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US IMMIGRATION & NATIONALITY LAW

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FEATURE ARTICLE

RED FLAGS IN TAXATION RELATED TO IMMIGRATION: AN OVERVIEW –This article provides an update on red flags in taxation related to immigration in several countries.

COUNTRY UPDATES

ITALY – Italy's digital nomad visa: finally a dream come true? This article also discusses quotas and application times under Decreto Flussi 2024.

RUSSIA – The Ministry of Internal Affairs has commented on the salary for highly qualified specialists.

UNITED KINGDOM – New Immigration Rules have been published that include salary increases for Skilled Workers, with fast-approaching deadlines for assigning Certificates of Sponsorship and submitting applications before the rule changes. Also, the Migration Advisory Committee will review the Graduate Visa Route and expects to publish a report in May.

Details:

Feature Article

RED FLAGS IN TAXATION RELATED TO IMMIGRATION: AN OVERVIEW

This article provides an update on red flags in taxation related to immigration in several countries.

Italy

Individuals living in Italy who are registered as residents with the municipality

(*residenti*), spend at least 183 consecutive days over a 12-month period in the country, or whose main interests are centered there are considered tax residents and must pay taxes on their worldwide income.

Italy has agreements in place with 40 countries, including members of the European Union, Canada, and the United States. This allows foreign national employees from these countries to remain under their own social security systems for up to five years. Foreign employers and employees from those countries with which Italy does not have an agreement must pay social security taxes under the Italian tax system, which in the aggregate is approximately 39% of the employee's salary.

Spain

An International Mobility Process legal strategy should be determined with a holistic approach, i.e., taking into account the various legal areas concerned: immigration, labor, social security, and taxation. This approach will allow for a consistent and efficient solution. In support of a holistic approach, the relationships and differences among tax and migration rules should be noted.

Residency in Spain differs for tax and migration purposes. In the case of a foreign national, a resident from a migration point of view is the holder of a residence permit/visa, whereas a tax resident is, in principle and except if otherwise established in the applicable International Tax Agreement, a person who spends more than 183 days in Spain in a calendar year. This means that a foreign national can be a tax resident in Spain without having a residence visa/permit, and even if the foreign national has such visa/permit, he or she might not be considered a resident for tax purposes.

It is important to bear in mind that certain visas, such as those for digital nomadic employment and entrepreneurship, can facilitate access to certain beneficial tax regimes, such as the "Beckham Law," a special tax regime whereby a foreign national, despite being a tax resident, is taxed as a nonresident at a fixed rate of 24% for the first €600,000 received from the employment source.

It is also important to analyze the tax impact from a business point of view of having a worker providing services in Spain. Despite not having a company in the country, this could create a permanent establishment.

In short, although the concept of residence is not the same from a tax and an immigration point of view, immigration status could influence the tax treatment.

Türkiye

Türkiye's immigration procedures, like most countries, are affected by local tax requirements. Issues related to tax, social security law, and employment law must all be considered by the Turkish employer sponsoring the work permit. This article focuses on tax-related matters.

The salary of a work permit holder may be paid in Türkiye or abroad—under certain conditions—assuming all social security requirements are complied with. If the Turkish employer is paying a salary for the foreigner in Türkiye, the sponsor must withhold income tax due from the employee's pay at the source and pass the sums withheld to the tax authorities.

Under the Income Tax Law, employment income or wages are defined as the sum of all benefits (monetary and benefits-in-kind) paid by an employer to an employee. Note that this is not the same definition as employment income for work permit purposes, which does not include benefits, bonuses, etc.

Employees are taxed on their employment income, minus social security and unemployment insurance contributions (see below), at progressive rates, which stand in 2024 at:

- 15% of annual income up to TRY 110,000;
- 20% of annual income from above TRY 110,000 to TRY 230,000;
- 27% of annual income from above TRY 230,000 to TRY 870,000;
- 35% of annual income from above TRY 870,000 to TRY 3,000,000; and
- 40% of annual income above TRY 3,000,000.

