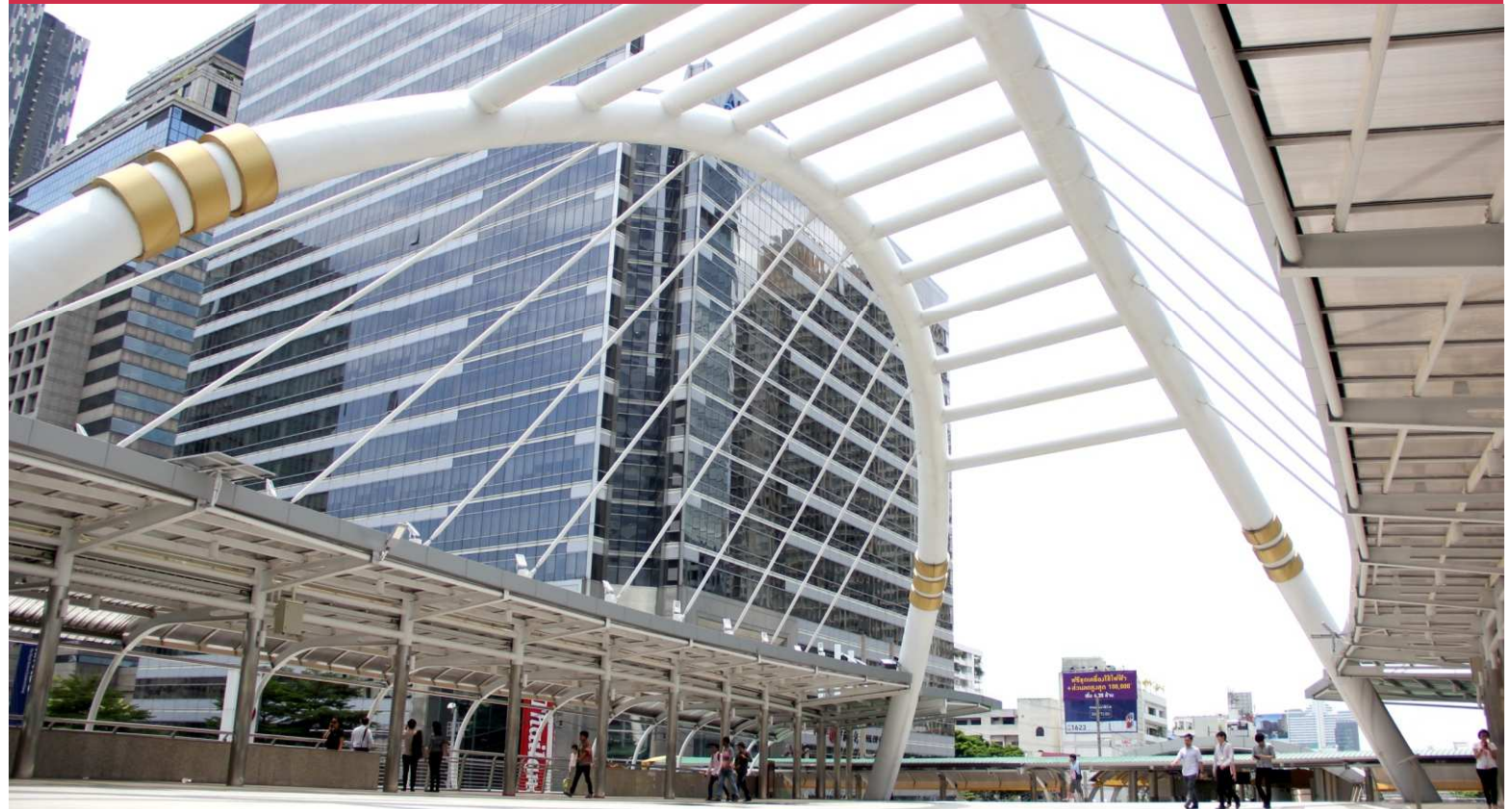


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Revisiting Expatriate Programmes

*15th Annual
Conference
Maximise
Shareholder Value
through Effective
TAX Planning 2014*

29-30 October 2013



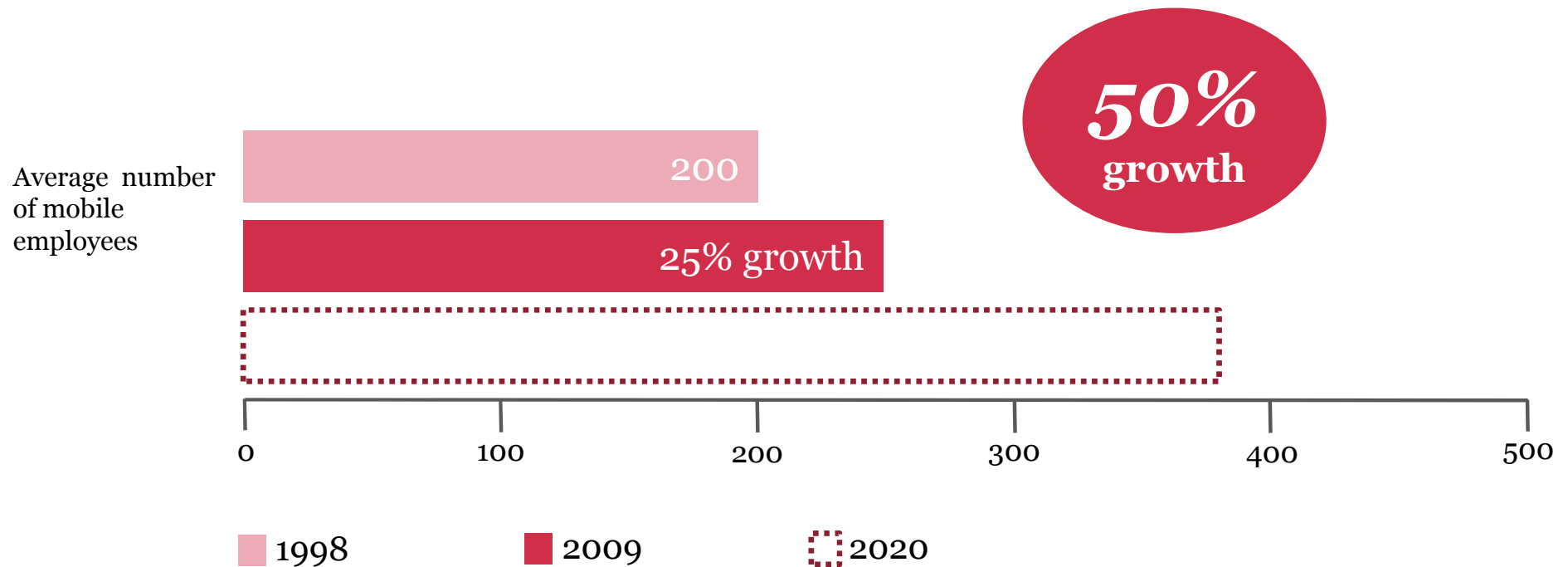
Agenda

- Global mobility trends
- Assignment policy and compensation
- Tax issues – individual and corporate
- Way forward

