

Superannuation Guarantee relief for certain visa holders

16 August 2018

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In brief

Employers of senior executives in Australia on temporary work visas are to be relieved of Superannuation Guarantee obligations following recognition that the existing Regulations need to be updated to acknowledge the new visas that are currently operational.

In detail

Background

In March 2018, the Australian Federal Government replaced the Subclass 457 Temporary Work (Skilled) Visa with the Subclass 482 Temporary Skills Shortage (TSS) Visa.

The replacement of the Subclass 457 Temporary Work Visa created some uncertainty regarding the eligibility for the 'Senior Executive Exemption' from Superannuation Guarantee, as this exemption was specifically tied to holders of Subclass 456, 457, 956 and 977 visas as set out in the *Superannuation Guarantee (Administration) Regulations 1993*.

In particular, for senior executives coming to Australia holding the new Subclass 482 visa, the question has arisen whether or not the exemption from Superannuation Guarantee can be applied in the absence of specific reference to this visa in the Regulations.

Regulations to be updated

The existing *Superannuation Guarantee (Administration) Regulations 1993*, which contain the senior executive exemption, are scheduled to sunset on 1 October 2018. To ensure the ongoing operation of the measures which support the Superannuation Guarantee scheme, Treasury released draft *Superannuation Guarantee (Administration) Regulations 2018* for consultation on 18 July 2018.

Treasury clarified that the draft Regulations do not propose to make any alteration to the substantive meaning or operation of the existing Regulations, however consequential amendments required by updates to *Migration Regulations 1994* have been made. Specifically, the draft Regulations containing the senior executive exemption from the Superannuation Guarantee now include references to both the new Subclass 482 visa and the Subclass 400 visa Temporary Work (Short Stay Specialist).

With consultation on the draft regulations having closed on 15 August 2018, it can be expected that the new Regulations will be finalised prior to 1 October 2018. The Explanatory Statement accompanying the draft Regulations states that the new Regulations will commence the date after registration on the Federal

Register of Legislation. Clarification is now being sought as to whether the changes will be applied retrospectively since the new visas came into operation.

The takeaway

An update to the Superannuation Regulations for senior executives holding Subclass 482 visas is to be welcomed as it preserves an existing exemption that has been in place for many years. The recognition of the exemption for senior executives on Subclass 400 visa is also welcome, given that this particular Subclass visa has been in existence since 2013.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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