Employees' tax liability is reduced by the net minimum wage (TRY 17,002.12 for the year 2024) through an income tax exemption. Employees earning employment income over TRY 3,000,000 for the year 2024 should submit an annual tax return. This must be submitted in March 2025 for fiscal year 2024. In addition to income tax, employees must pay a "stamp tax" of 0.759% of gross wages, which their employer must deduct from pay at the source and remit to the tax authorities.

Assuming the foreign employee is paid by the sponsor in Türkiye, both

employer and employee must pay contributions to the public social security system administered by the Social Security Institution (Sosyal Güvenlik Kurumu). Employers must generally register employees with the SGK at least one day before their employment starts. In newly registered companies, employees can be registered within one month of commencing employment. Note that these deadlines are different from the employment commencement notification that must be sent to the Ministry of Labor for certain work permit holders.

Note also that Türkiye has a significant double tax treaty network, assigning taxation rights to signatory countries for defined income types. Apart from a U.S. treaty, all double tax treaties signed by Türkiye are modeled according to Organisation for Economic Co-operation and Development regulations. The double tax treaties define employment income under "Article 15—Dependent personal services." This article under certain conditions may not assign a right to tax employment income to Türkiye but to the other signatory country. The conditions may vary depending on the individual treaty, but the criteria for taxing rights usually depend on the person's length of stay, the payment jurisdiction, and existence of a permanent establishment. Therefore, if there is an applicable double tax treaty, it is important to evaluate each person's tax position on a standalone basis.

In conclusion, compliance with tax and social security regulations is extremely important for sponsors of work permits. As the work permit is adjudicated by a directorate under the Ministry of Labor (MoL), any noncompliance perceived in the context of the filing/renewal of a work permit, or observed in an MoL inspection, can and will be forwarded to the appropriate directorate(s) within the MoL, such as the Social Security Institute, Employee Health and Safety, or National Health Care. Therefore, a violation of tax requirements can lead to compliance penalties in other areas (e.g., monetary fines, increased risk of audit, prohibition to benefit from social security incentives) for employers of work permit holders.

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Country Updates

ITALY

Italy's digital nomad visa: finally a dream come true? This article also discusses

quotas and application times under Decreto Flussi 2024.

Digital Nomad Visa

From information received from unofficial sources, it appears that the Ministries of the Interior, Foreign Affairs, Tourism, and Labor have finally signed the implementing decree for the digital nomad visa.

A "digital nomad" is defined as a non-European Union (EU) citizen who performs highly skilled remote work in Italy, either as a freelancer or as an employee/collaborator of a company, which can also be based outside Italy. The visa is exempt from "quota" limits, and it is not necessary to apply for a work permit (*nulla osta*) for entry as a digital nomad (professional or freelancer) or as a remote worker (employee or collaborator of a company).

The main requirements include:

- An annual income not less than three times the minimum level required for exemption from health care participation expenses (**around €28,000**).
- **Health insurance** for medical care and hospitalization valid throughout Italy and for the entire period of stay.
- Proof of having secured **accommodation in Italy.**
- At least **6 months of work experience** as a digital nomad or remote worker.

The visa applicant must submit a declaration signed by the employer and a self-certification in which the worker must attest to the absence of criminal convictions.

Once the visa is issued, the holder can travel to Italy and must apply for a residence permit within eight working days of entry. The worker will be issued a permit as a "digital nomad—remote worker" valid for one year, renewable each year if the conditions and requirements are met. Digital nomad/remote workers can bring core family members (spouse and children under 18, parents under certain conditions).

Social security coverage: Where bilateral agreements on social security exist between Italy and the country of origin, these agreements will apply. In the absence of such agreements, Italian social security and insurance coverage regulations will apply.