Global Mobility Trends

1

The mobile population is increasing

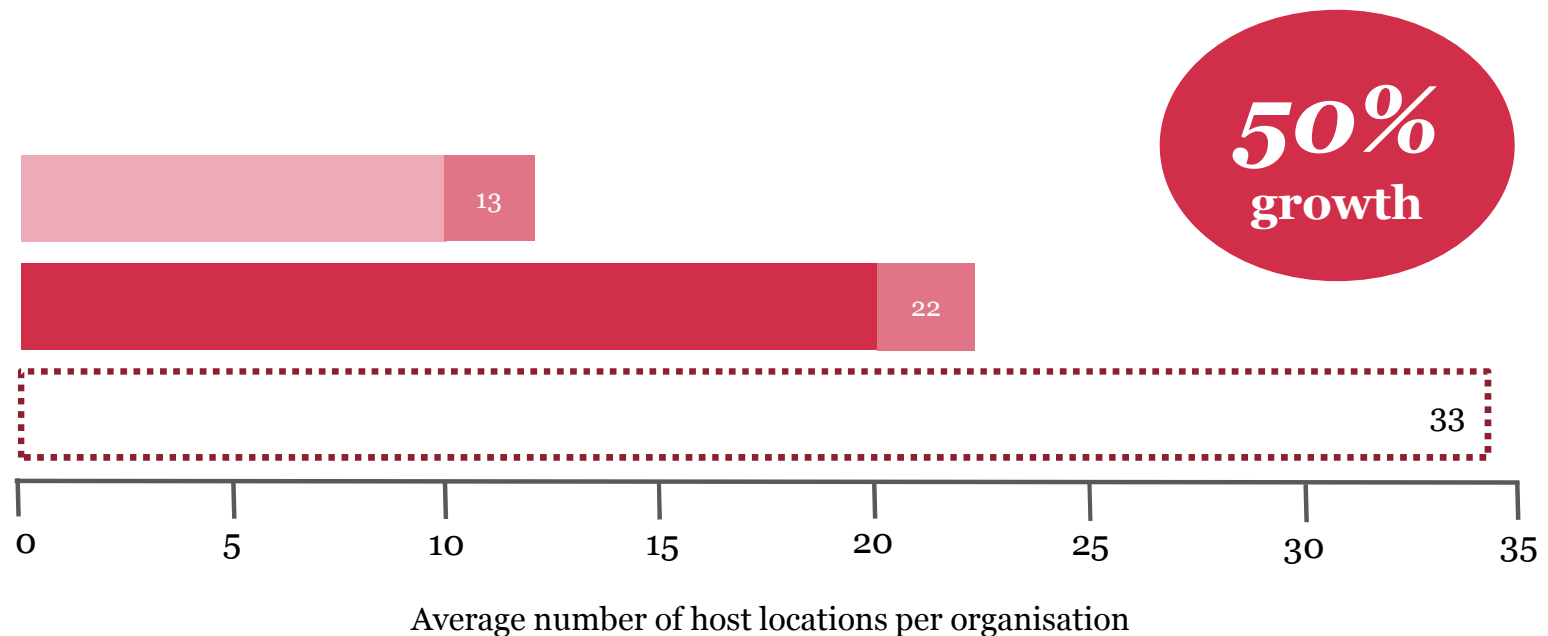


2020 projection: As the business model of an organisation evolves from multinational to international to global, the mix shifts accordingly (from 80% of mobile employees from HQ to 60% from HQ to 40% from HQ). Numbers continue to increase and the definitions of mobility have broadened – even with increasing numbers, costs may be flat due to changes in package design and focus on lower cost alternatives. Mobile employee type mix has evolved from 50% executive to 10% executive.

Source: PwC international mobility database – sample 900 companies

Companies are hosting mobile employees in more countries than ever before

The average number of host locations supported by a global organisation continues to rise



Source: PwC international mobility database – sample 900 companies

Interesting facts and observations

Expensive expat packages still exist: global governance, managing costs and compliance increasingly difficult

97% surveyed believe face time is the most important factor in business relationship

Talent shortage and mistakes

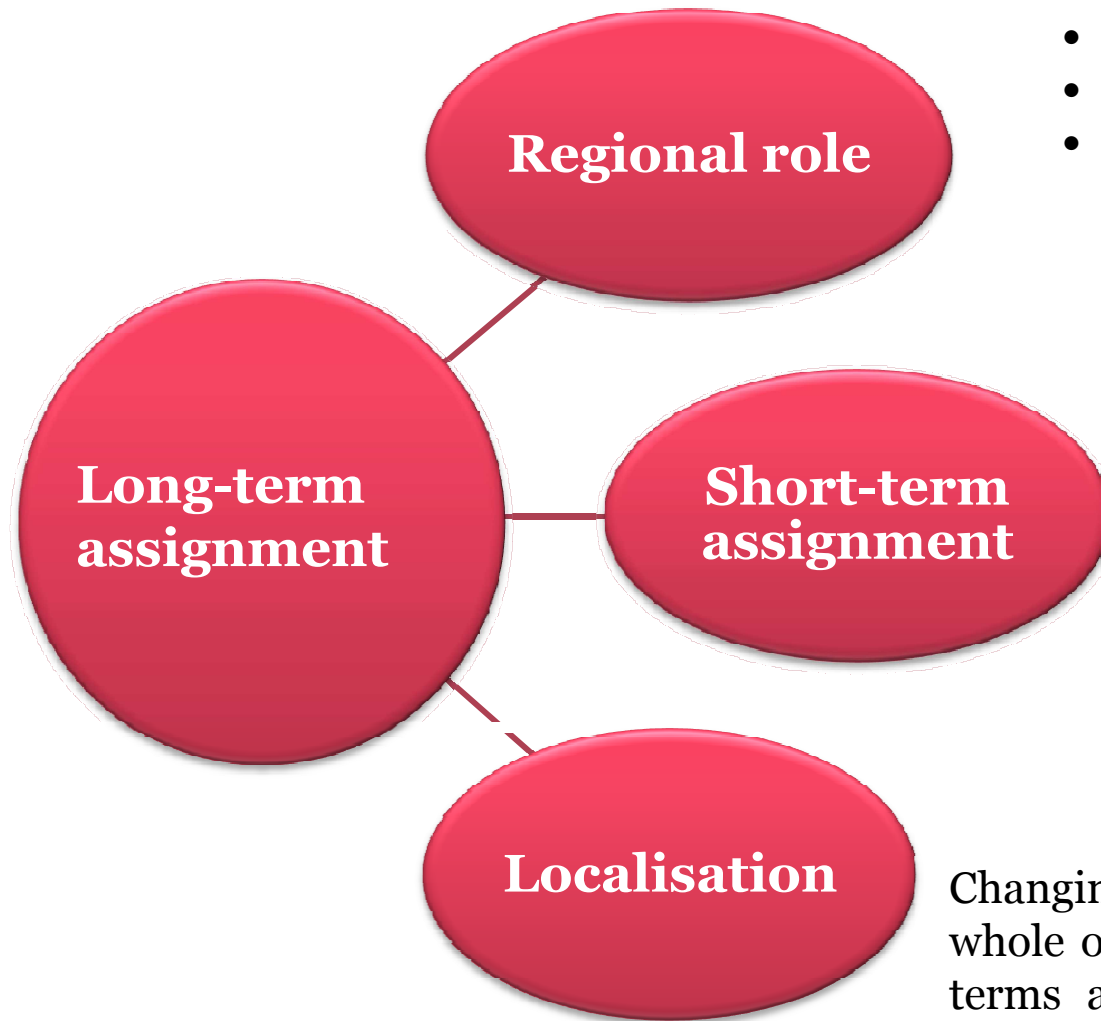
A 60 minute face time meeting = 20 emails = 10 calls = 5 VC

