071106 - Tax on Secondment

Tax on Secondment Part III

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In a conservative secondment structure, a seconded expatriate needs to pay personal income tax on income that is sourced in Thailand and that there should be no additional payment from a Thai employer to an offshore entity, which is seconding the expatriate to Thailand. If there is an additional payment that is not includable in the Thai tax base, either the expatriate or the Thai employer will face the issue of personal income tax avoidance, e.g. by routing the payments to the offshore entity, or the issue of a permanent establishment of such offshore entity in Thailand.

To be subject to Thai personal income tax, an expatriate does not have to stay in Thailand permanently so long as income is sourced in Thailand. This is often misunderstood by most people, who tend to apply the magic number of "180 days" to determine Thai tax liability. The truth is that a two-week business meeting in Thailand could be sufficient to drag along the offshore income to the Thai tax base if it reaches the minimum level under the law. The time test of 180 days is a safe-harbour rule only if the expatriate is a resident of a tax-treaty country and if other conditions are met — which is hardly the case in most structures.

It is normal to see an expatriate working in Thailand receive income from both a Thai and foreign employers for services rendered in Thailand. The expatriate will have a duty to pay Thai tax on both salaries even if the foreign employer is not doing business in Thailand and the offshore income is paid outside Thailand. However, things happening in the real world are different from the book. Due to the abolition of the "tax-clearance certificate" for an expatriate who has been in Thailand for more than 90 days in a calendar year since there is no evidence of salary paid offshore, compliance is low and tax enforcement can be regarded as nil.

Even so, a big multinational corporation tends to have a policy that its personnel must not violate the laws of the country where the performance takes place. At the same time, it does not want to absorb extra personal income tax that may be imposed outside the home base.

A number of tax-planning schemes have been created to allow the expatriates to classify their offshore income as sourced outside Thailand — starting from matching the offshore salary with the offshore assignment that needs to be performed during travelling overseas to the payments that are attributable only to the offshore position in an organisation. No matter how the scheme is being structured, the caveat is to break the chain of relationship between the offshore income and the services rendered in Thailand. This technique is known as "dual employment".

For example, an expat working in Thailand will continue to maintain his employment with an offshore employer, which is likely to be the parent company of the Thai employer. While staying in Thailand, the expatriate will not render services to the offshore employer. He will be paid by the offshore employer only for his post outside Thailand, or for services rendered while he is travelling outside Thailand.

Once the offshore income is irrelevant to the performance in Thailand, it will not be subject to Thai personal income tax, unless it is brought into Thailand during the relevant calendar year in which the expatriate is a Thai tax resident. The dual-employment scheme sounds acceptable so long as the arrangement is real. Unfortunately, the concept has been heavily abused, because the offshore parent company may be seeking reimbursement for the offshore salary from the Thai employer in a different form, such as an offshore administration fee or offshore management service fee.

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Keep in mind that to achieve a legitimate structure, there must be no reimbursement in whatever form. Otherwise, the Revenue Department could challenge the transaction by claiming the shortfall in payroll tax or the existence of a permanent establishment of the offshore employer in Thailand. In the worst-case scenario, both the expatriate and the Thai employer could be facing a charge on the grounds of tax avoidance.

Interested persons can learn more this Friday at a seminar entitled "Tax Implications on Secondment" at the Grand Hyatt Erawan Hotel. For more information, contact International Consulting Networks at 0-2465-4413, 084-077-9957 or 081-821-8368.

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