

# A RISING TREND: REVENUE DEPARTMENT AUDITS OF PERSONAL INCOME TAX

**T**he Thai Revenue Department has always taken the position that taxpayers (both companies and employees) must devote sufficient resources to ensure they comply with their tax obligations in a timely manner. Nowadays, employees should also ensure they have legally declared their income. They should also maintain proper records and documents in support of the tax returns they have filed in case there is a tax investigation.

In the past, individuals have not been of much interest to Revenue Department officers, but recently the department has shifted its focus to personal income tax as authorities seek to improve collections. Companies with expatriates are frequently viewed as having higher potential for revenue collection. This means that multinational corporations now face a higher risk of being targeted for review in how they prepare their expatriates' tax filings.

What follows are a few examples of cases in which revenue officers had success targeting certain areas, leading to the successful imposition of penalties.

**1. Permanent establishment (PE) exposure on secondment arrangements:** The Revenue Department recently found an area where it could score a quick win in its tax investigation efforts on multinational companies that employ expatriate employees.

In practice, there should not be a PE exposure on real secondment arrangements. However, if any documentation shows or states that the secondees are acting as a representative of or considered as an employee of the foreign company and providing a service to the multinational's subsidiary in Thailand, the foreign company would be deemed to have a PE in Thailand. If a PE is found to exist, this would mean the foreign parent would also be subject to Thai corporate income tax on its income attributable to the PE.

Any documents that the department might request during the tax investigation must be reviewed and drafted appropriately. That's why getting the proper advice before undertaking a secondment is recommended. Content and clauses in the secondment

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agreement or assignment letter, content and wording in the recharging and invoicing document, and accounting entries are also important as any mention of "fees" charged could be interpreted by the revenue officer to mean that the foreign entity has a service PE in Thailand.

**2. Under-reporting of assessable income and taxes:** Under-reporting of income on tax returns is not a new issue but it can quickly become a problem for individuals or a company, who may face penalties and/or surcharges once the tax shortfall has been discovered.

Over the past year, the Revenue Department has made some progress in looking for potentially unreported income using many sources, e.g. reconciling staff expenses reported in the corporate income tax returns and financial statements versus employers' personal withholding tax returns.

As well, officials can compare a company's declared salary expenses from year to year to see if they are increasing, and match these against the personal withholding tax returns filed. This would help officers to see if any items taken as expenses have been properly reported as employees' assessable income.

Companies and individuals usually are not aware of certain benefits-in-kind that are taxable and thus they tend to be underreported. These include:

- ◆ employer contributions to overseas social security;
- ◆ school fees/education assistance for dependents;
- ◆ relocation allowance;
- ◆ air tickets for home leave;
- ◆ club memberships;
- ◆ long-service awards, and;
- ◆ equity award programmes.

**3. Engaging in business with non-compliant companies or individual taxpayers:** Consider a case in which a company's suppliers, e.g. lessors for expat

staff accommodation, are subject to audit or investigation by the Revenue Department. If this is the case and the supplier fails to appropriately answer the department's questions, it may follow suit and investigate your company to see if you have withheld tax correctly. A failure to correctly withhold tax or remit the tax would lead to tax revenue collection by the Revenue Department.

**4. Claiming tax refunds due to the new reduced rates for personal income tax:** The newly approved personal income tax rates that will reduce personal income tax for the 2013 tax year are due to be announced in the *Royal Gazette* soon. There is a possibility, however, that the legal process will not be completed by the end of 2013 because of current political uncertainty, which will create a big headache for employers and taxpayers.

Because the new rates were approved so late in the year to begin with, many companies will have to adjust the personal income reported and may have overpaid tax for their employees, local and expat, during the year. As such, any tax refund claim may trigger a tax audit. The extent of the audit may vary depending on the skills of the officer in charge.

**What should you do to be prepared for tax investigation?** Taxpayers should periodically conduct a review of their tax returns and declarations. If you are in doubt with regard to the accuracy of your tax returns and declarations, we suggest you seek professional advice to ensure your company and its employees are compliant with Thai tax law; that tax-saving opportunities are analysed, and risks are reduced or mitigated.

Tax service providers often offer "desktop" reviews or company "health check" services through role play, including a mock audit and investigation using clients' existing information and documentation, to get them ready ahead of a real tax investigation.

**By Jiraporn Chongkamanont, Director, and Phusanisa Thongdee, Deputy Manager of PwC International Assignment Services (Thailand) Ltd. We welcome your comments at [leadingtheway@th.pwc.com](mailto:leadingtheway@th.pwc.com)**