would be given for documented travel costs. Such as airfare; deduction based on travel distance would only be given where private car is used (partly or for the full distance).

Gain from sale of personal residence

The previous government suggested change in the taxation regime for personal residence in the budget announced 14th October. The new government withdraws this suggested change in the revised budget announced 8th November.

Taxation of loan from employer – nominal interest rate is increased

The government suggests increasing the nominal interest rate used for valuation of benefit of low interest loans received from an employer. Due to increase of the overall interest rate level to households, the nominal rate based on state bonds has recently been significantly lower than the best bank interest rate available. It is suggested that the nominal rate is increased with 0.75%. Current nominal interest rate is 2.25% and the suggested increase will have effect from 1st March

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2014. The change will have an impact in which an employee receives a loan based on the nominal interest rate or receives a loan to zero or lower interest. Any reduced interest rate compared to the nominal interest rate will be subject to taxation and benefit will also be subject to employer social security contribution.

It is assumed and intended that the new nominal rate will still be lower than the best bank rate available.

Deduction for debt and interest – personal residence and vacation homes within the EEA

With the current legislation, deduction for interest is reduced where an individual holds personal residence or vacation homes in a state where the tax treaty exempts possible income from such property from taxation. Where a property is exempt from wealth tax due to a tax treaty, full deduction for debt is not awarded in the calculation of the net wealth subject to wealth tax under the current regime. The government suggests allowing a full deduction for debt and interest when the individual does not receive deductions in the relevant state. Deductions in Norway would be reduced with the deduction awarded in the relevant state. The suggested change comes as a result of inquiries from EFTA Surveillance Authority (ESA), in which ESA had the view that the Norwegian legislation was in breach on the EEA-treaty.

It is suggested that the change enters into force from 2013.

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Russia:
New Schengen Area entry rules

Overview

A new way of calculating the maximum allowed stay for third-country nationals intending to travel to the Schengen Area for a short stopover, introduced by EU Regulation 610/2013 (the "Regulation") and entered into force on 18 October 2013, has a great significance for non-European Union (EU) citizens.

The requirements of the Regulation apply to the following Schengen countries: Austria, Belgium, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovenia, Slovakia, Spain, Sweden, and Switzerland.

Under the former rules for stays in the Schengen Area, it was implied that the duration of an individual's stay in the Schengen countries for one or several trips on a multiple-entry visa should not exceed three months within six months from the date of first entry. However, in accordance with the new rules, the total period of short-term stay in the Schengen countries for non-European Union citizens must not exceed 90 days in any 180-day period, regardless of which country issues the visa.

The 180-day period starts from the date of first entry into the Schengen Area (rather than the date on which the visa was issued). As of 18 October 2013, the total number of days spent in the Schengen Area must be calculated, taking into account the 180-day period preceding each day of every stay.

Periods of stay authorized under a long-stay visa (type D) or a residence permit shall not be taken into account when calculating the duration of stay in the Schengen Area.

Example

If a non-EU citizen plans to enter Austria on 1 December, he/she should calculate the duration of stay by counting 180 days back from the date of planned entry (1 December), i.e., 3 June. Then it is necessary to calculate how many days in total were spent in the Schengen Area from 3 June to 1 December. Let us suppose that the individual has been in Italy for 20 days in June, then in France for 20 days in September, and in Finland for 15 days in November. Therefore, in the six months

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prior to 1 December, the individual has spent 55 days in the Schengen Area and so the rule of "90 days in any 180-day period" is observed.

A special online calculator has been made available to calculate the number of days you have already used.
URL: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/schengen_calculator_en.html

Requirements on travel documents

Requirements on travel documents for Schengen Area entry have been clarified by the Regulation.

The travel document should expire no earlier than three months after the intended date of departure from the Schengen country.

The travel document had to have been issued within the last 10 years.

