

New rules affecting foreign nationals entering China for short-term assignment

Regulations discussed in this issue:

- Recently, the Ministry of Human Resources and Social Security, the Ministry of Foreign Affairs, the Ministry of Public Security and the Ministry of Culture jointly released the *Notice on the Issuance of Relevant Formalities for Foreigners to Carry out Short-term Assignment in China* (for Trial Implementation, Ren She Bu Fa [2014] No.78) on 6 November 2014 and the notice shall be applied from 1 January 2015.

Background

The Ministry of Human Resources and Social Security, Ministry of Foreign Affairs, Ministry of Public Security and Ministry of Culture in China jointly issued the *Trial Implementation on Relevant Formalities for Foreigners to Carry Out Short-term Assignment in China (Notice 78)* to strengthen the regulation of employment of foreign nationals in China.

Notice 78 will come into effect on 1 January 2015 and provides clarification on:

- Definition of short term assignment;
- The visa requirements and the corresponding application procedures.

Chinese companies which host foreign individuals for short-term assignment in China from 1 January 2015 should therefore be aware of the changes to the visa requirements and application procedures, and review their corresponding internal procedures to ensure full compliance with respect to the hosting of short term assignees.

Main features

According to Notice 78, foreigners entering mainland China to carry out work on short term basis ("short-term assignment") and with an intended stay of no more than 90 days should obtain Foreigners Employment Permit (or an approval document for commercial performance by the Ministry of Culture), and Proof of short-term assignment in China in order to apply for a Z visa. Application for work-related residence permit may be required within the validity of the class Z visa, depending on the length of stay of the foreigner. For the purposes of Notice 78, short-term assignment means:

- Completing certain tasks in the field of technology, research, management or provision of guidance or other work for Chinese business partners
- Providing and attending training at sports organisations in China (including coaches and athletes)
- Filming (including commercials and documentaries)

- Fashion show (including auto show models and filming of advertisement, etc.)
- Engaging in cross border commercial performances

Foreigners who wish to enter China for short term assignment should observe the following procedures:

1. Apply for Foreigner's employment permit from the Ministry of Human Resource and Social Security (or an approval document for commercial performance from the Ministry of Culture) and proof of short-term assignment
2. Obtain an Invitation Letter from a duly authorised entity or Confirmation Letter of Invitation issued by the relevant Foreign Affairs Office of a provincial government of China
3. Apply for Z visa with the overseas visa offices including, Chinese Embassies, Consulates or Bodies commissioned by the Ministry of Foreign Affairs

For foreigners who intend to work in China for a period not exceeding 30 days, the overseas visa offices will issue a visa with a validity of 30 days. The visa holder shall only work in China for short term assignment for the period stated on the proof of short-term assignment, and remain in mainland China within the period stated on the Z visa. For foreigners who intend to work in China for a period of more than 30 days, a 90-day work-related residence permit should be obtained within 30 days after arriving in China with a Z-visa.

Notice 78 also emphasised the requirement that foreigners from countries which has entered into Mutual Visa Exemption Agreements with China should also obtain Foreigners employment Permit and apply for Z-visa before entering China for short-term assignment.

Foreigners entering China without following the relevant procedures or working in China beyond the scope stated in the proof of short-term assignment (details shall include the applicant's name, nationality, job description, location of work and duration of work etc.) will be regarded as illegally working in China by the Department of Public Security.

Notice 78 also confirmed that the following circumstances will not be considered as short-term assignment for the purpose of the requirements stipulated within the notice where the foreigner's length of stay in China does not exceed 90 days, and other visa should be obtained accordingly:

M-visa:

- Maintenance, installation, commission, disassembly, guidance and training for purchased machinery and equipment
- Providing guidance, supervision and inspection to projects whose bidding is won in China
- Dispatching personnel to branches, subsidiaries and representative offices in China to complete short-term tasks
- Participating in sport events

F-visa:

- Engaging in pro-bono work in China, or volunteers who are paid by foreign organisations
- Activities which the Ministry of Culture has not indicated as commercial performance on the Approval document.

