Technical update in Thailand

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Exploring the Employer of Record (EOR) arrangement: benefits, drawbacks, and tax implications

In today's globalised business environment, organisations often seek flexible and efficient ways to manage their workforce across different jurisdictions. The Employer of Record (EOR) arrangement has emerged as a popular solution, enabling companies to hire employees in regions where they do not have a legal entity. While this model offers several advantages, it also presents unique challenges and potential tax implications, particularly concerning the concept of a taxable presence under Thai domestic law and a permanent establishment (PE) as outlined in the international tax rules.

Understanding EOR Arrangements

An EOR is a third-party organisation that legally employs individuals on behalf of another company. This arrangement allows the hiring company to delegate various administrative and legal responsibilities associated with employment, such as payroll, tax withholding, and compliance with local labour laws, to the EOR. The EOR essentially acts as the formal legal employer for tax and legal purposes, while the individual works for the client company in a practical sense.

Advantages of EOR Arrangements

1. **Global talent access**: EORs enable companies to tap into a global talent pool without setting up a local entity, thereby accelerating the hiring process in new markets.
2. **Compliance and risk management**: By outsourcing employment responsibilities to EORs, companies can navigate complex local labour laws and regulations more effectively, reducing the risk of non-compliance.
3. **Cost and time savings**: Establishing legal entities in multiple countries can be costly and time-consuming. EOR arrangements eliminate these barriers, allowing companies to focus on their core business activities.
4. **Flexibility**: EORs offer businesses the flexibility to scale their workforce up or down based on operational needs without the long-term commitments typically associated with direct employment.

Disadvantages of EOR Arrangements

1. **Control and oversight**: While EORs handle the legal aspects of employment, companies might find it challenging to maintain the same level of control and oversight as they would with direct employees.
2. **Dependence on third parties**: Relying on EORs means entrusting critical aspects of employment to another entity, which can pose risks if the EOR fails to meet its obligations.
3. **Cost considerations**: While EORs can save costs related to setting up legal entities, the fees associated with EOR services can be significant and must be factored into the overall cost-benefit analysis.

Permanent Establishment risk and tax implications in Thailand

When considering the risks associated with a Permanent Establishment (PE) in Thailand, it's essential to analyse both the Thai Revenue Code and the network of double taxation treaties Thailand has entered into with other countries.

Thai Revenue Code and PE risks

Under the Thai Revenue Code, a foreign entity is considered to have a PE in Thailand if it carries on business in Thailand through a branch, an office, a place of management, or any other place of business in Thailand. This includes situations where a foreign company has employees, agents or go-betweens conducting business activities in Thailand on its behalf, which could potentially create a taxable presence in Thailand.

The definition of PE in Thailand's domestic law is broad and can encompass various forms of business presence. For instance, the presence of employees or agents in Thailand who have the authority to conclude contracts, or substantial business activities being conducted in Thailand could trigger PE status under the Thai Revenue Code. This would subject the foreign entity to Thai corporate income tax on the profits attributable to the PE.

Double taxation treaties and PE

Thailand has entered into double taxation treaties (DTTs) with numerous countries to prevent double taxation and provide tax certainty for international businesses. These treaties often include a definition of PE that may differ from that in the Thai Revenue Code, generally requiring a more substantial physical presence or activity level to constitute a PE.

For example, many of Thailand's DTTs follow the OECD model, which typically defines "PE" as a fixed place of business through which the business of an enterprise is wholly or partly carried on. This includes employees or agents with contracting authority and certain activities performed by employees within specific timeframes. However, these treaties often contain specific exemptions for activities deemed preparatory or auxiliary, providing some relief from PE status.

Thai tax authorities may apply a "substance over form" principle, looking beyond the formal EOR arrangement to the actual activities conducted by the foreign company through its employees in Thailand. If the foreign company appears to be responsible for the risks related to the work performed by the employees and has control over the employees' performance and evaluation, this could lead to a conclusion that the foreign company is an "economic employer" and trigger a risk of creating a PE in Thailand.

