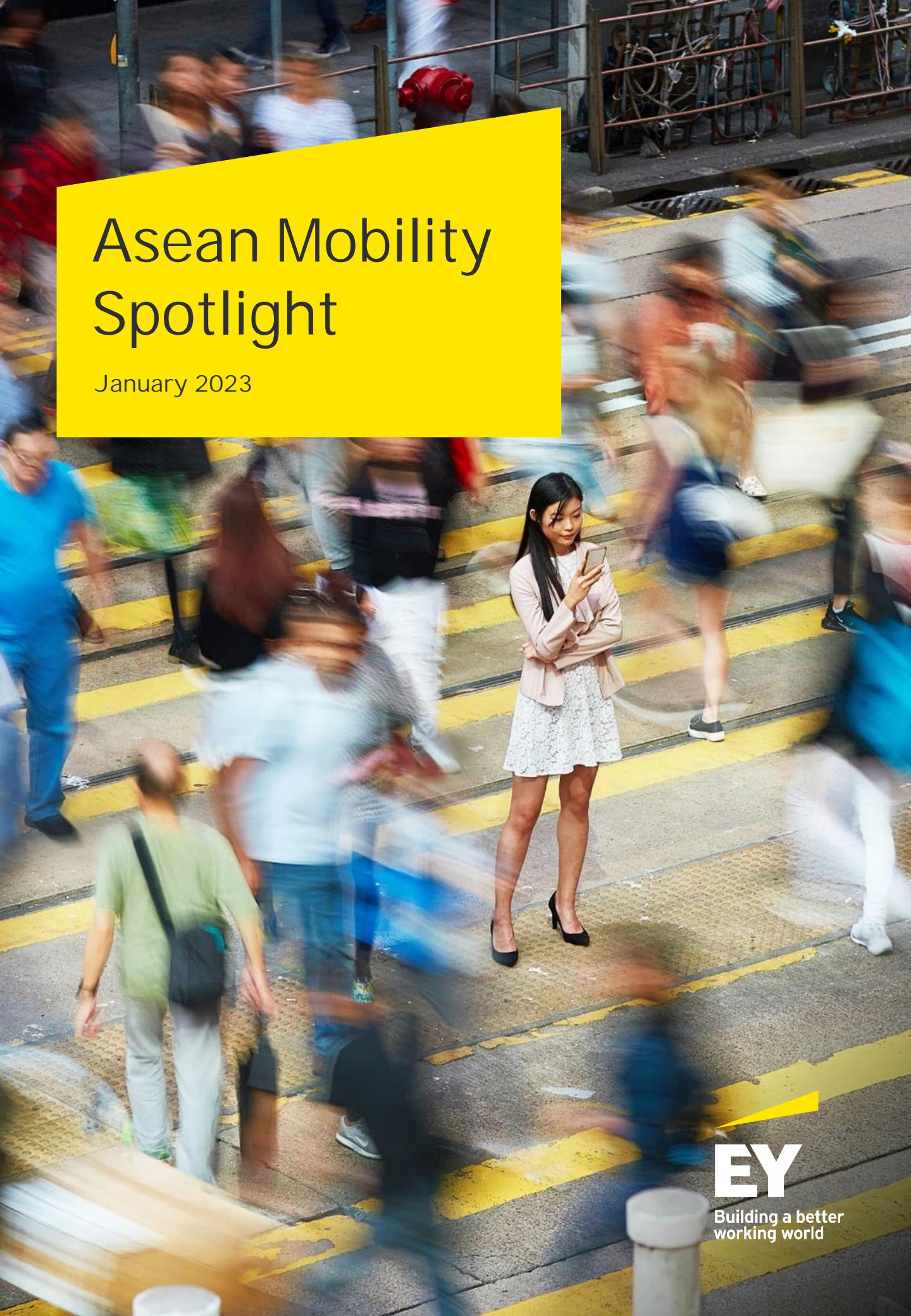


Asean Mobility Spotlight

January 2023



EY

Building a better
working world

Executive summary

As international borders across the globe re-opens and business travel returns to levels prior to the pandemic, government and tax authorities have begun lifting the concessions previously offered due to pandemic-related travel restrictions, while continuing their focus to scrutinize and tighten tax and immigration compliance requirements relating to the increasing business travels. With this, it is imperative for businesses to understand the compliance risks involved with business travelers (BTs) and maintain a balance between the cost of compliance and their business needs. Failure to understand the compliance risks in various jurisdictions will result in financial and reputational losses.

