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People's Republic of China: New Visa Policy to Benefit US Nationals Visiting or Studying in China

Overview

As per the new policy from Chinese consulates in the United States, effective from November 11, 2014, a qualified US national may apply for the China M (business), L (tourist), Q2 (reunion), and S2 (family visiting/private matters) visas with multiple entry up to 10 years.

Qualified students with US citizenship who intend to study in China may apply for valid *multiple entry residence permits up to five years* when entering China if they hold an X1 visa.

Key implications

A summary of the visa categories mentioned above and the maximum length of each stay in China is set forth below:

- M (business) visa: Issued to those who intend to come to China for commercial and trade activities. The visa holder may stay in China up to 60 days maximum per trip.
- L (tourist) visa: Issued to those who intend to come to China as a tourist. The visa holder may stay in China up to 60 days maximum per trip.
- Q2 (reunion) visa: Issued to those who intend to visit their relatives who are Chinese citizens residing in China or foreigners with permanent residence in China. The visa holder may stay in China up to 120 days maximum per trip.
- S2 (family visiting/private matters) visa: Issued to those who intend to visit their family members who are foreigners working or studying in China or to those who intend to come to China for other private matters. The visa holder may stay in China up to 90 days maximum per trip.

If the US national is going to extend his/her length of stay in China (e.g., the L visa applicant plans to stay in China for 70 days instead of 60 days), the China Consulate would only approve the L visa for one to two years instead of a 10-year visa.

- X1 visa: Issued to those who intend to study in China. The qualified students with US citizenship may apply for residence permit up to five years after arrival in China, and there should be no maximum duration for each stay, subject to residence permit expiration date.

The procedure and conditions for China visa applications remain the same as before under the new policy. The consular officers working in the Chinese consulates in the United States, and China police officers will decide on whether or not to issue the visa regarding its validity, duration of each stay, and number of entries in light of the specific conditions of the applicant.

When the US national obtains a 10-year China visa and renews his/her passport, he/she may hold both the new and old passports to enter China if the name, gender, date of birth, and nationality remain the same.

Deloitte's view

- China's new visa policy benefits US nationals to a great extent, especially for the frequent business travelers to China and the US family members of Chinese citizens/foreign individuals staying in China.
- Detailed implementation rules of the new China visa policy has not been released in writing by the Chinese government. It is highly recommended to keep a close watch on the development of this new policy.

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People's Republic of China: New Procedures for Foreigners Entering China for Short-Term Assignments

Background

As per the new notice from Chinese Governments (Ministry of Human Resources and Social Securities, Ministry of Foreign Affairs, the Ministry of Public Security, and the Ministry of Culture), effective from January 1, 2015, a foreigner entering China for Short-Term Assignment (STA) must apply for necessary China working documents (e.g., Employment License, Employment Certificate, Z Visa, and/or residence permit). For any violation of the new policy, both the assignee and employers would be subject to punishment by the Public Security Bureau.

Definition of the STA

A foreigner entering China for STA refers to a foreigner who comes to China under the below circumstances and stays in China for no longer than 90 days, for the following activities:

1. Certain technical, scientific research, management, or guidance work performed in China;
2. Training at a sports institution in China;
3. Film shooting;
4. Fashion show;
5. Engaging in commercial performance; and
6. Other circumstances designated by the relevant human resource and social security department.

In this connection, the foreigner should obtain the Employment License, Employment Certificate, Z Visa, and/or residence permit to stay in China. However, if the assignment period is more than 90 days for each single stay, the foreigner should apply for work permit and residence permit.

Immigration Procedure

For STA, the new immigration procedure is as follows:

- **Step 1:** Employment License and Employment Certificate application -- If the foreigner is invited by an entity or party in China for engaging in short-term work, the Chinese entity or party should sponsor with the working document application. If the foreigner enters China for STA in two or more provincial-level areas, the foreigner would apply for working documents at the place where the Chinese entity or party is located.
- **Step 2:** Z Visa notification letter application
- **Step 3:** Single-entry Z Visa application overseas
- **Step 4:** When the foreigner comes to China for STA for *not more than 30 days*, he/she must leave China before Z Visa expires -- If the STA period is more than 30 days but less than 90 days, after the foreigner's arrival to China, he/she should apply for the 90 days valid residence permit with work purpose.

