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NEW LABOUR CODE AND ITS IMPACT TO HUMAN RESOURCE OUTSOURCING & FOREIGN EMPLOYEES

New Labour Code which was effective on 1st May 2013, not only impact to local employee, organization, but also the foreigner who works in Vietnam and bring to the market of Human Resource Outsourcing (HRO) the new breeze of labour sub-leasing.

Q1: What are the challenges HRO in Vietnam facing after the new Labour code issued?

A1: Even though HRO and labour outsourcing have been using by many foreign-invested enterprises for more than ten years, they are still very new among local organisations and the community. Labour outsourcing has for the first time been mentioned in Vietnam's new Labour Code, which takes effect on May 1, 2013 and is an important change to the outsourcing market and the HR industry. With this background, HRO in Vietnam will certainly develop faster while having a number of challenges, of which all HRO decision makers should be aware.

HRO is still a fledgling market and as a result there are not many professional vendors for organisations to choose from. Organisations normally decide to outsource HR based only on short-term needs or emergency situations and not based on a long-term strategy or analysis of which HR functions or which level of workforce should be outsourced and the impact on an organisation's performance. Vendor infrastructure in Vietnam needs more investment to meet the requirements of data security, and service fees are high compared with developed countries. In addition, the strict term for outsourcing in the new Labour Code, which stipulates the duration of labour outsourcing at a maximum of 12 months, is also a challenge to an organisation when considering using labour outsourcing for long-term projects.

Q2: What are the key changes related to work permit application for foreign employee working in VN according to the new Labor Code?

A2: There are 2 key changes that you may note:

The term of work permit is maximum 24 months, instead of 36 months.

No more work permit exemption for foreigners who work less than 3 months in Vietnam, except those who come to VN for introducing/selling services or for handling urgent situation with the term less than 3 months. Please also note that in accordance to Circular 34/2008/ND-CP which is still in valid, in order to extend work permit for local hired foreigners, the employer is required to submit the training plan of local staff to replace the foreigners.



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Q3: I am appointed to the position of Chief Representative of a Representative Office (RO) in VN but I won't locate in Viet Nam. Am I required to apply work permit?

A3: Expatriates being assigned to work in Vietnam as Chief Representative of a RO in Vietnam regardless presenting in Vietnam or not is not exempt from work permit application under current regulations. Accordingly, he/she is required to do the procedures of work permit application at least 20 days before official assigning to work in Vietnam.

In practice, please note that the treatment may be different for each specific case.

Q4: A foreigner not presenting in Vietnam but being assigned as Chief Representative of a RO in Vietnam, is he/she required to declare Personal Income Tax ("PIT") in Vietnam?

A4: A foreigner is subject to Vietnamese PIT based on his/her residency status. In case the foreigner is not present in Vietnam but has Vietnam sourced income (e.g. income for the position in Vietnam), he/she is required to declare and pay PIT as a non-tax resident of Vietnam.

However, under current regulations, a foreigner can claim for Vietnamese tax exemption under Double Tax Avoidance Agreement ("DTA") between Vietnam and the country where he/she is a tax resident if the following stipulated conditions are qualified: (i) that foreigner is present in Vietnam less than 183 days in the calendar year concerned; (ii) The remuneration paid by an employer who is not a resident company in Vietnam and (iii) this remuneration is not recharged to the employer which has a permanent establishment or a fixed base in Vietnam.

Please note that the application is not automatically. It is requested to lodge to Vietnam Tax Authority the application dossiers for tax exemption under DTA 15 days **before** Vietnam assignment.

HR Consulting Corner is monthly composed in a Question & Answer format by HR consultants of Talentnet Payroll & HR Outsourcing Services. Our purpose is to support readers & enterprises to understand more about HR trend in Vietnam and update the new labour changes for prompt application.

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