

Thai Tax 2011 Booklet



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FOREWORD

This booklet has been prepared to provide general information on Thailand's tax system and primary assistance to those investing in Thailand and it should not be regarded as a basis for ascertaining a liability to tax in specific circumstances. The information is based on taxation laws and practices as at 31 December 2010. Further professional advice should always be obtained from our Tax and Legal Services Division before acting on any matters contained in this publication.

The information contained in this Booklet is also available online and can be downloaded from our website at <http://www.pwc.com/th>

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PERSONAL INCOME TAX

Resident status

An individual is regarded as a tax resident if he / she resides in Thailand at one or more times for an aggregate period of 180 days or more in any tax year.

Taxable persons

- (a) natural persons;
- (b) body of persons;
- (c) non-registered ordinary partnerships;
- (d) the deceased, for all assessable income of the deceased and the estate throughout the year in which death occurred; and
- (e) the estate of the deceased which remains undistributed.

Assessable income

Residents and non-residents are taxed on their assessable income derived from employment or business carried on in Thailand, regardless of whether such income is paid in or outside Thailand. Residents who derive income from outside Thailand will be subject to Thai tax only where that income is remitted into Thailand in the year in which the income is derived.

Assessable income is classified into eight categories:

1. Salaries and wages (including income from stock options, other equity compensation and other fringe benefits);
2. Hire of work, office of employment or services rendered;
3. Goodwill, copyright, franchise, patent, other rights, annuity, etc;
4. Interest (including interest derived from bank deposits in Thailand), dividend, bonus for investors, gain on amalgamation, acquisition or dissolution, gain on transfer of shares, etc;

5. Lease of property, breach of hire-purchase contract and installment sales contracts;
6. Income from liberal professions, such as law, medicine, engineering, architecture, accountancy and fine arts;
7. Income from a contract of work whereby the contractor provides essential materials other than tools; and
8. Income from business, commerce, industry and income other than as specified in (1) – (7).

Capital gains

Most types of capital gains are taxable as ordinary income, except for the following which are exempt from tax:

1. Capital gains on the sale of shares in a company listed on the Stock Exchange of Thailand, provided that the sale is made on the Stock Exchange of Thailand, and from the sale of investment units in a mutual fund.
2. Gains on the sale of non-interest bearing government bonds, debentures, bills, or debt instruments issued by a corporate entity or other juristic entities, except in the case where the bonds or debt instruments were sold for the first time at the price lower than their redemption price to an individual and the tax has been withheld from the difference between the redemption price earned and the selling price and the instrument has been stamped to the effect that tax has been so withheld.
3. Gains on the sale of government bonds.

Capital losses cannot be offset against capital gains. An individual may elect to bear only withholding tax at a flat rate of 15% on the gains derived from the sale of bonds, debentures, bills or debt instruments issued by a corporate entity or other juristic entities and to exclude the gains from assessable income in their annual computation of personal income tax.

Exemptions

Certain types of income are exempt from personal income tax. In relation to income from employment, money derived in the form of per diem, travelling expenses and certain fringe benefits such as medical treatments are tax exempt. The exemptions also cover the share of profits obtained from a non-juristic body of persons, maintenance income derived under moral obligation, corpus of a legacy or inheritance, income of a mutual fund or from the sale of investment units in a mutual fund, etc.

In addition, to support low income earners and the aged, an income exemption is granted to taxpayers. The first Baht 150,000 of net income is tax exempt. A Thai resident who is 65 years of age or older is also entitled to personal income tax exemption on income up to an amount not exceeding Baht 190,000.

Computation

The taxable income of an individual is arrived at after all deductions and allowances have been applied to the assessable income. Income tax thereon would be calculated at the progressive tax rates noted below.

In the case of an individual having assessable income, other than from employment, amounting to Baht 60,000 or more, the tax payable must be 0.5 percent of the assessable income or the tax calculated at the progressive rates, whichever is higher.

Deductible expenses

The amount of personal expenses that may be deducted depends on the category of assessable income as follows:

1. income under the categories of assessable income (1), (2) and for copyright under (3), a deduction of 40% is allowed subject to a maximum of Baht 60,000.

2. income under (3), other than for copyright, and (4) no deductions are allowed.
3. income under (5), the rates of deduction vary from 10% to 30% depending on the type of rented property.
4. income under (6), (7) and (8), the rates of deduction vary from 30% to 85% depending on the type of income or type of business.

The deduction of expenses in relation to income under (5) – (8) may be made on an actual basis only if satisfactory evidence of the expenditure can be provided to the tax authority.

Allowances

There are two categories of allowances after the deduction of expenses:

1. *Personal allowances* *Baht*
 - Taxpayer: 30,000
 - Spouse: 30,000
 - Taxpayer's children (maximum 3), each: 15,000
 - Additional education allowance for each child: 2,000
 - Parental care, each: 30,000
 - Care of disabled or incapacitated family members, each: 60,000
 - Care of a disabled or an incapacitated person other than a family member: 60,000
2. *Specific allowances*
 - A life insurance premium in an amount not exceeding Baht 100,000 paid by a taxpayer on his/her own life is allowable as a deduction provided that the insurance policy is for a minimum period of ten years and the insurer is carrying on a life insurance business in Thailand. For a life insurance policy executed from 1 January 2009 onwards, any embedded health or accident premium will not be deductible. Moreover, if the policy includes a savings plan which

provides an annual return to the policy holder exceeding 20% of the annual premium the entire premium will be non-deductible. The amount paid, up to a maximum of Baht 10,000 is also allowed for a life insurance premium for the taxpayer's spouse who does not earn income, provided that their marital status exists throughout the tax year.

- Health insurance up to Baht 15,000 paid to a life or non-life insurance business in Thailand for the taxpayer's parents or the parents of the spouse of the taxpayer is allowable as a deduction.
- Mortgage interest incurred for the purpose of purchase or construction of a residential building in Thailand may be deducted up to maximum of Baht 100,000.
- Contribution to an approved provident fund and/or to retirement mutual fund is deductible up to a maximum of Baht 500,000.
- Contribution to a Long Term Equity Fund (LTF) is also deductible up to a maximum of Baht 500,000 in any tax year provided that the investment units in the LTF are held for at least five calendar years, except in the case of incapacity or death.
- Donations to specified charities in the amount actually donated but not exceeding 10% of taxable income after all other allowances are deducted.
- Donations for rendering educational support to a state education institute, a government organisation education institute, a private school established under the law governing private schools or a private university established under the law governing private universities are entitled to a 200% deduction, but in total not exceeding 10% of taxable income after all other allowances have been deducted.
- Service fees paid to domestic tourism operators and accommodation charges paid to authorized hotels for domestic travel during the period from 8 June 2010 to 31 December 2010 in the amount actually paid up to a maximum of Baht 15,000.

Tax credits

Taxpayers are entitled to credits against their annual tax liability for tax withheld at source. In the case of dividends received from Thai incorporated companies, taxpayers are also entitled to a tax credit for the corporate income tax paid by the company paying the dividend in respect of that portion of its profit out of which the dividend is paid. The tax credit must be included as assessable income (in addition to the dividend income) for the purposes of the tax computation. Foreign tax cannot be taken as credit against Thai tax unless permitted under a double tax treaty.

Tax rates

Individual tax rates are shown below:

Tax Schedule	
Net Income (Baht)	Rate (%)
0 – 150,000	0
150,001 – 500,000	10
500,001 – 1,000,000	20
1,000,001 – 4,000,000	30
4,000,001 – up	37

Withholding tax

All persons paying assessable income are required to deduct income tax at source on each occasion of payment in accordance with the following rules:

- (a) In the case of assessable income under categories (1) or (2), the payer must deduct tax by:
 - i) multiplying the amount paid by the number of times of payment so that the result will represent the total amount which would be payable in a year; and

- ii) after deducting expenses and allowances, if any, computing the tax on such an amount in accordance with the personal income tax rates; and
 - iii) dividing the amount of tax so computed by the number of times of payment;
- (b) In the case of income under categories (3) and (4), the payer must deduct tax at the prevailing income tax rates. There are exceptions to this rule, notably interest on fixed deposits and dividends where a flat rate of 15% and 10% respectively are deductible; and
- (c) The tax withheld is required to be remitted to the respective Amphur (district) office within seven days from the last day of the month in which the taxable income is paid (except for dividend income where the tax so withheld must be remitted within seven days from the date of payment).

A company, registered partnership or other juristic person paying assessable income to any person who is subject to income tax, must withhold:

- (a) 5% from payments for lease of assets under category (5);
- (b) 3% from payments for professional fees under category (6);
- (c) 3% from payments for hire of work under category (7) - (8);
- (d) 2% from payments for advertising fees under category (8);
- (e) 3% from payments which constitute the rebates or benefits from sales promotion except where goods/services are used for private consumption (not for sale) by the buyer under category (8);
- (f) 3% from payments which constitute service fees other than fees for hire of work, fares for public transportation, services by hotel and restaurant and life insurance premiums under category (8);
- (g) 1% from payments for transportation excluding public transportation;
- (h) 5% from payments which constitute prizes won in contests, competitions, lucky draws or other like activities under category (8); and

- (i) 15% from income under categories (2), (3), (4), (5) and (6) paid to a non-resident, except for dividends which are 10%.