Additional Notes

1. Below circumstances should not be regarded as a STA:
 - a. Maintenance, installation, debugging, dismantlement, guidance, and training to support machinery or equipment purchased by the Chinese party;
 - b. Providing guidance, supervision, or inspection over a bid-winning project in China;
 - c. Being dispatched to a branch company, subsidiary company, or representative office in China for short-term assignment (under 90 days in a calendar year);
 - d. Participating in a sports event;
 - e. Entering China to engage in unpaid work or to serve as a voluntary worker or volunteer work whose salary is paid by an overseas institution; and
 - f. The relevant competent culture department does not indicate the words "foreign – related commercial performance" in the approval document. If a foreigner stays in China for not more than 90 days and meets the circumstances specified in items a, b, c, or d, he/she should apply for the M Visa, while F Visa should be applied to the items e or f. In situations where the foreigner falls under items a, b, c, or e and spends more than 90 days for each stay, he/she will be required to obtain the work permit and residence permit. If the foreigner obtains the Employment License and Employment Certificate, but he/she does not come to China due to assignment cancellation, the Chinese party shall report this to the relevant authority in writing.
2. When the foreigner comes to China for STA, the staying period of assignment in China should not exceed that indicated in the Employment Certificate and the Employment Certificate cannot be renewed.
3. For foreigner's illegal employment, the penalty for the individual would be up to RMB 20,000 and/or detained between 5 to 15 days for the individual. For companies who illegally hire foreigners, the penalty may be up to RMB 100,000.

Deloitte's view

- When foreigners come to China for STA, the individual should pay attention to this new STA immigration procedure. Most importantly, mutual agreement between overseas company and the cooperative party in China should be executed to ensure compliance with new STA rule.
- Since the validity of Employment Certificate and Z Visa is very short, it will be necessary for the visa holder to closely monitor their period of stay in China to ensure that the

holder does not inadvertently overstay beyond the approved period. In this regard, Deloitte recommends that employers track and monitor STA immigration compliance very closely.

- Chinese Governments will further standardize the employment of foreigners in China. Detailed implementation rules of the new notice have not been released in writing by the Chinese authorities. It is highly recommended to keep a close watch on the development of this new policy and take necessary actions where appropriate.

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Singapore: Clarity on Individual Tax Filing Requirements for Frequent Business Travelers (FTBs)

Background

Generally, an employer is required to notify the Inland Revenue Authority of Singapore (IRAS) by filing the Form IR21 (Notification of a noncitizen employee's cessation of employment or departure from Singapore) for its employee who is neither a Singapore citizen nor Singapore Permanent Resident (SPR) (under immigration rules) or is an SPR who is leaving Singapore permanently (including on overseas posting for a period of more than 3 months) on cessation of employment in Singapore, at least one month before the expected date of cessation of employment or departure from Singapore, whichever is earlier.

In addition, the employer is required to withhold any monies due and payable to such employee until the expiry of 30 days after the receipt by the IRAS of such notification, or until tax clearance is obtained from the IRAS, whichever is earlier.

Where the employee's tax liability is fully borne by the company, the IRAS will grant a 2-month extension of time from the cessation date to file the Form IR21 and the withholding of monies may not be required.

Clarity on Individual Tax Filing Requirements for FBTs

In view of the practical issues faced by employers in meeting the tax clearance filing timelines for foreign employees who have employment bases outside Singapore (i.e., exercising employment outside of Singapore), but are required to make frequent business trips to Singapore (i.e., FBTs), the IRAS is prepared to allow extension of time for the filing of the tax clearance returns for the FBTs as follows:

Category of FBT	Submission Deadlines
The work has ended and the FBT will not be making further business trips to Singapore (with or without work pass obtained)	<p>2 months from the date of last business visit.</p> <p>Example:</p> <ul style="list-style-type: none"> • Date of last business visit: 30 November 2014 • Due date to submit Form IR21: 31 January 2015
The company cancels the work pass of the FBT or the work pass expires	<p>2 months from the date of cancellation or expiry of the work pass</p> <p>Example:</p> <ul style="list-style-type: none"> • Date of cancellation/expiry of work pass: 31 December 2014 • Due date to submit Form IR21: 28 February 2015
FBTs whose business trips straddle over more than a year and no work pass is obtained	<p>The company has until 31 January of the following year to complete an annual review of the travel days of the FBT to Singapore.</p> <p>The company has to file the Form IR21 by 31 March (i.e., 2 months from 31 January of the following year)</p> <p>Example:</p> <ul style="list-style-type: none"> • FBT makes 5 business trips to Singapore during the year 2014, and is still required to make 3 business trips to Singapore during the year 2015 • Due date to submit Form IR21 for the year 2014: 31 March 2015 • Due date to submit Form IR21 for the year 2015: 2 months from the date of last business visit in the year 2015

