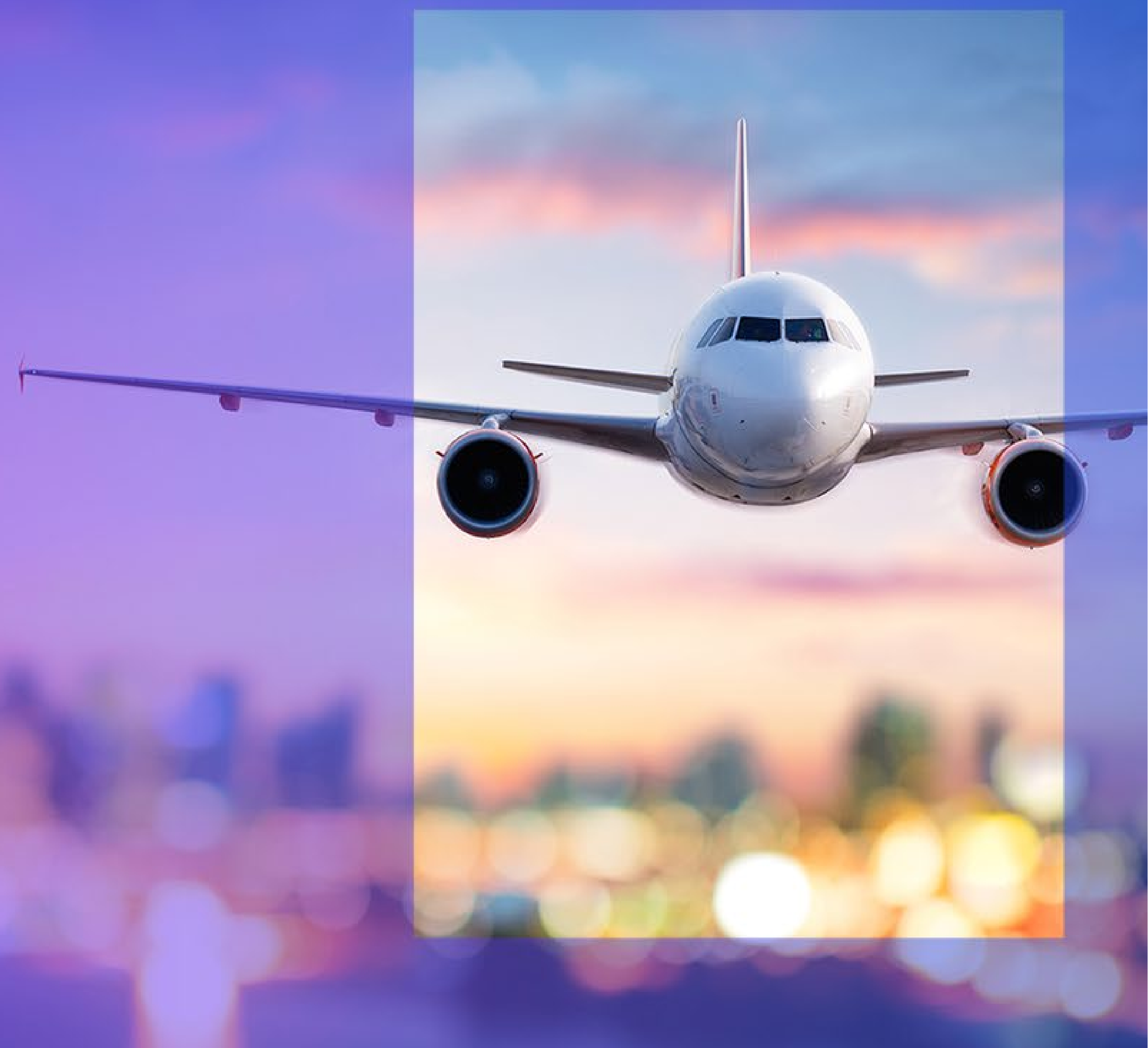
Thinking beyond borders: Management of extended business travelers - Thailand



February 2024

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Key message

Thailand imposes personal income tax on the Thai-sourced income of both residents and non-residents, regardless the Thai source is paid in or outside of Thailand, unless treaty income tax exemption is available.

On 15 September 2023, The Thai Revenue Department issued Departmental Instruction No. Por 161/2566 (“DI No. 161/2566”) that foreign-sourced income derives/receives from 1 January 2024 onwards will be subject to Thai personal income tax if:

I. The individual derives/receives the foreign source income in the year the individual is a Thai resident, **and**
II. The individual bring/transfer the foreign source income into Thailand in any calendar year.

A person’s liability to Thai tax is determined by residence status for taxation purposes and the source of income derived by the individual.