Where income under categories (5), (6), (7) or (8) in excess of Baht 10,000 is paid by Central or Local Government, the payer is required to deduct income tax at the rate of 1% at each time of payment.

A taxpayer whose income tax has been withheld may pay, or request a refund of, the amount of tax that has been under- or over-withheld, as the case may be. A claim for a refund must be submitted to the tax authority within three years from the last day of the year in which the excess amount was withheld.

Tax administration

Returns

Thailand applies a self-assessment system in collecting taxes. Taxpayers are required to declare their tax liabilities in the specified tax returns (PND 90, PND 91) and pay the tax due at the time of filing.

The following individuals are required to file income tax returns for income earned in the preceding tax year irrespective of whether there is tax due:

- (a) a person who has no spouse and earns income of more than Baht 30,000;
- (b) a person who has no spouse and earns income under category (1) (salaries and wages) of more than Baht 50,000;
- (c) a person who has a spouse and earns income of more than Baht 60,000;
- (d) a person who has a spouse and earns income under category (1) (salaries and wages) of more than Baht 100,000.

There is no reduced rate for a joint return filed by husband and wife. Separate returns may be filed for income in the form of salaries and wages of both husband and wife, in which case the deductions for child allowances and interest on mortgage loan allowances must be allocated between the husband and wife.

The tax year is the calendar year. All persons liable to taxation are required to file a return no later than 31 March of the following year. In addition, those taxpayers who derive income in relation to the lease of property, liberal professions (medicine, law, engineering, architecture, accountancy and fine arts), contractual work and other businesses, commerce or industries must file a mid-year tax return by 30 September in respect of income derived during the first half of the tax year to 30 June. Tax paid at the time of the mid-year filing is creditable against the annual tax liability.

Penalties and surcharge

A taxpayer who is assessed additional tax by an assessment officer on the grounds that an inaccurate return was filed, or who failed to file a return, is subject to a penalty. The rate of penalty is 100% in the case of inaccurate returns and 200% for failure to file a return. The penalties may be reduced by 50% if the taxpayer submits a request in writing and the assessment officer is of the opinion that the taxpayer did not intend to evade tax and cooperated with the officer during the tax audit.

Any person who fails to pay or remit tax within the specified time is liable to pay a surcharge of 1.5% per month, or fraction thereof, of the amount of tax to be paid or remitted subject to a maximum amount equal to the amount of tax to be paid or remitted.

Tax investigation and assessment

The Revenue Department is empowered to demand documents and records for inspection for a period of two years. The period is extended to five years if it is found or there is a reason to believe that there was tax evasion, or where a tax audit is conducted for the purpose of paying a tax refund.

However, under the Civil and Commercial Code, the Revenue Department can assess tax for up to ten years.

Appeal

If a taxpayer disagrees with the assessment of the tax authorities, he may appeal to the Board of Appeals within 30 days from the date of receiving the assessment notice. If the taxpayer does not agree with the ruling of the Board of Appeals, he may then appeal to the Court within 30 days from the date of receiving the ruling. An appeal does not defer payment of tax. If tax is not paid within the time prescribed by the law, it will be deemed to be in arrears unless the appellant has been authorized by the Director-General to wait for a decision of the appeal or judgment, in which case payment must be made within 30 days from the date of receiving the decision of the appeal or judgment.

CORPORATE INCOME TAX

Resident status

Company residence is determined by the place of incorporation. A company incorporated under the laws of Thailand is a resident company. Place of management and control is not statutorily defined. Thailand taxes its residents on a worldwide income basis.

Taxable entities

- Juristic companies and partnerships;
- Joint ventures, foundations, associations;
- Juristic companies incorporated under foreign laws:
 - carrying on business in Thailand (e.g. branch); and
 - not carrying on business in Thailand but deriving specified income in Thailand;
- Foreign government agencies or other juristic persons organized under foreign laws carrying on business in Thailand; and
- Other juristic entities as announced by the Director-General of the Revenue Department with the approval of the Minister of Finance.

Taxable income

- A juristic company or partnership incorporated in Thailand is subject to corporate income tax (CIT) on all profits derived from domestic and foreign sources.
- A company incorporated under a foreign law and carrying on business in Thailand (e.g. a branch) is subject to CIT on profits arising from the business carried on in Thailand. In addition, if the after-tax profits are repatriated to the head office, a final withholding tax at the rate of 10% is imposed.

The term “carrying on business in Thailand” is broad and, under the provisions of the Revenue Code, includes the presence of an employee, representative or go-between that results in the foreign company deriving income or gains in Thailand.

- A company incorporated under a foreign law and not carrying on business in Thailand but which derives certain categories of income in Thailand is subject to a final withholding tax (unless otherwise exempt under a double tax treaty). The following is an example of the categories of income:
 - brokerage
 - service fees
 - royalties
 - interest, dividends, capital gains
 - rent of property

Tax on gross income

Foundations and associations as well as foreign companies carrying on the business of international transportation services are subject to tax on gross income. The gross receipts, other than registration fees, membership fees or donations of a foundation or association are subject to tax at the rate of 10%. The rate is reduced to 2% if the gross receipts are income under category (8) of the schedule of assessable income. Foreign airlines and shipping companies carrying on business in Thailand in the category of carriage of passengers are subject to income tax at the rate of 3% of the fares, fees or any other benefits collectible in Thailand, prior to the deduction of any expenses. In the case of carriage of goods, the rate is 3% of the freight, fees and any other benefits collectible in Thailand or elsewhere in respect of transport of goods from Thailand, prior to the deduction of any expenses.

Capital gains

There is no specific legislation governing capital gains. All capital gains earned by a company are treated as ordinary revenue for tax purposes. Capital gains on the sale of investments derived from or in Thailand by a foreign company not carrying on business in Thailand are subject to a withholding tax of 15%, withheld by the purchaser, unless otherwise exempt under a double tax treaty.

With effect from 13 October 2010, gains on sale of government bonds earned by a non-resident are subject to 15% withholding tax unless otherwise reduced or exempt under a double tax treaty.

Exemptions

- The following categories of income are exempt from CIT:
 - Interest on government bonds paid to a foreign company not carrying on business in Thailand;
 - Interest on foreign loans paid to financial institutions organised under a specific law and wholly-owned by a foreign government;
 - Dividends or share of profits paid by an unincorporated joint venture to a Thai company or foreign company carrying on business in Thailand;
 - Dividends received from a Thai company by a company listed on the Stock Exchange of Thailand. Dividends received by a non-listed company from another Thai company are also exempt from tax, provided that the company receiving the dividends holds at least 25% of the total shares with voting rights without any direct or indirect cross-shareholding. In other cases where one Thai company receives a dividend from another Thai company, one-half of the dividend is exempt from tax. However, in all cases, the listed or non-listed company receiving a dividend must have held the shares in the company paying the dividend for at least three months before and three months after the dividends were received.

- Dividends received from foreign investments are exempt from tax provided that the Thai company receiving the dividends has held at least 25% of the shares with voting rights of the company paying the dividends for a period of not less than six months before the date on which the dividends were received and the dividends were derived from net profits in the foreign country taxed at a rate of not lower than 15%. In the event that a “special law” in a particular foreign country provides a reduced tax rate or exemption for the net profits, the limited company which receives the dividends is still eligible for the tax exemption.
- Interest on foreign currency deposits received from a commercial bank used for lending to non-Thai nationals domiciled or residing abroad, foreign companies not carrying on business in Thailand and foreign banks, including those with a branch or representative office in Thailand.
- Income from the sale of machinery will be eligible for corporate income tax exemption provided that it uses the income so derived to purchase brand new replacement machinery within one year. However the remaining cost of the machinery sold cannot be deducted as an expense in the computation of CIT. In addition, the machinery must be used for the expansion of production capacity and the enhancement of the quality of services and the sale must be made during the period from 1 January 2006 to 31 December 2010.
- The following categories of taxpayers are exempt from CIT:
 - Companies granted exemption from tax for a period of time by the Board of Investment under the Investment Promotion Act (1977),
 - Specified foundations or organizations, and
 - Foreign organizations under mutual agreements or diplomatic organizations.

Tax rates

- The standard rate of CIT is 30%.
- A reduction is given to companies listed on the Stock Exchange of Thailand (SET) and the Market for Alternative Investment (MAI), the trading board established by the SET, as follows:

(i) Companies listed between 6 September 2001 and 31 December 2005:

- Companies listed on the SET 25%
- Companies listed on the MAI 20%

The reduced rate applies for five accounting periods commencing from the first accounting period which begins on or after the day the company has listed its securities on the SET or the MAI.

(ii) Companies applying for listing between 1 January 2007 and 31 December 2008 and which were duly listed before 31 December 2009

- Companies listed on the SET 25%
- Companies listed on the MAI 20%

These rates will apply for three accounting periods commencing from the first accounting period beginning on or after the day on which the company has listed its securities on the SET or the MAI.

(iii) Listed companies other than those in items (i) and (ii) above

- Companies listed on the SET

Net profit	Rate
(a) Baht 0 - 300,000,000	25%
(b) Over Baht 300,000,000	30%
- Companies listed on the MAI

Net profit	Rate
(a) Baht 0 - 20,000,000	20%
(b) Over Baht 20,000,000	30%

These rates apply for three accounting periods commencing from the accounting period beginning on or after 1 January 2008.