In this edition, our focus is to address the key considerations in tax, immigration and social security compliance for BTs, who are assigned to ASEAN jurisdictions for short-term business meetings, etc., and not on formal assignment.

Personal income tax: Generally, BTs are subject to tax in the host jurisdiction on the income sourced from the work they perform in the host country. Depending on the applicable jurisdiction, there can be a certain day threshold to trigger tax. Generally, most of the jurisdiction will bring BTs to tax from day one.

Tax exemptions: exemption under Double Tax Agreement (DTA) can be considered provided certain conditions can be met. However, such exemption may not be automatically granted and an application is required in most of the jurisdictions. In addition, the concept of permanent establishment (PE) that may be crystallized via the activities that the BTs conduct in the host country should also be reviewed.

Immigration: While some jurisdictions allow for limited business activities to be conducted in the host country, it is imperative for businesses to study the activities conducted by BTs so that the correct visa or passes are applied for to enter the respective country.

Social security: There is generally no compliance requirement for BTs.

We have compiled the mobility implications, tax exemption feasibility, tax authorities' management of BTs and other factors in each jurisdiction for your better understanding.

Please note that the information provided in this spotlight is updated at the end of January 2023.

Indonesia



Mobility tax implication

The tax implication to the BTs will depend on their tax residency status.

- ▶ If their presence will be more than 182 days within any 12 months period, they will be considered as resident taxpayer. As a tax resident, they are taxed on worldwide income at the progressive tax rates from 5% to 35%.
- ▶ If their presence will be less than 183 days within any 12 months period, they will be considered as tax non-resident. As a non-resident taxpayer:
 - ▶ There are no requirements for obtaining a tax identification number and annual tax filing.
 - ▶ They are only taxed on Indonesia-sourced income.
 - ▶ The tax for non-resident individuals is settled through withholding mechanism on any income provided by Indonesian entity at flat rate of 20%.

Tax exemption feasibility

Tax exemption under double DTA, i.e., exemption on dependent personal services, can be applicable provided all conditions stated therein are satisfied.

How the local tax authorities manage the compliance?

The local tax authorities manage the compliance through tax audit activities. During a tax audit for an employer, the tax authorities would normally request for the financial report data, from where they could compare the employee cost stated in the financial report and the employee taxable remuneration reported in the withholding employee tax returns.

The tax authorities may also receive data of the expatriate being sponsored by a company and check if there is any withholding tax obligation incurred.

Other considerations

Individual travelling for business meetings normally use business visa or they use the visa-on-arrival (VoA) as newly regulated. Business visa or VoA are not allowed for work. A work permit and stay permit must be applied for working purposes. Work and stay permits are issued based on the application submitted by an Indonesia entity as the sponsoring entity for the expatriate employees.

An expatriate who will be working or staying in Indonesia for less than 183 days within a 12-month period, it is recommended for the expatriate to obtain a stay permit and work permit that is valid for six months. This is because, the expatriate could be considered as tax resident if the individual has an intention to reside in Indonesia, which can be proven by work visa or limited stay permit (KITAS) that is issued for 183 days or more.

Malaysia



Mobility tax implication

Under the territorial scope of taxation in Malaysia, income accrued in or derived from exercising an employment in Malaysia is subject to Malaysian income tax, regardless of where the individual is paid or where the individual's contract is signed.

Inbound BTs may be subject to Malaysian income tax depending on multiple factors, such as the nature of activities performed, frequency and duration of business travel, gaps between each travels and type of immigration pass used to enter Malaysia. An analysis must be performed on a case-by-case basis to ensure that the BTs are compliant with local immigration and income tax requirements.