Exceptions

The provisions of the Regulation do not apply to citizens of countries that have concluded visa waiver agreements with the European Union (e.g., Barbados, Brazil, Saint Kitts and Nevis, the Seychelles, etc.), as well as to citizens of countries that have concluded bilateral visa waiver agreements with Schengen countries before the entry into force of the Schengen Agreement.

Deloitte's comments

Employers should consider the above-mentioned changes when sending employees on business trips to the Schengen countries. Employees, often crossing the border of the Schengen Area, with itinerant nature of work, transporting goods, accompanying travelers or delegations, conducting in business trips to countries of the Schengen Group a lot of time during the year, are all in the risk envelope.

Failure to comply with this rule can cause problems on the border. If the duration of stay exceeds 90 days during the 180-day period, entry into the country will be denied until the end of the particular 180-day period.

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Global Rewards Updates:
United Kingdom: Finance Bill 2014 – Draft legislation on employee share plans

Background

On 5 December 2013 the Chancellor of the Exchequer delivered his Autumn Statement announcing a number of changes to the taxation and operation of employee share plans.

The UK Government has now published draft legislation (the Finance Bill 2014) and this Global Rewards Update (GRU) summarizes the proposed changes, which remain subject to consultation. Many of these measures are broadly based on the Office of Tax Simplification (OTS) recommendations (see GRU).
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/gx_tax_alert_UnitedKingdom_June-2013.pdf?id=us:em:na:gis:eng:tax:122013

Share plans for internationally mobile employees

The legislation aims to simplify the UK income tax and National Insurance (NIC) treatment of share based incentives for internationally mobile employees.

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Current position – Currently, there is significant complexity in determining the UK income tax and NIC treatment of share based incentives for internationally mobile employees. There can be different outcomes depending on, for example, the type of award granted and residency at that point, whether the employee is inbound to or outbound from the UK, and which country they reside in after the leaving the UK. The income tax analysis will also, in many cases, be different to the NIC analysis.

Proposed position – The draft Finance Bill seeks to simplify the treatment for all options and share awards granted to internationally mobile employees on or after 1 September 2014. The proposal is that income tax will be payable only by reference to UK workdays in the period over which the share award is earned. The existing legislation will apply to all awards granted before 1 September 2014.

There is also specific guidance on the sourcing period to be used in these circumstances. However, in cases where the sourcing period specified in the legislation is not considered to be 'just and reasonable', it should be possible to use a sourcing period that would be considered as such.

The Government has also announced that they will align the NIC position to follow the income tax treatment as far as possible. Further details of the NIC changes will be set out in due course.

These measure will be very welcome to many employers who currently have to spend time grappling with the complex rules. However, there could also be many years of applying two different approaches depending on the date of grant. Therefore there will be some winners and some losers from the proposed changes, for example:

> *An employee was granted a stock option outside of the UK whilst not UK resident, and not in anticipation of UK duties. The employee subsequently moved to the UK where he exercised the option. Under the current rules, no UK income tax would arise at exercise as the employee was not UK resident at grant. However, under the new rules, UK income tax would arise at exercise based on the UK period working time in, ordinarily, the grant to vest period.*

Action – Although this is draft legislation subject to consultation, companies should consider the possible impact on their internationally mobile employees and overall processes for tracking employees and calculating the amount of tax due. It is also important to consider the potential costs to the company, for example, if options are tax equalized.

The government may be open to representations that the new rules should apply to vesting events from 6 April 2014. If this does happen then, employees who hold vested share options may wish to consider if it would be beneficial for the employee (or the company if the employee is tax equalized) to exercise the option before or after the new rules take effect.

Corporate tax relief for internationally mobile employees

The draft legislation relaxes the rules for obtaining a statutory corporate tax deduction for options and share awards granted to employees who are on assignment or secondment in the UK (i.e. are not contractually employed by the UK company).

Currently, in order to obtain a statutory corporate tax deduction a number of conditions have to be met. One of the key conditions is that the employee must be contractually employed by the company claiming the statutory deduction.

