

February 24, 2014
2014-024

South Africa – New Regulations Clarify and Heighten Stringency of Immigration Law

by KPMG, South Africa (a KPMG International member)

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

Following recent amendments to South Africa's immigration laws, draft regulations have been issued that clarify and implement the amendments.

Why This Matters

Global mobility professionals dealing with their employees' immigration matters and immigration professionals will see terminology changes for previously named "visa" and "permit" documents, as well as new forms, fees, and penalties for non-compliance. They will also be dealing with a different agency with respect to the processing of visa applications.

In addition, they will be confronted with restrictions on the ability of their employees to change visa types or status within South African borders.

All told, global mobility professionals dealing with their employees' immigration matters and immigration professionals, when dealing with employees moving to South Africa to live and work, will need to revise some of their processes and procedures, and may be faced with increased costs.

The Department of Home Affairs¹ has gazetted the Draft Immigration Regulations² for public comment. Once finalized, the regulations will be gazetted and incorporated into South African Immigration law.

Changes under the Regulations

- A private company, Visa Facilitation Services "VFS," has been appointed for the facilitation and management of visa processing. VFS will have 11 processing centers which will be located throughout South Africa.
- Categories originally labelled as "Permits" will now be termed "Visas". The only category that will use the term "Permit" will be the Permanent Residence permit.
- Foreign nationals will no longer be allowed to change their status from a visitor's visa to another type of visa within the borders of South Africa. They will be forced to return home and apply for the desired visa in their home countries.
- Visa applications will be submitted at the VFS offices and they will, in turn, forward the applications to the Department of Home Affairs in Pretoria for adjudication.
- Study visas will be granted for the duration of the studies – avoiding annual renewals that are currently required.

- Business permit applications will first be reviewed and recommended by the Department of Trade & Industry before being forwarded to the Department of Home Affairs for issuance of the visas.
- The Quota and Exceptional Skills work permits will be replaced by the “Critical Skills Visa”. The Department of Home Affairs will work with the Department of Higher Education and Training and the Department of Trade & Industry to put together a Critical Skills list.
- The Intra Company Transfer permit will be issued as a four-year visa – a change from the current two-year duration.
- Additional fees are likely to be payable to the VFS offices, in addition to the standard Department of Home Affairs fees.
- New application forms, fees, and penalties will be published.
- Under the new regime, severe penalties will be imposed for non-compliance and the current fine for over-staying will be discontinued. Foreign nationals who over-stay and become illegal will be placed on the ‘undesirable’ list and will need to apply for and obtain removal from the list before being eligible to return to South Africa or apply for a visa.

KPMG Note

The changes under the Regulations have set a tone for a more compliance-based immigration system, which may lead to processing complications. However, the intricacies of implementation of the above-noted changes and what that means for global mobility professionals with immigration responsibilities and for immigration professionals will be better known and dealt with once the Regulations have been published.

The KPMG International member firm in South Africa will monitor developments and endeavor to inform readers of anything relevant.

Footnotes:

1 Department of Home Affairs: <http://www.home-affairs.gov.za/index.php/statements-speeches/430-home-affairs-minister-naledi-pandor-invites-public-comments-on-immigration-regulations-2014> .

2 Government Gazette No. 37335, 14 February 2014.

* * * *

If you require additional information or assistance, please contact Munhle Manzini (tel. +27 82 719 5668, e-mail: munhle.manzini@kpmg.co.za) or Moeketsi Seboko (+27 82 719 5705, e-mail: moeketsi.seboko@kpmg.co.za) or Carolyn Freeman (tel. + 27 11 647 5764, e-mail: carolyn.chambers@kpmg.co.za) with the KPMG International member firm in South Africa

Consider Watching This! A Video Brought to You from Your KPMG IES/People Services Practice

Video on Net Investment Income Tax

We invite you to watch this short 7-minute video that discusses the net investment income tax (NIIT) imposed on certain U.S. taxpayers for the first time in 2013 and what it means for international assignees and their employers.

<http://www.kpmginstitutes.com/taxwatch/insights/2013/ies-video-tax-on-net-investment-income.aspx>

The information contained in this newsletter was submitted by the KPMG International member firm in South Africa. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash International Executive Alert is an IES publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our IES practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.