Companies listed on the SET or MAI between 6 September 2001 and 31 December 2005, and whose concession rate as noted under item (i) above has expired, will be able to enjoy the concession rate under item (iii) but not beyond the accounting period ending on or after 31 December 2010.

- Small and medium enterprises (i.e. juristic companies and partnerships with a paid-up capital of not exceeding Baht 5 million at the end of any accounting period) are subject to CIT at reduced rates as follows :

Net profit	Rate
a) Baht 0 - 150,000	Nil
b) Baht 150,001 – 1,000,000	15%
c) Baht 1,000,001 – 3,000,000	25%
d) Over Baht 3,000,000	30%

- Banks are subject to CIT at the rate of 10% in respect of profits derived from lending to non-Thai residents from foreign currency funds obtained from non-Thai sources (so called “out-out business”).

Branch income

Branches of foreign companies pay income tax at the normal corporate income tax rate on locally earned profits only. Branch profits remitted to the foreign head office are subject to an additional withholding tax of 10%.

Branches of foreign commercial banks are exempt from this withholding tax in respect of profits derived from the out-out business.

Computation of net profit

Net profit must be computed on the accrual basis which, with certain exceptions, generally follows accounting practice.

Deductions

- Deductions are allowed for all expenses exclusively incurred for the purpose of acquiring profits or for the purpose of the business unless there is a specific direction in the Revenue Code to the contrary.
- Deductions for royalties, management fees and interest expenses may be claimed provided they are exclusively incurred for the purpose of acquiring profits or for the purpose of the business in Thailand and do not exceed a reasonable amount.
- A double deduction is allowed in respect of the costs incurred in sending employees for training at certain educational or skill development institutions as well as for in-house training.
- A double deduction is allowed in respect of expenditure on seminar rooms and accommodation, transportation or other relevant expenses paid in Thailand for seminars/training arranged for employees or expenses paid to authorized tourism operators for such seminars/training for two accounting periods beginning on or after 1 January 2010.
- An additional deduction of 25% is allowed in respect of the cost of acquisition of materials, equipment or machines which are energy-saving, excluding vehicles as well as the materials, equipment and machines used with the vehicles. The assets must be acquired and be ready for use between 19 May 2009 and 31 December 2010.

The materials, equipment or machines must be new and meet qualifications as specified by the Department of Alternative Energy Development and Efficiency. In addition, the energy-saving certification must be obtained from the Department of Alternative Energy Development and Efficiency by 31 December 2010.

- A double deduction is allowed in respect of the expenditure on lease of space, construction of exhibition premises, insurance, freight or transportation of goods and equipment to be used for participating in exhibitions or displaying goods both in Thailand and abroad during the period from 14 October 2010 to 31 December 2011.

Taxpayers eligible for this exemption must obtain a letter from the government authority confirming that they participated in the exhibition.

- The following are some examples of expenses that are not deductible:
 - Additions to provisions or reserves;
 - Contributions to any fund (except an approved provident fund);
 - Private expenses and gifts;
 - Income tax, tax fines and penalties under the Revenue Code;
 - The portion of salary paid to a shareholder which exceeds a reasonable amount;
 - Artificial or fictitious expenses;
 - Interest on capital, reserves or funds of the company;
 - Any disbursement where the identity of the recipient cannot be proved by the payer;
 - Any expenditure determined on and payable out of the profits after the end of an accounting period;
 - Bad debt written off from the debtor's account which is not consistent with the rules, procedures and conditions prescribed by Ministerial Regulations;
 - Any damages recoverable under an insurance or contract of indemnity.

Depreciation

Deductions for wear and tear and depreciation are allowed as a percentage of cost. If the rate of deduction adopted by a company under its own accounting method is lower than the statutory percentage of cost, a deduction will be allowed only at the rate adopted by the company. The straight-line basis is the method most commonly used by companies, but any generally accepted basis, such as the reducing-balance, sum-of-the-years-digits or double declining method, is permitted. Statutory rates are as follows:

	%
Buildings:	
Durable buildings.....	5
Temporary buildings.....	100
Cost of acquisition of depletable natural resources.....	5
Cost of acquisition of lease rights:	
If there is no written lease agreement or if there is a written lease agreement containing a renewal clause whereby continual renewals are permitted.....	10
If there is a written lease agreement containing no renewal clause or containing a renewal clause but restricting renewable periods to a definitely limited duration..... (Note 1)	
Cost of acquisition of the right in a process, formula, goodwill, trademark, business license, patent, copyright, or any other right:	
If the period of use is not limited.....	10
If the period of use is limited..... (Note 2)	
Other assets not above mentioned, excluding land and inventory.....	20

Notes:

1. Percentage equals 100 divided by the sum of years of the original and renewable lease periods.
2. Percentage equals 100 divided by the number of years of use.

Special depreciation methods for certain assets may be applied as follows:

1. Machinery and equipment for research and development may initially be depreciated at 40% of cost and the remaining balance is then depreciated at the above statutory rate of 20%.

2. Machinery and equipment may initially be depreciated at 40% of cost and the remaining balance is then depreciated at a maximum of 20% per annum. This method is valid for machinery and equipment acquired until 31 December 2010. For machinery and equipment acquired from 2011 onwards, depreciation is at the above statutory rate of 20%.
3. Computer hardware and software may be depreciated within three accounting periods.
4. Fixed assets, excluding vehicles, land, buildings and intangible assets, of taxpayers operating in the tourism business under the law governing Thailand tourism, which have been purchased or the ownership transferred for the taxpayer's own business use may initially be depreciated at 60% of cost on the acquisition date. The remaining cost should be depreciated according to the normal depreciation method, which is a maximum of 20% per annum. The initial depreciation can be used for assets acquired and ready for use from 14 October 2010 until 31 December 2011.

Special depreciation method for small and medium enterprises (SME)

SME in this context means companies or juristic partnerships having fixed assets, excluding land, of a value of no more than Baht 200 million and no more than 200 employees. In addition to the special depreciation method above, SME are entitled to the following special depreciation methods:

1. Machinery and equipment may initially be depreciated at 40% of cost and the remaining balance is then depreciated at the prescribed rate.
2. Computer hardware and software may initially be depreciated at 40% of cost and the remaining balance is then depreciated within three accounting periods.
3. Factory buildings may initially be depreciated at 25% of cost and the remaining balance is then depreciated at the prescribed rate.

- Any assets not mentioned above acquired during an accounting period, excluding land and inventory, may be depreciated at 100% of cost but not exceeding Baht 500,000, but this special treatment will only be available until 31 December 2010.

Losses

Net losses may be carried forward for five accounting periods for offset against future profits from all sources. There is no provision for loss carry-back.

Each company's losses are dealt with separately. There is no form of group relief or relief by consolidation. A change in shareholding of a company does not affect its tax losses.

Withholding tax on domestic payments

A company, registered partnership or other juristic person, which pays assessable income to another Thai registered company, registered partnership or other juristic person or a foreign company carrying on business in Thailand (through a branch or permanent establishment) must withhold tax from payments of the following types of income:

- 3% on royalties for use of intangible assets such as patents, copyrights or any other rights;
- 1% on interest paid to all resident corporations (other than a bank or a finance company) or on interest on bonds or debentures paid to a bank or a finance company;
- 10% on dividends, share of profits of registered partnership;
- 5% on rent of assets, but excluding leasing agreements which contain the option that, at the end of the lease contract, the lessee can elect to buy the property leased or otherwise return it to the lessor, provided that the following conditions exist:

- The lessor is a juristic company or partnership whose registered and paid-up capital is not less than Baht 60 million and is a VAT registrant;
 - The lessee is a juristic person; and
 - The lease period is for not less than three years except where the leased property is one repossessed from another lessee, in which case the lease period may be shorter than three years.
- (e) 1% on rent of a ship, under the law governing the promotion of merchant navy, used for international carriage of goods;
- (f) 3% on professional income;
- (g) 3% on fees for hire of work;
- (h) 5% on remuneration for hire of work paid to a foreign company without a permanent branch office (see note);
- (i) 5% on prizes won in contests, competitions, lucky draws or other like activities;
- (j) 2% on advertising fees under assessable income category (8);
- (k) 3% on rebates or benefits from sales promotion except where goods/ services are used for private consumption (not for sale) by the buyer;
- (l) 3% on service fees other than fees for hire of work, fares for public transportation, services by hotel and restaurant and life insurance premiums;
- (m) 1% on transportation fees;
- (n) 1% on non-life insurance premiums.

Note: A permanent branch office is not the same as a “permanent establishment”. A permanent branch office is under one of following criteria:

- Having ownership of an office in Thailand,
- Carrying on other business in Thailand besides engaging in contract work, e.g. purchase and sale of goods,
- Having a registered provident fund set up for the benefit of employees in Thailand.

Tax credits

Thai companies can use foreign tax paid on business income or dividends received as a credit against the corporate income tax liability. The credit cannot exceed the amount of Thai tax on the income.

Credit is also given for any Thai withholding tax that has been deducted at source (as mentioned above) and for the half-year tax paid.

Withholding tax on foreign payments

There are two types of final withholding taxes imposed on the remittance of income or profits to foreign companies:

- Remittance of income in the form of:
 - brokerage, fees for services 15%
 - royalties 15%
 - interest 15%
 - dividends 10%
 - capital gains 15%
 - rental of property 15%
 - liberal professions 15%

These withholding taxes may be reduced or exempt under double tax treaties.

- Remittance of branch profits is subject to 10% withholding tax.

