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Global Employment Solutions

# Global InSight

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In this issue:



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## Hong Kong:
## Immigration Department steps up enforcement during Chinese New Year: Nonresident performers reminded to comply with Hong Kong immigration and tax rules

### Summary

On 4th February, the Hong Kong Immigration Department's Task Force officers conducted a raid on a lion dance performance in the city center. Failing to provide proper immigration documentation and authorization, several mainland lion dance performers were arrested on the spot and charged with suspected breach of conditions of stay in Hong Kong. The lion dance group leader was also charged with suspected employment of persons not lawfully employable in Hong Kong. The case is still under investigation by the authorities.

### Immigration rules for nonresident performers

Under Hong Kong immigration rules, visitors to Hong Kong are not permitted to take up employment in Hong Kong, whether paid or unpaid, or to establish or join any business in Hong Kong without the permission of the Director of Immigration. Regardless of the duration of the performance and whether the performer is paid or unpaid, a nonresident performer is required to obtain an employment visa before he/she is allowed to come to Hong Kong to perform (e.g., music performances, dances, drama, traditional operas).

Offenders are liable to prosecution and upon conviction may be sentenced up to a maximum fine of HKD 50,000 and imprisonment for two years. Furthermore, anyone employing or engaging persons not lawfully employable in Hong Kong is liable to a maximum fine of HKD 350,000 and three years' imprisonment.

### The latest trend

The Hong Kong authorities remain vigilant against illegal workers, and in recent years, the Immigration Department has continued to take tough and effective enforcement actions against unlawful employment in order to protect the local labor market. Measures taken include publishing related government policies and regulations, encouraging the public to blow the whistle on offenders (through a 24-hour hotline or the Immigration Department website), as well as increasing the number of surprise checks. In calendar years 2012 and 2013, the Immigration Department has prosecuted nearly 7,000 cases, and among them, many were whistleblowing cases, similar to the case above.

## Tax implications of sum paid to nonresident performer

From a tax perspective, whether a nonresident performer (or entertainer/sportsman) is an employee requires careful review of the documentation (e.g., copy of employment contract, if any, or copy of employment visa application submitted to the Immigration Department) and specifics of the arrangement.

Under current Hong Kong tax law, any sums received with respect to a performance by a non – Hong Kong resident performer (or entertainer/sportsman) in Hong Kong who is not an employee are chargeable to profits tax in the name of the person in Hong Kong who pays or credits the sums to the entertainer/sportsman (the "Hong Kong payer"). Profits tax is charged on the gross amount received less deductible expenses. The Hong Kong payer is also required to report the payment by completing the nonresident tax return if required by the Inland Revenue Department and subsequently settle the tax amount due.

If the relationship between the Hong Kong payer and the performer (or entertainer/sportsman) is that of an employer and employee, regular Hong Kong salaries tax reporting and filing obligations apply.

Failure to comply may affect the reputation of both the Hong Kong payer (or employer) and the individual. Any person who without reasonable excuse fails to furnish a return in time or fails to inform chargeability to tax is subject to a fine of HKD 10,000 and three times the tax undercharged. As such, companies (or employers) should carefully plan and ensure proper documentation is in place to comply with the Hong Kong tax rules.

## Deloitte's view

While Hong Kong has a relatively simple tax and immigration system, the authorities remain very focused on ensuring compliance. Where companies and individuals are noncompliant, there can be not only monetary penalties but also criminal charges and reputational considerations. This case emphasizes the increased focus on compliance in the Asian market and the need for companies to actively manage and monitor their compliance requirements.

Deloitte Hong Kong has experienced Global Mobility professionals who can provide advice in both immigration and tax aspects. Please contact one of our professional team members if you would like to learn more.


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## United Kingdom:
## Immigration update: Proposed new fees and changes

### Overview

On 3 February 2014, the Minister for Immigration announced proposals to revise the fees for the majority of existing immigration and nationality applications and introduce a number of changes to Home Office services and the current immigration rules.

