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Figuring out tax on secondment

It is fairly common to see foreign companies, which invest in Thailand by setting up a branch or a subsidiary, send personnel to provide the services to its Thai operation. From time to time, activities are carried out in Thailand by its employees without any office. The former is generally known as the secondment.

The foreign employee who is seconded to work with the Thai subsidiary is known as a secondee, but the term can be misleading and does not indicate tax status. If you think that the staff seconded from your offshore head office to work with you in Thailand are always taxed as if they were your employees, you could be wrong.

In the absence of a tax treaty, if the parent company has an employee doing business in Thailand and derives income, the parent company may be deemed to be doing business in Thailand and would be subject to a Thai tax at the rate of 30%. If the parent comes from a country that has a double tax treaty with Thailand and it has no permanent establishment in Thailand, the parent will not have to pay Thai corporate income tax.

If the secondment of an employee from the parent is made to the Thai subsidiary for free, the parent will not have any tax concern in Thailand, as it does not derive any income. Instead, the subsidiary may have to comply with withholding tax on the payroll by itself.

If the Thai subsidiary does not have to pay salaries or benefits to the secondee

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and will let the parent pay the secondee in an offshore bank account, is there any tax obligation imposed on the Thai subsidiary or the secondee? Absent the payment by the Thai subsidiary, no withholding tax obligation is imposed, but the secondee will have to declare his income in the tax return by himself.

What if the parent seeks reimbursement from the Thai subsidiary later on for the secondment? This situation could complicate the matter, as the tax auditor is likely to consider that the parent is deemed to provide services to its subsidiary in Thailand via the secondee. As a result, such a secondee could be treated as a permanent establishment of the parent in Thailand and the tax base for this purpose would include the fees or reimbursement the parent has charged to the Thai subsidiary.

There was a case where a Thai company hired an offshore company to second staff to work in Thailand. The offshore company made an advance payment for salary and other benefits and sought reimbursement from the Thai company together with a profit margin of 5%. Since the seconded expatriates still had a contractual relationship with the offshore company, it was ruled that the expats were subject to personal income tax in Thailand on income sourced in Thailand and the offshore

company was deemed to be doing business in Thailand. Thus, the expatriates were liable to file a corporate income tax return on behalf of the offshore company. It also said that when the Thai company made payments to the offshore company, it was required to deduct 5% withholding tax.

Based on the above case, if the parent does not want to pay tax in Thailand, the direct employment must be made by the Thai subsidiary with the work permit issued under the name of the Thai subsidiary as the employer. The secondee must also receive his employment remunerations from the Thai subsidiary and pay Thai tax on such amounts. The charge back from the parent to the Thai subsidiary with margin could jeopardise the position.

Interested persons may find more information from a seminar entitled "Tax Implications on Secondment" on Oct 5 at the Four Seasons Hotel. Key issues cover tax implications on from a secondment contract, tax liability of secondees on onshore and offshore income, fringe benefits such as housing and stock options, tax deductibility of reimbursements, and tax planning via ROH and "dual employment". For more information, please contact International Consulting Networks at 0-2465-4413, 084-077-9957 or 081-821-8368.

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