Double tax treaties

Countries that have concluded double tax treaties with Thailand and the applicable rates of withholding taxes are as follows:

Country of recipient	Dividends %	Interest %	Royalties*
Armenia	10	10/15 (1)	15
Australia	10	10/15 (1)	15

Country of recipient	Dividends %	Interest %	Royalties* %
Austria	10	10/15 (1)	15
Bahrain	10	10/15 (1)	15
Bangladesh	10	10/15 (1)	15
Belgium	10	10/15 (1)	5/15 (6)
Bulgaria	10	10/15 (1)	5/15 (2)
Canada	10	10/15 (1)	5/15 (3)
Chile	10	10/15(1)	10/15(24)
China	10	10/15 (1)	15
Cyprus	10	10/15 (20)	5/10/15 (4)
Czech Republic	10	10/15 (1)	5/10/15 (5)
Denmark	10	10/15(1)	5/15 (6)
Finland	10	10/15 (1)	15
France	10	3/10/15 (7)	0/5/15 (8)
Germany	10	10/15 (1)	5/15 (6)
Hong Kong	10	10/15 (9)	5/10/15 (10)
Hungary	10	10/15 (1)	15
India	10	10/15 (1)	15
Indonesia	10	10/15 (1)	15
Israel	10	10/15 (1)	5/15 (11)
Italy	10	10/15 (1)	5/15 (6)
Japan	10	10/15 (1)	15

Country of recipient	Dividends %	Interest %	Royalties* %
Korea, Republic of	10	10/15 (21)	5/10/15 (22)
Kuwait	10	10/15 (1)	15
Laos	10	10/15 (1)	15
Luxembourg	10	10/15 (1)	15
Malaysia	10	10/15 (1)	15
Mauritius	10	10/15 (1)	5/15 (2)
Nepal	10	10/15 (1)	15
Netherlands	10	10/15 (1)	5/15 (6)
New Zealand	10	10/15 (21)	10/15 (12)
Norway	10	10/15 (1)	5/10/15(13)
Oman	10	10/15 (14)	15
Pakistan	10	10/15 (1)	0/10/15 (15)
Philippines	10	10/15 (25)	15
Poland	10	10/15 (1)	5/15 (16)
Romania	10	10/15 (1)	15
Russia	10	10/15 (23)	15
Seychelles	10	10/15 (1)	15
Singapore	10	10/15 (1)	15
Slovenia	10	10/15(1)	10/15 (17)
South Africa	10	10/15 (1)	15
Spain	10	10/15 (1)	5/8/15 (18)

Country of recipient	Dividends %	Interest %	Royalties* %
Sri Lanka	10	10/15 (1)	15
Sweden	10	10/15 (1)	15
Switzerland	10	10/15 (1)	5/10/15 (5)
Turkey	10	10/15 (1)	15
Ukraine	10	10/15 (1)	15
United Arab Emirates	10	10/15 (1)	15
United Kingdom	10	10/15 (1)	5/15 (6)
United States	10	10/15 (9)	5/8/15 (19)
Uzbekistan	10	10/15 (1)	15
Vietnam	10	10/15 (1)	15

*Royalties as defined in many Thai double tax treaties include the use of, or the right to use, industrial, commercial or scientific equipment (which are, therefore, not treated as business profits taxable only if there is a permanent establishment). Additionally, certain consultancy and technical services which transfer “know-how” may be treated as royalties and not business profits.

Notes:

The numbers in parentheses refer to the notes below:

1. The 10% rate applies to interest paid to a recipient that is a bank or financial institution (including an insurance company).
2. The 5% rate applies to royalties paid for the use of any copyright of literary, artistic or scientific work excluding cinematograph films and films, tapes or discs for radio or television broadcasting.

3. The 5% rate applies to royalties paid for the production or reproduction of any literary, dramatic, musical or artistic work excluding royalties with respect to motion picture films and works on film or videotape for use in connection with television.
4. The 5% rate applies to royalties paid for the use of any copyright of literary, dramatic, musical, artistic or scientific work including software, cinematograph films or films or tapes used for radio or television broadcasting; and the 10% rate applies to royalties paid for the use of industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
5. The 5% rate applies to royalties paid for the alienation or the use of any copyright of literary, artistic or scientific work excluding cinematograph films or films or tapes used for radio or television broadcasting, and the 10% rate for the alienation of any patent, trademark, design, or model, plan, secret formula, or process.
6. The 5% rate applies to royalties paid for the use of any copyright of literary, artistic or scientific work.
7. The 3% rate applies to interest paid on loans or credits granted for four years or more with the participation of a financing public institution to a statutory body or to an enterprise in relation to the sale of any equipment or to the survey, the installation or the supply of industrial, commercial or scientific premises and of public works. The 10% rate applies to interest paid to any financial institution.
8. The zero rate applies to royalties paid to a contracting state or state-owned company with respect to films or tapes, and the 5% rate to royalties for the alienation or the use of any copyright of literary, artistic or scientific work.
9. The 10% rate applies to (a) interest paid to a bank or financial institution (including an insurance company) and (b) interest paid with respect to indebtedness arising as a consequence of a sale on credit of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm's length. .

10. The 5% rate applies to royalties paid for the use or the right to use any copyright of literary, artistic or scientific work and the 10% rate for the use or the right to use any patent, trademark, design, or model, plan, secret formula, or process.
11. The 5% rate applies to royalties paid for the use of any copyright of literary, artistic or scientific work excluding cinematograph films or films, tapes used for radio or television broadcasting.
12. The 10% rate applies to royalties paid for the use of any copyright; or the use of, or the right to use, any industrial, scientific or commercial equipment; or the use of, or the right to use, any motion picture film, or film or videotape or any other recording for use in connection with television, or tape or any other recording for use in connection with radio broadcasting; or the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by satellite or, cable, optic fibre or similar technology; or the use in connection with television or radio broadcasting, or the right to use in connection with television or radio broadcasting, visual images or sounds, or both, transmitted by satellite or cable, optic fibre or similar technology.
13. The 5% rate applies to royalties paid for the use of any copyright of literary, artistic or scientific work and the 10% rate applies to royalties paid for the use or the right to use industrial, commercial or scientific equipment.
14. The 10% rate applies to (a) interest paid to a bank or financial institution (including an insurance company) and (b) interest from a loan or debt claim that is guaranteed by the government.
15. The zero rate applies to royalties paid to a contracting state or a state-owned company with respect to films or tapes, and the 10% rate applies to royalties paid for the alienation or the use of any copyright of literary, artistic or scientific work.
16. The 5% rate applies to royalties paid for the alienation or the use or the right to use any copyright of literary, artistic or scientific work excluding cinematograph films or tapes used for television or broadcasting.

17. The 10% rate applies to royalties paid for the use of, or the right to use, any copyright of literary or artistic work including motion pictures, live broadcasting, film, tape or other means of the use or reproduction in connection with radio and television broadcasting, and for the use of, or the right to use industrial, commercial, or scientific equipment.
18. The 5% rate applies to royalties paid for the use of any copyright of literary, dramatic, musical, artistic or scientific work excluding cinematograph films or films or tapes used for radio or television broadcasting. The 8% rate applies to royalties in consideration of financial leasing for the use of, or the right to use, industrial, commercial, or scientific equipment.
19. The 5% rate applies to royalties paid for the use of any copyright of literary, artistic or scientific work including software, motion pictures and works on film, tape or other means of reproduction for use in connection with radio or television broadcasting. The 8% rate applies to royalties paid for the use of industrial, commercial or scientific equipment.
20. The 10% rate applies to interest paid (a) to a recipient that is a bank or financial institution (including an insurance company); (b) in connection with the sale on credit of any industrial, commercial or scientific equipment; or (c) in connection with the sale on credit of any merchandise by one enterprise to another enterprise.
21. The 10% rate applies to interest paid (a) to a recipient that is a bank or financial institution (including an insurance company); or (b) with respect to indebtedness arising as a consequence of a sale on credit of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm's length.
22. The 5% rate applies to royalties paid for the use of or the right to use any copyright of literary, artistic or scientific work including software, and motion pictures and works on film, tape or other means of reproduction for use in connection with radio or television broadcasting and the 10% rate for the use of or the right to use any patent, trademark, design, or model, plan, secret formula or process.

23. The 10% rate applies to interest paid to the following recipients (a) in the case of a resident of Russia, any institution having a license to carry on banking operations; and (b) in the case of a resident of Thailand, any financial institution (including an insurance company).
24. The 10% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work, or for the use of, or the right to use, industrial, commercial or scientific equipment.
25. In case of interest arising in Thailand, the 10% rate applies to interest paid to a Philippines financial institution (including an insurance company). In the case of interest arising in the Philippines, the 10% rate applies in respect of public issues of bonds, debentures or similar obligations.

Group taxation

There is no group taxation in Thailand.

Holding companies

There is no specific legislation regarding holding companies.

Thin capitalization

Under the tax law, there are no thin capitalization or prescribed debt to equity rules in Thailand.

Tax administration

Returns

The system is one of self-assessment. A company prepares and files its tax returns by the due dates and at the same time pays the taxes calculated to be due.

The tax year for a company is its accounting period, which must be of 12 months' duration. However, it may be less than 12 months in the case of the first accounting period after incorporation, the accounting period of dissolution, or after approval for a change in the accounting period has been received from the Revenue Department and the Business Development Department.