KPMG Observations

Notice 78 focuses on the visa and residence requirements for foreigners who intend to come to China on short-term assignment for a period of no more than 90 days. These requirements are not stated in the existing "Administrative Regulations on the Employment of Foreigners in China" ("The Administrative Regulations"), which only addresses the visa and permit

requirements for foreigners who signed labour contracts directly with Chinese employers and foreigners who are dispatched and paid by an overseas company to work in China for a period of more than three months. With the increasing number of business travellers and Short-Term assignees entering China in recent years, Notice 78 which will come into effect on 1 January 2015, together with the Administrative Regulations, should serve the purpose of regulating the legal deployment of foreigners in China. Companies should therefore exercise care when deploying foreigners in China by distinguishing the purpose and length of their assignment in China in order to apply for appropriate visa, and ensure that their foreign workers comply with relevant work and residence requirements upon arrival.

It is worth to note that the proof of short-term assignment cannot be extended, which means that foreigners who intend to carry out short-term assignment on multiple visits to China may need to apply for multiple proofs of short-term assignment and visas if their stays in China exceed 90 days in aggregate. Given the cost and time associated with the applications, companies should carefully review the duration of the work to be carried out by a foreign national for the same purpose, in order to minimise the associated cost and avoid the potential delay in project progress due to visa application procedures. Furthermore, Notice 78 does not mention how to apply for multiple proofs of short-term assignments, and it is necessary to consult relevant authorities for the details and procedures. The release of Notice 78 not only have impact on companies which dispatch/host business travellers and short-term assignees with respect to visa compliance, but also have Chinese individual income tax ("IIT") and social security ("SS") implications for these types of cross-border transferees. When determining the Chinese IIT obligation of a foreigner dispatched to China, one of the key considerations is who his/her "employer"¹ is. Therefore, companies should carefully analyse and determine the foreigner's employer and the corresponding Chinese IIT obligations for the foreigner when applying for his/her M visa or short-term Z visa. Furthermore, a foreigner's Chinese SS obligation is currently assessed based on whether he/she holds a work permit. Although further clarification may be needed on whether foreigners with proof of short-term assignment are required to participate in China's SS schemes, companies are suggested to take into consideration a series of factors when budgeting for short-term assignments, including the company's business needs, the individuals' personal position, and China's IIT and SS implications.

Z visa for foreigners who intend to work in China for less than 90 days was discussed in the exposure draft of the *Ordinance on the Administration of Entry and Exit of Foreign Individuals in China*. However, the short-term Z visa was not included in the final draft of the *Ordinance on the Administration of Entry and Exit of Foreign Individuals in China* due to the absence of related government policies. As a result of a concerted effort by multiple authorities, Notice 78 now provides clarity on the visa requirements for short-term assignees and this shows Chinese authorities' intention to strengthen the regulation of foreigners' legal employment and residence in China.

As Notice 78 will come into effect this week, companies should review its compliance and cost implications when hosting short-term assignees. Human resources professionals are recommended to keep abreast of the relevant procedures and requirements to ensure visa compliance for their new short-term assignees, and to review existing assignment types and update the internal policies and guidelines to ensure ongoing compliance. Companies should also analyse the additional compliance requirements and budget for additional costs, such as the cost of filing relevant application and extension, and the potential IIT and SS cost associated with short-term assignments. KPMG would be pleased to provide assistance where required.

¹ The "employer" is defined by the PRC tax authority as an entity that holds ownership of the employee's work product and assumes relevant responsibilities and risks.

Khoonming Ho

Partner in Charge, Tax
China and Hong Kong SAR
Tel. +86 (10) 8508 7082
khoonming.ho@kpmg.com

Beijing/Shenyang

David Ling
Partner in Charge, Tax
Northern China
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Tianjin

David Ling
Partner in Charge, Tax
Northern China
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Eric Zhou

Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

Qingdao

Vincent Pang
Tel. +86 (532) 8907 1728
vincent.pang@kpmg.com

Shanghai/Nanjing

Lewis Lu
Partner in Charge, Tax
Central China
Tel. +86 (21) 2212 3421
lewis.lu@kpmg.com

Chengdu

Anthony Chau
Tel. +86 (28) 8673 3916
anthony.chau@kpmg.com

Hangzhou

John Wang
Tel. +86 (571) 2803 8088
john.wang@kpmg.com

Guangzhou

Lilly Li
Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Fuzhou/Xiamen

Maria Mei
Tel. +86 (755) 2547 1188
maria.mei@kpmg.com

Shenzhen

Eileen Sun
Partner in Charge, Tax
Southern China
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Hong Kong

