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LEADING THE WAY

Tax issues to consider when sending staff to work in Myanmar

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With the liberalisation of the political landscape in Myanmar, many people have become aware of the significant potential of this economic frontier that was once closed to the world. A number of multinational corporations are exploring Myanmar and will bring in experienced expatriates to help build capabilities locally.

This is not something new but, given Myanmar's emerging-market status along with tax laws and practices that change frequently, vaguely written and consequently open to interpretation, investors need an up-to-date understanding of the tax situation. This article describes some of the more important issues arising from the employment of expatriates.

Scope of Taxation: Expatriates working in Myanmar will be subject to personal income tax from day one (subject to any applicable tax treaty provisions) but how much they will have to pay depends on their residence status.

If they are on a long-term assignment and stay in Myanmar for at least 183 days during the tax year (which runs from April 1 to March 31, similar to Hong Kong) or work for a company set up under the Myanmar Foreign Investment Law (MFIL), they would become tax residents and have to pay personal income tax based on progressive rates up to a maximum of 20% for fiscal 2013 and 25% for 2014 onward, after personal and allowance deductions.

Strictly speaking, the Myanmar Income Tax law states that resident foreigners should be taxed on worldwide income. However, the Internal Revenue Department (IRD) has stated that, based on current practice, only resident foreign companies are liable for tax on their worldwide income (except those under MFIL status) and not individuals. In other words, resident foreigners will have to pay personal income tax on income derived from sources within Myanmar but not including offshore non-employment income.

Note that this clarification has not been made in writing and is based only on oral representations by IRD officials. Not only foreign investors but also expatriate employees will thus need an up-to-date understanding of the tax situation (which is often based on tax officers' interpretations and changes frequently) to ensure they remain fully compliant.

On the contrary, expatriate employees on short-term assignments and staying in the country fewer than 183 days during the tax year (and not working for a company with MFIL status) will be considered non-residents and taxed at a 35% flat rate on gross employment income with no personal deductions or allowances permitted.

One way to minimise the expatriate tax cost would be to structure the assignment with a start date soon after April 1, and ending just before March 31, to ensure the expat spends more than 183 days in Myanmar during the tax year and is considered a tax resident.

Taxable employment income: The definition of taxable employment income is broad and includes salaries, wages, annuities, pensions, benefits in kind, such as free accommodation, gratuities and any fees, commissions or perquisites received in lieu of or in addition to salaries and wages.

Although benefits such as free accommodation are taxable, the IRD does offer favourable treatment of employer-paid accommodation by providing specific valuation guidelines.

Tax treatment of equity-based compensation received by both expat and local employees is one area of concern since there is no guideline from the tax authorities.

The challenge is when the benefit will be taxed and by how much, i.e. is the expat employee taxed on the full benefit received or only the proportion that relates to Myanmar-sourced income, as in many other countries?

Since the definition of taxable employment income is broad, you will need to obtain specific agreement from local authorities for the tax treatment of any other types of benefits, e.g. equity-based compensation benefits, employer's contribution to overseas social security, bonuses received during the Myanmar assignment and related to performance in a prior year, and so on.

Social security contributions: The Social Security Law took effect on April 1, 2014 and applies to all entities with at least five employees (Myanmar nationals and/or expats). The current rates of contribution by employees and employers are 2% and 3% of wages, capped at 6,000 and 9,000 for the employee and employer respectively.

Foreign exchange controls: Typically, there are no restrictions with inbound remittances, but outbound remittances could prove difficult due to strict exchange control regulations. The next challenge is how the company structures the payment of expat compensation (percentage to be paid in the home country and in Mynamar).

On a first reading of the Myanmar tax law, many people may assume that it is not all that complicated. However, in fact, the regulations are broad and open to interpretation, in particular for expatriate-related issues that are not specifically addressed. As a result, both multinational companies and their expat employees should seek support from a Myanmar tax specialist to ensure compliance with frequently changing tax laws and practices.

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