Tax exemption feasibility

If it is determined that the BTs will be subject to Malaysia income tax, they may seek for tax exemption under the following income tax exemptions provided that the relevant conditions are met:

- ▶ 60 days income tax exemption

Further to the current regulations, the employment income derived by a tax non-resident is exempt from tax if the employment is exercised in Malaysia for period or periods not exceeding 60 days, in the current year or continuous period overlapping two successive years. It is key to note that the 60 days rule does not refer to the individual's physical presence in Malaysia, but the entirety of the individual's Malaysian employment period, typically referring to the first day of entry into Malaysia to the last day of permanent exit from Malaysia.

- ▶ DTA

If there is a DTA between Malaysia and the home country, tax non-resident BTs may claim an exemption provided all conditions stated therein are satisfied.

Regardless of the income tax exemption status, inbound BTs that are subject to Malaysian income tax are still required to comply with their income tax filing obligations. In addition, to obtain the tax exemption approval, they will be required to submit an application together with relevant supporting documents to the Malaysian Inland Revenue Board (MIRB) to obtain approval.

How the local tax authorities manage the compliance?

The Malaysian Immigration Department (MID) generally track BTs based on the type of immigration pass used to enter Malaysia and the travel frequency.

Additionally, the MID will share this information with the MIRB, and thereafter lead to enforcement of income tax compliance for the individual and the deemed employer (i.e., sponsor of the individual's work pass or beneficiary of the individual's work in Malaysia). This includes and is not limited to individual tax filing, monthly tax deduction and other statutory employer's tax as regulated.

Other considerations

It is important for the business to understand the intention, frequency and duration of travels of the business traveler. The BTs income tax and immigration compliance also depend on the nature of the activities performed and travel frequency, while the availability of income tax exemption will depend on the duration of travel and the adherence to the criteria set out in the specific DTA.

Of note, where a Malaysia entity sponsors the BTs work pass, they are deemed as the Malaysia employer of the BTs and will be therefore required to fulfill the employer statutory obligations. This is regardless of whether the Malaysian entity is the formal employer of the BTs or not.

Philippines



Mobility tax implication

Foreign nationals are subject to tax on Philippine-source income only. Compensation from labor or personal services is considered Philippine source if it pertains to services performed in the Philippines regardless of where the income is paid, the performed contract or the resided payor.

A foreign national entering the Philippines for business reasons that can be completed for a period of less than six months will be generally subject to tax for services performed in the Philippines to be reckoned from day one of presence in the country.

Where the BTs compensation is recharged to or paid by a Philippine entity or where the employer has a branch in the Philippines even if the salaries are not recharged thereto, the latter will be required to withhold taxes on such compensation. Otherwise, the BTs themselves will be required to file an annual income tax return to report their Philippine source income and pay the related income taxes.

In order to report income, the BTs should obtain a tax identification number which is usually part of the process in securing a work permit or visa.

Tax exemption feasibility

A foreign national who is engaged in trade or business will not be subject to income tax if his income from Philippine sources during the taxable calendar year does not exceed ₱250,000.

Where such individual is a resident of a country that has a DTA with the Philippines, the individual Philippine source income may be exempt from Philippine taxes provided all conditions stated therein are satisfied.

The exemption however is not automatically applied. An application is required to submit to obtain the approval.

How the local tax authorities manage the compliance?

Tax authorities manage compliance by enforcing the tax requirements, which include requiring the local Philippine entities paying for the salaries to withhold the required taxes or the foreign national to report income through an income tax return. Non-compliance allows the authorities to impose penalties on the erring Philippine entity or taxpayer if an audit shows that no taxes were paid on the Philippine source income.

Furthermore, tax authorities will evaluate the application to determine whether the circumstances of the taxpayer will entitle them to an exemption of their income from Philippine taxes.

Other considerations

If the cost for the BTs is recharged to Philippine entity or if the employer has a branch in the Philippines, BTs must comply with social security rules, which require the foreign national to contribute to the Philippine Social Security System and the Philippine Health Insurance Corporation.

From an immigration perspective, BTs or those staying for a maximum period of six months must have a special work permit application.