Karmen Yeung
Tel. +852 2143 8753
karmen.yeung@kpmg.com

Northern China

David Ling
Partner in Charge, Tax
Northern China
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Vaughn Barber

Tel. +86 (10) 8508 7071
vaughn.barber@kpmg.com

David Chamberlain

Tel. +86 (10) 8508 7056
david.chamberlain@kpmg.com

Tony Feng

Tel. +86 (10) 8508 7531
tony.feng@kpmg.com

John Gu

Tel. +86 (10) 8508 7095
john.gu@kpmg.com

Helen Han

Tel. +86 (10) 8508 7627
h.han@kpmg.com

Josephine Jiang

Tel. +86 (10) 8508 7511
josephine.jiang@kpmg.com

Kevin Lee

Tel. +86 (10) 8508 7536
kevin.lee@kpmg.com

Li Li

Tel. +86 (10) 8508 7537
li.li@kpmg.com

Thomas Li

Tel. +86 (10) 8508 7574
thomas.li@kpmg.com

Simon Liu

Tel. +86 (10) 8508 7565
simon.liu@kpmg.com

Paul Ma

Tel. +86 (10) 8508 7076
paul.ma@kpmg.com

Alan O'Connor

Tel. +86 (10) 8508 7521
alan.oconnor@kpmg.com

Vincent Pang

Tel. +86 (10) 8508 7516
+86 (532) 8907 1728
vincent.pang@kpmg.com

Shirley Shen

Tel. +86 (10) 8508 7586
yinghua.shen@kpmg.com

Joseph Tam

Tel. +86 (10) 8508 7605
laiyiu.tam@kpmg.com

Michael Wong

Tel. +86 (10) 8508 7085
michael.wong@kpmg.com

Jessica Xie

Tel. +86 (10) 8508 7540
jessica.xie@kpmg.com

Irene Yan

Tel. +86 (10) 8508 7508
irene.yan@kpmg.com

Sheila Zhang

Tel: +86 (10) 8508 7507
sheila.zhang@kpmg.com

Tiansheng Zhang

Tel. +86 (10) 8508 7526
tiansheng.zhang@kpmg.com

Tracy Zhang

Tel. +86 (10) 8508 7509
tracy.h.zhang@kpmg.com

Abe Zhao

Tel. +86 (10) 8508 7096
abe.zhao@kpmg.com

Eric Zhou

Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

Central China

Lewis Lu
Partner in Charge, Tax
Central China
Tel. +86 (21) 2212 3421
lewis.lu@kpmg.com

Anthony Chau

Tel. +86 (21) 2212 3206
anthony.chau@kpmg.com

Cheng Chi

Tel. +86 (21) 2212 3433
cheng.chi@kpmg.com

Cheng Dong

Tel. +86 (21) 2212 3410
cheng.dong@kpmg.com

Alan Garcia

Tel. +86 (21) 2212 3509
alan.garcia@kpmg.com

Chris Ho

Tel. +86 (21) 2212 3406
chris.ho@kpmg.com

Dylan Jeng

Tel. +86 (21) 2212 3080
dylan.jeng@kpmg.com

Ho Yin Leung

Tel. +86 (21) 2212 3358
hoyin.leung@kpmg.com

Sunny Leung

Tel. +86 (21) 2212 3488
sunny.leung@kpmg.com

Michael Li

Tel. +86 (21) 2212 3463
michael.y.li@kpmg.com

Christopher Mak

Tel. +86 (21) 2212 3409
christopher.mak@kpmg.com

Henry Ngai

Tel. +86 (21) 2212 3411
henry.ngai@kpmg.com

Brett Norwood

Tel. +86 (21) 2212 3505
brett.norwood@kpmg.com

Yasuhiko Otani

Tel. +86 (21) 2212 3360
yasuhiko.otani@kpmg.com

Amy Rao

Tel. +86 (21) 2212 3208
amy.rao@kpmg.com

John Wang

Tel. +86 (21) 2212 3438
john.wang@kpmg.com

Jennifer Weng

Tel. +86 (21) 2212 3431
jennifer.weng@kpmg.com

Henry Wong

Tel. +86 (21) 2212 3380
henry.wong@kpmg.com

Grace Xie

Tel. +86 (21) 2212 3422
grace.xie@kpmg.com

Bruce Xu

Tel. +86 (21) 2212 3396
bruce.xu@kpmg.com

William Zhang

Tel. +86 (21) 2212 3415
william.zhang@kpmg.com

Michelle Zhou

Tel. +86 (21) 2212 3458
michelle.b.zhou@kpmg.com

Southern China

Eileen Sun
Partner in Charge, Tax
Southern China
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Penny Chen

