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TAX UPDATE



In this edition

Paying Employment Income Offshore

Managing Taxation Risk: Paying Employment Income Offshore

Some foreigners in Thailand have inadvertently fallen into the tax trap of having a large portion of their Thailand-based employment salaries paid offshore.

Managing taxation risk requires you to be aware of the Revenue laws and practices of the Revenue officers. Should you be found not to comply with the requirements, you could be exposed to additional taxes and penalties.

Taxation Risk of Offshore Income

Thailand taxes both its residents and non-residents (whether being foreign or Thai nationality) on incomes derived from a post or office held in Thailand or from the business of an employer in Thailand, whether such income is paid within or outside Thailand.

Residents are defined as persons residing in Thailand at one or more times for an aggregate period of 180 days or more in any tax (calendar) year, and for such residents, a further taxing provision prescribes for the resident to pay Thai tax on the income earned abroad when the income is remitted into Thailand in the year in which it is earned.

There are no specific provisions or concessions for foreigners in the Thailand tax regulations, and accordingly, a foreigner who is a resident of Thailand is taxable in Thailand, as follows:

- On Thailand employment income, irrespective of whether the income is paid in or outside Thailand; and,
- On foreign employment income, when the income is brought into Thailand.

If the Thailand Revenue Department officers become aware (as they have done over the last few years for Japanese expatriates in Thailand) that income from Thailand-based employment is being paid offshore, they would be likely to assess tax on the offshore-paid portion as well as additional tax penalties and surcharge (interest).

Foreigners with Regional Roles

If a foreigner has a regional role and actually spends a significant amount of time working outside Thailand, there is then commercial substance to income being earned not just from Thailand-based employment but also from offshore-based employment.

For such foreigners with regional roles, the Thailand Revenue Department officers should accept that the offshore-based employment income is not subject to tax in Thailand, provided that the offshore income is not brought into Thailand.

Having said that however, it still remains the obligation of the foreigner to prove the non-taxable status of the offshore-based income, and one way of doing this is to put into effect formal dual (or split) employment contracts.

Dual Employment Contracts

Under a dual employment contract arrangement, a foreigner enters into one employment contract in respect of his Thailand services and another separate contract for his offshore services. If the foreigner performs all his services under the offshore contract outside Thailand, his income under that contract should not be subject to tax in Thailand, provided that the income from that contract is not brought into Thailand.

It is important that dual employment contracts are properly structured and documented carefully, with the following features being present:

1. The employee's offshore duties and Thailand duties should be separate and distinct to ensure that he is not required to perform services in Thailand under the offshore employment contract and that the offshore duties are not performed on behalf of the Thai company;
2. The offshore contract should be with a company that is not centrally managed and controlled in Thailand and has no presence itself in Thailand;
3. The level of income under each employment contract should be reasonable in the light of all factors surrounding the employment. Generally speaking, the allocation of income should be commensurate with the time spent under the different contracts;
4. The dual employment contract should be set up before an employee arrives in Thailand. An arrangement set up after tax returns have already been filed is likely to be regarded as artificial by the Revenue Department officers in Thailand; and,
5. The dual employment contracts should be reviewed each year to ensure that the income pertaining to each contract is reasonable in the light of all the factors surrounding the employment.

If dual employment contracts are properly structured and carefully documented and supported for foreigners with regional roles, the Thailand Revenue Department officers should be satisfied that there is commercial substance behind the arrangement (that is, that each employment contract stands alone as a separate and distinct employment and each has independent commercial rationale and purpose), and the offshore income should therefore not be subject to tax in Thailand. If the Revenue officers are not so satisfied, they may disregard the offshore contract and tax the total income from both contracts in Thailand.

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