The Home Office has attributed the increases in fees to the necessity to redistribute the burden of supporting the immigration system from the UK taxpayer to those who benefit directly from the system.

Subject to parliamentary approval, the new fees will come into force from 6 April 2014 with some fees for premium services overseas coming into effect from 31 March 2014.
URL: http://tax.cmail3.com/t/r-i-pdikkdd-l-j/

### Major changes

Tier 2 (General) and Tier 2 (Intracompany transfer) – One important proposed change involves the extension of the initial grant of leave to enter or remain in the United Kingdom for Tier 2 (General) and Tier 2 (Intracompany transfer) migrants from three years to five years. It is not clear when the proposed change will come into effect or whether there will be a change in the criteria required to qualify for the new five-year route.

Prevention of Illegal working: civil penalty fines raised – At present, employers can be fined for employing those with no legal right to work in the United Kingdom up to a maximum of £10,000 per illegal employee.

The Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2014 increases the maximum penalty to £20,000 per illegal employee from 6 April 2014.

Registered Traveller Scheme – The Home Office will be piloting a Registered Traveller Scheme for migrants from certain non-European Economic Area countries, who visit the United Kingdom at least four times a year. The migrant will need an e-passport and pay a yearly fee of £50 to make use of this scheme which will expedite border clearance procedures for the migrant.

Additional Services – In order to facilitate applications from outside the United Kingdom, the Home Office will introduce additional services and standardize their costs globally on 6 April 2014 – fee increases are expected to come into effect one week earlier.

- Their "priority" service (three- to five-day visa processing) is to be available globally for £100 for nonsettlement applications and £600 for settlement applications.
- In addition to appointments at standard free access visa centers, new conveniently located pay-as-you-use visa application center appointments are to be available for £59 per applicant.
- Appointments at certain visa application centers are to be available outside of office hours for £50.
- Passport pass-back services are to be introduced to more locations, which will enable travel while applications are being decided.

### New fees relevant to the Tier-2 category

A significant number of revisions have been made to Home Office fees, but increases have generally been limited to 4%. An exception is the increase of fees for dependent applications, which have risen by approximately 38% to reflect the advantages that dependents receive in relation to the main applicant when granted leave to remain.

Fees relating to applications to fill jobs on the shortage occupation lists will be reduced in order to attract more migrants to enter under the Tier-2 Shortage Occupations category.

Deloitte's view

Many businesses will welcome news of an expansion of priority services for visa applications made outside the United Kingdom, as well as the addition of new services aimed at providing greater convenience to applicants despite the additional cost. Faster processing times and the ability to travel at short notice remain a priority for many applicants.

The extra costs for these services – as well as rise in the standard visa processing fees – will continue to drive up the cost of bringing skilled labor to the United Kingdom.

With new civil penalty fine increase for employing illegal workers, employers need to ensure that they are carrying out appropriate right to work checks and annual checks – and have evidence on file which will act as a defense should they be found to be employing illegal workers unknowingly. The new penalty fine increase acts as a timely reminder to review compliance processes and conduct spot checks regarding evidence held.

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## Global Rewards Updates:
## Hungary: Changes to approved employee share plans

Background

Hungarian legislation provides for qualifying tax treatment for certain share options and share awards under an Approved Employees Securities Plan (AESP), if certain conditions are met.

Where these conditions are satisfied, no tax is payable until the sale of the shares in Hungary. The individual is then subject to capital gains tax rules upon sale of the shares.

Effective from 1 January 2014, changes to Hungarian legislation have amended the conditions required to be met for the qualifying treatment to apply.

Changes to approved employee share plans

Previously, local employers were required to register AESPs with the relevant authorities in Hungary. This obligation has now been abolished.

The conditions for the beneficial tax treatment to apply under an AESP remain mostly unchanged:

- A maximum of 25% of plan participants can be executives;
- Executives should not receive more than 50% of the nominal value of shares made available under the plan; and
- The benefit provided to participants should not exceed HUF 1,000,000 (c. GBP 2,700) per participant per year.