CIT is paid twice in each year. A half-year return must be filed within two months after the end of the first six months of an accounting period. The tax to be paid is computed on one-half of the estimated profits for the full accounting period except for listed companies, banks, certain other financial institutions and other companies under prescribed conditions, where the tax is based on the actual net profit for the first six months. The annual tax return must be filed within 150 days from the closing date of an accounting period and credit is given for the amount of tax paid at the half-year.

Penalties, surcharge and appeal

Taxpayers who fail to comply with tax administration requirements (e.g. tax filing requirements) are subject to the same penalties and surcharges as stated in the personal income tax section and to the same appeal procedures.

Tax incentives

Tax incentives in certain industries eligible for promotion under the Investment Promotion Act and the announcements of Board of Investment (“BOI”) include the following:

1. Exemption or reductions of import duties on imported machinery.
2. A reduction of up to 90% of import duties on imported raw or essential materials imported for manufacturing for domestic sale.
3. Exemption from corporate income tax equal to the investment excluding the cost of land and working capital for up to eight years depending on the promoted activity and location.

4. Exclusion of dividends derived from promoted enterprises from taxable income during the period of exemption from corporate income tax.

Additional incentives to encourage exports include the following:

1. Exemption from import duties on imported raw materials and components imported for manufacturing for export;
2. Exemption from import duties on items imported for re-export.

Additional incentives for enterprises located in an industrial estate or promotion zone include the following:

1. Reduction of 50% of corporate income tax for five years after the termination of a normal income tax holiday or from the date of earning income if no tax holiday is granted;
2. Double deduction from taxable income of the cost of transportation, electricity and water supply.

In April 2010, the BOI launched a new policy in regard to sustainable investment by stipulating that all areas of the country, except Bangkok, will be designated as Investment Promotional Zone until December 2012. The BOI will also provide special privileges to target industries, which have been classified in three categories as follows;

- 1) Activities related to energy conservation and alternative energy;
- 2) Activities related to eco-friendly materials and products; and
- 3) High-technology businesses.

Any activity which is classified under the above categories will obtain special privileges as a priority activity, e.g. corporate income tax exemption for a period of 8 years with no limit to the amount, import duty exemption for the import of machinery, 50% reduction in the rate of corporate income tax on net profit for five years after the end of the tax holiday, etc.

Applications for the above measures must be submitted before 31 December 2012.

A special purposes vehicle (“SPV”) for securitisation is granted tax exemption on income derived from a securitisation project approved by the Office of the Securities and Exchange Commission (“SEC”). Nevertheless, the operation and allocation of cash inflow for debt and expenses settlement must follow the plan approved by the SEC. Moreover, no dividends may be paid to the shareholders of a SPV until all remaining assets and benefits have been transferred by the SPV back to the originator of the securitisation project and the SPV ceases to exist.

Transfer pricing rules

Thailand has no detailed transfer pricing legislation. However, transfer pricing guidelines issued by the Revenue Department define the term “market price”, detail the permitted transfer pricing methods, describe the transfer pricing documentation requirements and provide for advance pricing agreements.

Legal framework

The transfer pricing guidelines issued by the Revenue Department do not have the status of legislation but are internal directives that the Revenue officials must adhere to when conducting tax audits, reviews or investigations. The guidelines are also intended to inform taxpayers about transfer pricing practices.

Definition of market price

A key element of the guidelines relates to the Revenue Department’s definition of ‘market price’.

Market price under the Revenue Code is defined by the guidelines to mean compensation for goods, services or interest that independent contracting parties would determine in good faith (the comparable transaction). In addition, the comparable transaction must be of the same type as the related parties' transaction and take place on the same date.

Definition of related party

The guidelines also define the term 'related party' as an entity, e.g. foreign branch, company, or partnership, which participates directly or indirectly in the management, control or share capital of the other party. There is no minimum percentage of shareholding for determination of control.

Acceptable transfer pricing methods

The guidelines authorize the use of both transactional transfer pricing methods (e.g. the comparable uncontrolled price, the resale price and the cost plus methods) as well as profit based methods, in order to determine the market price of a transaction. No one method is preferred over another and there is no hierarchy of acceptable methods. Although the Revenue Department would generally accept a taxpayer's chosen method, it retains the right to select an alternative method if it deems it to be more appropriate.

Transfer pricing documentation

Under the guidelines, taxpayers would be expected to maintain transfer pricing documentation, as follows:

1. Structure and relationship of group companies, including operating nature of each business;
2. Budget, business plan and financial projections;
3. Documentation setting out the company's business strategies and the reasons for its adoption;
4. Sales, operating results and the nature of its dealings with associated enterprises;

5. Reasons for entering into international dealings with associated enterprises;
6. Pricing policies, profitability of each product and market information, profit contribution of each party taking functions performed, assets used and risk assumed into account;
7. Reasons for selecting a particular pricing methodology;
8. Where other methodologies have been considered and rejected, details of those methodologies, including reasons for the rejection, should be documented contemporaneously with the selection of methodology in (7);
9. Documents evidencing the company's position in its negotiation over transactions carried out among group companies; and
10. Other documents relating to the setting of transfer price (if any).

The objective for taxpayers is to be able to prove to the Revenue Department that the transfer pricing methodology that is followed results in a market price.

Advance pricing agreements (APA)

The guidelines also allow taxpayers to apply for an APA ruling in respect of any intended related party transaction so long as the taxpayer provides the relevant information and documentation.

VALUE ADDED TAX

Basis of taxation

Value added tax (“VAT”) is a non-cumulative broad-based consumption tax levied on the supply of goods or provision of services in Thailand by VAT operators. VAT is calculated on the total price of the goods delivered or services provided. A provision of services is deemed to have been made in Thailand if the service is performed in Thailand regardless of where the service is used, or if the service is performed abroad but is used in Thailand. In principle, the input VAT on purchases of goods or services related to the business of a registered VAT operator may be credited against output VAT.

Taxpayers

Generally, every person who conducts business in Thailand is liable to pay VAT, regardless of whether the business is conducted by an ordinary person, group of persons, partnership, company or any other juristic person, including:

- Manufacturers, importers, wholesalers, retailers and any other persons who sell goods in the course of their business or professional activities;
- Persons providing services; and
- Agents in Thailand of foreign suppliers who sell goods and provide services in the ordinary course of business.

Registration

Persons who have annual turnover in excess of Baht 1,800,000 are required to register as VAT operators. Only registered VAT operators are entitled to the credit or refund of input VAT.

Exemptions

Persons and business activities exempt from VAT include:

- (a) - Taxpayers with total sales of less than Baht 1,800,000;
 - Sale of unprocessed agricultural products;
 - Sale of goods or products related to agriculture, e.g. fertilizers, animal feed and pesticides;
 - Sale of newspapers, magazines and textbooks; and
 - Sale of animals whether dead or alive.
- (b) Educational services including government and private schools.
- (c) Artistic and cultural services.
- (d) Medical, auditing and court practice services.
- (e) Health care services including government and private hospitals and clinics.
- (f) Research and technical services.
- (g) Libraries, museums, zoos and amateur sports.
- (h) Public performers.
- (i) Domestic transportation.
- (j) International transportation by land.
- (k) Rental of immovable property.
- (l) Services of government agencies and local government which send all revenue before expenses to the government.
- (m) Religious activities and public charities.
- (n) Imported goods brought into a duty free zone that are exempt from import duties under the law governing such.
- (o) Goods exempt from import duties pursuant to Chapter 4 of the Customs Tariff Code.
- (p) Imported goods processed by the Customs Department and returned abroad.

Tax rates

- The current rate is 7%. This is a reduced rate for a temporary period under a special Royal Decree. Unless the period is further extended, the rate will revert to 10% on 1 October 2012.
- A zero percent rate is applied to the following particular items:
 - Exported goods;
 - Services provided in Thailand but totally used in a foreign country;
 - Sales of goods or services to government agencies or state enterprises under foreign aid programs;
 - Sales of goods or services to the United Nations or its specialized agencies as well as embassies and consulate generals; and
 - Sales of goods and services between bonded warehouses or between enterprises located in a duty free zone.

Computation

VAT operators must charge VAT on the sales of goods or provision of services and it is regarded as output tax. The tax paid by VAT operators upon the purchase of goods or services is regarded as input tax. Input tax is creditable against output tax to yield the amount of tax due:

$$\text{Tax due} = \text{Output tax} - \text{Input tax}$$

Any excess of output tax over input tax must be remitted to the Revenue Department while taxpayers are entitled to a refund or credit for any excess of input tax over output tax.

Tax invoices

VAT operators are required to issue tax invoices indicating the amount of goods or services provided together with VAT charged. All significant particulars in tax invoices must be completed as prescribed by the law. Substantially incomplete or incorrect information in tax invoices may result in a VAT operator being unable to claim input tax.

Tax administration

Returns

VAT operators are required to file monthly tax returns no later than the 15th day of the following month.

Documents and records

Tax invoices received and copies of tax invoices issued must be maintained as well as relevant documents and records. For instance, bookkeeping records and raw materials records must be properly maintained at the place of business of VAT operators at all times.