Category of FBT	Submission Deadlines
FBTs whose business trips straddle over more than a year and work pass is obtained	<p>The company is required to prepare the Employer Return of Employee Remuneration (Form IR8A) and provide the same to the FBT by 1 March of the following year. If the company is under the Auto Inclusion Scheme (AIS), the company is required to electronically transmit the same to the IRAS (via submission of Form 8E) to the IRAS by 1 March of the following year.</p> <p>The FBT is required to file his Singapore tax return (Form B1/Form M) by 15 April of the following year, or e-file by 18 April of the following year.</p> <p>Example:</p> <ul style="list-style-type: none"> • FBT makes 5 business trips to Singapore during the year 2014, and is still required to make 3 business trips to Singapore during the year 2015 • Due date to prepare Form IR8A/e-file Form 8E for the year ended 31 December 2014: 1 March 2015 • Due date to submit/e-file Form B1 for the Year of Assessment 2015 (income year 2014): 15 April 2015 (paper filing)/18 April 2015 (e-filing) • Due date to submit Form IR21 for the year 2015: 2 months from the date of last business visit in the year 2015

Please note that the above tax clearance filing timelines apply to FBTs who have exercised employment in Singapore for more than 60 days in the calendar year.

For FBTs who have made business trips in Singapore for not more than 60 days during the calendar year, they may be treated as short-term non-resident visiting employees and be exempt from tax in respect of income from employment of not more than 60 days under Section 13(6) of the Singapore Income Tax Act (SITA). However, please note that Section 13(6) does not apply to income derived by a director of a company.

Please also note that for the FBTs to avail to the respective filing extensions, the employer has to indicate that the employee is an FBT by way of a covering letter when submitting the Form IR21 to the IRAS, together with the FBT's travel schedule.

Deloitte's view

The tax filing requirements for FBTs have traditionally proven to be challenging for employers as such individuals are typically not employees of the Singapore entities (which may act as sponsor for the work pass) and at times, work passes may not have been obtained for them in Singapore.

This coupled with the IRAS tightening its enforcement on the filing of tax clearance returns and the imposition of penalties for the late filing of tax clearance returns and/or issue of estimated tax assessments where tax clearance returns have not been filed, made the tax reporting of FBTs extremely onerous on the employer/Singapore entities.

With the IRAS providing clarity on the filing timelines for FBTs who spend more than 60 days in Singapore each calendar year (and hence not available for exemption of income in Singapore under Section 13(6) of the SITA), the IRAS is expecting employers to track the movements of their FBTs into Singapore and ensure that the appropriate tax reporting requirements are met.

It is therefore important for companies to review their tracking mechanisms for FBTs into Singapore, and also the implementation of processes to collate the necessary compensation information required to fulfil the tax reporting requirements to avoid penalties and enforcement actions by the IRAS.

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Sweden: Ruling from the Supreme Administrative Court regarding how to calculate the qualifying gross salary under a net salary contract when applying for expert tax relief

Overview

On 26 November 2014, the Supreme Administrative Court published a ruling on the method for calculating the qualifying gross salary for expatriates working in Sweden on a net salary contract when applying for the tax relief for foreign experts based on their salary level. The Supreme Administrative Court's decision clarifies that the gross salary must be determined taking the tax relief for foreign experts into account.

Background

Under the rules for tax relief for foreign experts and key personnel, an individual with a monthly remuneration above SEK 88,800 for 2014 and SEK 89,000 for 2015 will qualify for the relief.

A net salary must be converted to a gross salary in the application to the Taxation of Research Workers Board, which is the deciding authority in determining if the salary level for the expert tax relief is met. In relation hereto the question has arisen if the tax relief for foreign experts should be taken into consideration when calculating the gross salary or not.

To illustrate the difference, please see table below.

	Considering the tax relief	Without consideration of the tax relief
Net salary	60 000 SEK	60 000 SEK
Gross up	21 500 SEK	45 000 SEK
Gross salary	81 500 SEK	105 000 SEK

The ruling of the Supreme Administrative Court

The Supreme Administrative Court ruled that a net salary must be converted to a gross salary taking the tax relief for foreign experts into consideration when determining whether the gross salary meets the requirements of the salary level for the expert tax relief. Hence, the Supreme Administrative Court's ruling follows the decision from the Taxation of Research Workers Board and the Supreme Administrative Court set aside the rulings from the Administrative court and the Administrative court of Appeal.

According to the reasoning of the Supreme Administrative Court, an individual on a net salary contract should receive at least the same amount as the net salary for an individual on a gross salary contract, in order to be entitled to tax relief for foreign experts and key personnel.

