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Germany – New Salary Criteria Defined for EU Blue Cards

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flash Alert

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With effect as of January 1, 2015, the salary criteria for European Union (EU) Blue Cards issued by the German authorities have increased. The new criteria also apply to EU Blue Card-based entry visas (national visas). For so-called "shortage occupations" (more on this below), the new salary criterion is EUR 37,752 (in 2014: EUR 37,128) and for all other occupations, EUR 48,400 (in 2014: EUR 47,600).¹ In other words, to qualify for the Blue Card, the employee must be making a salary of at least EUR 37,752 annually in a shortage occupation and at least EUR 48,400 for all other occupations.

Why This Matters

Comparable to many other countries,² salary criteria for EU Blue Cards are revised annually. All employees from outside Germany who are non-European Economic Area (EEA) nationals making applications related to a start date of January 1, 2015 or later for EU Blue Cards or EU Blue Card-based entry visas (national visas) have to be compliant with the new salary criteria. It is important to note that pending applications will also have to meet the new salary criteria if the decision on an application is made after January 1, 2015.

Companies intending to hire non-EU/non-EEA/non-Swiss nationals³ have to take the new salary criteria into account when offering employment contracts to candidates. It may be necessary to amend an existing offer if the decision has not been made before January 1, 2015, and the planned salary does not comply with the new salary criteria.

Already issued entry visas (national visas) and EU Blue Cards are not affected by the new salary criteria, so the related employment contracts do not need to be amended.

There may be cases where amendments must be made if the salary guaranteed with the employment contract was sufficient for the entry visa application, but turns out to be insufficient for the final EU Blue Card application filed later than January 1, 2015.

Background

The EU's "Blue Card" Directive⁴ was incorporated into Germany's immigration legislation with effect as of August 1, 2012. The Blue Card Directive intended to simplify access to the European labor market by highly-skilled non-EEA nationals. The EU Blue Card is just one important type of combined residence and work permit under German immigration law. All foreigners except nationals of Australia, Canada, Japan, Israel, New Zealand, South Korea, and the United States are entry-visa required for employment-related stays in Germany. Visas are regularly issued with a validity of 90 days. However, the entry visas are mainly issued under the same requirements as final EU Blue Cards.⁵

Those requirements are:

- Must be working in Germany under a local employment contract;
- Must be in possession of a German or equal foreign university degree;
- Must be earning a salary that complies with the salary criteria.

Additionally, in terms of salary, German immigration law differentiates between shortage occupations and other occupations. For example, engineers and IT specialists are considered as shortage occupations.⁶ The salary criteria stipulated by the EU Blue Card regulation are a mandatory requirement.

As a fundamental principle under German law, authorities have to apply the latest laws when issuing a permit. If the laws change between filing the application and the decision for issuing a permit, the latest laws have to be considered. For example, an EU Blue Card-based entry visa (national visa) was issued in December 2014 and the applicant's salary met the erstwhile salary criterion. Upon arrival in January 2015, the applicant applies for the final EU Blue Card. However, with respect to this application, his salary must meet the salary criterion in effect as of January 1, 2015.

Nevertheless, the EU Blue Card is not the only type of combined residence and work permit for third-country nationals locally employed in Germany. Another type of permit for highly-skilled specialists exists; additionally, nationals of the seven countries listed above can apply for a combined residence and work permit even without being highly-skilled. For these types of permits, definite salary criteria do not exist. Amongst other requirements, the salary must be equal to the salary of local workers with a comparable professional background and working in a comparable position.

KPMG Note: Action Steps

For companies focusing on definite salary criteria when hiring (non-privileged) third-country nationals, annual amendments should be monitored closely.⁷ The KPMG International member firm in Germany strongly recommends the amendment of employment contracts in-line with the new salary criteria as follows:

- Drafting employment contracts with a start date later than January 1, 2015, in-line with the new salary criteria;
- Amending already issued employment contracts in-line with the new salary criteria in the case of pending applications.

If the rules are not adhered to, the EU Blue Card-based applications can be rejected and the preferred candidate will not be able to start working in Germany, if the applicant does not qualify for a different combined residence and work permit. Since those types of permits have no fixed salary criteria, approval depends on whether working conditions are comparable with those of local workers.

Footnotes:

- 1 Both salary criteria are related to the gross annual salary.
- 2 See, for example, [Flash Alert 2014-125](#) (December 23, 2014) from the KPMG International member firm (Meijburg & Co.) in the Netherlands.
- 3 The Blue Card regulations do not apply to EU, EEA nationals, or Swiss nationals due to general rights of free movements including labor market access.
- 4 Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. The following countries have implemented the Blue Card Directive: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.
- 5 See Section 6 (3) in conjunction with Sec. 19a of the German Residence Act.
- 6 For all shortage occupations in this regard, please refer to groups 21, 221, 25 of the International Standard Classification of Occupations pursuant to the referral in § 2.
- 7 It is worth mentioning that the salary requirements or criteria for Blue Cards within Europe can differ substantially. The actual salary criteria are defined by each country individually in accordance with Art. 5 (3) of the Directive. In principle, the standard requirement is that a Blue Card holder earns at least 1.5 times the average annual salary of that country and that these amounts are indexed yearly. For instance, currently the Dutch salary requirement for a Blue Card is EUR 63,608 gross per year (which is substantially higher than the Netherlands' common Highly Skilled Migrant scheme). The amount for France is EUR 52,751. At the implementation of the Blue Card in 2011, the average annual salary in Romania was roughly around EUR 4,200 – so their salary criteria at that time was as low as approximately EUR 6,300 per year.

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The information contained in this newsletter was submitted by the KPMG International member firm in Germany. 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.

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