

A high-angle, long-exposure photograph of a busy city street. In the center, a woman with long dark hair, wearing a light pink blazer and a white lace skirt, stands still, looking down at her smartphone. She is wearing black high-heeled shoes. The surrounding pedestrians are blurred, creating a sense of motion and contrast with the stationary woman. The street has yellow crosswalk markings. In the background, there are metal railings and a red fire hydrant.

Asean Mobility Spotlight

July 2022

The EY logo, consisting of the letters 'EY' in a bold, white, sans-serif font. A yellow diagonal bar is positioned behind the 'Y'.

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Executive summary

In this edition of the *Asean Mobility Spotlight*, we address the topic of employers' responsibility in ASEAN jurisdictions on complying with tax withholding or annual tax filing obligations of employees' remuneration.

Based on our experience, it is observed that there are some common underreported items across the jurisdictions featured. These include (but not limited to) benefits in kind provided by the company, equity gains and compensation items that are not delivered via local payroll. Penalties are imposed by the various tax authorities for noncompliance.

Below are the different areas that the employers should take note of:



Please note that the information provided in this spotlight is updated as of July 2022.



Indonesia

Employer compliance

Based on the tax law, an employer in Indonesia has obligation to withhold, remit and report employee income tax on remuneration provided to its employee on a monthly basis (Monthly Income Tax Article 21/26). Therefore, it is important for the company, as an employer to determine what compensation are taxable, the taxable amount, the applicable tax rates, the eligible deductions, as well as the due date for payment and reporting to be able to comply with this obligation.

For the employee, as the evidence that the employer has withheld and remitted the tax, the Indonesian company is required to issue a withholding tax slip (Form 1721 A1) for each employee.

Employer reporting obligations

The employee withholding tax (income tax Art. 21/26) must be remitted by the 10th day of the following month and the tax return must be submitted to the tax office by the 20th day of the following month.

There is no annual reporting, but the December monthly tax return serves as an annual reporting as it also includes the summary of annual taxable compensation and related tax that has been withheld for the calendar year.

To ensure that the employer has withheld tax on all taxable compensation, the employer may need to prepare a reconciliation of employee remuneration cost and the amount of taxable compensation reported in the employee withholding tax return for January to December.

Common underreported items

It is common for payroll to continue to be administered in the home country of foreign employees working in Indonesia, with a cost recharge to the Indonesian company. If so, the Indonesian company still has the obligation to withhold tax. As such, the Indonesian company will need to monitor the cost recharges and report the related employee income tax withholding.

Based on a new law, effective January 2022, benefits in kind are taxable. Going forward, the employer is required to track the benefits in kind provided to employees and report it in the monthly employee withholding tax return.

Penalties for noncompliance

There will be penalty for late payment of tax and late filing of tax return.

- ▶ Late payment penalty
 - ▶ The interest rate for late payment is based on the rate set by the Ministry of Finance each month for maximum of 24 months. Currently the interest penalty is about 1% per month.
 - ▶ Pursuant to the result of tax audit, if the tax payable is not paid or underpaid, the penalty is 2% per month for a maximum of 24 months.
 - ▶ In the event if the taxpayer amends the tax return which results in additional tax, the interest rate is determined by the Minister of Finance each month for maximum of 24 months. Currently the interest penalty is about 1% per month.

- ▶ Late filing penalty: IDR100,000 per tax return

The tax office will issue a tax collection letter to collect the penalties. If the penalty is not paid in timely manner, Indonesian tax authority will issue a Distress Warrant.

What can you do if you identify potential errors?

As long as the tax office has not conducted a tax audit, if there are any errors in the tax calculation or there are taxable compensation underreported, the employer shall be entitled to amend the tax return. If the tax audit has been conducted, the employer can still amend tax return as long as the tax auditor has not issued the notification letter of tax audit findings.



Malaysia

Employer compliance

There has been an increased focus on employer compliance within the audit and investigation landscape in Malaysia as the Malaysian Inland Revenue Board (MIRB) looks to strengthen compliance to the employer's tax obligations under Sections 83 and 107 of the Malaysian Income Tax Act, 1967 (MITA) among the Malaysian employers.

The MIRB has issued an Audit Framework for Employer on 1 October 2021 and a revised Tax Audit Framework on 1 May 2022 as guidance for the Malaysian employers.