The draft legislation proposes a statutory corporate tax deduction (assuming other conditions are met) even if the employee is not contractually employed by the UK company. Provided that the employee is performing services for the UK company, a deduction should be available for share income up to the amount on which the employee is chargeable to income tax.

This change is set to apply from 1 September 2014.

Action – This is welcome news and potentially allows employers to claim a statutory corporate tax deduction for employees where they previously could not.

Companies should consider how they can track employees into the UK and establish the amount of the relevant deduction.

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Corporate tax relief on a company takeover

The rules for obtaining a statutory corporate tax deduction when a private company is taken over by another private company have been relaxed.

Under current rules, in order to obtain a statutory corporate tax deduction, the shares acquired at the exercise of an option must either be listed on a recognised stock exchange, in a company that is not under the control of another company, or in a company that is under the control of a listed company.

It is often the case that, when a company is taken over, all outstanding options will vest and become exercisable as a result of the transaction. However, where a private company is taken over by another private company, if an option is exercised after the transaction, the shares acquired will not qualify for a statutory corporate tax deduction. The Finance Bill proposes to allow a statutory corporate tax deduction to be available where an option is exercised within 90 days of a company being taken over by another private company.

This change is set to apply from 6 April 2014.

Comment – This is another welcome change and will enable companies in similar circumstances to obtain a statutory corporate tax deduction without complex planning.

Changes to tax advantaged share plans

The Government announced an increase to the tax free limits that apply under the share incentive plan (SIP) and the Save as you earn plan (SAYE). In particular:

- The maximum value of partnership shares that can be purchased each year (under the SIP) is increased from £1,500 to £1,800.
- The maximum value of free shares that can be awarded each year (under the SIP) is increased from £3,000 to £3,600.
- The maximum value which an employee can save each month under the SAYE is increased from £250 to £500.

These limits will apply to options granted or SIP shares acquired from 6 April 2014.

Action – Employers who want to increase their offering should consider if they need to amend their existing rules to allow for the increased limits, and amend their employee communications appropriately.

Employers who don't want to increase their offering should check their rules to ensure they are not bound by these increases.

Self-certification and online filing of share plans

As outlined in the August GRU, the draft Finance Bill introduces legislation covering the self-certification for tax advantaged share schemes, along with the registration and online filing requirements for all employee share plans.
URL: hhttp://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-gru-unitedkingdom-august-2013.pdf?id=us:em:na:gis:eng:tax:122013

From 6 April 2014:

- Employers will be required to register their employee share plans with HM Revenue & Customs (HMRC) via the PAYE Online service.
- Companies will be obliged to file their annual share plan returns (including Form 42) online (for the 2014/15 tax year onwards). To date HMRC have not provided any further details on the exact nature of these forms, therefore we await further information.
- Companies who wish to implement a tax advantaged plan will no longer need to seek formal approval of the plan from HMRC. Instead they will be asked to self-certify that their plan meets the conditions set down in legislation. This would be done as part of the online registration process mentioned above.

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Action – Employers should be prepared to register new and current share plans via the PAYE Online service.

Employers may also want to review the manner in which they compile their share plan annual returns, and consider whether this approach should change as a result of the introduction of online filing. For the year ending 5 April 2014, existing processes will apply.

Any employers considering implementing a new tax advantaged share plan may wish to consider delaying the implementation until after 6 April 2014 in order to benefit from the self-certification regime.

Valuation of shares for tax purposes

For UK listed company shares, the market value of the shares for tax purposes is based on a specific methodology, either the 'quarter up' method or the 'average of marked bargains' method.

Following a recommendation of the OTS, the Government has confirmed that the current valuation methods will be simplified. The valuation of the shares will be taken as the closing price on the day on which the taxable event occurs.

The measure will be relevant to companies whose shares are listed on the Stock Exchange Daily Official List and is expected to be introduced by secondary legislation form 6 April 2014.

Action – In practice, many companies apply this valuation method.

Those who do not and who are on the Stock Exchange Daily Official List should be prepared to revise their methodology of calculating tax due at a taxable event, particularly where they are required to operate PAYE on this value.

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