



Newsletter No. 235 (EN)

Secondment of Employees to Thailand

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1. Introduction

This newsletter outlines points to consider when an employee from Germany is to work in a Thai company.

2. Employment and secondment contract

It is advisable that the parties conclude a secondment agreement which regulates the conditions of the secondment, e.g.:

- What happens to the existing employment in the home country (made dormant, terminate, return guarantee etc.)
- Conditions for the secondment coming into force (positive health check, visa and work permit approval etc.)
- Conditions of the employment in Thailand (salary, allowances, insurances, holidays, family integration, company car, school fees, home flights, etc.)
- Position and title
- Payment arrangements (split payment?)

Such secondment agreement serves as a link between the old employment in the home country and the employment in Thailand.

Additionally, the employee and the employer in Thailand (which is often a different legal entity) conclude a local employment agreement which mirrors the arrangements of the secondment agreement as far as they are relevant for the employment in Thailand.

Such local employment agreement does not need to be in writing, however, it is advisable to do so in order to avoid misunderstandings.

3. Visa application

Foreign citizens need a visa **and** work permit to work in Thailand.

The appropriate visa can be applied for at the nearest Thai embassy or consulate. With this visa, the foreigner can then proceed with the work permit application in Thailand.

a) Criteria for visa approval

An application for a non-immigrant “B” visa requires an invitation from the Thai employer and usually a pre-approval from the Thai Department of Employment (so-called WP3 certificate) or a pre-approval letter of the Board of Investments. Additional documents may be requested depending on the embassy/consulate in charge. It is therefore important to double check with the embassy/consulate in charge which documents are exactly needed.

b) Entry of family members

Applicants applying for a work visa may request that their spouse and unmarried dependent children under 20 years of age be allowed to enter Thailand under the applicable provisions for dependants.

The duration of stay of these family members is linked to the duration of stay of the work permit holder. Subsequent applications for extension of stay will only be considered if the applicant continues to meet the criteria for entry as a dependant (including the fact that there has been no change in circumstances which would otherwise have led to the loss of the applicant's sponsorship, e.g. change in marital relationship between the

dependent spouse and the work permit holder or death of the work permit holder).

c) Processing time

The processing of applications for work visas usually takes 2-3 business days once all the necessary documents have been submitted.

All applications are processed and decided by the embassy/consulate in charge. The approval of applications is discretionary and subject to changes in government policy and internal guidelines. Overall, however, the process is relatively simple.

4. Work permit

Once the expat has entered Thailand with the abovementioned visa, the work permit can be issued. The pre-approval was usually already obtained during the visa application process (WP3 certificate or BOI cooperation letter, see item 3. a) above).

It should be noted that the work permit is required from the first working day and regardless of the duration of the expat's secondment. Taking up work without the work permit is a violation of the law, which may have serious consequences.

5. Compulsory registration in Thailand

Foreigners temporarily residing in Thailand must report their valid address to the Immigration Office every 90 days (so-called "90 days report").

6. Social security

a) Germany

In addition to questions of labour law and immigration law, there is always the problem of how to deal with the German social security system in the case of an assignment.

Thailand has not concluded a social security agreement with Germany and is therefore a so-called non-contractual foreign country. This means that, in principal, there is no obligation to pay social security in Germany if an employee starts working in Thailand. This means that on the one hand the employee and employer no longer have to pay into the German social security system, but on the other hand the employee's social security protection also ceases.

The only exception is if the employee is seconded abroad in accordance with § 4 SGB IV. In this case, the German social security regulations pursuant to § 4 SGB IV continue to apply to an employee during his employment in Thailand.

The prerequisite for this is that

- it is a posting within the framework of a continuing employment relationship in Germany;
- the duration of the employment abroad is limited in advance or by its nature in terms of time (preferably precisely regulated in the secondment contract); and
- the employment relationship continues in Germany. This requires in particular that the employee temporarily employed abroad remains organisationally integrated into the business of the German employer sending him/her abroad and that essential elements of an employment relationship are fulfilled. In addition, it is a prerequisite that the employment contract entitlement to remuneration is directed against the seconding employer and that the seconding employer actually also bears the final economic cost of the remuneration.