Digital nomads and remote workers will be provided with a tax code upon

residence permit issuance. Digital nomads can request a value-added tax (VAT) number from the Revenue Agency, which is informed about the visa issuance by police authorities.

Refusal of the visa: The visa may be refused/revoked if the employer or contractor has been convicted in the last five years. A residence permit that has already been issued may be revoked if the worker or the company fails to comply with tax and contributory obligations.

Decreto Flussi 2024: Quotas and Application Timelines

As of February 29, 2024, it is possible to fill out applications on the Ministry of the Interior's Portal to hire non-EU workers from abroad and to convert residence permits, within the framework of the **151,000 quotas** provided for by the "quota decree" for the **year 2024.**

Applications can be submitted starting at 9 a.m. on the "click days" set by Decree January 19, 2024, namely:

- **From 9 a.m. on March 18**, applications for **non-seasonal** subordinate workers who are **citizens of countries that have cooperation agreements with Italy;**
- **From 9 a.m. on March 21**, applications for **other non-seasonal subordinate workers (including domestic workers**);
- **from 9 a.m. on March 25**, applications for **seasonal workers.**

Applications can be submitted **until December 31, 2024.**

Quota Categories

The *151,000 quotas* are to be allocated among the following categories:

- **89,050** quotas for **seasonal work** in the sector of agriculture; hospitality and tourism industry quotas are reserved for certain nationalities
- **61,450** quotas (of which 61,250 are for **subordinate work**—work as an employee—and 200 are for **self-employment**)

In the sectors of freight transportation on behalf of third parties, building, hospitality and tourism, mechanics, telecommunications, food, shipbuilding, transportation of passengers by bus, fishing, hairdressing, electricians, plumbers:

- **2,500** quotas for citizens of countries that promote media campaigns regarding the risks resulting from involvement in irregular migration
- **25,000** quotas for the following nationalities: Albania, Algeria, Bangladesh, Bosnia-Herzegovina, South Korea, Ivory Coast, Egypt, El Salvador, Ethiopia, Philippines, Gambia, Georgia, Ghana, Jordan, Japan, Guatemala, India, Kyrgyzstan, Kosovo, Mali, Morocco, Mauritius, Moldova, Montenegro, Niger, Nigeria, Pakistan, Peru, Republic of North Macedonia, Senegal, Serbia, Sri Lanka, Sudan, Tunisia, Ukraine
- **20,000** quotas for citizens of countries with which Italy will have cooperation agreements (4,000 will be reserved to workers from Tunisia)
- **100** quotas for employed or self-employed work reserved for foreign nationals who have Italian ancestry and reside in Venezuela
- **200 quotas** for employed or self-employed work reserved for stateless persons and refugees

In the sector of family care and support services **(domestic work):**

- **9,500 quotas**

Permit conversion for non-EU nationals already in Italy/EU:

- **4,000** quotas for conversion from a seasonal work permit to a standard, non-seasonal work permit (as an employee)
- **150** quotas for conversion from an EU long-term permit issued by another EU country to an Italian work permit (employed/self-employed)

- **500** quotas for **self-employment** for:

- Entrepreneurs intending to implement an investment plan of interest for the Italian economy, involving an investment of at least €500,000 and creating at least three new jobs in Italy
- Freelancers/independent contractors who intend to practice regulated or controlled professions (i.e., individuals belonging to a professional association or enrolled with an official/public register) or professions that are not non-regulated but are considered representative at the national level and are included in the lists edited by the Public Administration
- Holders of corporate offices or administrative/controlling positions (any of the following: Chairman, CEO, Member of Board of Directors, Auditor) in an Italian company, active for at least three years (requirements set in

Visa Decree May 11, 2011 n.850)

- Foreign citizens who intend to set up innovative start-up companies under certain conditions and who will have a self-employment relationship with the start-up
- Internationally well-known and highest-repute artists, artists of recognized high professional qualification, or artists who are hired by well-known Italian theaters, important public institutions, public television, or well-known national private television (requirements set in Visa Decree May 11, 2011 n.850)

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RUSSIA

The Ministry of Internal Affairs has commented on the salary for highly qualified specialists.