1 Key message

Every person, resident or non-resident, is taxed on employment income derived from work duty or from business carried on in Thailand, or from business of an employer in Thailand, or from a property situated in Thailand, regardless of whether such income is paid inside or outside of Thailand.

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Income tax

2 Income Tax

2.1 Liability for income tax

A person's liability for Thai tax is determined by both residence and source rules. A resident of Thailand for tax purposes refers to an individual who is present in Thailand for a total of at least 180 days in a given tax year (being the calendar year).

The general rule is that a person who is either a resident or non-resident of Thailand is assessable on income derived from sources in Thailand. A resident who derives/receives a foreign source income is subject to Thai tax on foreign-sourced income, but only if that income is remitted to Thailand. Extended business travelers are considered non-residents of Thailand for tax purposes unless they are present in Thailand for more than 180 days in the tax year.

2.2 Definition of source

Employment income is generally treated as Thai-sourced compensation where the individual performs the services in Thailand and/or performs the services for the business of the employer in Thailand.

2.3 Tax trigger points

Technically, there is no threshold/minimum number of days that exempts the employee from the requirements to file and pay tax in Thailand. To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable double tax treaty, there may be no tax liability.

2.4 Types of taxable income

Assessable income includes income from employment, including benefits either in cash or in-kind is assessable income subject to Thai tax, unless it is specifically exempt.

2.5 Tax rates

The maximum tax rate applies to income earned over 5 million Thai baht (THB). Net taxable income is taxed at progressive rates up to 35 percent. The maximum tax rate is currently 35 percent on income over THB 5 million in the case of both residents and non-residents.

Flat rate of 17% for highly skilled professionals with Long-Term Resident ("LTR") visa.

Flat rate of 15% for employees registered under the International Business Centre ("IBC") tax regime at the Thai Revenue Department.

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Social Security

3 Social Security

3.1 Liability for social security

Resident and non-resident employees who receive salary from Thai employer are required to make contributions to Thailand's social security fund. Contributions to the social security fund are made by employees and employers in equal proportions. The present rate of contribution made by each party is 5 percent of the employee's salary, up to a maximum amount of THB750 per month. The contributions must be deducted by the employer at the source and remitted to the social security fund by the 15th day of the following month salary is paid.

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Compliance obligations

4 Compliance obligations

4.1 Employee compliance obligations

Tax returns are due by 31 March following the tax year-end, which is 31 December, for paper-based return (or 8 April for electronically return).

4.2 Employer reporting and withholding requirements

Employers are required to withhold income tax from salaries and benefits paid to employees. A monthly withholding tax return must be filed via E-filing with the tax authorities by the employer by the 15th of the month following the month income is paid.

Employers also are required to issue withholding tax certificate (50Bis) to employees within 15 February of the following tax year or within one month the employment is terminated, then file an annual withholding tax return (PND1Gor) with the tax authorities by the end of February following the tax year-end, which summarizes total income paid and tax withheld for the previous tax year.

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Other issues

5 Other issues

5.1 Work permit/visa requirements

A foreigner entering Thailand to work must obtain a non-immigrant type of business visa (non-B) from the Royal Thai Embassy or Consulate. This visa entitles the foreigner to apply for a work permit.

5.2 Double taxation treaties

Thailand has an extensive tax treaty network. Thailand has entered into double taxation treaties with more than 60 countries/jurisdictions to prevent double taxation and allow cooperation between Thailand and overseas tax authorities in enforcing their respective tax laws. Claims for double tax relief are not required to be submitted. It is the responsibility of the taxpayer to determine whether the relief is applicable. A permanent establishment (PE) may potentially be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has the responsibility of the taxpayer to determine whether the relief is applicable.

5.3 Permanent establishment implications

A permanent establishment (PE) may potentially be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has.

5.4 Indirect taxes

Value-added tax (VAT) is applicable at 7 percent on taxable supplies. VAT registration is not required on employment income.

5.5 Transfer pricing

The Thai Revenue Code empowers the tax authority to assess deemed income if the services are provided without consideration. A transfer pricing implication could arise if the employee is being paid by an entity in Thailand but performing services for the benefit of another entity. This would also be dependent on the nature and complexity of the services performed.

5.6 Local data privacy requirements

Thailand has data privacy laws.

5.7 Exchange control

Foreign currencies can be transferred or brought into Thailand without limit. Any person receiving foreign currencies from abroad is required to repatriate such funds immediately and sell to an authorized bank or deposit them in a foreign currency account with an authorized bank within 360 days of receipt, except certain conditions.

Any person bringing into or taking out of Thailand foreign currency bank notes in an aggregate amount exceeding USD 20,000 or its equivalent must declare to a customs officer.

5.8 Non-deductible costs for assignees

Non-deductible costs for assignees include payments that are not for or related to the employer’s business.

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