

Intra-Company Transfer Route – Migration Advisory Committee Report and Recommendations

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In September 2020 the Migration Advisory Committee (“MAC”) was commissioned by the Home Office to review the Intra-Company Transfer (“ICT”) Visa Route. Following a long period of consultation and evidence-taking, the MAC has now published its findings.

Background

Following the post-Brexit changes to the UK Immigration Rules and reform of the Points-Based System, many of the restrictions of the Tier 2 (General) visa were removed, making the Skilled Worker visa route more attractive to those who would previously have opted for an ICT visa. Principle ICT benefits against the Skilled Worker route are:

- No English language requirement
- Inclusion of some employment allowances to meet ICT salary thresholds

The MAC has made the following recommendations to the Home Office in their report, identifying how they believe the ICT Route should now evolve.

Skills and Salary Thresholds

ICT Skill Level

It was decided that the skill level should remain consistent at RQF6+, setting a higher skills threshold than the Skilled Worker regime. The ICT route is therefore carved out as a route for highly skilled employees of multi-national companies.

Salary – ICT

The current requirement is a salary of £41,500 or the ‘going-rate’ for an occupation under the Codes of Practice, whichever is higher.

The MAC recommendation is to set the ICT route threshold at £42,400 which would represent the median annual gross wage of occupations at RQF6+. Salary thresholds for the ICT route should be updated annually.

Salary – Graduate Trainee

The MAC has recommended a salary threshold equivalent to the Skilled Worker new entrant rate of £20,480 or the ‘going rate’ for an occupation following a 30% discount.

This will put the Graduate Trainee programme on the same salary footing as new entrant roles under the Skilled Worker Route.

Salary – High-Earner

The “high earner” threshold should remain at £73,900, but with the same annual review of thresholds to ensure growth in line with annual wages across RQF6+ occupations. The 12-month previous employment requirement applied to the ICT route (and the 3-month previous employment for Graduate Trainees) will continue to be waived for high-earners.

The MAC has also recommended that a skills charge remain in place where trade arrangements allow. It is important to note that from 1 January 2023, the Immigration Skills Charge will not apply to EU nationals coming to the UK under the ICT route.

Allowances

A recommendation that a more comprehensive breakdown of allowances should be provided by employers in applications for ICT visas has also been included. Allowances is an area where employers can misrepresent and inflate salaries to meet thresholds. Greater enforcement of the use of allowances is recommended.

Settlement

One inclusion that represents a significant departure from previous conditions for the ICT route sees the MAC recommending that time spent in the UK on an ICT visa should count towards settlement. This would leave the English language requirement and excessive absences over periods of ICT leave as the only significant obstacles to settlement for this category of worker.

Subsidiaries

In a change to the Representative of an Overseas Business Rules (“ROBR”), the MAC recommends that this route be opened to overseas teams (one of whom must continue to meet the ROBR criteria). The team would be given a 2-year permission within which to set up the subsidiary in the UK, sponsored by the parent overseas company through an overseas Sponsor Licence process. Applying an over-arching visa permission to a group rather than an individual is a novel concept and the MAC says this should be introduced on a trial basis and closely monitored.

The subsidiary route would sit alongside new secondment conditions that would see free movement of employees between an overseas business operating for over 12 months and the UK linked entity under a contract valued at £50 million or more. These secondment opportunities would be for 12-month periods with potential extension options.

Conclusion

Whilst these are simply recommendations to the Home Office, historically the MAC’s advice has mostly been adopted by the Home Office when developing policy. With new changes set to be introduced in the next few years relating to business visits to the UK (an area that has long been ripe for reform), these recommendations, if adopted, will constitute a significant broadening of options for foreign workers and their employers.

For further information and to discuss how this may impact your business, please contact your usual Magrath Sheldrick LLP advisor.

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