Business is making greater use of short term assignment

Transitioning from traditional expat package to modified or localized package

> 50% of CEOs worry about rising tax burdens and over-regulation

Mobility trends to minimise expatriate cost



- Regional functions
- Multiple employment contracts
- Period over 1 year

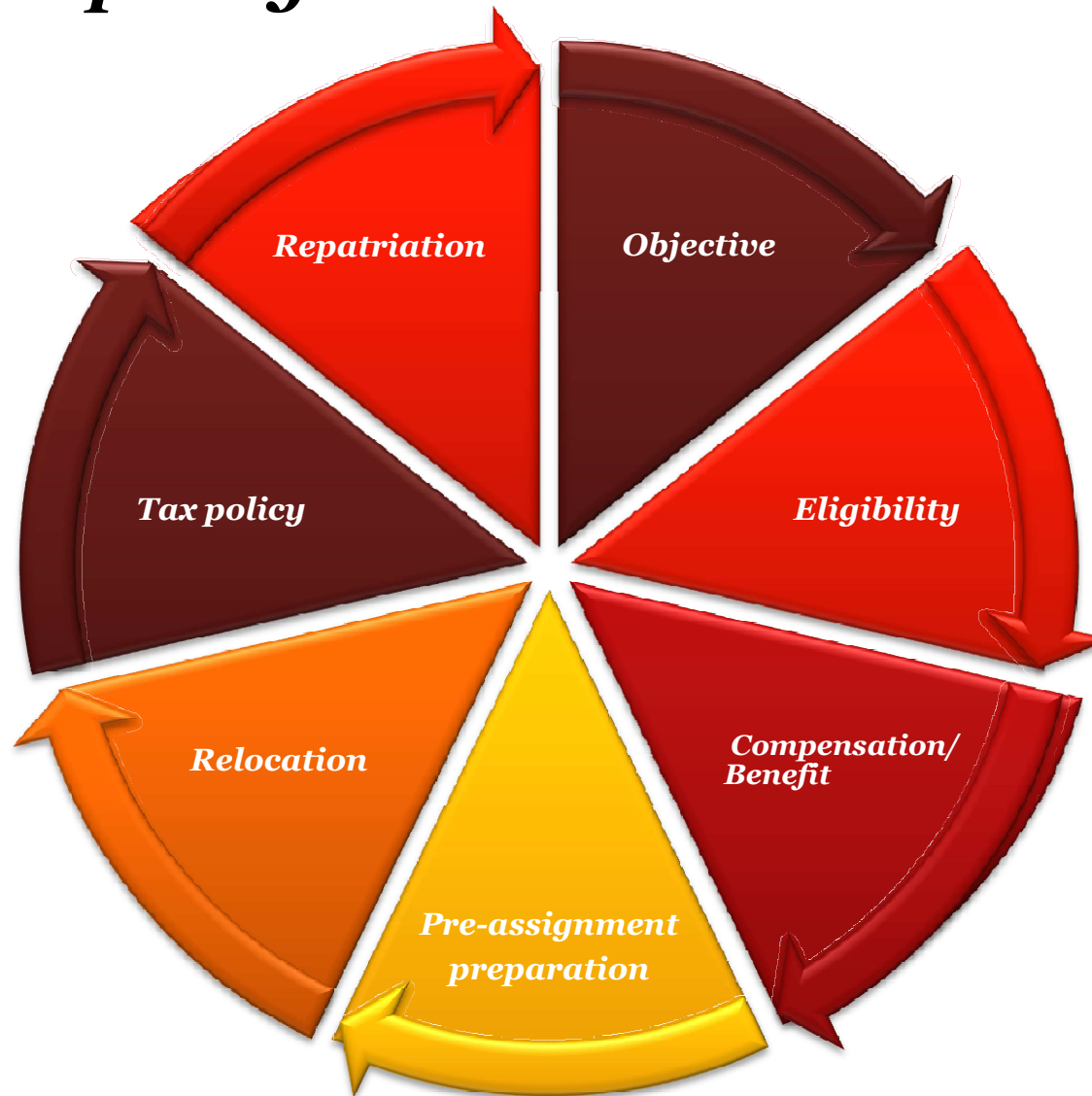
- Typically spends less than one year abroad
- Perhaps in various countries
- Does not break home residence
- Salary/benefits paid in home
- Often it is assumed there are no taxes in the host country (treaty benefit)
- Project, training, internal audits, IT support

Changing of an employee's expatriate status -- in whole or in part -- to host location employment terms and conditions, including compensation and benefits.

Assignment policy and compensation

2

Assignment policy



Classification of policies



Home country based system

Host country based system

Hybrid system

Selected country approach

Home country based system

Advantages

- Equity among assignees come from same location
- Link with home country salary structure

Disadvantages

- Different pay levels among different home location
- Adjustment of COLA = administrative burden

Host country based system

Advantages

- Simpler
- Equity among assignees come from different locations

Disadvantages

- Resistance to assignment to countries where the local market rate for the job is lower
- Reluctant to return to a lower salary upon repatriation

Hybrid system

Advantages

- Standard of living at least comparable to that enjoyed at home

Disadvantages

- Expensive
- Administration associated with setting and reviewing expatriate packages

