BY THANG MEE LEE

Global Mobility of Employees

A look at the challenges faced by employers.

Multinational corporations today are faced with the challenges of managing their international manpower effectively, both from a tax perspective as well as being the employer of choice in the current fiercely competitive market for global talent. There are various tax issues concerning mobility, which HR and Finance Directors need to be knowledgeable about in managing cross-border assignment of employees, as discussed below.

INTERNATIONAL ASSIGNMENT

Under a cross-border assignment, an employee is based out of one's country (home country) to work in another country (host country). This leads to two key concerns for the employee (assignee), ie, the risk of being subjected to tax in both countries as well as the risk that the tax rate in the host country is higher than that of the home country, resulting in a higher tax burden.

Double tax agreements will generally address the first concern. The second concern can be resolved by the implementation of a tax reimbursement plan.

WHAT IS A TAX REIMBURSEMENT PLAN?

A tax reimbursement plan is a HR policy designed to ensure employees assigned overseas will not suffer additional taxes due to the overseas assignment as compared to the amount of tax payable in the home country. Such plans are implemented to:

- ensure employees are 'tax neutral',
- maintain compensation equity among employees,
- allow global mobility of employees when the need arises, and
- encourage employees to comply with global income and tax reporting requirements.

Two most common tax reimbursement plans are tax equalisation and tax protection plans.

TAX EQUALISATION

Tax equalisation is a concept where an employee who has been seconded to work in a foreign country would end up 'tax neural', ie, he would not pay more or less tax than what he would have paid on the same level of compensation in the home country had he remained working at home. Under this method, any additional tax liability arising from the secondment due to a higher effective tax rate in the host country will be borne by the employer. Likewise, should there be any tax savings due to a lower effective tax rate in the host country, the savings will accrue to the employer. This method has proven to be a popular choice as the employee neither suffers incremental tax nor enjoys any financial windfall from tax consequences in connection with his overseas assignment.

TAX PROTECTION

Tax protection, on the other hand, is designed to reimburse the employee for additional tax payable arising from the overseas assignment. What this means is that additional taxes will be borne by the employer, but where the effective tax rate in the host country is lower, the benefit of this will be enjoyed by the employee and not the employer.

TAX EQUALISATION VS TAX PROTECTION

So, which method is a better choice? Although both methods are meant to provide tax relief to employees, they are essentially compensation policies and not merely tax strategies. Generally, tax equalisation is seen to be the better choice for reasons of compensation equity and mobility.

Compensation Equity

Maintaining compensation equity amongst assignees seconded to jurisdictions with different tax regimes is a key factor in ensuring the success of a global assignment program. Under a tax protection plan, an assignee sent to a low tax jurisdiction will end up paying less tax and will therefore have a higher disposable income as compared with his peer who is sent to a higher tax jurisdiction. All factors being equal, the assignee assigned to a low tax jurisdiction will receive a 'benefit', ie, a higher income than his peer who assigned in to high tax jurisdiction.

Tax equalisation will eliminate this disparity as any tax benefit arising from a posting to a lower tax jurisdiction will be enjoyed by the employer and not the assignee and hence, compensation equity can be achieved.

Mobility

In the absence of a tax reimbursement policy, employees may be reluctant to take up posting to a high tax jurisdiction or to return home after being posted to a low tax jurisdiction. Tax equalisation will address this concern as the assignee will end up in a tax neutral position, regardless of where he is posted to. Global mobility of employees is, therefore, encouraged, as there would be less resistance on the part of the employees to be placed under an international assignment.

BENEFITS OUTWEIGH COSTS

The key objective of a tax reimbursement plan is to maintain compensation equity amongst assignees by ensuring the purchasing power of the assignees is not depleted as a result of taxation effects. However, such plans require effective administration and can be a time-consuming and expensive process. Further, the additional tax borne by the employer arising from a higher effective tax rate in the host country will increase the overall cost of the international assignment.

Nevertheless, mobility of talent is promoted, as the employee will be tax neutral regardless of which assignment location he is posted to. This would also encourage compliance with both home and host country tax reporting requirements.

EMPLOYER'S TAX OBLIGATIONS

In an international assignment, employers need to be aware of their tax obligations, both in the home and host country. Employers will face the risk of penalties and reputational risk if they do not comply with the statutory requirements in the relevant jurisdiction.

Employer's tax obligations – inbound assignees

In cases where assignees are posted to work in Malaysia, the Malaysian employer is required to comply with the following obligations:

(a) Reporting
- i) Notification of commencement of employment (Form CP22) - to be filed not later than one month from the date of commencement of employment
- ii) Notification of cessation of employment (Form CP21) – to be filed not less than one month before the expected date of departure
- iii) Statement of Income from Remuneration (Form EA) – to be furnished to the assignee not later than the last day of February in the following calendar year

(b) Tax deductions – monthly tax deductions to be remitted via the Schedular Tax Deduction Scheme

(c) Withholding of monies – in the year of departure from Malaysia, any monies due to the employee to be withheld and the sum can only be released to the assignee upon receiving tax clearance from the Inland Revenue Board or 90 days after the filing of Form CP21

Employer's tax obligations – outbound assignees

Apart from the mandatory reporting and tax withholding obligations in the host country, another crucial issue to address is whether the presence of employees in the foreign jurisdiction would give rise to a permanent establishment or taxable presence for the employer in that jurisdiction. If so, corporate tax filings and other statutory compliance issues need to be dealt with as well.

SUMMARY

The issues of which tax reimbursement policy to adopt, and how to implement such policies effectively are the main challenges faced by organisations with international assignment programmes. Ultimately, apart from encouraging global mobility, the objective is to ensure that worldwide tax costs are minimised as permissible by law, and that filing and other statutory requirements are properly met in the relevant jurisdictions. mb

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Thang Mee Lee is an Executive Director of TAXAND MALAYSIA Sdn Bhd, a member firm of TAXAND, the first global organisation of independent tax firms. The views expressed do not necessarily represent those of the firm. Readers should seek specific professional advice before acting on the views. Mee Lee can be contacted at mlee@taxand.com.my