Conclusion

While EOR arrangements offer significant advantages for companies looking to expand into Thailand without establishing a local entity, they must be mindful of Thailand's specific regulations and the risks associated with the arrangement, including the risk of creating a PE in Thailand. To successfully manage the risk of PE in Thailand, it's crucial to have a deep understanding of both the Thai Revenue Code and the relevant DTTs. If a company is employing EOR arrangements, they should pay close attention to the activities performed by their employees in Thailand, the authority given to them, and legal documents supporting the arrangement. Given the complexity and possible tax consequences, it is advisable to obtain professional guidance to ensure compliance with the regulations and treaty obligations.

Legal

E-signature

What is an e-signature?

The Electronic Transactions Act defines an electronic signature or e-signature as any letters, characters, numbers, sounds, or symbols in an electronic format attached to an electronic data message. The purpose of an e-signature is to establish a relationship between the signatory and the data message, thereby identifying the signatory and indicating their approval of the information contained in the data message.

E-signatures can take various forms, such as scanned signatures, fingerprints, clicking an 'Accept' tick box, or a digital signature created using cryptographic means.

Requirements for an e-signature to be legally valid

In order for an e-signature to be legally binding and have the same effect as a handwritten signature on a paper document, it must meet the minimum requirements set out in the Electronic Transactions Act. These include the following:

- **Authentication**: The e-signature must be generated using a method that can accurately identify the signatory and their intention with respect to the electronic data message.
- **Reliability**: The e-signature must be produced using a reliable method that is suitable for the purpose of creating or delivering electronic data messages, or other methods that can verify the identity and intention of the signatory through surrounding evidence.

Affixing an electronic company seal is legally acceptable if it meets the same requirements as an e-signature.

Things for which e-signatures cannot be used

Under the Royal Decree dated November 26, 2006, e-signatures cannot be used for electronic data messages that are related to family and inheritance matters, such as the execution of wills and documents regarding divorce.

Use of e-signatures in transactions with Thai state agencies

In Thailand, electronic signatures can be used for executing documents that are submitted to a Thai state agency, but only if the following requirements are met:

1. The relevant government authority has issued rules regarding the execution of electronic transactions, in compliance with the Royal Decree issued in 2006. These rules set out the criteria and procedures for the execution of electronic transactions with a state agency.
2. The e-signature used is in accordance with the rules set out by each state agency.

As a result, it is essential to check the rules and requirements of each state agency on a case-by-case basis to determine whether e-signature is acceptable or not.

References:

- https://krisdika.ocs.go.th/librarian/get?sysid=570721&ext=htm
- https://krisdika.ocs.go.th/librarian/get?sysid=502095&ext=htm
- https://krisdika.ocs.go.th/librarian/get?sysid=523998&ext=htm

Contingent assets: Compensation from insurance companies

The definition and accounting treatment of contingent assets have been newly introduced in the most recent version of the Thai Financial Reporting Standards for Non-publicly Accountable Entities (TFRS for NPAEs) (Revised 2022). To determine the appropriate recording of compensation from insurance companies, adherence to the guidelines outlined in the TFRS for NPAEs is essential.

A contingent asset is defined as an asset that may arise from a past event. Its existence is confirmed when one or more uncertain future events occur or fail to occur, events that are not entirely under the control of the entity (Paragraph 16.3 of the TFRS for NPAEs).

According to Paragraph 16.5 of the TFRS for NPAEs, entities must not recognize contingent assets. However, if there is a probability that economic benefits associated with the contingent asset will accrue to the entity, disclosure of the nature of contingent assets is required. Additionally, if feasible, entities should disclose the best estimate of the financial impact. Contingent assets must be realized if it is virtually certain that revenue will be received.

Example:

On 13 November 2023, a fire broke out in Company A's office, causing significant damage to the office equipment, rendering it unusable. The office equipment had a book value of THB 570,000 (cost of THB 970,000, accumulated depreciation until 13 November of THB 400,000).

On 5 December 2023, the insurance company conducted a survey to assess the extent of the damage.

On 30 March 2024, Company A's Board of Directors approved the issuance of its 31 December 2023 financial statements.

Scenario A:

On 10 December 2023, Company A received documentation confirming compensation of THB 1,100,000 from the insurance company. The document provided assurance that Company A would indeed receive compensation, with no conditions requiring Company A to return the funds.

On 22 December 2023, Company A received compensation from the insurance company totalling THB 1,100,000.

In this scenario, since the compensation income was received before the issuance of the financial statements, Company A must record the insurance compensation income in the financial statements for the year ended 31 December 2023.

