

ASEAN Mobility Spotlight

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エグゼクティブサマリー*

EYニュースレター「ASEAN Mobility Spotlight」の2023年8月号をお届けします。

近年、国境を越えたリモート勤務に対する関心が高まっています。新型コロナウイルス(COVID-19)大流行時のロックダウンなど、さまざまな行動制限への対応として始まったこの取り組みは、組織の長期的な人材戦略の中核を成すものへと発展しつつあります。中でも国をまたいだリモートワークや人材活用(いわゆる「バーチャルアサインメント」と呼ばれる仕組み)は、スキル不足への対処や広範なグローバル人材目標を達成する解決方法の一つとして、検討・導入する企業が増えてきています。

一般的に、リモート勤務の採用により企業はさまざまな勤務形態の提示が可能となります。ニーズに合った人材を採用するためにどの程度のリスクを許容できるかは、企業によって異なりますが、社員が在宅勤務を余儀なくされるケースや休暇先からの勤務(ワーケーション)を希望する場合においても、リモート勤務の制度があれば柔軟な対応が可能となります。また国内外を問わず、転居を伴うことなく人材ニーズに対応できるよう、社員の永続的なリモート勤務の提供を検討する会社も増えてきています。

一方で、国境を越えたリモート勤務にはコンプライアンス上のリスクが伴います。例として、個人所得税や法人税、社会保障やイミグレーション等の対応が挙げられますが、社員の所在の監視・追跡等はコンプライアンス違反となるリスクがあるため、アプローチについては検討が必要です。各国間の租税条約等も確認する必要があり、非常に複雑な分野と言えます。

本ニュースレターでは「国境を越えたリモート勤務」について、ASEAN主要6カ国における所得税やイミグレーションなどコンプライアンス上のリスクや留意点について解説します。本稿が、制度の導入を検討する上で考察の一助となれば幸いです。

なお、本文の解説は英語となりますこと、ご了承ください。

* 本ニュースレターに記載されている情報は2023年8月時点のものとなります。

Executive summary

In the recent years, international remote working has been a growing topic of interest. What started as a reactive response to the challenges posed by lockdowns and accommodating personal needs triggered during the COVID-19 pandemic, is developing into a core component of an organization's long-term talent strategy. More organizations are exploring international remote working policies and programs to address local skills shortages, advance broader global talent objectives, and provide flexibility to meet the shifting priorities of their employees.

The term "remote working" encompasses a wide range of working arrangements. Depending on risk appetite and talent needs, organizations may look to provide flexibility for their employees with work-from-home arrangements within the same jurisdiction, workcations enabling individuals work from a holiday location and temporary arrangements for employees to manage personal commitments. Alternatively, organizations may explore offering permanent remote roles to meet talent needs without the requirement for individuals to relocate domestically or internationally.

While the offer of flexibility may be appealing to both employees and employers, international remote working does give rise to compliance risks. Individual income tax, social security, immigration requirements and corporate tax implications, as well as approaches to monitoring and tracking employee's whereabouts, must all be considered when developing an international remote working strategy to avoid potential non compliance. This is a complex area and the interplay of treaties and government initiatives should also be considered.

In this edition of the Asean Mobility Spotlight, we focus on the compliance considerations and areas of risk for remote workers in selected Asean jurisdictions. As organizations define their stance on international remote working arrangements, understanding what is required and who is responsible is key. Organizations need to adopt a forward-looking approach and develop a robust framework to manage the growing complexities and risks associated with international remote working arrangements.

Please note that the information provided in this spotlight is updated as of August 2023.

Indonesia



Individual income tax implication

- ▶ There is no specific tax residency rules for international remote working individuals in Indonesia. The general tax residency would apply. If their presence will be from 183 days or more within any 12-months period, they will be considered as tax residents. Also, if they come to Indonesia in a calendar year with intention to reside in Indonesia, they will be considered as tax residents since the first arrival day. Being tax residents, they have the obligation to file annual individual income tax return on their worldwide income and obtain an individual tax code number. If their presence will be less than 183 days within any 12-month period and they do not intend to reside in Indonesia, they will be considered as tax non-residents. Accordingly, they are taxed on Indonesia sourced income with no annual filing requirement. Individual tax code number is not also required. The tax obligation will be settled through withholding mechanism by Indonesian employer on the provided remuneration.
- ▶ The overseas entity which employs the foreigner working remotely from Indonesia will have no obligation to withhold payroll tax and report it to Indonesian tax authority unless the overseas entity is considered to have a permanent establishment (PE) resulting in the withholding tax obligations.

