

# LEX MUNDI

## INTERNATIONAL TAX DESK BOOK

### A SUMMARY OF THAILAND'S TAX LAWS<sup>1</sup>

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#### INTRODUCTION

In Thailand, taxes are imposed at both national and local levels. The central government is the main taxing authority. The principal taxes levied by the central government are as follows:

##### **Direct Taxes**

- Personal Income Tax
- Corporate Income Tax
- Petroleum Income Tax

##### **Indirect Taxes**

- Value Added Tax
- Specific Business Tax
- Customs Duties
- Excise Tax
- Stamp Duties

#### **Source of Tax Law**

The principal tax law in Thailand is the Revenue Code, which governs personal and corporate income taxes, value added tax, specific business tax, and stamp duties. Customs duties are regulated by the Customs Act; the Excise Act governs excise tax; and the Petroleum Income Tax Act governs petroleum income tax.

#### **Tax Administration Structure**

The Revenue Department of the Ministry of Finance is responsible for the administration of personal income tax, corporate income tax, petroleum income tax, value added tax, specific business tax, and stamp duties. The administration of customs duties is the responsibility of the Customs Department, Ministry of Finance, while the administration of excise tax is the responsibility of the Excise Department, Ministry of Finance.

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<sup>1</sup> "Summary of Thailand's Tax Laws" is intended to provide general information on Thai tax laws. The contents do not constitute legal advice and should not be relied upon as such. If legal advice or other expert assistance is required, the services of competent professionals should be sought.

In general, Thailand's tax administration follows the concept of self-assessment. Taxpayers have a legal duty to declare their income and pay tax to the authorities. The income declared and tax paid are assumed to be correct. However, assessments may be conducted by the authorities in certain circumstances, such as failure to file tax returns or filing of false or inadequate tax returns.

## **I. INCOME TAXES AS APPLIED TO BUSINESS ENTITIES AND INDIVIDUALS**

The Thai Revenue Code imposes taxes on income except income subject to petroleum income tax. There are two types of income tax: personal income tax (income tax on individuals) and corporate income tax (income tax on juristic entities).

### **A. CORPORATIONS**

In Thailand, the tax on income of juristic entities is called corporate income tax. All juristic companies and partnerships established under Thai or foreign law which carry on business in Thailand are subject to corporate income tax. A domestic corporation is subject to tax on worldwide income, while a foreign corporation is subject to tax on income generated in Thailand. Tax is generally levied at the rate of 30% of net profits.

International transportation companies, associations, and foundations all fall within the scope of corporate income tax but only pay tax on gross receipts instead of on net profits.

#### **1. Taxable Entities**

Corporate income tax is levied on juristic companies and partnerships. For income tax purposes, "juristic companies and partnerships" include the following:

- a. A limited company, a public company, or a juristic partnership (a limited partnership or a registered ordinary partnership) organized under Thai or foreign law.
- b. A business or profit-seeking enterprise operated by a foreign government, an organization owned by a foreign government, or any other juristic person organized under a foreign law.
- c. A joint venture.
- d. A foundation or association engaged in any business that produces revenue.

Although joint ventures, foundations, and associations are all subject to corporate income tax, there are special rules applicable to them. (See Sections I.C.1 and I.C.3 for details.)

#### **2. Tax Computation**

Corporate income tax is computed by taking into account all revenue arising from or in consequence of a business carried on in an accounting period and deducting therefrom all expenses, in accordance with the conditions prescribed in Sections 65 bis and 65 ter of the Revenue Code. The tax year for a corporation is its accounting period, which normally has a duration of 12 months.

In computing net profits, an accrual basis following generally accepted accounting principles may be applied. However, other methods of computation can also be applied for certain types of income, e.g., income derived from businesses such as banking, finance, securities, insurance, hire-purchase, installment sale, construction, sale of immovable properties, golf courses, etc.

### **3. Taxable Income**

In determining taxable income, the all-inclusive concept of income is applied. All realized economic gains are treated as income whether they occur frequently or sporadically. Taxable income includes business or professional income, dividends, interest, royalties, service fees, etc. Capital gains are treated as ordinary income and are subject to corporate income tax.