The following have been introduced as new conditions:

- Eligibility for participation in the plan should not be related to the performance of the employee (however, vesting of awards can be subject to conditions not related to the employee's performance);
- The plan should be communicated to all employees and executives (even to those who are not eligible to participate).

The following condition has been removed:

- The number of participants in the plan must not be less than 10% of the average number of participants for the previous year (substantiated by a letter of interest signed by the participants).

Action

Companies may consider implementing an AESP in Hungary, to allow participants to benefit from the tax advantages.

If companies are already operating an AESP (registered prior to January 2014), they should reassess whether the plan meets the qualifying conditions, when:

- Changes are made to the plan; or
- The period the plan was registered for (usually up to 10 years) expires.

Although the administrative burden of implementing an AESP has been reduced (i.e. there is no longer a requirement to register the plan with the relevant authorities), companies should ensure they are comfortable that the share plan meets the required conditions. To eliminate risk and in the case of uncertainty, we recommend that companies file a ruling request with the relevant authorities to confirm the approved treatment of awards.


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## Global Rewards Updates:
## United Kingdom: Self-certification of tax-advantaged share plans and online filing of share plan returns

Background

As discussed in our previous Global Rewards Updates of August 2013 and December 2013, HMRC have introduced draft legislation in relation to the self-certification of tax advantaged share plans and online filing of share plan returns. The effect of the draft legislation (contained in the draft Finance Bill 2014) is that from 6 April 2014:

URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Content/Articles/Tax/Newsletters%20and%20alerts/Global%20Rewards%20Updates/dttl_tax_alert_UnitedKingdom_August-2013.pdf?id=us:em:na:gis:eng:tax:031414
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-gru-unitedkingdom-dec-2013.pdf?id=us:em:na:gis:eng:tax:031414

- 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 (for example, Form 42 for non-tax advantaged plans) online (for the 2014/15 tax year onwards).

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.

### Recent developments

Deloitte attended a meeting recently at which HMRC provided additional information in relation to these items. Some of the key points for employers to be aware of are as follows:

- Employers will not be able to register their share plans with HMRC until on or after 6 April 2014.
- Once a plan has been registered, a unique registration number will be generated and this reference number is needed in order to be able to submit the online share plan return. HMRC has advised that it could take up to one week to generate this reference number. As such, companies should ensure they register their plans well before 6 July 2015 so that returns for the 2014/2015 tax year can be filed on a timely basis.
- Tax agents are not able to register the share plans – this has to be completed by the company. Once a plan has been registered, however, agents will be able to submit the share plan returns on behalf of employers.
- In relation to form 42, there is a reasonable amount of flexibility as regards how to register – for example, a parent company could submit one registration to cover multiple plans, PAYE references and/or employer companies. Alternatively, each plan/reference/employer could be registered separately (but in that case, a return would have to be submitted for each reference created).
- Information to be included on the share plan returns for 2014/15 is broadly similar to that for 2013/14.
- Companies will be able to either:
  - Enter and submit information directly on to the HMRC system; or
  - Download the relevant templates from the HMRC website (where they will be held in 'Open Document Format' (ODF)), complete the templates as appropriate and re-upload them to the system (again in ODF format) for submission to HMRC.
- The HMRC online system will not be ready until October 2014. The templates however should be ready to download from April 2014.
- Information will be provided to companies when the 'Notices to file' share plan returns for the 2013/2014 are sent out (generally to the Company Secretary). FAQs and a video showing how to register and self-certify will also be posted to the PAYE online service – likely to be in March 2014.

### Action

Employers should be prepared to register new and current share plans via the PAYE Online service. As such, they should identify who has access to the PAYE Online service so that plans can be registered on a timely basis (and in any event, well before 6 July 2015).

Employers may also want to consider the most effective way in which they compile their share plan annual returns, particularly where UK employees receive awards under different plans/employers/PAYE references.

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