Deloitte's view

Unfortunately the reasoning behind the Supreme Administrative Court's decision is not very detailed. The ruling does however limit the possibility for many expatriates to apply for the tax relief for experts and key personnel. When determining their gross salary from the net salary contract, they will receive a salary above the threshold for the expert tax relief, but they are prevented to apply for the expert tax relief through the judgment from the Supreme Administrative Court. In our opinion this leads to an unnecessary discrepancy between net salary contracts versus gross salary contracts, where it is favorable for companies applying a gross salary policy.

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United States: IRS Issues Final Regulations Applicable to Form 8938 Reporting of Specified Foreign Financial Assets

Overview

The Treasury Department and IRS issued final regulations regarding the reporting of foreign financial assets that modify certain rules impacting the filing requirements of Form 8938 for US

taxpayers. The final regulations adopt most of the temporary regulations, with certain key modifications.

Background

In the Hiring Incentives to Restore Employment Act, enacted in 2010, Congress legislated that taxpayers meeting certain requirements would be required to report foreign financial assets to the IRS for tax years beginning after March 18, 2010. In December 2011, the IRS released temporary regulations that addressed many of the rules regarding who would be required to report these foreign financial assets, which assets would be included, and various other rules. As a result of the legislation, and as clarified by the temporary regulations, Form 8938, Statement of Specified Foreign Financial Assets, was finalized for taxpayers with a reporting obligation of their foreign financial assets.

Final Regulations

The IRS recently released final regulations related to the reporting of foreign financial assets, addressing the many comments that were submitted to the IRS since the release of the temporary regulations. For most of the provisions, the final regulations adopt the rules that were initially published as part of the temporary regulations. However, there are a few key modifications to these provisions. These modifications include the following:

Individuals Required to Report: All “specified individuals” are subject to the reporting requirements of these rules. The temporary regulations identified “specified individuals” to include US citizens, a resident alien of the United States, and a nonresident alien who elected to be treated as a resident. An individual classified as a resident under US domestic law, but who invoked certain treaty benefits to be treated as a nonresident for US income tax purposes, would be required to report. The final regulations exempt an individual who is a nonresident by virtue of the treaty tiebreaker provisions from this reporting obligation, provided the taxpayer timely files his/her tax return and properly discloses the treaty claim by attaching Form 8833.

No other changes were made to the category of individual required to report their assets.

Clarification Regarding Definition of Specified Foreign Financial Assets: Initial guidance provided that a specified person that has property transferred to him/her in connection with the performance of personal services (e.g., foreign stock options) is considered to have an interest in the property whether the property was vested or not, thereby requiring both vested and unvested assets to be reported. The final regulations clarify that only vested assets need be reported, and unvested property generally may be disregarded for Form 8938 filing requirement and disclosure purposes until the time of vest, unless the taxpayer makes a valid election to include the assets for income tax purposes.

Other Changes: A few other modifications were made in the final regulations. These include:

1. Clarification regarding the reporting requirements of jointly owned assets for taxpayers who are not married or who are married but file separate returns; and
2. Simplification in the required currency conversion of foreign assets when the conversion is already shown on a periodic financial account statement that is provided at least annually by or on behalf of a financial institution maintaining an account.

One of the comments submitted to the IRS suggested that the reporting of these foreign financial assets on Form 8938 was duplicative of the reporting requirements for foreign bank accounts, and suggested that this dual requirement be eliminated. The IRS did not adopt this recommendation.

Additionally, the IRS indicated that it is considering the proper treatment of virtual currency, but did not provide any guidance with these regulations.

Deloitte's view

The reporting of foreign financial assets continues to be a primary focus for the IRS and should be taken seriously by all taxpayers. These final regulations provide some clarifications regarding certain filing obligations that were uncertain, but the clear implication in the preamble to the regulations is that the IRS is utilizing various resources to help it enforce US law, including the reporting of income from offshore accounts. Taxpayers should continue to be diligent in reporting income on worldwide income and disclosing any assets held outside the United States.

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Global Rewards Updates: France: Draft bill on qualified free shares

Background

A draft bill to be presented to the French Government in December, and to be discussed subsequently by the National Assembly and Senate, proposes new rules for qualified free share plans (i.e. Restricted Stock Unit, Long Term Incentive Plan, Performance Share Plan awards) in France.

The proposed changes for qualified free share plans are detailed below, although these may be subject to change before the draft bill is adopted into law. If adopted, the new provisions would apply to awards granted as from the date the law is published. The timeline is not currently defined but it is anticipated that the new law would be adopted in spring 2015.