Penalties and surcharge

- Failure to register for VAT or businesses continuing after their VAT registration has been revoked, the penalty is 200% of the tax due (but not less than Baht 1,000 per month).
- Failure to file monthly VAT returns within the time limit, the penalty is 200% of the tax due.
- Miscalculation of the amount of tax in tax return filing, the penalty is 100% of the tax underpaid.
- Misstatement of the amount of output tax or input tax, the penalty is 100% of the deficient output tax or the excess input tax.
- Failure to issue a tax invoice to a purchaser, the penalty is 200% of the tax due.
- Failure to prepare the required reports, the penalty is 200% of the tax due.
- An additional surcharge of 1.5% per month of the tax underpaid is levied but not exceeding the amount of tax due.

SPECIFIC BUSINESS TAX

Due to the difficulty in determining the value added of certain businesses for the purpose of assessing VAT, an alternative tax levy on services, especially in the financial services sectors, was introduced in tandem with the VAT regime. Specific business tax (“SBT”) is collected on gross revenue at fixed rates.

Taxpayers

The following persons who are conducting transactions in the regular course of business are required to register as specific business tax operators:

- Natural persons including a non-juristic body of persons;
- Juristic persons;
- Government agencies or cooperatives; and
- Any other juristic persons.

Businesses subject to SBT and applicable rates

	%
(a) Commercial banking, financial and credit foncier business	3.0
(b) Life insurance	2.5
(c) Pawnshop brokerage	2.5
(d) Sale of immovable property, real estate	3.0
(e) Sale of securities in the stock exchange	0.1*
(f) Business with regular transactions similar to commercial banking	3.0

* *Note:* currently exempt from SBT

An additional 10% of the SBT is levied as municipality tax.

Notes:

1. Exemption from SBT is in force on the sale of futures contracts in accordance with the laws governing agricultural futures trading on the Agricultural Futures Exchange of Thailand (“AFET”).
2. Exemption from SBT has been granted on the sale of derivatives in accordance with the laws governing derivatives on the Thailand Futures Exchange (“TFEX”).
3. The rate of SBT has been reduced from 3% to 0.01% in respect of certain banking businesses.

Tax administration

Returns

Businesses subject to SBT are required to file monthly tax returns no later than the 15th day of the following month.

Penalties and surcharge

- Failure to register for SBT, the penalty is 200% of tax due.
- Failure to file monthly SBT returns, the penalty is 200% of tax due.
- Incorrect or tax underpayment on monthly tax filing, the penalty is 100% of tax underpaid.
- An additional surcharge of 1.5% per month of the tax underpaid is levied, but not exceeding the amount of tax due.

STAMP DUTY

Basis of taxation

Stamp duty is levied on the execution of 28 different items of documents or instruments specified in the stamp duty schedule in the Revenue Code.

Rates

The rates vary according to the nature of the documents or instruments. The rates range from Baht 1 per 1,000 on most contracts and agreements to a fixed Baht per instrument charge on most commercial and other documents. Stamp duty must be duly stamped at the rate specified in the stamp duty schedule.

Documents or instruments subject to stamp duty

- Contracts / Agreements
 - Lease of land or buildings
 - Hire purchase
 - Hire of work
 - Loan
 - Partnership contract
- Financial / Commercial documents
 - Transfer of shares / debentures
 - Bill of exchange
 - Promissory note
 - Bill of lading
 - Share or debenture certificate
 - Cheque / Traveller's cheque
 - Letter of credit
 - Receipt for interest bearing bank deposit
 - Carrier's receipt

- Suretyship
- Pledge
- Warehouse receipt
- Delivery order
- Agency / Power of attorney
- Duplicate of original document
- Memorandum / Articles of Association of a limited company
- Proxy for voting
- Policy of insurance
- Receipt in connection with transfer of right in immovable property which gives rise to its registration
- Receipt in connection with sale, transfer of ownership or hire purchase of a vehicle.

Payment of stamp duty and surcharge

In most cases it is the recipient of the consideration under the instrument who is liable to pay the stamp duty and affix the stamps. Unstamped documents or instruments are not admissible as evidence in a civil lawsuit.

Failure to pay the stamp duty and affix the stamps on a timely basis is subject to a surcharge ranking from 200 percent to 600 percent of the duties.

CUSTOMS DUTIES

Basis of taxation

Customs duties are imposed under the Customs Act and the Customs Tariff Decree. Customs duties are collected on both imports and a very limited number of exports. Classification of imports is based on the Harmonized Commodity Description and Coding System (the so-called “Harmonized System”). Thailand has adopted the ASEAN Harmonized Tariff Nomenclature (“AHTN”) 2007, which is based on the Harmonized System 2007, as its latest import tariff nomenclature.

Duties are levied on a specific or an ad valorem basis, whichever is the higher, and the applied ad valorem duties range between 0% and 80%. Exemptions from import duties are available on particular items of goods as prescribed in the Customs Tariff Decree. Preferential duty rates are available on imported goods from countries that have a preferential free trade agreement with Thailand. Currently, Thailand has FTAs with the following countries:

- ASEAN member states (i.e. Singapore, Vietnam, Malaysia, Indonesia, Philippines, Cambodia, Laos, Myanmar, Brunei);
- Peru (not entered into force yet as at December 2010);
- New Zealand;
- Australia;
- India; and
- Japan.

Also, as part of ASEAN, Thailand has preferential trade agreements with:

- China;
- Korea;
- Japan;

- Australia and New Zealand; and
- India.

Generally, the value of imports is based on their CIF (cost, insurance and freight), whereas exported goods are based on their FOB (free on board).

Thailand has implemented the WTO Valuation Agreement. The primary basis for the customs value is “transaction value”, i.e. the price actually paid or payable for the goods when sold for export. This is subject to adjustments for certain elements which are considered to form a part of the value for customs purposes, but are not yet included in the selling price. The elements that may need to be added include royalties and license fees, which are related to the goods and paid as a condition of sale, proceeds from subsequent resale in the importing country, value of goods or services supplied by the buyer, such as design or development fee related to imported goods, etc. If the declared price is evidently low or is unlikely to be the true value of such goods, Thai Customs will dispute the declared price.

Customs controls and procedures

Customs procedures for goods arriving in Thailand in any manner are similar to those existing in most other countries.

An importer is required to file an entry form together with other requisite documents including a bill of lading, invoice, and packing list via the e-Customs system.

Customs duties are due upon the arrival of the vessel carrying the imported goods and goods may be stored in a bonded warehouse. Landing and storage charges must be paid before the goods are released.

Customs incentives schemes

Various customs incentives schemes, each with its own specific conditions and duty privileges, are available in Thailand, including the following:

- Duty and tax compensation (“Tax Coupons”)
- Duty drawback under Section 19bis for imported raw materials used in export production
- Duty drawback for re-export in the same state under Section 19
- Free Zone (Customs or Industrial Estate Authority of Thailand Free Zones)
- Manufacturing bonded warehouses
- General bonded warehouses
- BOI promotion

Offences and penalties

Although, technically, an offence against the customs law is a criminal offence, in practice legal procedures are usually concerned with the recovery of tax arrears and fines. Offences include non-compliance with customs procedures, false declarations and the most serious offence of smuggling and evasion of customs duties. Statutory penalties are as prescribed by relevant provisions of the Customs Act. Where Customs and the offender agree to settle the case at the Customs level (i.e. waiver of prosecution), the penalties would be in accordance with the settlement criteria as prescribed by the Director-General of the Customs Department. This is typically two times the duty and one time the VAT duty evasion. For import licensing errors and smuggling, the penalties are based on a multiple of the value of the goods.

EXCISE TAX

Basis of taxation

Excise tax is imposed on the sale of a selected range of commodities whether manufactured locally or imported. Tax rates are based on ad valorem or a specific rate, whichever is higher. Tax liabilities arise on locally manufactured goods when leaving the factory and at the time of importation for imported goods.

Taxable goods and services

1. Fuel oil and petroleum products
2. Certain non-alcoholic beverages
3. Certain electrical appliances
4. Crystal glassware
5. Motor vehicles
6. Boats
7. Perfume products and cosmetics
8. Entertaining services, turf courses and golf courses
9. Alcoholic beverages
10. Cigarettes containing tobacco
11. Woolen carpets
12. Motor bicycles
13. Batteries
14. Playing cards
15. Ozone depleting substances

The manufacturer of the products must file a return and remit the tax due prior to taking the goods from the factory or bonded warehouse. If a VAT liability arises before the goods are taken out of such locations, the manufacturer must file a return and remit the excise tax to the Excise Department within 15 days from the end of the month.

PETROLEUM INCOME TAX

Basis of taxation

Taxation on income from petroleum operations is imposed on petroleum concessionaire companies by the Petroleum Income Tax Acts (“PITA”). Companies taxed under the PITA are exempt from taxes and duties on income imposed under the Revenue Code and under any other laws. The exemption applies so long as the company pays taxes and duties on income subject to the PITA or on dividends paid out of income subject to the PITA.

Taxable income

Petroleum companies are taxed at the rate of 50% of their annual net profit from petroleum operations, including profit from the transfer of their concession interests and other activities incidental to petroleum operations. Deductions are allowed for “ordinary and necessary” business expenses, as well as depreciation on capital expenditure, petroleum royalties and other charges. Certain types of expenses are specifically disallowed for deduction, including interest.

Tax administration

Taxpayers must file an annual tax return at the local Revenue Office within five months after the closing date of each accounting period.

Penalties and surcharge

Failure to file accurate or timely returns results in the imposition of penalties and a surcharge.