On March 1, 2024, the version of paragraph 3, part 1 of article 13.2 of Federal Law No. 115-FZ dated 07/25/2002, "On the Legal Status of Foreign Citizens in the Russian Federation," came into force. According to that edition, the salary of a highly qualified specialist (HQS) (for the category of other foreign citizens) must be at least 750,000 rubles per quarter. Thus, to comply with this requirement, the monthly salary must be at least 250,000 rubles.

The situation is uncertain if an HQS had started working before March 1, 2024, and his or her salary in the first quarter of 2024 was less than 750,000 rubles. The question is whether the employer would be required to pay for March the amount necessary to reach 750,000 rubles for the quarter, or whether 250,000 rubles for March would be enough.

An appeal on this issue was submitted to the General Migration Department of the Ministry of Internal Affairs of Russia. The ruling was that the salary in the first quarter of 2024 should correspond to the amount determined by law. In the case of a violation, the employer cannot recruit foreign citizens to work in the Russian Federation as HQS for two years.

To avoid that risk, it would be prudent for an employer to pay the minimum of 750,000 rubles in the first quarter of 2024. For example, if the salary for January is 167,000 rubles and for February 167,000 rubles, then the salary for March should be at least 416,000 rubles.

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UNITED KINGDOM

New Immigration Rules have been published that include salary increases for Skilled Workers, with fast-approaching deadlines for assigning Certificates of Sponsorship (CoS) and submitting applications before the rule changes. Also, the Migration Advisory Committee will review the Graduate Visa Route and expects to publish a report in May.

On March 14, 2024, new Immigration Rules were published. For employers, the key date is **April 4, 2024.** This is when the new salary rules for Skilled Worker visas will come into force. **The deadline for assigning a CoS under the current rules is 7 p.m. on Tuesday, April 2, 2024**. For details, see below under ***Submission of applications before the rule changes.***

A summary of the newly published Skilled Worker rules is set out below.

Skilled Worker Salary Increases

Currently, Skilled Workers must be paid the higher of the general salary threshold, the going rate for the role, or an overall minimum hourly rate (£10.75).

Changes for new hires on or after April 4, 2024:

- **General salary threshold**. The general salary threshold is increasing from £26,200 to £38,700.

A lower salary threshold will remain for "new entrants" (including students switching to Skilled Worker status; those under 26 years old; and those working toward registration/becoming chartered, such as architects, accountants, and solicitors). The general salary threshold for new entrants will be £30,960, up from £20,960. New entrants can be sponsored for up to four years on the lower salary threshold.

- **Going rates**. The going rates are also increasing and will be set at the 50th percentile (median) of the salary range for the role, rather than the 25th percentile as has been the case to date. A recent blog explains how the going rates will be calculated and what the new amounts will be.

As is the case under the current rules, new entrants can still be paid 70% of the

full going rate.

The new higher going rates for all jobs are shown in Table 1 of the new rules from page 80 here (Option A is for standard applications and Option E is for new entrants). The overall minimum hourly rate is increasing from £10.75 to £15.88, but it will no longer be a separate requirement. Instead it is to be incorporated into the new going rates.

Changes for existing (pre-April 4, 2024) Skilled Workers:

Where someone has been sponsored as a Skilled Worker under the rules before April 4, 2024, to extend their stay, change employer/sponsor, or apply for settlement (indefinite leave to remain), the following rules will apply:

- **General salary threshold**. The general salary threshold will increase from £26,200 to £29,000.

The lower general salary threshold for new entrants will be £23,200, up from £20,960.

- **Going rates**. As expected, the going rates will increase but not by as much as for new hires. Existing Skilled Workers must meet the updated (higher) going rates but only at the same 25th percentile, not the median. Again, the recent blog mentioned above has more details. The new higher going rates for all jobs for pre-April 4, 2024, Skilled Workers are shown in Table 2 of the new rules from page 124 here (Option F is for standard applications and Option J is for new entrants).