Employer social security contributions

Currently employer social security is payable on qualified free shares at grant, at a rate of 30%.

The draft bill proposes a decrease of the employer social security rate to 20%.

It is also proposed that employer social security would be payable on the date of delivery of the shares.

Employee social security contributions and social surtaxes

Currently, qualified free shares are subject to employee social security at sale, at a rate of 10%. Under the draft bill, qualified free shares would become exempt from employee social security contributions.

The “acquisition gain” (i.e. the value of the shares at vesting) would continue to be subject to social surtaxes at sale but at the rate applicable to investment income (currently 15.5%), rather than at the current rate of 8%.

Two year vesting and holding period requirement

Currently the minimum cumulative vesting and holding period applicable for qualified free shares is four years. The draft bill proposes to reduce this to two years.

Income tax and taper relief

Under the draft bill, income tax will continue to be payable on qualified free share awards at the date of sale, based on the acquisition gain at vesting.

Taper relief is currently applied at 50% or 65% (depending on the number of years shares have been held for) on the capital gain only (i.e. the difference between the sales proceeds and the value of the shares at vesting). Under the proposed new rules, the acquisition gain would be subject to taper relief like the capital gain.

Action

The scope of the draft bill needs to be defined and clarified. We will provide more information on this as it becomes available.

In the meantime, companies considering implementing qualified free share plans in France should take into account the proposed new rules.

Companies offering qualified free share plans should not proceed with disqualification, nor replace qualified plans with nonqualified plans without considering the consequences of the draft bill.

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Global Rewards Updates: People's Republic of China: New circulars encouraging equity offerings in China

Background

Recently, the China Securities Regulatory Commission (“CSRC”) issued Circular [2014] 33, offering guidance for Chinese listed companies implementing Employee Share Purchase Plans (“ESPP”).

In addition, the China State Administration of Foreign Exchange (“SAFE”) issued Circular [2014] 37 announcing that equity incentive plans for non-listed Special Purpose Vehicle companies (“SPV”, referring to an overseas enterprise directly established or indirectly controlled by Chinese domestic residents for overseas investment or financing purposes) can now be SAFE registered.

Both the above newly issued circulars signal an increased interest in equity offerings as a recognised remuneration tool in the Chinese market.

ESPP guidance

ESPPs have long served as an effective global incentive vehicle. However, they are still new to Chinese listed companies due to a lack of relevant guidance in the past.

In Circular 33, the CSRC has set out the general principles and requirements for Chinese listed companies to implement ESPPs in China, particularly on the following:

- All ESPPs should comply with any relevant legal requirements and employees must be able to participate on a voluntary basis. The participants must bear the same risks as other investors.
- Funds and stocks should be offered from certain legitimate sources.
- There should be a post-acquisition holding period of at least 12 months (or 36 months if the plan is implemented through a non-public offering).
- The total number of shares held under all valid ESPPs of a listed company should not exceed 10% of the total share capital of the company, and no participant should receive a total number of shares in excess of 1% of the total share capital of the company.
- Generally, Chinese listed companies do not need to apply for the CSRC’s approval to implement an ESPP unless the ESPP is implemented through a non-public offering. The CSRC will supervise all ESPPs and may impose penalties in the event of any violation of the relevant laws and regulations.

Pre-IPO plans SAFE registration

Historically, it has been unclear whether an equity plan set up prior to a company's initial public offering ("IPO") could be SAFE registered, even if the company became listed at a later stage.

To facilitate the cross-border capital transactions involved in domestic residents' investment and financing activities via SPVs, Circular 37 has now given the green light for the SAFE registration of pre-IPO equity plans of non-listed SPVs. However, it is still unclear whether such registration is applicable for other pre-IPO companies.

While post-IPO SAFE registrations may still be acceptable for pre-IPO plans, we have seen, in recent cases, a generally more rigorous approach being taken by local SAFE officers when handling such post-IPO registrations for both SPVs and other companies.

Deloitte view

The issuance of the Circulars 33 and 37 demonstrates the increased focus on equity incentive plans in China.

Equity incentives are now a more familiar element of employee remuneration offered by Chinese companies and are becoming increasingly supported by Chinese authorities. This is a trend multi-national companies operating in China should be aware of, in order to be able to offer a competitive remuneration package in China.

In addition, from a regulatory perspective, with more equity vehicles introduced in China, companies that are considering offering equity awards in China should be aware of the evolving regulatory changes and monitor the changes in local practice.

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