However, penalties and surcharge can be waived or reduced at the discretion of the tax authorities where there is no willful evasion.

LOCAL TAXES

Basis of taxation

Thailand is divided into 76 provinces which are each administered by a local autonomous authority, the municipality. The municipalities, including the City of Pattaya and City of Bangkok Metropolis, impose three major local taxes, namely signboard tax, local development tax and house and land tax.

Signboard tax

An annual signboard tax is imposed on signs or billboards, which display a name, trademark or product for the purpose of advertising or providing information about a business.

Owners of signboards are subject to the tax, and the rate of tax varies according to the size of the board and the language written on the board. Signboards that display Thai words are levied at the rate of Baht 10 per 500 square centimeters. Signboards displaying both Thai and foreign words are taxed at Baht 100 per 500 square centimeters and, for foreign words alone or Thai words below foreign words, the rate increases to Baht 200 per 500 square centimeters. However, at present, the rate is reduced to Baht 3, Baht 20 and Baht 40 respectively.

The following categories of signboard are tax exempt:

- (a) for public places or organizations owned by the government;
- (b) for private schools within the compound of the schools;
- (c) for religious bodies or charitable organizations and associations;
- (d) erected within the area of occasional fairs;
- (e) displayed in theatres or movie houses which publicize shows;
- (f) on products or containers;
- (g) that are confined in the internal place of a business;

- (h) farmers' produce signs; and
- (i) attached to a vehicle, man or animal.

Owners of signboards are required to file tax returns in March of each year and tax must be paid within 15 days after notification of the tax assessment.

In case of failure to file a tax return, a surcharge at the rate of 10% of signboard tax payable will be imposed.

In case of failure to pay signboard tax, a surcharge at the rate of 2% per month of the tax payable would also be charged. Furthermore, a failure to pay tax may result in the seizure and sale of the property by the local authorities in order to collect the arrears.

Local development tax

Local development tax is based on the value of the land, excluding improvements, and ranges from between 0.25% and 0.95% annually. Assessments are calculated on the area of the land and on the median value of the land as assessed by the district authority. Taxable property includes land, mountains and water basins.

Land used for the personal residence of the owner is exempt from the local development tax unless a specified area of a large plot is otherwise subject to the tax.

Cultivated land in excess of the exempt area is subject to one-half of the statutory rate. Idle land is subject to twice the statutory rate.

The following categories of land are exempt from the local development tax:

- (a) land owned by government agencies;

- (b) land on which royal palaces are located;
- (c) land on which public hospitals, public educational institutions or other structures for public use are located;
- (d) land owned by religious bodies or for religious use;
- (e) non-profit cemeteries;
- (f) land subject to house and land tax;
- (g) land which is privately owned but used by the government for public purposes;
- (h) land on which embassies, consulates or offices of international agencies are located.

Landowners are required to file tax returns at the district office where the land is located if outside a municipality, or at the municipal office of the department if the land is located within the municipality. Returns must be filed in January of each year and tax is to be paid within April of each year or within 30 days of assessment if it is notified after March.

In case of failure to file a tax return, a surcharge of 10% of the local development tax payable will be imposed.

In case of failure to pay local development tax, a surcharge at the rate of 24% per annum of the tax payable would also be imposed. Furthermore, failure to pay tax may result in the seizure and sale of the property by the authorities in order to collect the arrears.

House and land tax

The rate of tax is 12.5% of the actual or imputed annual rental value of property on owners of land or buildings, used for any purpose, with the exception of owner occupied residences.

If buildings on the land are owned by a person other than the owner of the land, the owner of the buildings is liable for the tax.

Damaged buildings are subject to a reduced valuation in proportion to the extent of the damage. Reductions are also made, pro rata, where buildings become unoccupied during the year.

Exceptions to the house and land tax are as follows:

- (a) royal palaces owned by the Crown;
- (b) buildings owned by the government and which are utilized for public purposes;
- (c) public hospitals and educational institutions not operated for profit;
- (d) religious buildings;
- (e) buildings unoccupied for a period of 12 months or more; and
- (f) buildings used for personal residence of the owner.

A tax return is required to be filed within February of each year at the municipal or district office of the provincial administrative organization where the land and buildings are located and tax must be paid within 30 days after notification of the tax assessment.

Failure to file a tax return would result in a fine of Baht 200.

Furthermore, a penalty of 2.5% of the tax liability will be imposed if the tax is paid during the first month following the due date for payment, rising to 5% for the second month, 7.5% for the third month and 10% for the fourth month. After the fourth month, the authorities have the right to seize and sell the property in order to collect the arrears.

TAX INCENTIVES

The Board of Investment (BOI)

Under the Investment Promotion Act of B.E.2520 (1977), the Board of Investment is authorized to grant incentives and privileges to qualified investments. An investor entitled to investment incentives from the BOI must be a limited company, foundation or cooperative organized under Thai law. The incentives are also available to a joint venture company established under Thai law in accordance with specific BOI criteria.

To relax the limitation of foreign shareholding in manufacturing activities and to facilitate investors on their investment, the following criteria are used by the BOI:

1. For a project in agriculture, animal husbandry, fishery, mineral exploration and mining and service businesses under Schedule 1 of the Foreign Business Act B.E. 2542 (1999), Thai nationals must hold not less than 51% of the registered capital;
2. For manufacturing projects, in all zones, foreign investors may hold a majority or all of the shares in promoted projects;
3. The BOI may specifically fix the shareholding of foreign investors in promoted projects when it is deemed appropriate.

The BOI provides tax and non-tax incentives as well as various guarantees and protection measures, which vary with project locations (BOI Zone), priority activities and other criteria.

The following tax incentives may be granted to investors:

1. Exemption or reduction of import duties on imported machinery.
2. A reduction of up to 90% of import duties on imported raw or essential materials imported for manufacturing for domestic sale.

3. Exemption from corporate income tax equal to the amount of the investment, excluding the cost of land and working capital, for up to eight years depending on the promoted activity and the location.
4. Dividends derived by a shareholder from promoted enterprises are exempt from tax including dividend withholding tax, during the period of exemption from corporate income tax granted to the payer.
5. Exemption of import duties on raw or essential materials imported for manufacturing for export.

The BOI places priority on the promotion of the following types of projects (the priority activities):

1. Agriculture and agricultural products
2. Direct involvement in technological and human resource development
3. Public utilities, basic services and infrastructure
4. Environmental protection and conservation
5. Targeted industries

Such projects will be entitled to the following tax privileges regardless of location in addition to other privileges for each zone:

1. Corporate income tax exemption will be granted for eight years; and
2. Import duty exemption on machinery

Apart from the tax incentives, the non-tax incentives granted to a promoted enterprise regardless of location include permission to bring in foreigners to engage in investment feasibility studies, to bring in foreign technicians and experts to work on promoted projects, to own land to undertake the promoted activities and to remit foreign currencies.

The BOI provides guarantees against nationalisation, competition from new state enterprises, state monopolization of the sale of products similar to those produced by the promoted project, price controls and tax exempt imports by government agencies or state enterprises.

Protection measures include imposition of a surcharge on imports, import bans on competing products and the authority of the Chairman of the BOI to order any actions or tax relief measures for the benefit of promoted projects.

IEAT free zone

Under the Industrial Estate Authority of Thailand (IEAT) law, the free zone is designated for the operation of industrial activities, commercial activities or other businesses relating thereto, for the purpose of economics, national security, public well-being, environmental management or other necessities as prescribed by the Board of the IEAT, whereby goods taken into the area will be entitled to additional rights and privileges on tax and duty as well as special fees as provided in the law.

Incentives and privileges

Industrial operators in an IEAT free zone will be granted additional privileges as follows:

1. Exemption from import duties, VAT and excise tax on machinery, equipment, tools and supplies (including components) which are essential for the production of goods or for commercial purposes and on materials to be used in the construction, assembly, or installation of factories or buildings in the IEAT free zone. Consumer products or vehicles are not exempt.

2. Exemption from import duties , VAT and excise tax on raw materials imported and taken into an IEAT free zone for use in the production of goods or for commercial purposes. Exempt imported materials taken into an IEAT free zone for use in production include items from another IEAT free zone, promoted persons under BOI for export, bonded warehouse, items imported under bank guarantee for re-export of finished goods and items exempt under other laws.
3. Goods imported and taken into an IEAT free zone under (2), including products, by-products or other things from production in the IEAT free zone, will, if exported, be exempt from export duties, VAT and excise tax.
4. Goods manufactured in an IEAT free zone and sold in Thailand will be deemed as imported goods and subject to VAT at the normal rate or at the zero rate if sold between operators located in the IEAT free zones.

Duty free zone

In order to support and promote the country's exports, a duty free zone (DFZ) is an area designated for industrial or commercial operations, or other businesses that are beneficial to the economy of the country, whereby the goods imported into or manufactured in this zone will be exempt from import duty, VAT and excise tax.

To qualify as a duty free zone, an application to establish such zone must be submitted for the approval of the Director-General of the Customs Department. A company permitted to establish or operate in the DFZ must conclude a guarantee agreement with the Customs Department and conform strictly to all customs regulations and is required to pay an annual fee as fixed by the law.