Other considerations

- ▶ In general, individual who will be working or staying in Indonesia is required to obtain a stay permit and work permit. Application for work permit and stay permit for expatriate employee should be sponsored by an Indonesian company or a subsidiary of foreign company, which has business license in Indonesia. If there is no Indonesian company, the stay permit and work permit for the employee cannot be obtained.

In the case where the expatriate is employed by an overseas entity and performs work remotely from Indonesia, there is no specific regulation on this other than the regulation of working holiday visa (WHV) for Australians. The WHV may grant Australian citizens with temporary residence in Indonesia. Generally, this type of visa is granted based on a cooperation agreement made between state governments with reciprocal treatment, which is intended to establish cultural exchanges between its citizens. This one year granted visa is intended for a non-formal working in the fields of education, tourism, health, social work, sports and culture.

- ▶ Determining whether a PE is created or not is important as it impacts the Indonesian tax obligation of the overseas entity employing the foreigner. To determine whether the individual working remotely in Indonesia may create a PE in Indonesia, it is required to refer to the tax treaty between Indonesia and the home country employer. Also, the nature of activities performed by the individual and the period of activity in Indonesia will determine whether the individual will create a PE of the foreign company in Indonesia.
- ▶ There are no specific regulations on social security related to remote workers. In general, the Indonesian entity as the employer will have an obligation to register for the expatriate employees working in Indonesia for more than six months the healthcare scheme (BPJS Kesehatan) and social security scheme (BPJS Ketenagakerjaan).



Malaysia

Individual income tax implication

- ▶ In Malaysia, income accrued in or derived from exercising an employment in Malaysia, or an incidental employment exercised remotely from outside Malaysia, is subject to Malaysian income tax under the territorial scope of taxation, regardless of the individual's nationality or citizenship, where the individual is paid, or where the individual's contract is signed.
- ▶ If it is assessed that an overseas employment was exercised remotely in Malaysia, the foreign employer and the inbound remote worker should ensure compliance with local immigration and income tax requirements. This includes but is not limited to registering a tax identification number in Malaysia and filing a Malaysian income tax return to report the income derived from the period of remote work in Malaysia.
- ▶ In the case where an individual is hired by the Malaysian entity to exercise an employment remotely outside of Malaysia, an assessment on the factors and circumstances should be conducted to determine whether the duties of the remote worker are considered incidental to the exercise of a Malaysian employment. If affirmative, both the Malaysian employer and remote worker should ensure compliance with both employer and employee statutory tax requirements in Malaysia.
- ▶ The remote worker has an obligation to file a Malaysian income tax return even if they may be eligible for the following income tax exemptions and have met the relevant tax exemption conditions:
 - ▶ 60 days income tax exemption
 - ▶ Exemption under the tax treaty, where relevant

Other considerations

- ▶ If an inbound remote worker is not a Malaysian citizen or permanent resident in Malaysia, there is a requirement to obtain a valid work permit before exercising the foreign employment remotely in Malaysia. Where a Malaysian entity sponsors the work permit, the said entity shall be the deemed employer of the inbound remote worker in Malaysia.
- ▶ If it is assessed that an overseas employment was exercised remotely in Malaysia or where the exercise of employment overseas is deemed incidental to Malaysian employment, the legal or deemed employer in Malaysia is responsible to fulfill the employer's statutory obligations per the following legislation, where applicable:
 - ▶ Section 83 of the Malaysian Income Tax Act
 - ▶ Income Tax (Deduction from Remuneration) Rules 1994
 - ▶ Employees Provident Fund Act 1991
 - ▶ Employees' Social Security Act 1969
 - ▶ Employment Insurance System Act 2017
- ▶ There may be a risk of a permanent establishment (PE) if there is a fixed place of business with business activities wholly or partly carried on in Malaysia by the remote worker on behalf of the foreign employer. Generally, PE may be established in Malaysia where a remote worker or representative of the foreign company has and habitually exercises an authority to conclude contracts in the name of the foreign business. As the facts and circumstance of a remote worker may vary on a case-to-case basis, further analysis should be performed to ensure that the PE risk is accurately assessed.

