The Nation

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BusinessINSIGHT

HOW TO BE SURE YOU'RE NOT PAYING TAX IN TWO COUNTRIES UNNECESSARILY

Is foreign tax credit relief available in Thailand?

The answer is yes.

If you pay tax in two or more countries due to cross-border business travel, the first question that pops up in your mind is which country should provide tax relief to you. The simple answer is that generally it is the country where you are a tax resident.

In the case of a Thai working outside Thailand and subject to tax in another country, if he maintains Thai tax resident status, which is staying in Thailand for 180 days or more in the tax year (calendar year), Thailand must grant the tax relief. However, Thailand will only grant relief in the form of a foreign tax credit (FTC) if a double tax treaty with the other country exists and a FTC is provided for in the treaty.

But even then, actually getting the FTC from the Thai Revenue Department is not easy. Success depends on your presentation, defence and how you substantiate and document your FTC refund request to the Revenue Department.

Are you subject to tax in two or more countries?

If you are lucky, you may go on business trips to countries with tax laws allowing short-term business travellers to work there without having to pay taxes. For example, under the domestic law, Singapore grants a 60-day exemption while China grants up to 90 days before the business traveller would be subject to personal income tax there.

If the country has a tax treaty with Thailand, there is generally a 183-day rule before you are subject to the foreign country's tax. However, you may be assigned to work in one country for an extended period that is over the threshold stipulated in either the country's domestic law or the treaty, and would no longer be exempted from personal income tax there.

One scenario where you may be subject to double taxation is when you are still subject to tax in Thailand as your payroll register is here. However, the host country where you are working is taxing you because you have overstayed the period in the tax treaty, or the host country is taxing you as your salary has been recharged there and the host entity is bearing your costs.

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How can you claim the FTC from the Thai government if you are paying tax in two or more countries?

If you are subject to double taxation and the tax relief country is Thailand, what should you do? We advise a step-by-step approach as follows:

1) You will be required to produce proper documents, including a copy of the other country's tax return and proof of payment, to prove that you were double taxed.

2) You will need to convince the Revenue Department that they should be the party to provide tax relief. The revenue agents may ask you to share the tax law of the other country and the

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clause of the tax treaty granting FTC relief.

3) In assessing your case, commonly requested documents would include assignment letters, secondment/service agreement, your passport, your tax documents filed in the other country, your bank statements, recharging documents/invoices, payment evidence and possibly more.

The tax officers may also look into the company's financial statements to verify and confirm whether your arrangement, which is explained to them, is true. Are your salary costs booked in the Thai financial statements? Is there more than one payroll? All must tell the same story. If all the questions from the Revenue Department can be answered convincingly, there is a strong likelihood that the refund will be processed accordingly.

We recommend that although there is a three-year period for filing an application, it should be done as quickly as possible. In cases where the employer paid the overseas tax for the employee and the FTC should be claimed, like all refund applications, the employees' signatures are required on the applications.

The caveat is that the employee must still be around to give the refunds back to the company after the tax refund cheques have been issued in the taxpayer's name.

An additional point to be aware of is that Thailand will only grant an FTC equal to the Thai tax on the income that was taxed in the other country. Thus, if the tax rate in the other country is higher, you may not get full tax relief.

FINAL THOUGHT

One way to avoid double taxation in the first place and the need to try and get an FTC from the Revenue Department is to not remit the foreign earnings back to Thailand in the year they are earned. This is because Thailand will only tax foreign earnings if remitted back in the same year they are earned. However, this may not be totally practical as the employee likely has a family back in Thailand that needs to be supported or other expenses in Thailand even while out of the country.

Natchanond Charoenmechaikul, PwC Manager, contributed this article.