Income can be in money or in kind, provided that it is convertible into money or monetary value.

### **4. Exemptions**

Certain exemptions from corporate income tax are provided under the Revenue Code, Royal Decrees issued under the Revenue Code, and the Investment Promotion Act. Examples of such exemptions are as follows:

- a. Dividends paid by a limited company, registered under Thai law, to another Thai limited company or to a company registered under the law governing the Stock Exchange of Thailand may be exempt from corporate income tax, if the holding of the shares in the payer company is in compliance with conditions prescribed in the Revenue Code.
- b. A reduction or exemption from tax may be granted to juristic entities in accordance with tax treaties between Thailand and foreign countries (see Section V.C, Tax Treaties).
- c. A corporate income tax exemption for a period of 3 to 8 years may be granted to promoted businesses under the Investment Promotion Act. In addition, dividends, fees for goodwill, copyright or other rights received from the promoted businesses may also be exempt from income tax in the hands of the recipient (see Section V.A, Tax Incentives).

### **5. Deductible Expenses and Allowance**

Generally, expenses incurred exclusively for the purpose of generating income or for the purpose of business, other than certain expenses specified under Section 65 ter of the Revenue Code, are tax deductible. However, the deduction of some expenses and allowances must comply with the rules prescribed in the Revenue Code as follows:

- a. Depreciation Allowance

Any accounting method of depreciation which is generally accepted can be used, but the depreciation rates cannot exceed the rates specified in the Royal Decree issued under the Revenue Code (No. 145). Accelerated depreciation may be allowed for cash registering

machines and machinery and/or accessories used in research and technological development.

Buses with no more than a 10-seating capacity, or passenger cars, may be depreciated but only for the part of the cost value which does not exceed Baht 1,000,000.

b. Reserves

Reserves set aside from premiums of an insurance business as well as reserves set aside as provision for bad or doubtful debts from credit extension by banks or finance and securities or credit foncier companies are allowed as deductions. Other reserves are not allowed.

c. Contribution to Funds

Contribution to a provident fund for employees, established in accordance with Ministerial Regulations, is deductible.

d. Bad Debts

For tax purposes, bad debts may be written off only in accordance with the procedures and conditions prescribed by Ministerial Regulations.

e. Entertainment Expenses

Actual entertainment expenses may be deducted from gross income. However, the total deduction of entertainment expenses in an accounting period shall not exceed 0.3 % of total gross revenue or gross sales, or of the paid-up capital, whichever is greater. In addition, the total entertainment expenses allowed for deduction shall not exceed Baht 10 million.

f. Donations

Donations to public charities of up to 2% of net profits and donations for education or sports of up to 2% of net profits may be deducted.

g. Losses Carried Forward

Operating losses may be carried forward for five accounting periods to offset against future profits. However, there is no provision for the carry back of losses to previous accounting periods.

## **6. Non-Deductible Expenses**

Various items of non-deductible expenses are stated under Section 65 ter of the Revenue Code. Such items include:

a. Personal expenses and gifts.

b. Tax penalties, surcharges and criminal fines under the Revenue Code.

- c. Any artificial or fictitious expenses.
- d. Consideration for properties owned and used by the juristic entity.
- e. Interest on capital, reserves, or funds of the juristic entity.
- f. Any damage recoverable under an insurance or contract of indemnity.
- g. Any disbursement if the identity of its recipient cannot be proved by the payer.
- h. The portion of the purchase price of properties and the expenses in connection with the purchase or sale of properties which exceeds a reasonable amount.

## **7. Tax Rate**

Generally, the rate of income tax for juristic companies and partnerships is 30% of net profits.

Reduced rates at the progressive rates of 15% to 25% are granted to small and medium-sized enterprises (SMEs), and reduced rates at the flat rates of 20% or 25% are granted to companies listed on the Stock Exchange of Thailand, and companies listed on the Market for Alternative Investment (MAI).

A company established as a Regional Operating Headquarters (ROH) providing qualifying services to affiliated juristic companies or partnerships or branches is subject to tax at a reduced rate of 10% of net profits.

