

The logo for BDO, featuring the letters 'BDO' in a bold, dark blue, serif font. To the left of the 'B' is a vertical red bar, and below the letters is a horizontal red bar. The background is a light gray gradient, and there is a red border on the left side of the image.

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Tax issues and planning for outbound expatriate employees

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Tax & Legal Services



Presentation outline

- Taxation of Thai residents working abroad
- Remittance rules for foreign income
- Claiming foreign tax credits
- Tax planning for Thai expatriate employees

Basis of employee taxation

- Section 41

Every person who derives assessable income under Section 40

- From a post or office held in Thailand
- From business of an employer in Thailand

shall pay tax, whether such income is paid within or outside Thailand.

Basis of employee taxation

- Section 41

A resident who derives assessable income under Section 40 in the course of the preceding tax year from a post or office held abroad shall pay tax upon bringing such assessable income into Thailand.

A person residing in Thailand for 180 days at one or more times in a tax year shall be deemed a resident of Thailand.



Points to consider

- payer of income

- If offshore employer then can argue post or office held offshore – taxable in Thailand on a remittance basis only
- If Thai employer then consider:
 - Does the employment relate to a post or office abroad or in Thailand?
 - Does a double tax agreement apply?

Remittance rule

- Under Section 56 of the Revenue Code, a person shall within the last day of March of every year file an income tax return in respect of the assessable income derived in the course of the preceding tax year i.e. 1 January to 31 December.
- Section 56 of the Revenue Code does not require assessable income brought into Thailand in a preceding tax year to be returned as assessable income for paying personal income tax unless it is derived in the preceding tax year.



Remittance rule

- Accordingly, a tax resident is not liable to tax on foreign source employment income received offshore, unless such income is brought into Thailand in the same year that it is derived.
- For example, if you derive such income in 2006 and remit it into Thailand in 2007, you would not be liable to personal income tax in respect of such income for either the 2006 or 2007 tax years.
- Such treatment is consistent with the views expressed by the Revenue Department.



Double tax agreement

- taxation of employment income

- General rule is that employment income is taxable in the country where the employment is actually exercised.
- Employment is exercised where the employee is physically present when performing the activities for which the employment income is paid.
- A resident of a DTA country who derives income from a source in Thailand cannot be taxed in Thailand merely because the result of that work is exploited in Thailand.
- Care must be exercised in following past rulings where a DTA applies and the employee is a resident of the DTA country.



Personal services article of DTA - a typical example

Income derived by a resident of Thailand from services rendered in Country A, may be taxed in Country A if:

- 1.** present in Country A for an aggregate period of 183 days in the year concerned; or
- 2.** the services are rendered for or on behalf of a resident of Company A; or
- 3.** the income is borne by a permanent establishment which the person paying the income has in Country A.



Thai employees working offshore

- rulings

- Overseas project (Thai employer)
 - derived assessable income not from the business of an employer in Thailand
 - Staying in Thailand less than 180 days/ tax year
 - Not subject to Thai income tax (Tax ruling no. KorKhor 0802/15262 dated 25 October 1988 and KorKhor 0802/11487 dated 20 August 1984)
- Overseas branch (Thai employer)
 - Staying in Thailand less than 180 days/ tax year
 - Not subject to Thai income tax (Tax ruling no. KorKhor 0802/1427 dated 3 February 1988 and KorKhor 0802/9314 dated 4 July 1988)

Thai employees working offshore

- rulings

- Secondment (Thai employer)
 - derived assessable income from a business carried on in Thailand or from the business of an employer in Thailand
 - Although staying in Thailand less than 180 days/ tax year
 - Subject to Thai tax (Tax ruling no. KorKhor 0811/03366 dated 16 April 1999)
- Overseas training (Thai employer)
 - Assessable income not derived from a post or office held or business carried on abroad
 - Subject to Thai tax (Tax ruling no. KorKhor 0802/15478 dated 14 May 1986)