Selected country system

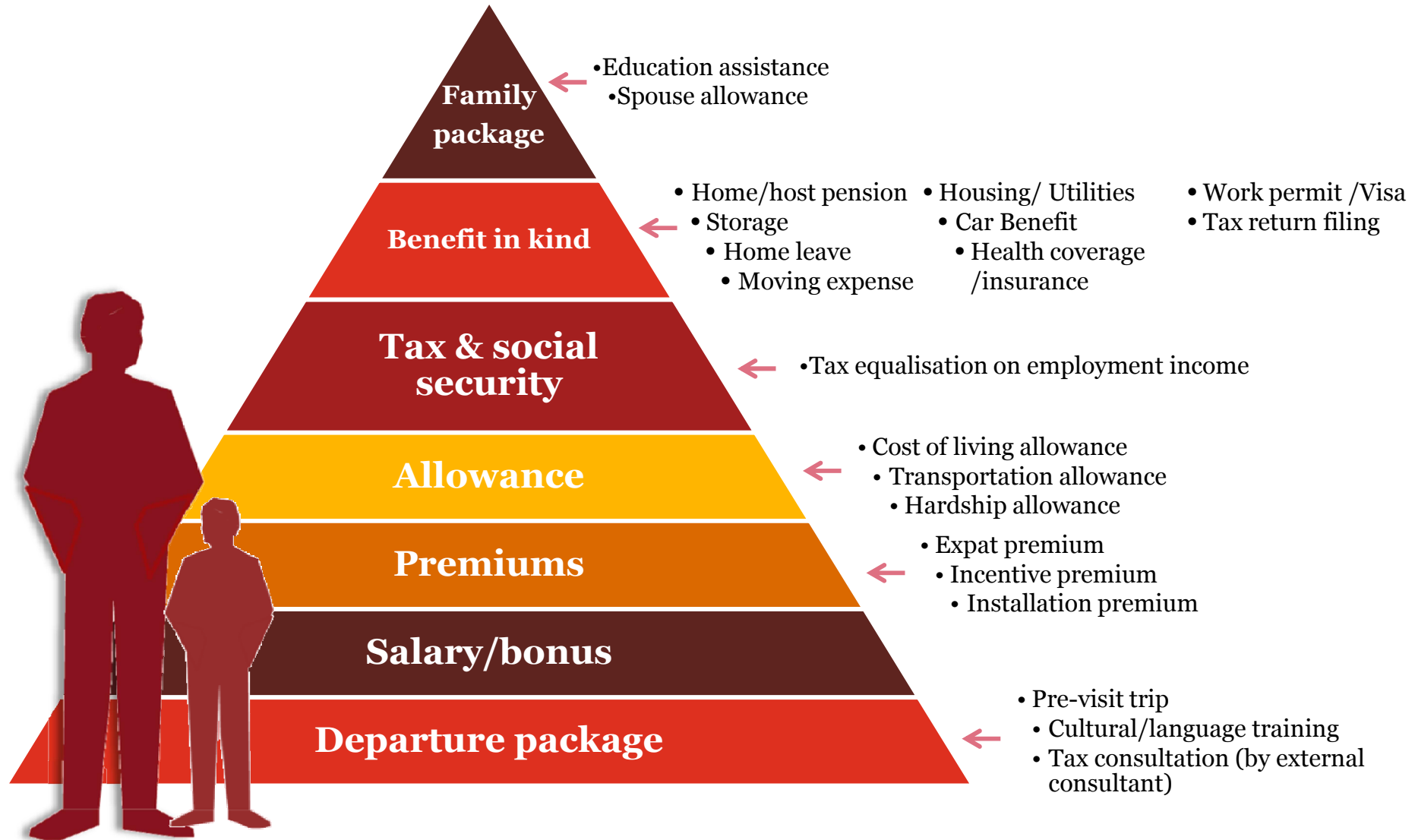
Advantages

- Ease of administration
- Complexity of calculating home based packages for multi-national workforce is reduced

Disadvantages

- Expat come from poorer countries gain more
- Reluctant to return to a lower salary upon repatriation

Long-term assignment compensation



Short-term assignment – Challenges sited by assignees

No supporting policies for the family

Tend to be more project oriented, with more concentrated workload

Communication with the assignee

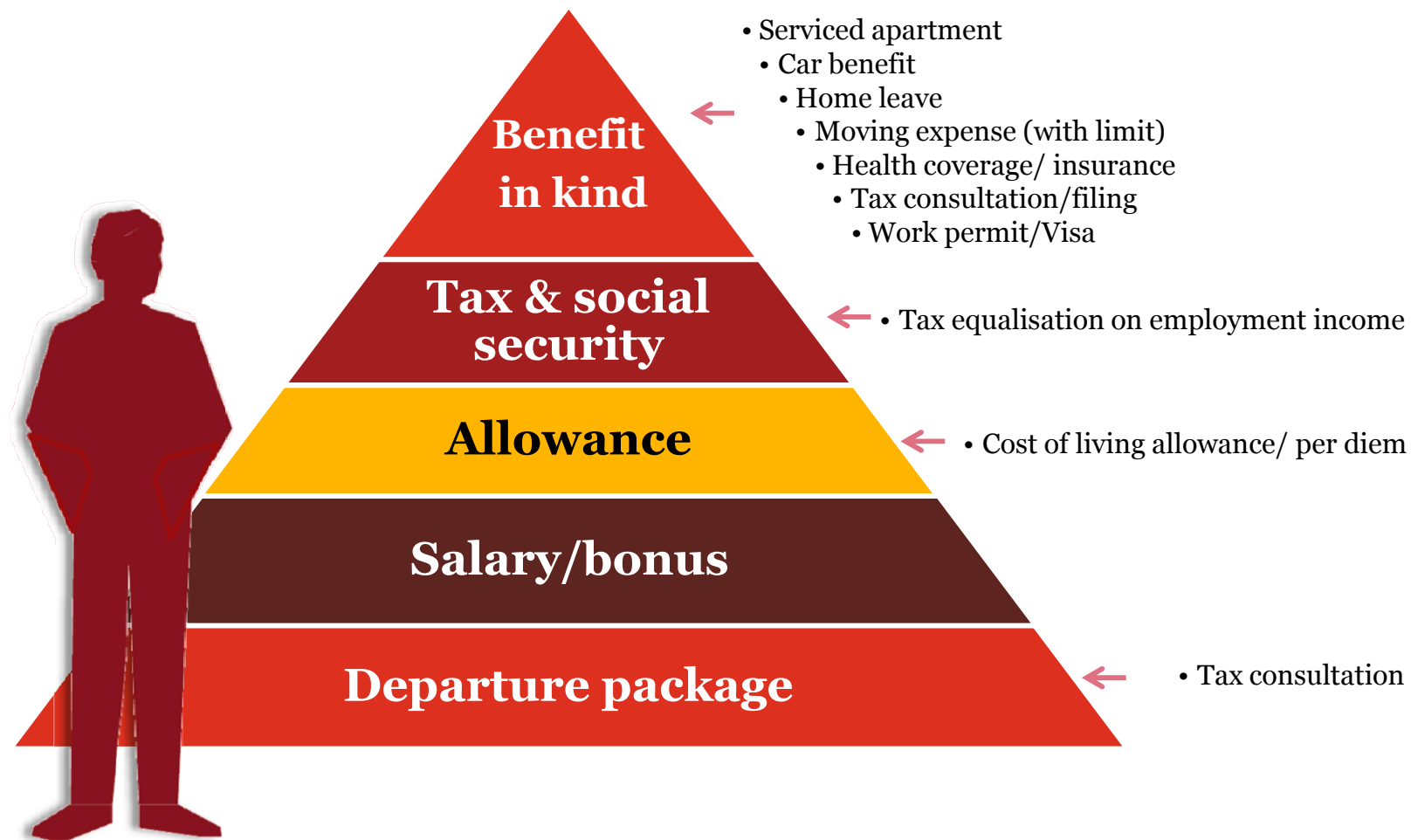
Strains on personal and family relationship

Uncertainty of continuity of contract and career

Inadequate /lack of pre-assignment preparation

No specific corporate supporting policies

Short-term assignment compensation



Localisation

The assignee moves from assignment status to a local employee in the host country location and is included in the host country compensation and benefit plans.