In lieu of tax on net profits, foreign corporations engaged in the business of international transportation are subject to tax at the rate of 3% of gross ticket receipts collected in Thailand for transportation of passengers and 3% of gross freight charges collected anywhere for transportation of goods from Thailand.

Foundations and associations engaged in business activities are subject to tax at the rate of 2% and 10% of gross business income depending on category of income (see Section I.C.3, “Associations and Foundations”).

## **8. Territorial Rules**

- a. Foreign juristic entities in the form of corporations, limited companies, or partnerships carrying on business in Thailand through branch offices or otherwise are subject to income tax.
- b. The term “carrying on business in Thailand”, for income tax purposes, is very broad. Foreign juristic entities are deemed to be “carrying on business in Thailand” if they have in Thailand an employee, agent, representative or go-between and thereby derive income or gains in Thailand. Accordingly, such person has the duty to file a return and pay corporate income tax in respect of such income or gains on behalf of the foreign juristic entities.

- c. A juristic entity incorporated in Thailand is subject to tax on its worldwide income, derived from both domestic and foreign sources. A juristic entity incorporated abroad but carrying on business in Thailand is subject to tax only for income arising from or in consequence of the business carried on in Thailand. The computation of net profits and the rate applied to foreign corporations carrying on business in Thailand is the same as domestic corporations. However, a branch remitting its net after-tax profits to its head office, or the keeping of profits abroad in case the head office has received abroad a payment for service rendered in Thailand, is subject to a further income tax (profit remittance tax) at the rate of 10% of the amount actually remitted or deemed remitted.
- d. Foreign corporations not carrying on business in Thailand but deriving certain types of income from or in Thailand, usually in the form of service fees, royalties, interest, dividends, capital gains, rent, or professional fees are subject to a flat rate of corporate income tax. This is a final tax but is collected in the form of withholding tax based on gross income (see Section 9 below for more information on “Withholding Taxes”).
- e. Tax credit for income tax paid abroad is granted by a Royal Decree issued under the Revenue Code and double tax treaties, whereby income tax paid in a foreign country can be used as a credit against Thai income tax payable. However, the amount of tax credit allowed shall not exceed the Thai income tax imposed on the same income.
- f. Export made by any juristic corporation to its head office, branch, affiliated company, principal, agent, employer, or employee are treated as sales made in Thailand. The profits from such exports are taxable in Thailand. The revenue from export is determined according to the market price of the goods on the date of export, excluding freight and insurance premium.

## **9. Withholding Taxes**

Withholding taxes apply to various categories of income paid to juristic entities. The amount of tax to be withheld depends on the category of income and the tax status of the recipient. The withholding tax rates on some important categories of income are as follows:

- a. Rates on Dividends
  - 10% on dividends paid to domestic and foreign corporations
- b. Rates on Interest
  - 1% on interest paid by financial institutions (banks, finance or credit foncier companies) to domestic companies that are not financial institutions
  - 10% on interest paid by financial institutions to associations and foundations
  - 15% on interest paid to foreign corporations (final tax payment)

- c. Rates on Royalties
  - 3% on royalties paid to domestic companies and partnerships (juristic partnerships)
  - 10% on royalties paid to associations and foundations
  - 15% on royalties paid to foreign corporations (final tax payment)
  
- d. Others
  - 15% on capital gains, service fees, professional fees and rent paid to foreign corporations (final tax payment)
  - 3% on service fees and professional fees paid to domestic corporations or permanent branch offices of foreign corporations
  - 5% on service fees and professional fees paid to non-permanent branch offices of foreign corporations

The withholding tax rates applied to foreign corporations may be reduced or exempted under tax treaties.

Tax withheld must be remitted to the local district office within seven days from the last date of the month in which the payment is made. The tax withheld will then be credited against the final tax liability of the domestic corporations or branches of foreign corporations.