The foreign company or employer will be deemed to be doing business in the Philippines if the services the BTs are performing in the country are those mentioned in the relevant DTA provisions. Otherwise, there may be basis to hold a position that no PE is created by BTs for the foreign entity in the Philippines. In order to determine whether a PE exists, an application must be filed with the tax authorities so that it can be determined whether there is PE based on the tax authorities' assessment of the works performed in the Philippines.



Singapore

Mobility tax implication

An individual who has an offshore employment base visits Singapore for business purposes is regarded as a Frequent Business Traveller (FBT) by the Inland Revenue Authority of Singapore (IRAS). The remuneration attributable to days spent working in Singapore is deemed derived from Singapore and regarded as Singapore-sourced. The income is subject to Singapore tax unless it is specifically tax exempt under the Singapore domestic tax law or under a valid DTA.

However, certain types of remuneration or benefits relating to business travelling expenses are tax exempt:

- ▶ Airfare
- ▶ Accommodation and related expenses (i.e., laundry, telephone, meals) incurred for business purposes
- ▶ Per diem allowance not exceeding IRAS' acceptable rate (S\$140 per day for tax year 2023)
- ▶ Allowances for subsistence, travelling, conveyance or business entertainment

In counting the number of workdays in Singapore to determine a FBT's taxable income, the IRAS has prescribed the following methodology:

- ▶ Any part of a day in Singapore constitutes a full day in Singapore
- ▶ The number of employment days in Singapore includes the entire visit from the day of arrival to departure, regardless of whether the day of arrival or departure falls on a weekend or public holiday
- ▶ Where official vacation days are taken before the start and/or after completion of work in Singapore for employees to extend their stay purely for leisure, those days will not be counted as workdays in Singapore

Tax exemption feasibility

Tax non-residents who are employed for 60 days or less in a calendar year in Singapore will be exempt from tax on their employment income derived from Singapore.

However, this tax exemption does not apply to directors and independent consultants.

For the employees who do not qualify for this exemption, they may be liable to tax in Singapore unless tax exemption can be claimed under the relevant DTA.

How the local tax authorities manage the compliance?

The IRAS has specific reporting rules for FBTs, which is dependent on the length of the trips in a calendar year and whether a work pass has been applied for the FBTs. In the event of any tax reporting requirements triggered, it is the foreign employer's obligations to fulfill. In practice, if the company has an entity in Singapore, the Singapore entity may also assist with the employer's tax filing obligations on behalf of the foreign employing entity.

Employers who fail to comply with the filing requirements may be liable to a late filing penalty of up to S\$5,000 per tax return and/or be summoned to court.

Other considerations

FBTs should be aware of the permissible business activities they can engage in while in a foreign country. Generally, FBTs are not permitted to perform any employment activities in Singapore without a valid work pass. Being non-compliant may put both the employer and individual at risk.

For social security, central provident fund contributions may not be mandatory for Singaporeans and Singapore Permanent Resident employees who make business trips to Singapore during their overseas employments but voluntary contributions can still be made.

It is also worth to note that the foreign employer may have a PE exposure in Singapore due to the work performed by FBTs and it is recommended for companies to review this implication with corporate tax professionals.



Thailand

Mobility tax implication

In Thailand, income tax is levied within jurisdiction and individuals are taxed on income derived within Thailand.

Income received by individuals (tax resident or non-resident, Thailand or foreign nationals) who work or reside in Thailand would be considered as Thailand sourced income and subject to tax regardless number of day spent in Thailand.

Days spent in Thailand would impact the tax residency status. Being a tax resident (physically present in Thailand accumulated for 180 days or more during calendar year), BTs would be subject to income tax on their worldwide income, whereas tax non-resident is only taxed on Thailand sourced income or Thailand deemed income.

The individual would have a filing obligation to file the annual tax filing by end of March at the following year unless specific exemption is available (earning of employment income not exceeding ₩120,000 or other income not exceeding ₩60,000 would not result a filing requirement). To be able to file annual return, a tax identification code is required which is one of the obstacles for BTs entering Thailand who do not have proper visa and work permit.

In the case that the compensation cost of BTs is borne by Thailand entity, they would have a filing obligation to submit the monthly company payroll withholding tax return by seventh of the following month of payment.