Approaches to localisation

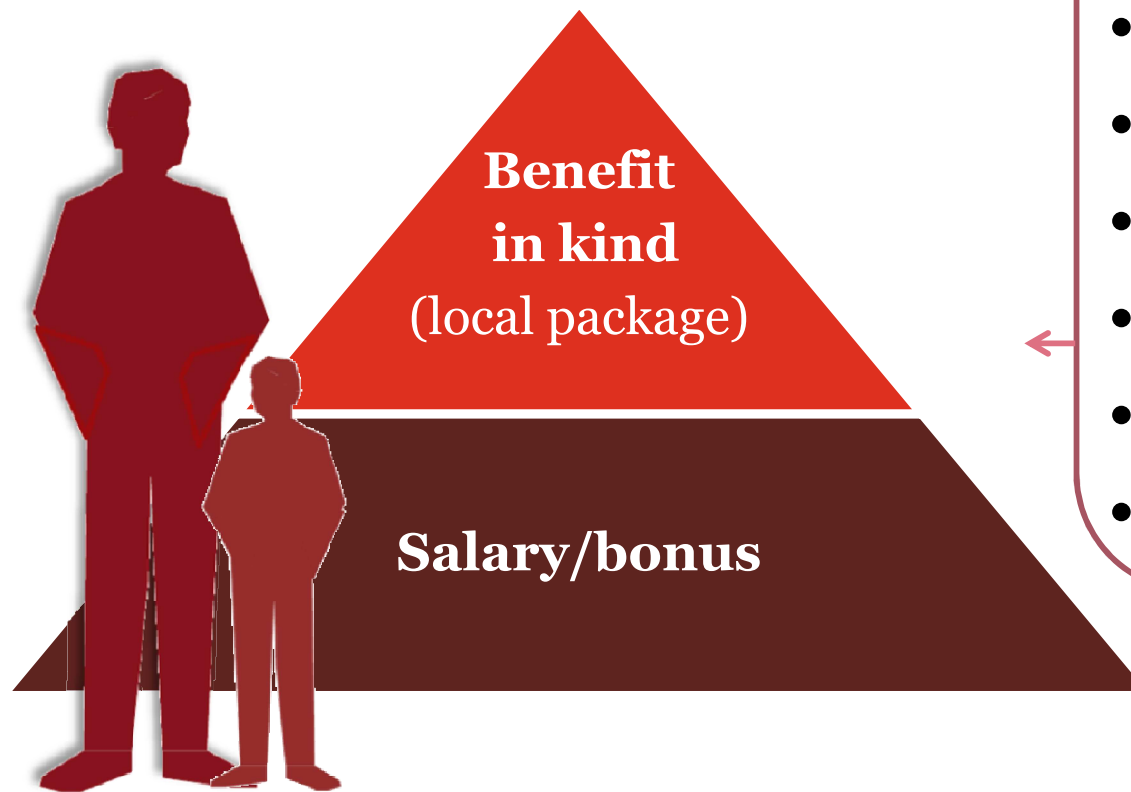
Phased localisation

- Assignee friendly
- Delay in the change in the employment relationship
- Continuance of home country pay and benefit plan participation (and assignee mindset) during the transition period
- Negotiation with the assignee may continue
- Little impact on cost saving

Straight localisation

- Immediate change in employment relationship
- Change to host country pay and benefit plan participation (an assignee mindset) from the date of localisation
- Limit of employee negotiation
- Immediate impact on cost saving goals

Localisation compensation



Challenges:

- Health care
- Retirement benefit
- Immigration
- Schooling
- Housing
- Taxes

Localisation

Local plus conditions is based on local compensation and employment conditions. This includes supplementary expatriate benefits and allowances; typically for housing and education.

Tax issues - individual and corporate

3

Individual income tax

Why do we care?

- Income tax / Social security considerations in home / host country
- Permanent establishment concerns
- Charge backs and transfer pricing
 - weigh possible loss of corporate deduction against treaty benefit
- Immigration issues: proper work permit / visa
- HR considerations
- Other

Individual income tax

- A few number of workdays in host country can trigger compliance requirements
- Often no de-minimus limit (i.e. tax triggered from day 1)

Mainland China	90 days
India	90 days
Singapore	60 days
Hong Kong	60 days
Malaysia	60 days
Australia	0 day
Philippines	0 day
Thailand	0 day
Indonesia	0 day
Vietnam	0 day



Tax protection under the treaty

The following conditions must be satisfied for exemption of employment income in other contracting states:

1. Presence \leq 183* days in the other contracting state in a calendar year/any 12-month period; and
2. Remuneration is paid, or on behalf of, an employer who is not a resident in the other contracting state; and
3. Remuneration is not borne by permanent establishment (PE) [or a fixed base] which the employer has in the other contracting State.

**Days vary based on treaties*

Common questions

Individuals:

- Who is tracking? “Who knows I am here?”
- What income is taxable?
- Double taxation? “Who will pay tax?”
- Tax filing requirement?
- Do I have to get a work permit?

Employers:

- Who is here?
- Cost charges?
- Withholding/payroll taxes?
- How to obtain a work permit?

Risks and exposures

Individuals:

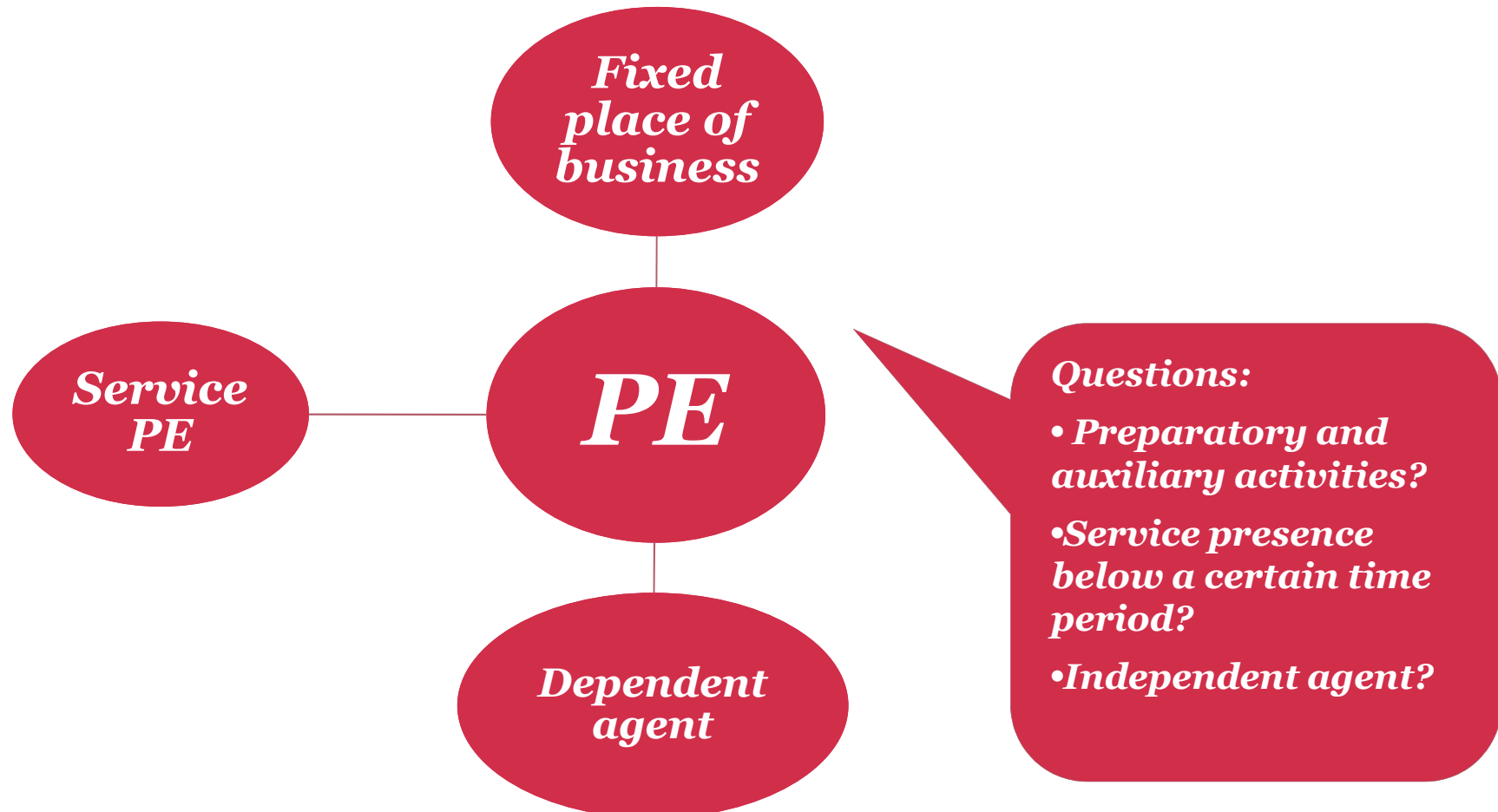
- Non-compliance: tax and immigration
- Financial penalties
- Inconvenience