Usually, therefore, the social security obligations cease in case of a secondment, since the employment relationship in Germany ceases (or is made dormant).

Only if the above conditions are fulfilled, the obligation to be insured as an employee in

the German social security system continues (so-called "Ausstrahlung", § 4 I SGB IV).

It is important to check and agree with the authorities in each individual case whether the "Ausstrahlung" applies.

In cases where no "Ausstrahlung" applies, other options can be considered to remain in the German social security system (e.g. voluntary insurance).

It is important to note that this has to be decided **prior to the employee's relocation** to Thailand, since otherwise the employee may lose his/her right to voluntarily contribute.

b) Thailand

As there is no social security agreement between Thailand and Germany, a possible exemption from contribution payments in Thailand is only possible according to national regulations. This may lead to double insurance.

In Thailand, compulsory contributions must be paid into the social security system.

The minimum monthly contributions for both the employer and the employee are 5% of the employee's gross income. The maximum amount for both parties is THB 750 (approx. EUR 20) per month. The entire contribution must be submitted by the employer.

c) Summary

Social security issues should be discussed with the employee as early as possible before the secondment begins. If the "Ausstrahlung" is desired, the contract must be drafted accordingly. It is also advisable to clarify this with the social security institution in order to avoid surprises later on.

If the "Ausstrahlung" is not desired (which can be the case especially with longer-term

secondment), this is also possible in the case of a corresponding contractual arrangement.

Last but not least, if "Ausstrahlung" is not desired, voluntary continued insurance in the German social security system or on a purely voluntary basis with private insurers should always be considered in order to avoid gaps in the insurance process.

7. Aspects of tax law

a) For the employee

The following types of (employment) income are taxable in Thailand:

- Income received for work performed in Thailand
- Income received from a Thai employer
- Income received by a tax resident (= minimum stay of 180 days per calendar year in Thailand), if such income is brought into Thailand within the same tax year

If the employee continues to maintain a tax residence in Germany and is thus subject to unlimited tax liability, double taxation is avoided through the double taxation agreement between Germany and Thailand.

The details are quite complex, however, in principle, the salary of the employee is taxable in Thailand as soon as the Thai subsidiary or branch bears the cost.

In cases where the salary is (partially) continued to be paid by the German employer and charged back to the Thai entity, the German employer can apply for a waiver to deduct tax on the employee's salary ("Antrag auf Befreiung von der Lohnsteuerabzugspflicht").

b) For the seconding company when the employee is seconded to a subsidiary

Usually, in cases where the employee works for a subsidiary, salary payment is handled by the subsidiary directly.

However, in some cases (in particular in cases where the employer and employee want the employee to remain in the German social security system), the parties agree on continuing the salary payment in Germany.

In such cases, the cost of the employee (plus a reasonable surcharge) should be charged back under an intercompany agreement between the German home company and the Thai subsidiary. The underlying contract should not refer to a specific service (this would lead to further complications on a corporate level, such as permanent establishment considerations and foreign business licence requirements), but to a secondment of personnel only, whereby the seconding entity is only liable for sending a person being qualified, not for the provision of a specific service.

8. Summary

The secondment of personnel is quite a complex task. It is important to consider all the aspects involved, ranging from labour law matters in both countries, social security considerations and visa issues to personal and corporate income tax matters. Often, it is not possible to find a solution which is ideal in all aspects and compromises are sometimes necessary. Companies who do not have experience with seconding staff to Thailand should get proper advice prior to seconding staff, since some of the decisions taken prior to the start of the secondment are very difficult or even impossible to reverse once the employee left Germany.

*We hope that the information provided in this brochure was helpful for you.
If you have any further questions, please do not hesitate to contact us.*

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