#### **10. Filing of Tax Returns and Payment of Tax**

Juristic entities must file tax returns and pay corporate income tax twice a year (once a year for associations and foundations) as follows:

- a. A half-year income tax return must be filed within two months from the last day of the first six months of an accounting period. The amount of tax to be paid is computed either on one-half of the estimated net profits for the whole year or on the actual net profits for the first six months of an accounting period. A juristic entity selecting to pay tax on the actual net profits must submit financial statements together with the tax return. The financial statements must be reviewed by an authorized auditor. The tax paid for a half-year is treated as a credit in the computation of the annual income tax liability.

Juristic entities that pay taxes on gross receipts instead of net profits (i.e. foreign corporations engaged in international transportation, associations and foundations) as well as juristic entities whose first or last accounting period is less than 12 months are not required to file half-year tax returns.

- b. An annual income tax return must be filed and tax must be paid within 150 days from the end of an accounting period. The tax return must also be filed together with an audited balance sheet and profit and loss accounts, or a statement of gross receipts, as the case may be.

In cases involving profit remittance tax, the tax return must be filed and tax must be paid within seven days from the date of remittance.

#### **11. Consolidated Returns for Affiliated Corporations**

There is no consolidated treatment under the Thai Revenue Code whereby corporations within a group may be treated as one tax entity. Each corporation is taxed as a separate legal entity.

In addition, there is no form of group relief or relief by consolidation in respect of losses incurred by an affiliate.

#### **12. Transfer Pricing Rules**

The Revenue Department has the power to make assessments regarding transfer of assets, rendering of services or lending of money without any compensation, service charge or interest or compensation, service charges or interest in an amount considered to be lower than the market value without justification.

Under the transfer pricing regulation, the term “market price” is defined as the price of the remuneration, service fee, or interest which each independent party shall set fairly in business practice, in the transfer of assets, provision of services, or extension of loans of the same type as on the date of such transfer of assets, or provision of services, or extension of loans. The term “independent party” means a party to the contract that has no relationship with the other party in the aspects of management, control, or joint investment, directly or indirectly.

Methods that may be employed for determining market price are the Comparable Uncontrolled Price (CUP) Method, Resale Price Method, Cost Plus Method, or other internationally accepted methods.

Additionally, the Revenue Department has the power to determine the price of imported goods by comparing them with the price of goods of the same category and type which are delivered to another country.

#### **13. Other Matters**

##### **The Petroleum Income Tax**

Companies granted licenses to explore, produce, and export petroleum (crude oil, natural gas, etc.) under the Petroleum Act are subject to tax under the Petroleum Income Tax Act instead of corporate income tax under the Revenue Code.

Petroleum Income Tax is chargeable on net profits at the rate of 50%. No further tax is levied on dividends payable to shareholders or on the distribution of profits to the head office by a branch. Net profit for petroleum income tax purposes is computed in the same manner as for corporate income tax but net losses may be carried forward for ten accounting periods and interest is not a deductible expense.

### **B. PARTNERSHIPS**

Under the Thai Civil and Commercial Code, partnerships are classified into three types as follows:

1. Unregistered Ordinary Partnership
2. Registered Ordinary Partnership
3. Limited Partnership

For income tax purposes, unregistered ordinary partnerships are subject to personal income tax (see Section D, “Individuals”) in the same manner as a group of persons that do not constitute a legal entity, whereas registered ordinary partnerships, limited partnerships, and limited companies fall within the scope of corporate income tax.

## **C. OTHER ENTITIES**

### **1. Joint Ventures**

A joint venture is not recognized as a juristic person under the Civil and Commercial Code but is recognized as a taxable entity for corporate income tax purposes under the Revenue Code.

The term “Joint Venture”, defined in Section 39 of the Revenue Code, means a business or profit-seeking enterprise carried on jointly between:

- a. a company and another company;
- b. a company and a juristic partnership (i.e., a registered ordinary partnership or a limited partnership);
- c. a juristic partnership and another juristic partnership; or
- d. a company and/or a juristic partnership on the one hand, and an individual, a non-juristic body of persons (a group of persons), an ordinary partnership, or another juristic person on the other hand.