Shortage occupation changes as of April 4, 2024:

Under the current rules, where a job is on the current shortage occupation list, this has meant the UK Visas and Immigration application fee is slightly lower and the salary threshold is slightly reduced because it needs to be the higher of £20,960, 80% of the going rate for the role, or £10.75 per hour.

Following the Migration Advisory Committee's (MAC) report last month on the shortage occupation list, the following changes will come into force on April 4, 2024:

- **Change of name.** The shortage occupation list will be renamed the Immigration Salary List.
- **Jobs on the list.** Due to the significant increase in the Skilled Worker

salary requirements, there will now only be 23 jobs on the Immigration Salary List (see the full list in the table from page 230 here). The MAC will carry out a full review of the Immigration Salary List before the end of this year.

- **General salary threshold.** The lower general salary threshold for jobs on the list will increase from £20,960 to £30,960.
- **Going rates.** The current 20% discount on going rates will be removed. The new higher going rates for all jobs are shown in Table 1 of the new rules from page 80 here. (Option D is for Immigration Salary List jobs. However, the rates shown appear to be incorrect as they still refer to a 20% discount, so presumably the going rates shown in Option A will apply. It is hoped that this error will be corrected.)
- **Existing Skilled Workers.** Pre-April 4, 2024, Skilled Workers sponsored in a shortage occupation list role will need to meet a slightly higher general salary threshold of £23,200 and a slightly increased going rate (see Table 2 from page 124 here—Option I).

***Other sponsored worker changes as of April 4, 2024**:*

- **Senior or Specialist Worker.** For Senior or Specialist Workers (previously known as Intra-Company Transferees (ICT) where an employee of a group company outside the UK is transferring to the UK group company), the general salary threshold will be updated from £45,800 to £48,500, and going rates will be increased.
- **Graduate Trainee.** For Graduate Trainees (applying to transfer from an overseas group company to work at a UK group company as part of a structured graduate program), the general salary threshold will be updated from £24,220 to £25,410, and going rates will remain based on 70% of the 25th percentile.

Submission of applications before the rule changes:

Given the rule changes summarized above, employers may wish to submit Skilled Worker visa applications before the rule changes to avoid the salary increases.

For Skilled Worker applications, it's important to bear in mind the timescales to receive a CoS, explained here. The key date is when the CoS is assigned, not when the application is submitted. If the CoS is assigned before April 4, 2024,

the pre-April 4 rules will apply even if the application is submitted on or after April 4. See the 2024 business immigration changes timeline.

An update to the Home Office guidance gives important information on the deadline for assigning the CoS so that the application can proceed under the current rules (with the lower salary thresholds): **the deadline for assigning a CoS under the current rules is 7 p.m. on Tuesday, April 2, 2024**.

This is because the online sponsor management system (SMS) will be unavailable between the hours of 7 p.m. on Tuesday, April 2 to 9 a.m. on Thursday, April 4. During that period, you will not be able to assign any CoS, apply for any defined CoS for applications to be submitted outside the UK, or ask for any additional CoS for applications to be submitted inside the UK.

So if you are considering any last-minute applications before the rule changes, you must assign the CoS before 7 p.m. on Tuesday, April 2. Given the long Easter bank holiday weekend from Friday, March 29 to Monday, April 1, there is less time to assign any CoS before the deadline.

Review of the Graduate visa route:

Overseas students who complete a degree course in the UK can apply for the Graduate visa route for a two-year visa, or three years if they are studying for a Ph.D.

On March 11, 2024, the Home Secretary asked the Migration Advisory Committee (MAC) to review the Graduate route to "prevent abuse, protect the integrity and quality of UK higher education and ensure it works in the best interests of the UK." The MAC is due to publish its report by May 14, 2024.

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