Employer reporting obligations

Under Section 83 of the MITA, employers have the obligation to fulfill the following by the statutory deadlines:

- ▶ **Employer's return (Form E):** file by 31 March in the immediate following year
- ▶ **Employee's statement of remuneration (Form EA):** provide to employee by the last day of February in the immediate following year
- ▶ **Notification of a new employee (Form CP22):** within 30 days of employment commencing
- ▶ **Notification of an employee ceasing employment (Form CP22A):** not less than 30 days before the cessation unless certain conditions are met and employee is not retiring from any employment
- ▶ **Notification of an employee leaving Malaysia for a period of more than 3 months (Form CP21):** not less than 30 days before the expected departure date for tax clearance purposes
- ▶ **Withhold monies payable to the employee ceasing employment or leaving Malaysia:** until the tax clearance letter is issued or until 90 days after the notification of Form CP21 or Form CP22A was submitted

Pursuant to the Income Tax (Deduction from Remuneration) Rules 1994, employers are obligated to deduct Monthly Tax Deduction (MTD) from the employee and remit to the MIRB no later than the 15th day of the following month.

Common underreported items

Off-payroll compensation and benefits that are not delivered through local payroll or tracked by the employer are commonly underreported in Malaysia, including but not limited to the following:

- ▶ Benefits in kind, such as company car, leave passage and school fees
- ▶ Director's remuneration
- ▶ Employer provided accommodation
- ▶ Employee share benefit or equity awards
- ▶ Trailing income that relates to the exercise of employment in Malaysia

Penalties for noncompliance

Any employer that has failed to comply with the employer's tax obligations without reasonable excuse shall, on conviction of an offence, be liable to:

- ▶ A fine of not less than RM200 and not more than RM20,000 or
- ▶ Imprisonment for a term not exceeding 6 months or
- ▶ Both

In the event of a MTD audit, where under deduction of MTD is identified, a compound may be levied by the MIRB at their discretion. The compound is generally the higher of RM200 or 10% of the amount under deducted.

What can you do if you identify potential errors?

There are no tax amnesty programs for employers in Malaysia at present.

However, in practice, employers are encouraged to submit a voluntary disclosure of any errors to the MIRB to facilitate negotiations for remediation and appeals for lower penalties. If the errors were identified by the MIRB in a formal tax audit, the employers will be charged in accordance with the latest Tax Audit Framework guidelines.



Philippines

Employer compliance

Philippine employers are required to withhold taxes on taxable compensation and fringe benefits given to their employees and to report these to the Bureau of Internal Revenue (BIR), the local tax authorities. In addition, as employers are covered by the Social Security System (SSS) and Philippine Health Insurance Corporation (Philhealth), they are mandated to remit regulatory contributions to these agencies. The local employer must ensure timely reporting and remittance of all withheld taxes and regulatory contributions to mitigate the imposition of penalties and fines.

Compensation and fringe benefits are considered ordinary and necessary business expenses. To be considered as allowable corporate deductions, employers are required to subject these to withholding taxes and, where required, substantiate the same with required documentation. Withholding taxes are of two types, namely: withholding taxes on compensation and fringe benefits tax (FBT). FBT applies to fringe benefits, such as housing benefits and car rentals which are granted to employees occupying managerial or supervisory positions.

Employer reporting obligations

Withholding Requirements

The employer is required to report the compensation income and remit the tax withheld from employees using BIR Form 1601-C (Monthly Remittance Return of Income Taxes Withheld on Compensation).

Fringe benefits subject to FBT are remitted to the tax authorities on a quarterly basis using the BIR Form 1603 (Quarterly Remittance Return of Final Income Taxes Withheld On Fringe Benefits Paid to Employees Other than Rank and File). While FBT is a tax on fringe benefits given to managerial or supervisory employees, the tax is required to be paid by the employers. Hence, the tax base thereof shall be the grossed-up value of the benefits.

Annually, the employer undertakes a year-end adjustment, also known as annualization, to determine the tax due from the foreign national's taxable compensation income for the entire taxable year. Where the foreign national's employment ceases prior to the calendar year, the employer should also perform an annualization prior to the payment of the employee's last pay. It should also issue a BIR Form 2316 to the foreign national.

Common underreported items

Compensation income not delivered through local payroll are the commonly underreported items. In general, this includes:

- ▶ Benefits-in-kind
- ▶ Overseas payroll
- ▶ Trailing income
- ▶ Share-based payment

These should be reported in the annual income tax return of the employee, unless the home country employer paying the said compensation has a Philippine branch office, in which case, the latter will have withholding responsibility following the single-entity principle.