Employers:

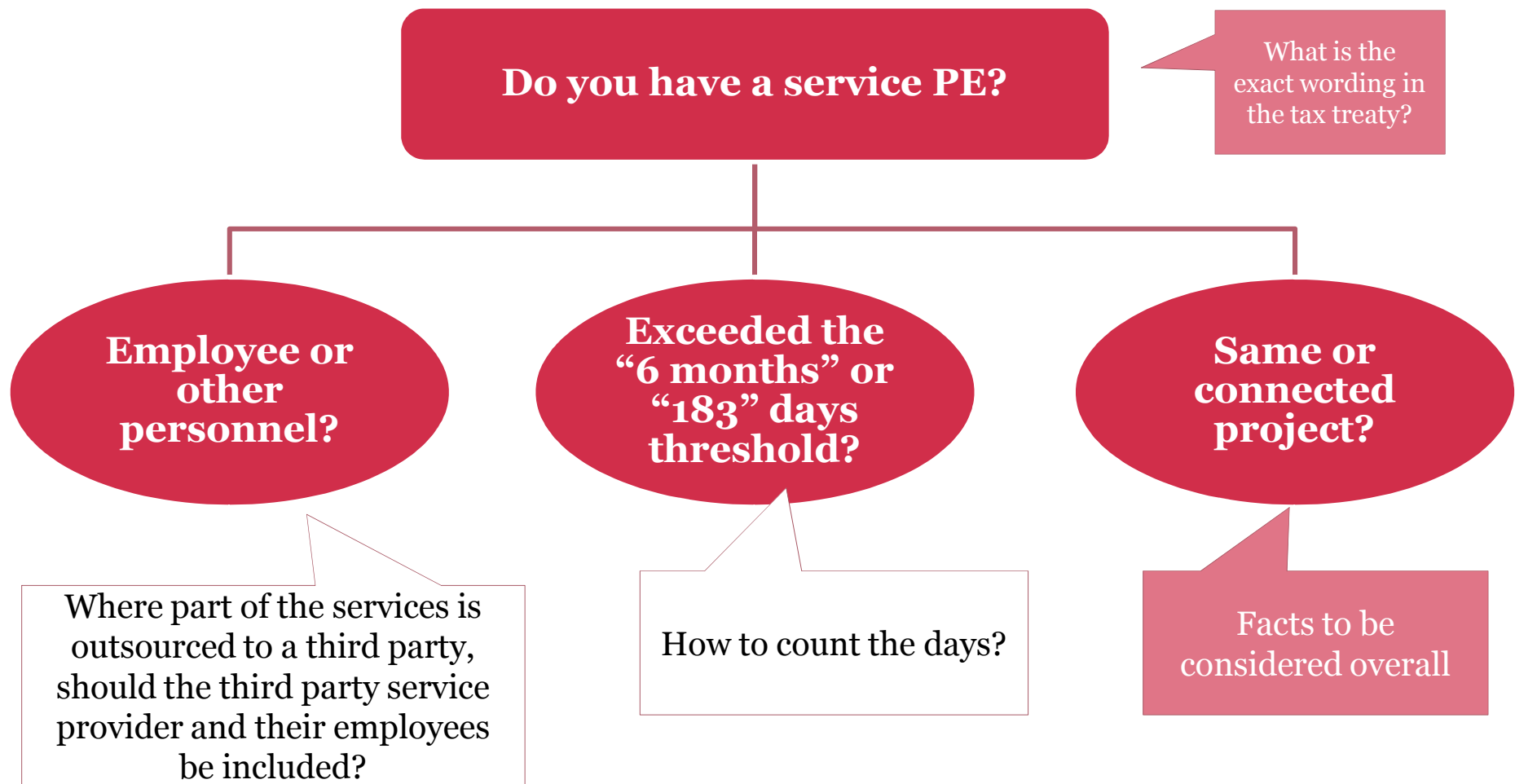
- Corporate income tax and immigration exposure
- Financial penalties
- Unexpected/unbudgeted costs
- Reputational

Corporate income tax

Permanent establishment (PE) risks



Business travelers and PE risks



Service PE clauses

Article 5, paragraph 4 of the Thailand – Japan tax treaty states:

“An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes in that other Contracting State, services including consultancy services through employees or other personnel provided that such activities last (for the same project or two or more connected projects) for a period or periods aggregating more than 6 months within any twelve-month period.”

Article 5, paragraph 2 (i) of the Thailand – Australia tax treaty states:

“the furnishing of services, including consultancy services, by a resident of one of the Contracting States through employees or other personnel, provided activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating more than 183 days within any 12 month period”

Business travelers and PE risks

What if you have a service PE?

Corporate income tax exposure = net profit attributed to the PE taxed at domestic corporate tax rate

Questions:

- Is there income earned by the foreign entity, i.e. employer of the business travellers?
- How do you determine net profit?

Business travelers and PE risks

What if you have a service PE?

Individual income tax exposure

- Remuneration of travellers is deemed borne by the PE
- Day count threshold under a treaty is no longer applicable
- Individual could be subject to tax even if he spends one day in host country
- Compliance requirement... administrative nightmare?

Business travelers and PE risks

What can be done to mitigate the PE exposure?

- Tracking system
 - Track overseas personnel's travel
 - Travel nature
 - Project name and purpose
- Internal PE policy to alert the relevant parties on the PE risk
- Secondment arrangement?

1st Assignment type : *Regional/Dual Role*

Meaning

An expatriate who has dual/multinational duties signs a separate contract with the employer for the services to be performed in each location.

Advantage

Remuneration on offshore workdays not taxable in Thailand, such services should preferably have no connection with Thai assignment.

Documentation

Employment contracts with the same or two or more entities clearly stating roles and responsibilities. Split remuneration commensurate with services rendered for each entity/time records/working papers to demonstrate work done for respective entities/physical stay details justifying services rendered outside Thailand.