Foreign tax credits

- To claim a foreign tax credit requires a double tax agreement
- No unilateral foreign tax credit system unlike for companies
- Consider the DTA provisions carefully - limited to the Thai tax payable
- No rules for determining the Thai tax payable

Deductible allowances

If taxpayer is not a resident of Thailand:

- Can still claim taxpayer allowance of Baht 30,000
- Can claim allowance for spouse and children only if they reside in Thailand



Tax planning for Thai expatriate employees



Tax planning outline

- Relocation costs
- Training benefits
- Dual contracts
- Director fees
- Remittance rules

Transport expenses

- Section 42 (3) provides tax exemption for relocation travelling expenses
- Travelling to take up employment or returning to place of origin after termination
- Expended wholly and necessary for travelling – in and outside Thailand including accom. expenses
- Return home trips during employment are taxable benefits

Training benefits

- Section 42 (11) provides tax exemption for awards given for the purpose of education
- Allowance paid by Thai employer to study overseas could be tax free
- Consider treaty benefits regarding taxation in the country where study/training conducted

Singapore –Thai DTA

Article 19

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely-

- (a) as a student at a recognized university, college or school,
- (b) as a recipient of a grant, allowance or award for the primary purpose of study or research from a government, religious, charitable, scientific, literary or educational organization, or
- (c) as a business or technical apprentice,



Singapore –Thai DTA

Article 19

shall be exempt from tax of that other Contracting State in respect of-

- (i) remittances from abroad for the purposes of his maintenance, education, study, research or training,
- (ii) the grant, allowance or award, and
- (iii) remuneration for personal services in that other Contracting State and such services are in connection with his study, research or training or are necessary for the purpose of his maintenance, not exceeding 12,000 Singapore dollars or 96,000 Thai Baht during any calendar year or such other amounts as the competent authorities of the Contracting States may from time to time agree upon.



Dual contracts

- Dual contract arrangements are sometimes employed by expatriates to minimise their Thai tax liability
 - Two employment contracts
 - One contract with the Thai employer for work performed in Thailand
 - One contract with an offshore employer for worked performed offshore

Dual contracts

- minimising Thai tax liability

- A purpose of the offshore contract is to minimise liability to Thai personal tax – only the Thai contract is recorded in the payroll of the Thai company
- Under Section 41, a resident of Thailand will be taxable on offshore employment income only if it is brought into Thailand in the same year that it is derived.



Dual contracts - problems in practice

- The dual contracts are artificial – there is really only one employment
- The Thai company is recharged the offshore employment costs from offshore e.g. in the form of a management fee
- The remuneration is not apportioned on a reasonable basis – tax minimisation is factored into the allocation

Dual contracts - problems in practice

- The expatriate does in fact work in Thailand on matters relating to the scope of work in his offshore employment contract
- The employee runs the risk of being punished for tax evasion e.g. jail term max 7 years - by not declaring his offshore employment income in his Thai personal tax return

Director fees

- Thai directors of MNCs – consider paying director fees for directorships offshore
- Aim is to be only taxable in Thailand if remitted in same year income derived
- Some DTAs have director fee articles – will normally give the source country the right to tax the director fees.

Remittance rules for foreign source employment income

- If not a tax resident of Thailand – can receive in Thailand in same year of income
- If in later years become a tax resident of Thailand, can remit offshore income of prior years into Thailand tax free
- If tax resident with income from offshore employment – need to receive offshore to take advantage of remittance exemption



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Presenter profile



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BDO profile

BDO Richfield Advisory Limited specialises in providing tax and legal services to international clients operating in Thailand and the Asia Pacific region.

BDO Richfield Limited, the Thailand member firm of BDO international, is one of the largest accounting and advisory firms in Thailand.



BDO International

BDO International is a worldwide network of public accounting firms, called BDO Member Firms, serving international clients. Each BDO Member Firm is an independent legal entity in its own country.

BDO International is the world's fifth largest international accounting and advisory network, with over 620 offices in 107 countries and almost 30,000 professionals.



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