Philippines

Penalties for noncompliance

Employers who fail to comply with its withholding tax and reporting obligations are exposed to possible assessments for the unpaid taxes and the following penalties:

- ▶ Surcharge of 25% of the amount of tax due (50% in case of fraud or willful neglect)
- ▶ Interest of 12% per annum
- ▶ Compromise penalty with a maximum amount of PHP50,000 depending on the amount of unpaid taxes

In addition, failure to file certain information returns required from employers (e.g., annual information returns, certificates of withholding) are subject to the following penalties:

- ▶ PHP1,000 for each failure: provided, however, that the aggregate amount to be imposed for all such failures during a calendar year shall not exceed PHP25,000.

Nonimposition of surcharge on amended tax returns

Under Revenue Memorandum Circular No. 43-2022, the 25% surcharge shall not be imposed to an amendment of a tax return if the taxpayer was able to file the initial tax return on or before the prescribed due date for its filing.

On the other hand, the 25% surcharge shall be imposed on a tax deficiency found during audit if the particular tax return being audited was found to have been filed beyond the due date.

BIR tax audit

Under Philippine tax rules, once a tax return is filed, it cannot be withdrawn. Nonetheless, taxpayers are allowed to modify, change or amend the return within three years from the date of filing, provided that the taxpayer has not received any notice for audit or investigation of such return from the BIR. Thus, the three-year statute of limitations for the BIR to issue an assessment on any tax return is reckoned from whichever is the later date between: the deadline of filing or the date of actual filing, whether it is an original or amended return.

What can you do if you identify potential errors?

The employer may amend previously filed monthly WTW or FBT returns and remittances for the affected month or quarter and remit the taxes for the pay cycle missed including the imposed penalties. Likewise, the employer will also have to amend its previously filed BIR year-end forms. The related annual information returns and related annual certificates to report correct information.

Employers may come forward to request from agencies such as SSS, Philhealth and HDMF for an assessment through a formal request letter and submission of relevant documents for validation of membership through employment and for the determination of accrued benefits and related penalties and obligation.



Singapore

Employer compliance

In Singapore, the onus to report taxable remuneration to the Inland Revenue Authority of Singapore (IRAS) is on the employing entity.

We have seen the IRAS upgrading their capabilities over the years through digitalization and automation to detect non-compliance.

- ▶ The most common approach to detect noncompliance is for companies to complete the Assurance Program Questionnaire on their tax reporting positions. A complete review should be undertaken and preferably by an independent party who is familiar with the reporting requirements, either in-house or by a professional firm.
- ▶ We also see increased cross-checks between individual income tax filings (i.e., Form IR8A/8E), company's audited accounts and corporate tax returns (Form C). For example, the deductions claimed in a corporate tax return can be cross-checked with the income reported in the Form IR8A. If there is any discrepancy noted, then the IRAS will send a letter highlighting the same and will ask the company to provide an explanation. If the difference is due to underreporting of income for the individuals, then the IRAS will investigate this further.
- ▶ Cross-checks between different agencies: as a digital nation, the government agencies are interlinked and we have seen an increase in interactions whereby information is shared between government agencies like IRAS, Central Provident Fund Board and Ministry of Manpower.

Employer reporting obligations

- ▶ **In a regular year:**
Singapore does not have a pay-as-you-go withholding tax regime on remuneration. The reporting of gross remuneration will be reportable in the Return of Employees' Remuneration (Form IR8A/8E) by 1 March of the following year for employees.
- ▶ **Year of cessation:**
If a foreigner, including a Singapore Permanent Resident (SPR), is leaving Singapore permanently, ceases employment in Singapore (including an overseas posting) or plans to leave Singapore for more than three months or permanently, the employer is required to submit a Form IR21 (Notification of a Non-Citizen Employee's Cessation of Employment or Departure from Singapore) to the IRAS at least one month before the cessation of employment or departure from Singapore, whichever earlier. As an employer, there is also the responsibility to withhold all monies due to the employee for tax clearance purpose and the monies withheld will be used to settle the outstanding taxes.
- ▶ **Trailing tax reporting:**
Any payments made to the employee after the filing of the Form IR21, which relates to their Singapore employment (i.e., trailing bonus payments, income attributable to business trips back to Singapore, share gains taxed under the tracking option) needs to be reported to the IRAS by the employer by filing an additional Form IR21.