Tax exemption under DTA will be in place provided all conditions stated therein are satisfied.

How the local tax authorities manage the compliance?

The tax authorities randomly visit the companies for corporate income tax audit to ensure the compliance of tax laws, deductibility issues or tax refund claiming on withholding tax, value added tax, corporate tax, etc. These also lead to the audit on expatriate tax, especially tax on BTs group.

Other considerations

When the oversea company or head office assigns their employees to work in Thailand, it would be viewed that the head office is generating Thailand sourced income through its employee.

Companies with employees providing services in Thailand for the same or connected projects for periods in aggregate of more than six months or 90 days, would be considered as having a PE in Thailand. Referring to the DTA between Thailand and relevant countries on the PE clause, the total accumulated days spent in Thailand of each individual in the same project (combining all days of all employees working in Thailand) shall result in a certain level of PE risks.

From an immigration perspective, in order to work legally in Thailand even if for one working day, the correct type of visa and work permit sponsorship by Thailand entity is required unless there some special activities that would qualify as waiver from work permit requirement. However, a proper visa type is still required.



Vietnam

Mobility tax implication

Vietnam regulation does not provide a specific definition and tax treatment on BTs. Generally, there is no threshold of days for tax exemption, foreigners are subject to tax from their first arrival day in Vietnam and are required to declare and pay tax based on their tax residency status, regardless of whether their income is paid or received and regardless of whether there is a formal assignment.

- ▶ If the BTs stayed in Vietnam for less than 183 days in a concerned tax year, they might qualify the conditions to become a tax non-resident, otherwise they are tax resident
- ▶ Tax resident are subject to tax on worldwide income with progressive tax rates from 5% to 35%; meanwhile non-resident are subject to tax on Vietnam sourced income with flat tax rate of 20%
- ▶ In the case of tax non-resident, if Vietnam-sourced income cannot be determined, there is a specific formula to derive Vietnam sourced income based on the worldwide income. Local expenses recorded in the accounting books of local entity are also considered as Vietnam-sourced income and subject to income tax.
- ▶ Local entity shall have tax withholding obligation on the income or benefit provided to the BTs. Meanwhile, the filing obligation is with the Bst individually in case the income is sourced income from overseas.

Tax exemption feasibility

Vietnam tax non-residents may be tax exempted under DTA provided all conditions stated therein are satisfied. In the practice, the tax authorities tend to focus increased attention on DTA application and will challenge the dossier content upon review, especially on the concept of economic employer and PE.

How the local tax authorities manage the compliance?

Local entity is required to inform its foreign contractor about the tax filing obligation of their employees, as well as to inform the tax authorities of general information regarding employees of foreign contractor within seven days since start working date of the employee, including names, passport numbers, duration of stay in Vietnam and Vietnam sourced income.

BTs are normally triggered via an audit trail from service contract between local entity and its foreign contractor, sponsorship of visa work permit for the BTs by the local entity, records in local entity's accounting book on the benefit or business trip expense, etc. In addition, the sharing of information among different authorities is also a good tool to enforce the compliance for this group.

Other considerations

In Vietnam, social security is not required unless the BTs enter into an employment contract with local entity.

The concepts of economic employer and PE need to be reviewed from the local laws' interpretation if tax exemption is a feasible or preferred approach.

Correct visa type and work permit requirement should be applied corresponding to the frequency of the business trip pattern in a year and nature of the trip.

Next steps

In view of the statutory responsibilities placed on BTs, companies need to undertake the following holistic reviews on:

- ▶ Policy: Whether your cross-border BTs policy can effectively identify the stakeholders and process ownership, or do you have a manual guidance to help you communicate the policy to the relevant functions and a process to streamline the compliance requirement in respect to your BTs.
- ▶ Risk and gap identification: Understanding the local regulatory requirement and the current tax reporting process, remuneration policies and items that have been or have not been reported to the respective tax authorities.

Where gaps or anomalies are identified, EY teams are here to assist with tax risk review, advice on taking advantages of tax amnesty (where applicable) remediation and voluntary disclosure programs (where required) as well as recommendation on process improvements going forward.

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