Tel. +86 (755) 2547 1072
penny.chen@kpmg.com

Vivian Chen

Tel. +86 (755) 2547 1198
vivian.w.chen@kpmg.com

Sam Fan

Tel. +86 (755) 2547 1071
sam.kh.fan@kpmg.com

Ricky Gu

Tel. +86 (20) 3813 8620
ricky.gu@kpmg.com

Angie Ho

Tel. +86 (755) 2547 1276
angie.ho@kpmg.com

Jean Jin Li

Tel. +86 (755) 2547 1128
jean.j.li@kpmg.com

Lilly Li

Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Kelly Liao

Tel. +86 (20) 3813 8668
kelly.liao@kpmg.com

Donald Lin

Tel. +86 (20) 3813 8680
donald.lin@kpmg.com

Grace Luo

Tel. +86 (20) 3813 8609
grace.luo@kpmg.com

Maria Mei

Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Michelle Sun

Tel. +86 (20) 3813 8615
michelle.sun@kpmg.com

Bin Yang

Tel. +86 (20) 3813 8605
bin.yang@kpmg.com

Lixin Zeng

Tel. +86 (20) 3813 8812
lixin.zeng@kpmg.com

Hong Kong

Ayesha M. Lau
Partner in Charge, Tax
Hong Kong SAR
Tel. +852 2826 7165
ayasha.lau@kpmg.com

Chris Abbiss

Tel. +852 2826 7226
chris.abbiss@kpmg.com

Darren Bowdern

Tel. +852 2826 7166
darren.bowdern@kpmg.com

Yvette Chan

Tel. +852 2847 5108
yvette.chan@kpmg.com

Rebecca Chin

Tel. +852 2978 8987
rebecca.chin@kpmg.com

Matthew Fenwick

Tel. +852 2143 8761
matthew.fenwick@kpmg.com

Barbara Forrest

Tel. +852 2978 8941
barbara.forrest@kpmg.com

Stanley Ho

Tel. +852 2826 7296
stanley.ho@kpmg.com

Daniel Hui

Tel. +852 2685 7815
daniel.hui@kpmg.com

Charles Kinsley

Tel. +852 2826 8070
charles.kinsley@kpmg.com

John Kondos

Tel. +852 2685 7457
john.kondos@kpmg.com

Kate Lai

Tel. +852 2978 8942
kate.lai@kpmg.com

Alice Leung

Tel. +852 2143 8711
alice.leung@kpmg.com

Steve Man

Tel. +852 2978 8976
steve.man@kpmg.com

Ivor Morris

Tel. +852 2847 5092
ivor.morris@kpmg.com

Curtis Ng

Tel. +852 2143 8709
curtis.ng@kpmg.com

Kari Pahlman

Tel. +852 2143 8777
kari.pahlman@kpmg.com

Benjamin Pong

Tel. +852 2143 8525
benjamin.pong@kpmg.com

Malcolm Prebble

Tel. +852 2684 7472
malcolm.j.prebble@kpmg.com

Murray Sarelius

Tel. +852 3927 5671
murray.sarelius@kpmg.com

David Siew

Tel. +852 2143 8785
david.siew@kpmg.com

John Timpany

Tel. +852 2143 8790
john.timpany@kpmg.com

Wade Wagatsuma

Tel. +852 2685 7806
wade.wagatsuma@kpmg.com

Lachlan Wolfers

Tel. +852 2685 7791
lachlan.wolfers@kpmg.com

Christopher Xing

Tel. +852 2978 8965
christopher.xing@kpmg.com

Karmen Yeung

Tel. +852 2143 8753
karmen.yeung@kpmg.com

Adam Zhong

Tel. +852 2685 7559
adam.zhong@kpmg.com