Singapore

Common underreported items

- ▶ **Remuneration paid overseas:** if an individual is working in Singapore, his entire remuneration irrespective of where it is paid will be regarded as taxable.
- ▶ **Share gains:** taxability of share gains will depend on the plan features, whether it is share settled or cash settled, etc. In addition, Singapore's rules of taxation of share gains are complex, especially with the deemed exercise rule that requires the companies to report the income on a deemed basis even if the shares have not vested or exercised.
- ▶ **Trailing liabilities of Singapore sourced income:** bonus, for example, for the period an employee was working in Singapore but paid after the person has ceased employment in Singapore is taxable and reportable.
- ▶ **Employer's contribution to overseas pension or social security:** often, employers miss reporting this as payment is made directly by the overseas entity to the overseas pension or social security. Depending on the laws governing the overseas pension or social security scheme, there is also a need to review if any admin concession can be applied to these contributions to treat them as tax exempt.
- ▶ **Other common benefits** that are often missed out to be reported includes incentive holiday trips, reimbursement of expenses relating to employee's car, personal mobile phones, landlines and internet usage.

In addition, there is a common misconception that the IRAS' administration concession for tax exemption of medical reimbursements and medical or hospitalization insurance extends to all coverage. However, vision health and optical cover is specifically excluded and remains taxable.

Penalties for noncompliance

Where the underreporting error is made without excuse or through negligence, statutory penalties range from 100% to 400% of tax undercharged.

In situations of tax evasion and willful intention, steeper penalties will also be imposed on the undercharged taxes and other possible sanctions such as fines and other imprisonment depending on the severity of the situation (normally this is unlikely for first time offenders).

- ▶ Fines could range from S\$5,000 to S\$50,000
- ▶ Terms of imprisonment can range from three to five years

What can you do if you identify potential errors?

Under the Singapore Income Tax Act, the IRAS has up to four years after the end of any tax year, to reopen the tax assessment for that year. There is no reopen time bar in the case of fraud or willful intent to evade taxes.

For any underreporting of employees' remuneration, the IRAS's Voluntary Disclosure Programme which allows companies to undertake remediation for any underreporting and the penalty rates are at the concessionary rates of 0% to 20% from the current Year of Assessment (YA) in addition to previous four YA.



Thailand

Employer compliance

Thailand has a pay-as-you-earn system in place in which the employer has the obligation to calculate, withhold and submit the monthly payroll withholding tax (PND 1) together with the tax payment to the Revenue Department on the monthly basis.

Thailand's Revenue Department generally conducts audit on the corporate income tax filing of the employer which may extend to other areas such as payroll withholding tax.

In case of noncompliance, a monthly surcharge of 1.5% on the tax shortfall will be levied.

Employer reporting obligations

- ▶ The filing of PND.1 deadline is 7th of the following month (paper-based) and 15th of the following month (e-filing). Any delay in tax payment will be subject to a monthly surcharge of 1.5% on the tax shortfall and a fine for late filing not exceeding THB2,000. In addition, the filing of Thai monthly social security return and contribution is due on 15th of the following month. Any filing delay will incur a surcharge of 2% per month of the contribution amount to be paid.
- ▶ Trailing income that is related to or attributable to employee's Thailand assignment or employment or performance, will be subject to Thailand personal income. If the cost of the such trailing income is borne by the Thai entity, the Thai entity is required to report it on PND1 and remit withhold or tax thereof upon filing. If not, the individual himself or herself has to self-declare such income into his or her Thai personal income tax return on self assessment basis unless some specific exemption is available.

- ▶ After tax year-end, the employer has the obligation to issue the Summary of Withholding Tax Certificate (50 Tawi) by the end of February to enable the individual employees to file their annual personal income tax returns.

Common underreported items

In general, we regularly see companies and assignees are unaware of the following items (but not limited to the items listed below) that are taxable :

- ▶ Home leave
- ▶ Car lease
- ▶ Equity income
- ▶ Home country portion of salary not recharged to Thailand

Penalties for noncompliance

- ▶ Late filing is subject to a cash penalty of not more than THB2,000 per return.
- ▶ Tax shortfall is subject to a monthly surcharge of 1.5%.

What can you do if you identify potential errors?

In general, the Revenue Department welcomes voluntary disclosures. However, there are no incentives available and late filing and monthly surcharge as mentioned above apply.



Vietnam

Employer compliance

Since the reopening of the economy after the pandemic, the production and business operations of enterprises have begun to slowly recover, thanks to the special incentives granted by the Government. At the same time, due to budget revenue pressures in the first half of 2022, the tax authorities have resumed inspection activities on tax withholding obligations of income-paying entities.

