

### **A Case for Reforming Tier 2 of the UK Points Based System?**

**August 20, 2009**

***Is there a case for reforming Tier 2 of the UK's Points Based System for immigration, less than a year after it was introduced? The UK Migration Advisory Committee has now published its report into the workings of Tier 2.***

Earlier this week, the UK's Migration Advisory Committee (the MAC) published its report into the workings of Tier 2 of the UK Points Based System for immigration (PBS). The MAC is an independent organisation set up by the UK government to assess skills shortages in the UK economy. Earlier this year, it was asked by the UK government to consider specific questions which could have a serious impact on the future ability of UK employers to bring migrant workers into the UK.

Tier 2 (which is further subdivided into five "sub-tiers") is the immigration category by which skilled workers with a job offer can apply to work in the UK, to fill gaps in the UK labour force. Of importance to most UK employers and global companies are the sub-tiers, which are:

1. Tier 2 (Intra-Company Transfer), which enables established employees of multinational companies to be transferred to a skilled job in a UK-based related entity
2. Tier 2 (Resident Labour Market Test (RLMT)) under which a UK employer can sponsor a foreign worker to fill a UK vacancy that cannot be filled by a worker from either the UK or any country making up the European Economic Area (EEA), following a search of the resident labour market

This search essentially involves advertising the UK position for up to two weeks in certain prescribed forums. The outcome must be that the position cannot be filled by a worker from the UK or EEA.

The MAC was asked to consider two specific questions in connection with Tier 2 as follows:

1. Is there an economic case for restricting Tier 2 to shortage occupations only? Shortage occupations are ones for which there are not enough resident workers to fill available jobs in particular sectors.
2. What is the MAC's assessment of the economic contribution made by dependants of points-based system migrants and their role in the UK labour market?

In considering the above questions, the MAC conducted a significant analysis of the UK economy, labour market and migration data, reviewed current academic and policy literature relating to UK and foreign migration systems and also considered a range of evidence provided by key Tier 2 stakeholders. This exercise represents the first real examination of the PBS.

### **Findings**

The MAC report concludes that in its considered opinion, the structure of Tier 2 is, generally speaking, well designed to respond to the changing needs of UK economy and both Tier 2 (Intra-Company Transfer) and Tier 2 (RLMT) should be retained largely in their current form. In response to the specific questions it considered, the MAC concluded that it does not think that there is an economic case for restricting Tier 2 to the shortage occupation route only.

This is particularly good news for multinational companies, which will continue to be able to make use of the global talent pool by bringing employees with particular company-specific skills and expertise to the UK. This is clear support for the view that intra-company transfers are an essential element in ensuring that UK companies remain globally competitive and that inward investment into the UK should be promoted.

Further, the MAC held that the current system is working well in that it identifies and attracts foreign workers who have the most to contribute to the UK while providing a flexible system that can adjust to changing demand brought about by fluctuating economic conditions.

In response to the second question, the MAC concluded that on the basis of the information it currently has, there is no reason to suggest that the conditions facing either the UK economy or UK workers would be improved by placing greater restrictions on the rights and freedoms of Tier 2 dependants. However, the MAC emphasised that it only had the benefit of very limited data and as such, further research was required to provide more substantive answers to this question.

Notwithstanding the MAC's overall findings that Tier 2 should not be substantially altered, it has, however, made a series of recommendations for how the government may wish to alter Tier 2.

Of particular note, the MAC has recommended the following:

In respect of Tier 2 (Intra-Company Transfer):

- The qualifying period working for the overseas entity should be extended from six to 12 months
- A separate scheme should be created for graduates that would only require three months' prior experience with the company and would allow for a maximum stay in the UK of 12 months
- The government should consider whether it is necessary to increase the level of resources it devotes to enforcement of Intra-Company Transfers and whether the transparency around enforcement of the system could be increased
- The route should not lead to a right of permanent residency in the UK

In respect of Tier 2 generally:

- A requirement that Tier 2 workers must be employed in positions paying at least £20,000 and workers without qualifications must earn at least £32,000 should be introduced
- The points awarded for a master's degree should be increased
- The UK Border Agency and the UK tax authority should consider increased sharing of information in relation to particular foreign workers to prevent potential abuse of the tax system

## **Next Steps**

The UK government must now consider whether the recommendations put forward by the MAC should be accepted (in whole or in part) and determine a timescale for implementing those recommendations it accepts. There is no obligation, however, for the government to follow the MAC's recommendations.

In addition, the MAC has been asked to consider a third question relating to Tier 1 of the PBS: What further changes should be made to Tier 1 given the changing economic UK circumstances? The MAC's response to this separate question is due in autumn 2009.

We will continue to monitor the situation and will update you with any new information.

If you have any questions about any of the issues raised in this Morgan Lewis Immigration Alert, please contact either of the following Morgan Lewis attorneys:

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