Philippines



Individual income tax implication

- ▶ An employee, who is a tax resident of a foreign country and opts to work remotely within the Philippines while under the employment of his home country employer, is generally subject to tax on his Philippine source income only. Compensation from labor or personal services is defined as Philippine source if received for services performed within the Philippines, regardless of where the income is paid, the employment contract is executed or perfected or the residence of the payor of the income.
- ▶ Foreign nationals cannot claim foreign tax credit against their Philippine income taxes as they are taxed only on days work within the Philippines or on their Philippine source income. The applicable tax rate is 25% on their gross income if the total number of days presence in the Philippines, in any calendar year is not more than 180 days. Those whose physical presence in the Philippines would exceed 180 days in a calendar year shall be already taxed based on the graduated tax rates at 0% to 35% for the duration of their stay in the Philippines.
- ▶ A Filipino citizen who opts to work remotely in the Philippines and whose total days stay in the country exceeds 183 days during the calendar tax year, shall be subject to tax based on his global income. He can claim foreign tax credit against income tax imposed on foreign sources.
- ▶ The remote worker shall file an annual income tax return to report his taxable income and pay the related income taxes on or before 15 April after the close of the calendar year.
- ▶ If such individual is a resident of a country that has a tax treaty with the Philippines, the individual can invoke tax exemption under the tax treaty. However, application is required.

- ▶ Provided that there is no employment relationship with a Philippine entity, there has no obligation to register and withhold employment taxes on the salaries and benefits paid to the employee via home country employer by the Philippine entity. It is necessary that the remote worker complies to tax filing requirements in the Philippines under a voluntary reporting of income or seeking the claiming the exemption under the tax treaty to manage potential exposures and risks related to compliance requirements of the home country employer.

Other considerations

- ▶ Currently, the Philippine government does not require any immigration compliance for international remote working.
- ▶ Individuals working remotely in the Philippines may create a permanent establishment (PE) risks to home country employer because of their presence in the country and the nature of the services or work they provide are those mentioned in the relevant tax treaty provisions. Otherwise, there may be basis to hold a position that no PE is created by the employees for the foreign entity in the Philippines.

Singapore

Individual income tax implication

The tax treatment for individuals working remotely in Singapore may differ depending on nature of the arrangement.

Temporary remote working arrangements

Individuals who choose to work remotely in Singapore for their foreign employer on a temporary or ad-hoc basis, may be treated as Frequent Business Travelers. In this regard, the income attributable to Singapore workdays will be considered Singapore sourced and therefore subject to tax, unless otherwise exempted.

In counting the number of workdays in Singapore to determine 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 the day of 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 or after completion of work in Singapore for employees to extend their stay purely for leisure, those days will not be considered as workdays in Singapore.

Permanent remote working arrangements

Individuals who choose to work remotely in Singapore on a permanent basis should be treated as exercising a Singapore employment and their employment remuneration would be regarded as Singapore sourced income and subject to tax in Singapore.

Temporary absences would be considered incidental to the Singapore employment and the remuneration related to those days should be reported for tax purposes.

Tax exemptions

Individuals who are non-resident for tax purposes and are physically working in Singapore for 60 days or less in a calendar year may be exempted from tax on their employment income derived from their Singapore workdays under domestic legislation. This tax exemption does not apply to directors and independent consultants. Employees who do not qualify for the above exemption, may be able to claim tax exemption under a tax treaty provided certain conditions are met.

How the local tax authorities manage the compliance?

In general, the foreign employer is required to report the employment income earned with respect to the workdays in Singapore in the statutory forms.

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

Other considerations

From an immigration perspective, remote work is permitted without the requirement to obtain a work permit, subject to the following conditions:

- ▶ The individual is working remotely for an overseas company
- ▶ The overseas company is a separate legal entity from any related office it may have in Singapore and the work performed has no linkage or interaction with the Singapore office
- ▶ The individual is not meeting or providing services to clients in Singapore.

Social security contributions to Central Provident Fund may be required for Singaporeans and Singapore Permanent Resident who choose to work remotely in Singapore on a permanent basis.

Foreign employers should assess the potential permanent establishment and corporate tax exposure in Singapore arising from employees working remotely from Singapore.



Thailand

Individual income tax implication

- Thailand imposes personal income tax on a territorial basis, whereby any income sourced in Thailand, such as from an income payer in Thailand, or as a result of working in Thailand, irrespective of where the payment is made, would be considered as Thailand sourced income and would be subject to Thailand income tax unless specific exemption is available.
- Income received by individuals (tax resident or non-resident, Thailand or foreign nationals) who work for or reside in Thailand would be considered as Thailand sourced income and subject to tax regardless the number of days 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), individuals 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.

