

Remote Work: What about and Challenging

Tax and Legal Alert

Remote work and challenges

COVID-19 pandemic continues to have a significant health and economic impact and has posed challenges to many things, among these is where and how people will work. It has accelerated the future of work. The resulting public safety mandates and restriction on travel made many businesses abruptly implement work-from-home protocols and introduced new ways of work where possible.

At the start of the COVID-19 pandemic, many employees globally who normally worked in the office, would start working from home and in many countries still currently work from home because of the lockdown and the travel restrictions that are still widespread. While many employees are unable to return to their employer's location due to travel restriction, remote work seemed to be a temporary necessity for both employers and employees and evolved in a short period of time as the 'new normal'.

Remote work can be broadly defined to cover various scenarios such as employees work from another part of the same country (domestic remote work) or work from another country (international remote work) and also includes virtual assignments (employer assigned to virtual work for host country but where no physical relocation has occurred).

With the impact of the pandemic, a significant number of companies, depending on geography, have announced continued long term work-from-home and remote work plans for their employees with a number of them considering to adopt the international remote work as part of their long-term business plan and talent strategy. Although this has accelerated future of work and has shown that remote work is possible, remote work however may not be an option for every business because some work or jobs can only be performed on site or in a certain location.

Remote work however, can trigger unintended considerations and issues such as corporate tax, permanent establishment, individual tax, social security, withholding tax as well as Immigration/legal obligations and this list may not be exhaustive. For example, if the right plans and implementation have not been considered, an employee physically working in Thailand for an overseas employer for a period of time may trigger potential risks for the employer and employee such as corporate, individual tax and immigration risks and obligations to name a few. Moreover, from a legal perspective, the employer may have to consider if there are any permission or registration requirements for the overseas employer if its employees work remotely in Thailand.

Therefore, when a company is considering to implement a long-term remote work program, it is essential to adopt a holistic approach which incorporates cross-functional requirements ensuing alignment and compliance across subject matter experts with various groups or stakeholders such as business leaders, human resource, global mobility, corporate tax, finance and Legal. This will ensure that the program is not only fit for purpose

from a talent employee and business perspective, but equally places a solutions-oriented focus on addressing the current and future tax, legal and immigration risks.

Due to location, facilities, environment, culture, cost of living etc. Thailand is a country where extensive remote work can take place. Similar to other countries however, rules and regulations relating to remote work have not kept up to speed with this trend but is expected to evolve as remote work continues to be implemented.

The Thailand government has lifted some restrictions and has encouraged businesses to re-open in order to reverse the economic decline caused by the pandemic. For example, the Ministry of Interior has officially announced the “Special Tourist Visa” to welcome foreign long-stay visitors back to Thailand. With the Gazette announcement, the Special tourist visa came into effect from 1 October 2020 and will be available for one year, until 30 September 2021.

Moreover, the Ministry of Interior had provided relief measures and visa amnesty to foreign individuals holding temporary visas of all types (i.e. tourist, transit, national waiver visa, or visa on arrival to remain in the Kingdom as a Special Case until the end of October without Visa extension and penalty of over stay. These measurements allow the foreign individual to enter and stay in the country but does not currently cover any work approval. In case of any foreign individual working in Thailand, it is under the the Foreigner’s Working Management Emergency Decree B.E. 2560 (2017) and Amendment B.E. 2561 (2018) (“Foreign Working Law”), which defines very broadly that “work”, means any professional regardless of whether or not there is an employer or wages or other form of compensation. Therefore, if any foreign individuals work remotely in Thailand, work permit is required for them to legally work in Thailand. This may create challenges and issues for the individual and potential employer since generally the work permit application is only possible if it is sponsored by a Thai entity (i.e. set up as a branch etc.. in the country).

Moreover from a legal perspective on remote work, the foreign business act may need to be considered because in principle the foreign business act prohibits any foreigner, either individual or entity, to perform any restricted business prescribed under the law. In case that the oversea employers allow their employees to work remotely in Thailand, it may need to be considered whether the overseas employer has complied with the regulations in Thailand or not. If the overseas employer is deemed to have operated in Thailand, the foreign business license or certificate may be required before starting remote work. The relief on the FBA (‘Foreign Business Act’) is unlikely to be announced by the authority.

In summary, Remote Work is a very new concept and while it looks simple and straight forward, there could potentially be many issues due to various regulations, or lack thereof. It may be challenging for companies to know and comply with all the potential regulations and laws that may come into play when planning or implementing their remote work strategy. Business looking to implement should spend time to study it so as to minimize any disruption and risks to their businesses.

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