Employer reporting obligations

Employer has the obligation to report the tax on the income, which is paid by the company:

- ▶ Monthly withholding and reporting obligation: due on the 20th of the following month
- ▶ Year-end finalization: due on the 31st March of the following year

Common underreported items or reporting errors

- ▶ Lack of supporting documents to prove for non-taxable position for certain benefits in kind
- ▶ Lack of supporting documents to justify the business expenses claimed by employees
- ▶ Failure to withhold the tax on payment made to non-employees or employees of foreign contractors
- ▶ Incorrect determination of tax residency status for expatriate employees
- ▶ Incorrect tax treatment adopted

Penalties for noncompliance

- ▶ Administrative penalty up to VND25 million (equivalent to US\$1,100) applies for late tax registration and filing of tax returns.
- ▶ Late payment of tax at 0.03% per day on the unpaid tax amount.
- ▶ Underpayment of tax at 20% of the underpaid tax, but it may be possible to reduce this to nil if voluntary declaration is filed.
- ▶ Tax evasion could be subject to penalty of 1 to 3 times of the underpaid tax. Tax evasion is defined to include the submission of tax returns 90 days post the deadline.

What can you do if you identify potential errors?

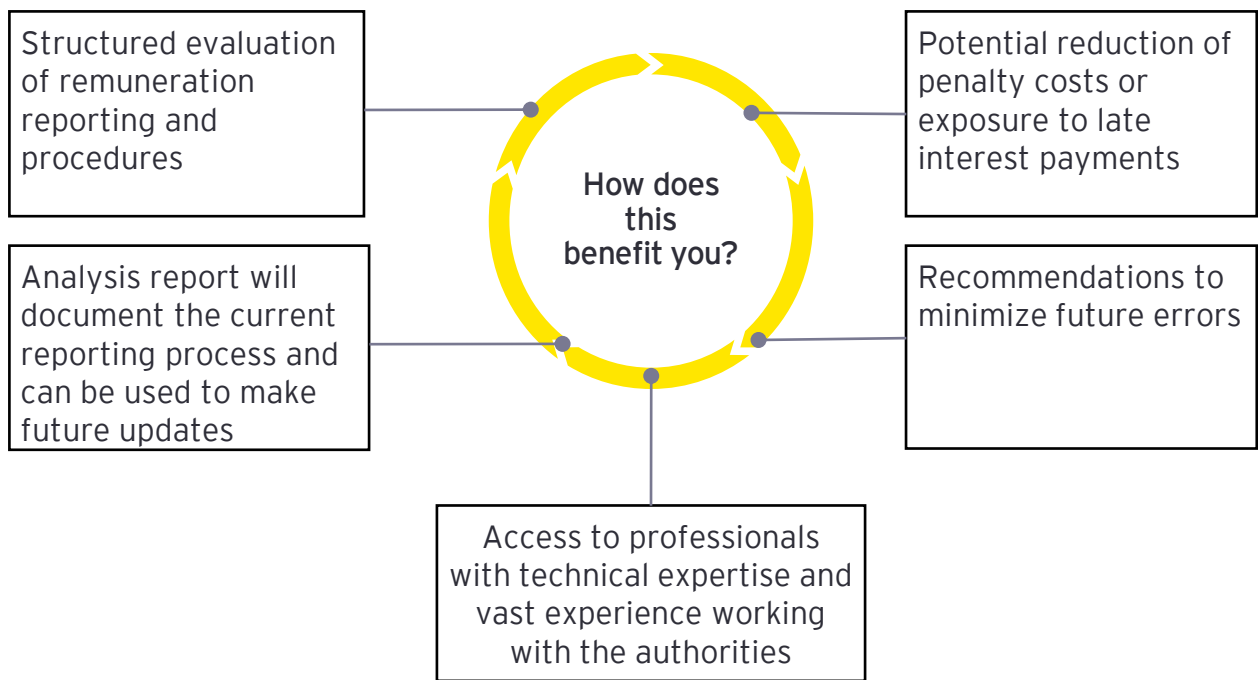
The Vietnam tax authorities look favorably to voluntary disclosure. Benefits of the voluntary disclosure are as follows:

- ▶ To avoid having a record of being a tax evader, which may lead to a penalty of up to 300% of the tax under-declared
- ▶ To avoid 20% penalty of the tax due for underdeclaration in a tax audit
- ▶ To reduce the interest penalty, which is ranged from 0.03% each period

Next steps

In view of the statutory responsibilities placed on employers, all employers need to undertake a holistic review of their current tax reporting process, remuneration policies and the remuneration items that have been reported to the respective tax authorities.

Where gaps or anomalies are identified, our EY teams are here to assist with the remediation of past wrongs, take advantage of tax amnesty or voluntary disclosure programs as relevant and to advise on process improvements moving forward.



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