

HR and tax alert

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Australia

Immigration: China Australia Free Trade Agreement deal accelerates subclass 457 visa reforms

Executive summary

The Australian government and the opposition have reached an agreement to support the China Australia Free Trade Agreement (ChAFTA) which will have a wider impact on the subclass 457 visa programme.

Key concerns that the opposition has sought to address are that the ChAFTA enabled employers to sidestep labour market testing and skills assessments.

The opposition says that safeguards they have negotiated are complementary to the ChAFTA and do not require any renegotiation of the free trade agreement. The safeguards can be implemented instead via changes to Australia's *Migration Act 1958*.

The political compromise is welcomed as ChAFTA will provide improved market access to a range of Australian and Chinese skilled service providers, investors and business visitors, support bilateral investment and provide business with greater certainty.

Key issues

The government has announced that under the compromise deal:

- ▶ the Temporary Skilled Migration Income Threshold (TSMIT) will be reviewed
- ▶ a framework of guidelines for labour agreements will be implemented
- ▶ tighter controls will be placed on tradespersons requiring licencing

TSMIT Review

The TSMIT sets a base market rate for positions to be filled by subclass 457 visa holders to ensure the positions are genuinely skilled and that subclass 457 visa holders have the means to support themselves. It has not increased from A\$53,900 since 2013.

A review of the TSMIT was recommended by the *Independent Review into the integrity of the subclass 457 visa programme* and was scheduled to commence in 2016. It will now be brought forward to this year.

The opposition's position is that:

- ▶ the TSMIT should be increased to A\$57,000
- ▶ annual indexation should resume in line with movements in Average Weekly Ordinary Time Earnings, and
- ▶ flexibility to adjust the TSMIT for specific industries should be implemented

Stakeholders will be consulted during the review. EY will continue to argue that flexibility is necessary for certain industry sectors and regional employers in particular.

An increase to the TSMIT will not mean that existing visa holders' salaries need to be adjusted. However, business sponsors must ensure all subclass 457 visa holders continue to be paid at least the market rate of pay.

Investment Facilitation Arrangement

Investment Facilitation Arrangements (IFAs) were put in place under the ChAFTA for Chinese funded infrastructure projects worth A\$150 million or more. IFAs have attracted the most strident opposition as they provided Chinese business with an exemption from labour market testing.

Under the compromise deal, IFAs and all other work agreements, including labour agreements, will be subject to the following which will be prescribed in law:

- ▶ demonstrating recent and genuine labour market testing efforts to recruit Australian workers
- ▶ guidelines for approval of agreements will replace Ministerial discretion
- ▶ greater transparency through mandatory reporting by the immigration department

Skills assessments and trades occupations

The ChAFTA provides an exemption from formal skills assessments for certain trades occupations to streamline subclass 457 visa processing. To ensure minimum skill and safety standards are upheld, the deal between the opposition and the government means that:

- ▶ all tradespersons applying for a subclass 457 visa will be required to demonstrate they meet Australian licensing requirements before a visa is granted to them
- ▶ visa conditions will be tightened to require visa holders to obtain any mandatory licence within 60 days of arriving in Australia, not to work until the licence is issued, and to notify the immigration department of any changes to licence including any conditions on the licence

Employers who employ tradespersons from overseas should now ensure that their candidates can meet licensing requirements in Australia to avoid prolonged visa processing.

Next steps

Both the ChAFTA and changes to Australia's migration legislation will go through parliamentary processes for approval.

As a key stakeholder, EY continues to actively engage with immigration portfolio reviews and will continue to represent our clients' views and keep you informed.

To discuss how we can support your business and ensure your views are clearly expressed to the government, contact your EY advisor.

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