2nd Assignment type : *Secondment*

Secondment: Being as an employee of Thai Co. Only the Thai contract is recorded in the payroll of Thai Co. A tax resident of Thailand will be taxed on offshore income only if it is brought into Thailand in the same year that it is earned.

Practical exposure

CIT exposure : The offshore Co. recharges the offshore employment costs to the Thai Co. in the form of a management fee.

- The offshore Co. is considered providing services to the Thai Co. via its employee.
- The employee may be deemed to constitute a PE of his offshore employer in Thailand.
- The fee paid to the offshore Co. is subject to Thai corporate income tax.

Challenges on the use of secondment

Dispatch Fee

Gor Kor 0702/9406 dated October 25, 2012

Background:

Offshore Co. sends an employee to Thai Co. under the 4 year secondment agreement

- The employee was treated as the employee of Thai Co. and
- The employee continued to be regarded as the employee of the Offshore Co. but
- The employee was solely working for Thai Co.

Payments of Thai Co. to each party

To Employee	To Revenue Department	To Offshore Co.
Thai salary and bonus	Monthly and annual tax	Dispatch fee (consisting of Japanese salary, per diem, insurance, pension)

Challenges on the use of secondment

Dispatch Fee

Revenue Department ruling: provision of service by Offshore Co. => PE ---> CIT, VAT, PIT

Lesson learned

- Name of the agreement and invoicing => charging **dispatch fee** leading to interpretation of provision of service, though at cost
- Review of the **secondment agreement** => Thai translation on key employment relationship
- Other documentation => **local employment letter**
- **Accounting record** => service fees payable to Offshore Co. or personnel costs reimbursed from Offshore Co.
- Employment relationship defined under the **CCC and OECD** are very similar
- Dealing with complicated structure => use of expertise

3rd Assignment type : Localisation

Localisation is the process of removing an employee from an expatriate package and integrating the employee into the host country on local terms of employment.

The employee is taxed only in the host location.

Repatriation or separation



Repatriation or separation : governing laws

Relevant laws relating to repatriation

- Revenue Code
- Provident Fund Act
- Social Security Act

Relevant laws relating to employment separation

- Civil and Commercial Code
- Labour Protection Act, 1998
- Revenue Code
- Provident Fund Act
- Social Security Act

Employment separation : action required

Labour Protection Act, 1998

Section 17 – Termination notice

By giving advance notice in writing to the other party before or at the date a wage payment falls due in order to take effect on the following date a wage payment falls due.

Advance notice of more than three months is not required.

If the employer fails to state any reason for termination in the notice of termination of the Contract of Employment, the employer may pay wages, at the amount to be paid, up to the due time of termination specified in the notice and dismiss the employee immediately.

Employment separation : action required

Labour Protection Act, 1998

Section 67 – Unused annual leave

The Employer shall pay wages to the employee for annual holidays in the year of termination equal to the proportion of annual holidays to which the employee is entitled, including accumulated annual holidays.

Employment separation : action required

Labour Protection Act, 1998

Section 118 – Severance payment schedule

An employer shall pay compensation to an employee whose employment has been terminated as follows:

Years of services	Severance pay (calculated from the last rate of wages before termination)
120 days but less than 1 year	30 days wages
1 year but less than 3 years	90 days wages
3 years but less than 6 years	180 days wages
6 years but less than 10 years	240 days wages
10 years or more	300 days wages

Employment separation : action required

Revenue Code - Section 48 (5), DG's Notification on income tax (No.45) and Ministerial Regulation No. 126, clause 2 (51)

- **Special tax calculation method:** will be applicable for an employee who serves the company for at least 5 years
- **Exclusion provision:** A taxpayer may elect to exclude the severance payment from the normal tax computation on income under Section 40(1)
- **Tax exemption:** Severance pay received from termination of employment that is not exceeding the last 300 working days and capped at Baht 300,000 (Ministerial Regulation No. 217)

Employment separation : action required

- **Exempt income from provident fund payout** upon termination of employment or retirement with the following conditions (Ministerial Regulation No. 126 (36) and DG's Notification on income tax (No.52) – Income from the provident funds upon termination of employment, retirement, incompetency or death, DG's Notification on income tax No.151) :
 - employee age not less than 55 years, and
 - has been a member of a provident fund for not less than five years.

Employment separation : action required

- Employer should inform the **provident fund** manager as soon as possible
- The employer must notify the **Social Security** department within 15 days
- **Employer has to:**
 - Issue an employment certificate to the employee
 - Issue a letter confirming the last 12 month's wages and the amount of severance payment
 - Issue a withholding tax certificate
 - Severance payment must be paid within the last working day
 - Special severance pay under Section 120, must be paid within seven days after the employee refuses to go to work at a new location

Employment separation : action required

Civil and Commercial Code

Article 582 : Termination notice

By giving notice of termination at or before the time of remuneration payment to take effect at the following time of payment.

But no more than three-month notice needs to be given.

Article 586 : Costs of return journey

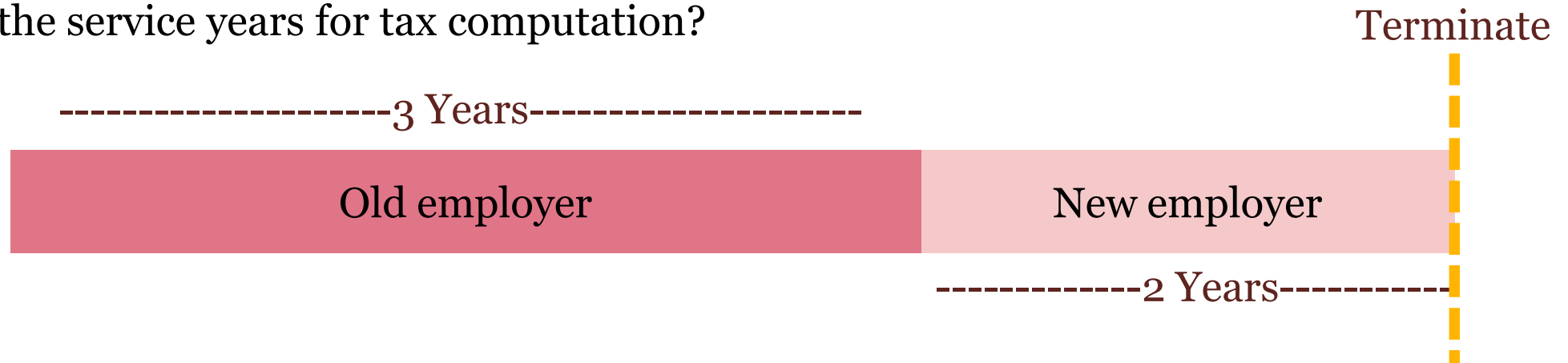
If the employee has been brought from elsewhere at the expense of the employer, the employer is bound, when the hire of services comes to an end to pay the costs of the return journey, unless otherwise provided in contract.

How to count the service years

Transfer of employment: Thai company to Thai company

Resulting from business combination, the employment contracts are generally transferred with no change in employment conditions to avoid severance payment. The rights and responsibilities of the former employer are transferred including the service years.

When termination triggered by the new employer in the future, how to count the service years for tax computation?