Employer payroll reporting requirement

- In the case that the compensation cost of assignee is borne by Thai entity, the Thai entity as an income payer would have a monthly payroll withholding tax obligation. The Thai entity is required to include the assignee's compensation in the company's monthly payroll withholding tax return and remit the withholding tax thereof to the tax authority by the seventh day of the following month.
- In addition to the monthly payroll tax withholding obligation, both the Thai employer and employees including the assignees are required to make an equal contribution to Thai Social Security Fund at a rate of 5% on fixed wage of first THB15,000 per month. The contribution amount is capped at THB750 per month. The Thai employer is required to submit both contributions to the Thai Social Security Office by the 15th day of the month following the payment of employment income.

Employee tax filing requirement

- After the year-end, the assignee would still have an obligation to file his annual personal income tax return to summarize his taxable income earned during the tax year concerned and finalize his tax status, either to pay additional tax or claim for tax refund or balanced as the case may be on self-assessment basis. The deadline of filing tax return and the payment is on 31 March of the following year unless specific exemption is available.

Tax penalties for non-compliance

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

Other considerations

- Typically, a non-Thai citizen is required to have a tax code number for filing his annual personal income tax return. In obtaining a Thai tax ID number, he has to submit an application to Thai tax authority together with a copy of his appropriate visa, work permit and other required documents.
- However, the individual may be entitled to tax exemption under tax treaty between Thailand and the individual's tax resident country provided that certain conditions are met.
- There would have a low risk of permanent establishment if the individual is working remotely for the oversea entity in Thailand, assuming the individual physical stays in Thailand does not exceed six months in any 12 months period and has not generated any income for the oversea company in Thailand.

Vietnam



Individual income tax implication

- ▶ A remote working individual will be taxed in Vietnam in either the following scenario:
 - ▶ The individual stays in Vietnam and is Vietnam tax resident but performs the works for an entity not in Vietnam.
 - ▶ He/she does not stay in Vietnam and is Vietnam tax non-resident but performs the works related to Vietnam.
- ▶ If the salary is paid by or the cost of the salary is borne by an entity in Vietnam, employer's withholding and reporting is required for the Vietnam entity. It is not required for the host payroll or shadow payroll to be maintained in Vietnam.
- ▶ If the salary is paid by an overseas entity and not recharged to any entity in Vietnam, the employee shall have the obligation to report the tax on the income directly to the tax authority under their individual tax code. The tax declaration and tax payment are made on a quarterly basis by the end of the following month.
- ▶ For remote working individuals, double taxation is likely to occur. Foreign tax credit or tax exemption under the available tax treaty, subject to the qualifications of the required conditions, the supporting documents and the approval of the tax authority.

Other considerations

- ▶ It should be reviewed whether a foreign employee needs a work permit or residence permit to conduct the remote work from Vietnam. If required, there must be a local entity acting as sponsoring entity. In this case, there will be certain employer reporting application applicable, such as labor report requirement for the Vietnam entity.
- ▶ Mandatory social security (SS) contribution in Vietnam only applies for employee who has local labor contract with a Vietnam entity. The SS scheme in Vietnam includes social insurance, health insurance and unemployment insurance. Unemployment insurance is not applicable to foreign employees. Employees of Vietnam company working remotely overseas are not required to contribute to the health insurance fund.
- ▶ With a long-term and regular remote international working arrangement, an employer may run a risk of creating a permanent establishment in the country from the activities conducted by that employee in the other country.

How EY team can help

A well-designed framework or policy, and a robust tracking mechanism is essential for the success of an organization's remote working strategy.

The issues that can arise from international remote working arrangements can include immigration compliance, technology enablement, tax reporting requirements and even health and safety considerations, among others.

Developing a formal policy or framework establishes clear parameters and expectations that employees must follow. The formalization of processes allows organizations to better identify risks and communicate guidelines effectively to employees. This will help to establish a level of trust between the organization and its remote workforce.

Furthermore, tracking the location of employees to identify potential tax, immigration or regulatory risks, as well as safety and cybersecurity issues can be made more manageable through leveraging technology. The right technology solution will support the administration and execution of the remote work program, streamlining requests, initiating risk assessments, triggering the necessary approval process and retaining records for tracking purposes.

As remote work is increasingly viewed as a key component of the talent agenda, facilitating access to broader talent pools as well as supporting diversity & inclusion (D&I) is drawing the focus of tax and immigration authorities.

At EY, we have worked with a number of organizations to identify areas of risk, develop and implement tailored international remote work frameworks to better serve the organization strategy, and support the ongoing administration of the program with our EY technology solution.

EY managed program support can assist the organization with the detailed assessment of the remote work program. We encourage businesses to review their current approach to international remote working, with reference to the organization's wider talent strategy and reach out to EY teams if they would like to discuss international remote working policy, tracking and risk further.

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