Incentives and privileges

An operator in a duty free zone will be granted rights and privileges as follows:

1. Exemption from payment of import duties, VAT and excise tax on the acquisition (including the transfer from another duty free zone) of machinery, equipment, tools and supplies (including components) which are essential for use in industrial and commercial operations, or any other businesses that are beneficial to the economy of the country.
2. Raw materials taken into a duty free zone for use in the production of goods to be exported will be exempt from the enforcement of the law in the part relating to the control of standards or quality, affixing of mark or any sign according to the rules prescribed by the Director-General.
3. Goods manufactured in a duty free zone and sold in Thailand will be deemed to be imported product and subject to VAT on import. Goods sold between operators located in duty free zones are subject to the zero rate.

REGIONAL OPERATING HEADQUARTERS (ROH)

Thailand has had for many years a ROH regime whereby tax privileges were granted to attract multinational companies (domestic and foreign) to set up regional headquarters operations in Thailand. The regime in Thailand presents opportunities for establishing an ROH to act as a holding, services, financing and licensing company.

On 6 November 2010, a new ROH model came into existence modifying some of the criteria and benefits. An existing ROH will be able to elect to keep the old existing regime or move to the new model and a new ROH can choose either.

Old ROH Regime

The criteria for a ROH are:

- Company formed under Thai law with minimum paid up capital of Baht 10 million
- Provide qualified services to qualified affiliates (companies with at least 25% common group ownership) in at least 3 countries other than Thailand
- Income from services provided to, or royalties received from, overseas affiliates must be at least 50% of the total income of the ROH company (reduced to one-third for first 3 years).

The tax concessions are:

- Corporate income tax (CIT) of 10% on net profit from ROH services provided to foreign and domestic affiliates
- 10% CIT on net profit from qualified royalties and interest income from lending borrowed funds to domestic and foreign affiliates
- CIT and domestic withholding tax exemptions for dividends received from affiliates

- Withholding tax exemption for dividends paid to foreign shareholders
- Expatriates employed by the ROH can choose to be taxed at a flat rate of 15% for 4 consecutive years

New ROH Regime

Modifications and additional criteria to those above:

- The number of foreign affiliates that services must be provided to is modified
 - at least 1 foreign country in the first 2 years
 - at least 2 foreign countries in years 3 and 4
 - at least 3 foreign countries in year 5 and onward
- “Operating expenses” related to ROH activities of at least Baht 15 million per year or investment spending in Thailand of Baht 30 million per year
- Maintain “skilled staff” of at least 75% of total employees by end of third year (staff who graduated from at least secondary school or primary vocational institute or equivalent)
- Average compensation of Baht 2.5 million per person per annum for at least 5 employees by the end of the third year
- The foreign affiliate must have actual business operations.

Modifications to tax concessions listed above:

- Full CIT exemption on net profit from ROH services provided to foreign affiliates for 10 years. (This can be extended to 15 years if cumulative “operating expenses” for 10 fiscal periods exceed Baht 150 million at the end of the 10th fiscal year.)
- 10% CIT for 10 years on net profit from ROH services provided to domestic affiliates including qualified royalties and qualified interest income (with extension to 15 years on the same conditions noted above)
- The exemption from CIT and domestic withholding tax for dividends received from affiliates is also limited to 10 years (with extension to 15 years on the same conditions noted above)

- Withholding tax exemption for dividends paid to foreign shareholders
- The expatriate flat rate of 15% is for 8 consecutive years.

In addition, an ROH that meets all the criteria except the test of 50% or more of its income coming from ROH services and royalties from overseas affiliates will be entitled only to the CIT exemption for foreign profit and the 10% rate for domestic profit and none of the other concessions.

Registration and reporting requirements

In order to register as an ROH, a company must submit the required registration form to the Large Business Tax Administration Office at the Revenue Department or to an Area Revenue Office or Provincial Revenue Office where the ROH will be located. Under the new tax package, the required registration form must be submitted within 5 years from 15 November 2010. The registration form requires the ROH to disclose the identities and locations of the affiliated enterprises to which the ROH will provide qualifying services.

A company operating both as an ROH and conducting other business is required to calculate the profit or loss of each business separately and to submit a separate tax return for each business. In calculating the profit or loss of each business, expenses must be allocated to each business. Common expenses must be allocated pro rata to the income generated by each business.

Any loss generated by an ROH must be maintained within the ROH. It cannot be offset against the profits of any other business. Furthermore, any loss generated by the ROH business which is subject to exemption cannot be offset against the portion subject to the reduction of the tax rate.

Qualifying services

Income from the following categories of services is entitled to the tax incentives available to the ROH:

- Procurement of raw materials and parts
- Technical assistance
- Research and development
- Marketing and sales promotion
- Financial advisory services
- Human resource management and training
- General administration, business planning and co-ordination
- Credit management and control
- Analyzing and researching economics and investment
- Other services as prescribed by the Director-General of the Revenue Department

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Services include:

BOI

- Legal compliance and planning:
 - Determine best strategy for seeking investment promotion for new and existing investment projects, as well as project relocation
 - Negotiate with officials to find the optimum solution
 - Ensure that various aspects of environmental, labour and technology requirements of BOI are satisfied
 - Post implementation support to ensure conditions imposed by BOI are maintained for every type of incentive received
- Tax compliance and planning:
 - Cost of capital, capacity, raw materials and scrap planning
 - Segregation of BOI and non BOI activities
 - Segregation of future projects
 - Transfer pricing during and after BOI
- Accounting Analysis and Financial Modelling:
 - Choice of depreciation methods
 - Inventory valuation methods
 - Types of forward contracts used to cover FX risks
 - Leasing alternatives
 - Debt vs. equity evaluation from tax and financing perspective

Customs & Trade

- Competitiveness improvement through strategic customs and trade planning
 - Free Trade Agreements
 - Duty savings through unbundling of transaction value
 - Customs supply-chain business modelling
 - Tariff engineering (reviewing the optimum way to import)

- Optimising use of customs incentives schemes (e.g. Free Zones, Bonded Warehouses, Board of Investment (BOI) promotion, Duty Drawback for Re-Exported Goods, Duty & Tax Reimbursement for Exports etc.)
- Customs compliance and risk management
 - Customs compliance review
 - Customs audit and investigation support
 - Managing customs valuation and transfer pricing documentation
 - Classification of traded goods
 - Assisting in applying for advance and post-importation customs rulings
 - Voluntary disclosure
 - Review compliance and managing import & export of controlled goods (e.g. hazardous substances, dual-use goods) and non-core importations (e.g. business and technical documents and computer software)
 - On-site customs training

Financial Services

- Tax services for financial services industry - bank, capital market, insurance, funds, real estate
 - Tax compliance services e.g. tax return review and preparation, tax risk identification, tax investigation assistance, etc.
 - Tax advisory on new and existing financial products/ transactions
- Tax planning through financial functions to achieve group tax effectiveness, etc.

Global Compliance Services

- Tax compliance services:
 - Corporate income tax return review / assistance with the return preparation
 - Tax compliance review / tax health check
- Tax function effectiveness services:
 - Effectiveness and efficiency of tax operations
 - Tax risk management services
- Tax accounting services:
 - Tax provision outsourcing & support
 - Deferred tax accounting services
 - Accounting for uncertainty in income tax (FIN 48) services
 - Tax accounting consulting
 - Tax accounting training & advice

Indirect Tax (VAT)

- Motor industry
- Retail industry
- Supply chain management
- Business promotions management
- Efficient eBusiness, etc.

International Assignment Services

- Expatriate assignment structuring and administration services
- Global visa and work permit solutions
- Personal income tax advisory
- Share incentive program design and administration services
- Human resource tax and legal due diligence and compliance review services
- Human resource start-up support services
- Payroll outsourcing service for executive expatriates

Legal Services

- Corporate services & business establishment
- Commercial contracts
- Labour
- Real estate
- Legal due diligence
- Tax dispute
- Investment incentives

Mergers and Acquisitions

- Tax due diligence
- Deal structuring
- Tax-efficient group reorganisation
- Post deal services / project implementation and management

Outsourcing Services

- The HR outsourcing and payroll services include the followings:
 - Monthly payroll administration and withholding tax services
 - Annual personal income tax return and withholding tax services
 - Other payroll related services
- The Finance outsourcing and accounting services include the followings:
 - Statutory financial statements services
 - Bookkeeping services
 - Tax compliance outsourcing services
 - Other finance functions e.g. processing of customers' billings, processing of vendors' invoices, etc.

Tax Dispute Resolution

- Advising on the interpretation and application of the complex and sometimes ambiguous rules and regulations prescribed in the Revenue Code and in extra-statutory announcements
- Coordinating with the investigating Revenue Officer and providing necessary documents and information
- Assisting with the defense of transactions that may be under review for non-compliance

Tax Structuring

- International tax services
- Value chain transformation - alignment of tax and operational models
- Group tax planning / tax optimisation programme
- Finance and treasury

Transfer Pricing

- Transfer pricing advisory
- Transfer pricing setting
- Transfer pricing documentation
- Transfer pricing benchmarking
- Transfer pricing dispute resolution
- Advance Pricing Agreement
- Mutual Agreement Procedure

U.S. Tax Desk

- M&A and structuring advice on investment in U.S.
- Assistance to Thai subsidiaries of U.S. companies in understanding U.S. tax and reporting requirements
- U.S. tax compliance including tax return preparation and withholding tax refund claims

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Awarded Thailand “Tax Firm of the Year 2009 and 2010” and “Transfer Pricing Firm of the Year 2009” by the International Tax Review (ITR)

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