How to count the service years

Termination of seconded assignee into Thailand

Expatriate employee was employed and seconded to perform duties in Thailand under a secondment agreement. How to count the service years upon termination for Thai tax, the first date hire or the first date of employment in Thailand?



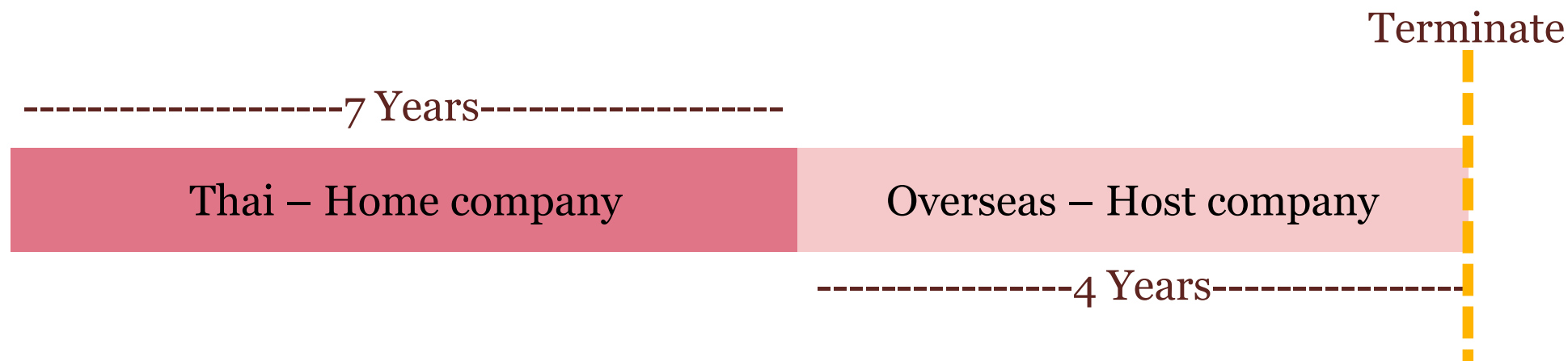
How to count the service years

Termination of Thai seconded assignee overseas

Thai national was hired by Thai Co. and seconded to work with the affiliated companies outside Thailand.

How to count the service years if termination take place outside Thailand?

How much of the severance pay subject to Thai tax?



Employment separation : Tax Ruling & Supreme Court Judgment

Gor Kor 0702/9608 dated October 26, 2012

- Payments made by employer and provident fund in different tax years
 - Company paid severance payment
 - Provident fund manager paid provident fund payout
- The Revenue Department ruled that the employee cannot elect to pay tax under the special tax calculation method, according to Section 48(5).

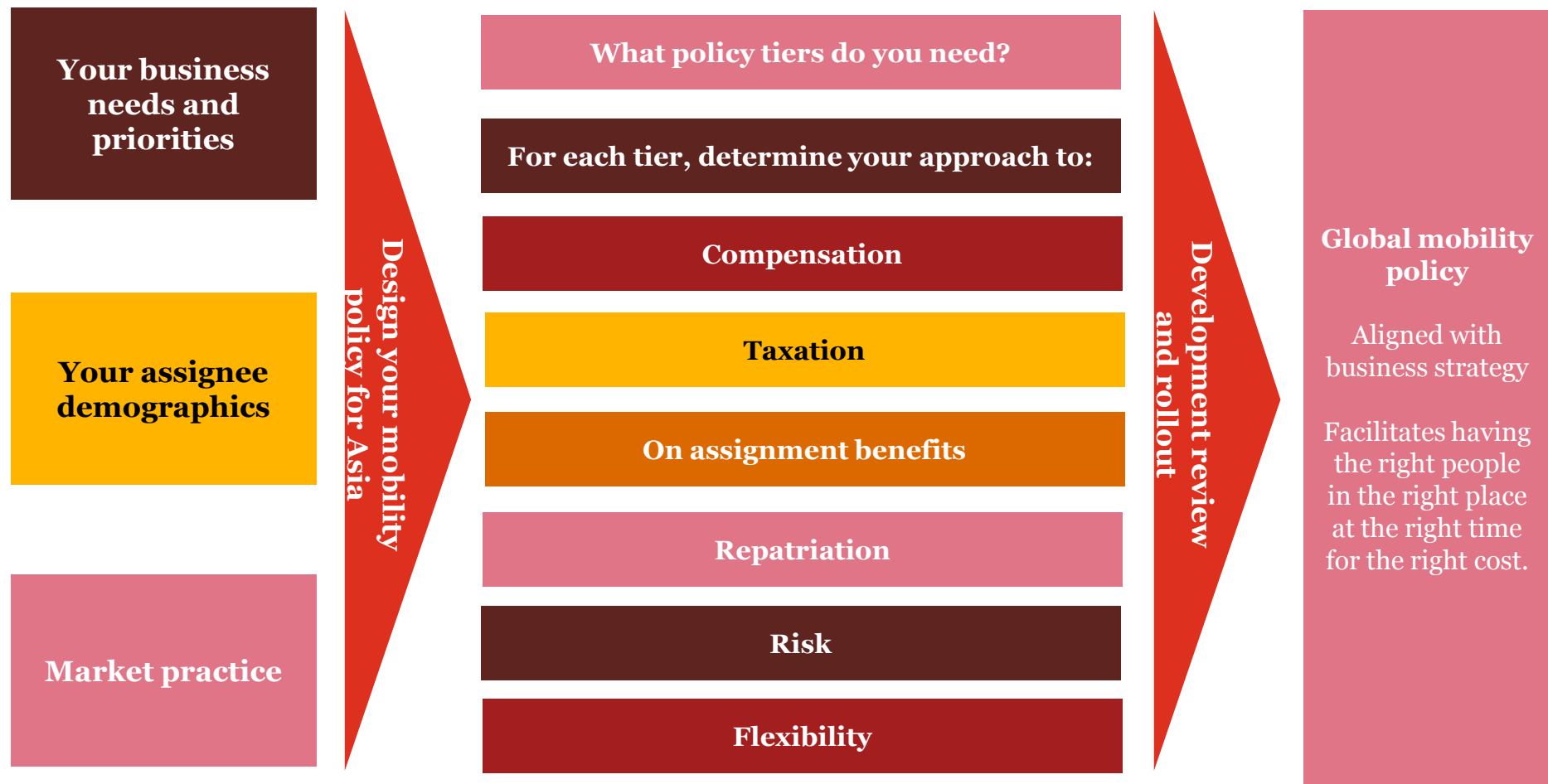
Supreme Court Judgment No. 43/2547

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- The Supreme Court ruled that the employee can elect to pay tax under the special tax calculation method, according to Section 48(5).

Way forward

4

Designing your modern mobility policy for Asia



Contact

Prapasiri Kositthanakorn

Partner

Tel: +66 (0) 2344 1228

prapasiri.kositthanakorn@th.pwc.com

Jiraporn Chongkamanont

Director

Tel: +66 (0) 2344 1189

jiraporn.chongkamanont@th.pwc.com

Contact

Napaporn Saralaksana

Senior Manager

Tel: +66 (0) 2344 1231

napaporn.saralaksana@th.pwc.com

Hatairat Topiboonpong

Senior Manager

Tel: +66 (0) 2344 1263

hatairat.topiboonpong@th.pwc.com

Thank you