Accounting entries:

1. 13 November 2023:
    - Record loss from the fire.
    - Dr. Loss from fire: THB 570,000
    - Cr. Allowance for damage to office equipment: THB 570,000
2. 10 December 2023:
    - Record compensation due from the insurance company.
        - Dr. Receivable – Insurance company: THB 1,100,000
        - Cr. Gain from reversal of loss from fire: THB 570,000
        - Cr. Compensation income from insurance company: THB 530,000
    - Write-off the book value of office equipment.
        - Dr. Accumulated depreciation - office equipment: THB 400,000
        - Dr. Allowance for damage to office equipment: THB 570,000
        - Cr. Office equipment: THB 970,000
3. 22 December 2023:
    - Record compensation received from the insurance company.
        - Dr. Cash: THB 1,100,000
        - Cr. Receivable – Insurance company: THB 1,100,000

Scenario B:

On 15 March 2024, Company A received documentation confirming compensation from the insurance company. The document provided assurance that Company A would indeed receive compensation, with no conditions requiring Company A to return the funds.

On 12 April 2024, Company A received compensation from the insurance company.

In this scenario, since the documentation confirming compensation was received before the issuance of the financial statements, Company A must record the compensation income and receivable from the insurance company in the financial statements for the year ended 31 December 2023.

Accounting entries: (same amounts and journals as per Scenario A)

1. 13 November 2023:
   - Record loss from the fire.
2. 15 March 2024:
   - Record compensation due from the insurance company.
   - Write-off the book value of office equipment.
3. 12 April 2024:
   - Record compensation received from the insurance company.

Scenario C:

On 30 March 2024, Company A has not received any documentation confirming compensation from the insurance company.

On 5 April 2024, Company A received documentation confirming compensation from the insurance company. The document provided assurance that Company A would indeed receive compensation, with no conditions requiring Company A to return the funds.

On 25 April 2024, Company A received compensation from the insurance company.

In this scenario:

31 December 2023 year-end:

Company A must not record compensation income from insurance companies and a receivable from the insurance company. However, if there's a probability that economic benefits associated with the contingent asset will accrue to the entity, disclosure of the nature of contingent assets is required.

31 December 2024 year-end:

Company A must record compensation income from insurance companies and a receivable from the insurance company.

Accounting entries: (same amounts and journals as per Scenario A)

1. 13 November 2023:
   - Record loss from the fire.
2. 5 April 2024:
   - Record compensation due from the insurance company.
   - Write-off the book value of office equipment.
3. 25 April 2024:
   - Record compensation received from the insurance company.

In conclusion, the inclusion of contingent assets in TFRS for NPAEs (Revised 2022) marks a significant step towards enhancing transparency and accuracy in financial reporting practices. As illustrated through various scenarios involving compensation from insurance companies, adherence to these standards ensures that entities recognize contingent assets appropriately and disclose relevant information to stakeholders. By understanding and applying these guidelines, businesses can navigate complex accounting scenarios with confidence, ultimately fostering trust and credibility in financial reporting.

Reference:
TFRS for NPAEs (Revised 2022) TFAC website

IFRS and Sustainability update

In January 2024, sustainability reporting has again dominated the news, with the provisional agreement from the European Parliament to delay Commission adoption of the next sets of ESRS (namely sector-specific ESRS and ESRS for non-EU groups) by two years, i.e. by 30 June 2026 instead of 30 June 2024 as initially indicated in the Corporate Sustainability Reporting Directive. Sector-specific standards in eight areas will nonetheless be published as soon as they are ready with respect to high-impact sectors. In January, EFRAG also issued its proposals regarding an ESRS for listed SMEs and a voluntary standard for non-listed SMEs.

With respect to financial reporting, the IASB continued its deliberations on draft amendments to IFRS 9 and IFRS 7, considering comment letters received. The IASB's discussions focused on the SPPI qualification and associated indicators, as well as on financial assets with non-recourse features and contractually linked instruments, for which stakeholders expressed reservations about the existence of alternative structures avoiding the application for requirements of the standard.

IASB deliberations on draft amendments to IFRS 9 and IFRS 7

At its meeting on 23 January 2024, following its first deliberations, the IASB continued its analysis of the feedbacks received to the Exposure Draft on Amendments to IFRS 9 and IFRS 7 on the classification and Measurement of financial instruments.

