



## GES NewsFlash

# Russia – Immigration: New Beneficial Treatment of Highly Qualified Specialists

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In this issue:

**Summary**

**Main changes**

**Tax treatment**

**Effective from 1 July 2010**

**Deloitte's View**

**People to Contact**

The government of the Russian Federation has published details regarding significant changes to Russian legislation as it applies to work visas and work permits required by certain experienced/qualified/specialist foreign employees.

### Summary

In November 2009, the Russian President, Dmitri Medvedev, announced that he intended to simplify the migration process for highly-skilled foreign specialists coming to Russia.

President Medvedev followed this on 20 May 2010 by signing a new Federal Law that introduces changes to the migration legislation, and also to the tax legislation, stipulating new rules applicable to highly-skilled foreign employees. These changes are designed to result in beneficial treatment for eligible foreign employees.

Oleg Artamonov of the Federal Migration Service spoke at a meeting of the American Chamber of Commerce in Moscow on 21 May 2010, and provided some additional background/perspective on interpretation of the legislation. He also indicated that the new legislation will be supported by regulations, which will be published in due course and will provide additional detail as to how the changes will be implemented.

### Main changes

The main changes ushered into effect under the new legislation include:

- A new term, "highly qualified specialist" will be introduced to the migration legislation, defined as a "*foreign citizen with experience, skills or achievements in a particular area; who, under his employment arrangements, would receive salary (remuneration) of no less than RUB 2 mln per annum.*" The provisions allow for the possibility that the RUB

2,000,000 threshold may be decreased by future legislative changes.

- Scope to obtain work authorization documents and work visas for such *highly qualified specialists* is simplified and broadened. For example, employees working in more than one region of Russia were previously required to hold a work permit for each region where work was performed. But it will be possible in certain circumstances for *highly qualified specialists* to obtain one work permit covering services that will be rendered in two or more regions of Russia.
- The administrative procedures for employers hiring *highly qualified specialists* have also been simplified, including changes to the requirements administered by the Migration, Tax, and Education Authorities. For example, currently, would-be employers of foreign nationals must apply in advance for an annual quota of work permits/work visas; but individuals coming to Russia as *highly qualified specialists* will not count towards allocated entry quotas.
- Whether an individual is competent/sufficiently skilled and experienced to be treated as a *highly qualified specialist* will be determined by his Russian employer (the new legislation defines no particular criteria other than the minimum remuneration); although the relevant authorities will be able to refuse to grant a visa and/or permit/s to any individual whose application is unsatisfactory.
- Employers will be responsible for maintaining such records and evidence as may be required in the event of an audit of *highly qualified specialists* by the authorities. One of the points discussed by Mr. Artamonov was that employers of *highly qualified specialists* will be obliged, on a quarterly basis, to provide the authorities with evidence of remuneration/salary paid.
- Decision on the final approval/rejection of *highly qualified specialist* work permit/work visa applications must be made by the Migration Authorities within a maximum of 14 working days from submission of the application.
- Extension of *highly qualified specialist* work visas/work permits from the current one year to a maximum period of three years, with the possibility of further extension for additional three-year periods (within the limits of the relevant employment contract).
- The procedure for obtaining a residence permit, which allows eligible individuals and their family members to live in Russia longer-term (within the limits of the relevant employment contract) has been simplified for *highly qualified specialists*, with deletion of the requirement of a minimum one year stay in Russia prior to applying for a residence permit.

The new beneficial migration regime provisions for *highly qualified specialists* will apply to individuals coming to Russia to work for Russian legal entities, registered branches of foreign legal entities, health and education institutions (except religious institutions), and other organizations dealing with innovations, R&D, high-tech, etc.

Foreign workers coming to Russia on the basis of employment by a Representative Office of a foreign entity are therefore unable to benefit from the simplified procedures or beneficial treatment applicable to *highly qualified specialists*. The legislation does note that foreign employees of a Representative Office may be able to work in Russia without obtaining work authorization documents, but only in cases where an applicable international treaty specifically provides for this. The full implications of this provision of the law are not yet entirely clear, however the expected publication of further details on implementation of the legislation should provide greater certainty in the near future.

### Tax treatment

The Federal Law introduces an amendment to the Russian Tax Code with respect to the taxation of remuneration and benefits received by individuals treated as *highly qualified specialists*. The amendment stipulates that the Personal Income Tax rate applicable to such income would be fixed at 13%. Mr. Artamonov spoke on this point, and specified that the 13% tax rate would apply to employment income received in respect of employment as a *highly qualified specialist*, regardless of such individuals' tax residence status.

Read in conjunction with the preexisting legislation, this means that the Russian-sourced employment income of a tax **non-resident** *highly qualified specialist* will be subject to tax at 13% rather than at the current applicable rate of 30%; whereas the worldwide income (most income types) of a *highly qualified specialist* who is tax **resident** will remain subject to tax at 13%.

Although no tax registration requirement has applied to employees coming to Russia in the past, employers of *highly qualified specialists* will be obliged to register them with the Russian Tax Authorities.

### Effective from 1 July 2010

Most provisions of the new legislation will come into force on 1 July 2010.

The relevant authorities, and the Migration Authorities in particular, will be obliged to develop new processes, forms, etc. in order to implement the legislative changes for *highly qualified specialists*. No details of any new procedures or practical requirements have been published yet, but further regulations are expected to provide more information and guidance.

#### Deloitte's View

The developments outlined above are designed to make it much easier for employers to bring suitably skilled, qualified and/or experienced employees to Russia to work in vital roles. For *highly qualified specialists*, the massive bureaucracy associated with obtaining work authorization documents, work

visas, etc. should be significantly reduced.

In addition to making the initial migration processes simpler for both the employer and the employee, the legislation should allow for more stable, longer term employment arrangements (including the potential to extend work visas/permits and to accelerate the criteria for permanent residence) for eligible applicants.

Our interpretation of the legislation is that only those employed by a branch registered in Russia or by a Russian legal entity will be eligible to obtain *highly qualified specialist* status. If not already the norm for personnel coming to Russia, businesses may take this opportunity to consider implementing direct employment (i.e. local hire instead of assignment) arrangements for those foreign workers who meet the criteria for treatment as *highly qualified specialists*.

The favorable tax rate applicable to the Russian-sourced employment income earned by tax non-resident highly qualified specialists may represent a cost saving to employers with any form of equalization commitment, and an incentive to employees responsible for payment of their own Russian tax liabilities.

In theory, the new regime for *highly qualified specialists* will have an overwhelmingly positive impact on Russian business – encouraging more skilled workers to come to work in Russia, and creating a more welcoming investment climate. This said, the relevant authorities (Tax Authorities, Migration Authorities, etc.) must now adapt their procedures, or perhaps even design new systems and processes, to deal with *highly qualified specialists*. We look forward to the authorities' publication of further regulations, guidance and comment in this respect.

## People to Contact

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