General requirements

As a reminder, at the IASB meeting on 25 October 2023, the staff papers initially suggested that the SPPI nature of a contingent loan compensation clause could be indicated analysing whether or not the fair value of the clause was insignificant at initial recognition. The IASB has now tentatively decided to:

- clarify, in paragraph B4.1.8A of the Exposure Draft, that the quantitative aspect of the adjustment linked to the compensation clause shall be taken into account in the SPPI analysis, in addition to the qualitative analysis linked to the nature of the clause;
- clarify, in paragraph B4.1.10A of the Exposure Draft, that, when the nature of a contingent event is not directly related to a change in basic lending risks or costs, a financial asset has contractual cash flows that are SPPI:
  - when, irrespective of the probability that the contingent event will occur, the contractual cash flows before and after any contingent event(s), considered in isolation, are solely payments of principal and interest; and
  - when the contractual cash flows arising from a contingent event are not significantly different from the cash flows on a similar financial asset without such a contingent event and do not represent an investment in particular assets or cash flows;
- delete from paragraph B4.1.10A of the Exposure Draft the notion of investment "specific to the debtor", which had received mixed feedback from stakeholders.

Financial assets with non-recourse features and contractually linked instruments

Many stakeholders who commented on the Exposure Draft expressed reservations about the existence of alternative structures to avoid applying requirements of the standard for contractually linked instruments (CLIs). This would be the case, for example, where the junior debt instrument is held by the sponsor on initial recognition and subsequently transferred to a third party, with no possible reassessment of the instrument as a CLI.

The IASB tentatively decided to finalise the proposed amendments in the Exposure Draft, subject to a requirement, under paragraph B4.1.20A, that the junior debt instrument be held by the debtor (the sponsoring entity) throughout the life of the transaction.

Minor drafting suggestions will also be made to clarify the proposed amendments. The staff papers suggest, in particular:

- For assets with non-recourse features: removing the reference to non-recourse feature "throughout the life of the instrument" in paragraph B4.1.16A of the Exposure Draft, to retain only the case of default of the debtor;
- For contractually linked instruments: clarifying, in paragraph B4.1.23 of the Exposure Draft, the existence of a rebuttable presumption of SPPI nature when a group of underlying assets includes lease receivables.

Joint IASB-ISSB meeting to discuss feedback on ISSB consultation on its future priorities

The inaugural joint IASB-ISSB meeting was held on 25 January 2024 to hold preliminary discussions on the feedback from the ISSB's consultation launched in May 2023 on its priorities for the next two years.

The meeting focused on:

- a potential project on integration in reporting, including consideration of the IASB Exposure Draft Management Commentary and the Integrated Reporting Framework, and
- connectivity of the work of the two Boards.

A brief joint IASB-ISSB update is available summarising the matters discussed and the next steps.

A podcast episode is also available where IASB Vice-Chair Linda Mezon-Hutter and ISSB Vice-Chair Sue Lloyd share their reflections on the meeting, including the importance of connectivity in the work of the two Boards.

The IASB will then reconsider the direction of its Exposure draft *Management Commentary* of May 2021 (a project that had been temporarily paused in view of the ISSB consultation) in light of this discussion and the ISSB will continue to discuss feedback on its consultation on future priorities, including other sustainability-related topics which were seen as higher priority by most respondents.

Illustration of interoperability between GRI and ISSB standards through the reporting on GHG emissions

On 18 January 2024, the IFRS Foundation and GRI jointly published the following document: Interoperability considerations for GHG emissions when applying GRI Standards and ISSB Standards, focussing on Scope 1, 2 and 3 GHG emissions disclosures (the press release is available here).

The GHG disclosure requirements of both standards GRI 305, *Emissions* and IFRS S2, *Climate-related disclosures* are highly aligned, for example both cover the same gases, require disclosure of location-based emissions in CO_2e, emissions and scope 3 categories as well as disclosure of approach and methodologies used. As a result, entities already reporting Scope 1, 2 and 3 GHG emissions under GRI standards will be well placed to comply with IFRS S2.

Some other GHG emissions disclosures may be aligned depending on the decisions the entity makes in applying these standards (such as those related to the choice of global warming potential (GWP) rates and the emissions factors used).

In addition, there are some requirements specific only to either GRI 305 or IFRS S2, and all such disclosures would need to be made to ensure compliance with both standards.

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