In order to be regarded as a joint venture, the following conditions must be satisfied:

- a. There must be a business or profit-seeking activity. If two companies jointly carry on a non-profit-seeking activity, it is not a joint venture in the meaning of the Revenue Code.
- b. The business or profit-seeking enterprise must be undertaken jointly by two or more partners.
- c. There is an agreement for sharing of profits and/or losses, investments, liabilities, properties and/or technology under a joint venture agreement.
- d. One of the partners in the joint venture business must be a limited company or a juristic partnership. If both partners are individuals, they do not constitute a joint venture and therefore are subject to personal income tax instead of corporate income tax.

Under the Revenue Code, a joint venture is treated in the same manner as a corporation and subject to all the rules (i.e. computation of net profits and/or losses, filing of tax returns and payment of taxes) and tax rates applicable to a corporation.

However, the share of profits under a joint venture received by a juristic company and partnership organized under Thai law or by a juristic company and partnership organized under a foreign law and carrying on business in Thailand is exempt from further corporate income tax once in the hands of the recipients (participating partners).

In case a partner is a foreign company not carrying on any other business activity in Thailand, the share of the profits paid to that partner is subject to withholding tax in the same manner as dividends (withholding tax rate of 10%).

According to the Civil and Commercial Code, since a joint venture does not constitute a juristic person, it can neither be sued in court nor be a plaintiff or defendant. Therefore, when business transactions (buying or selling of goods, lending money) are entered into, they must be effected by one or both of the partners on behalf of the joint venture. The bank account of the joint venture should also clearly be separate and distinct from the individual accounts of the joint venture partners.

## **2. Consortiums**

A consortium is a group of companies similar to a joint venture, but the members do not share in the profits and/or losses, investments, liabilities, properties, and/or technology. Therefore, a consortium is not liable to pay income tax in its own name. Income derived by a member from a consortium will be included with the member's other income and is subject to corporate income tax.

## **3. Associations and Foundations**

Associations and foundations registered under Thai law are subject to pay corporate income tax on gross income before the deduction of any expenses. The tax rates are:

- a. 2% on gross income under Section 40(8) of the Revenue Code (i.e. income from business, commerce, agriculture, industry transport, etc.).
- b. 10% on any gross income other than income under Section 40(8) of the Revenue Code (i.e. interest, dividend, capital gain, rental, commission, professional fee).

Associations and foundations are granted corporate income tax exemption on registration and subscription fees received from members, and on money or properties received as donations or gifts.

Associations and foundations prescribed as public charity organizations or institutions under a Notification of the Ministry of Finance are exempt from corporate income tax on all kinds of income.

An association or a foundation must file a tax return (Form Por.Ngor.Dor. 55) and pay tax to the local district office within 150 days from the closing date of an accounting period. The filing of a half-year tax return (Form Por.Ngor.Dor 51) is not required for associations or foundations.

## **D. INDIVIDUALS**

In Thailand, the tax on income of an individual is called personal income tax. The Thai Revenue Code provides principles for the collection of personal income tax on income derived from sources both inside and outside Thailand. According to the Code, individual taxpayers are classified into five categories and assessable income is classified into eight categories. Taxable income of an individual is derived after all expenses and allowances have been deducted from the assessable income. Tax levied on taxable income ranges from 5% up to 37%.

## **1. Taxable Persons**

Individual taxpayers are classified into five categories as follows:

- a. a natural person;
- b. a group of persons which do not constitute a legal entity;
- c. an unregistered ordinary partnership;
- d. a deceased person for their assessable income and estate throughout the year in which death occurred;
- e. an undistributed estate of the deceased.

## **2. Taxable Base**

The taxable base is determined by deducting certain allowances from the total assessable income. The total assessable income is determined by aggregating the amounts under the different categories of income after deducting certain permitted expenses from assessable income of each category.

In general, all types of income are assessable unless expressly exempt by law. Assessable income includes the tax absorbed by the payer of assessable income, or any other persons at all levels. According to Section 40 of the Revenue Code, assessable income is classified into eight categories, as follows:

- a. income derived from personal services rendered to employers (employment income);
- b. income derived by virtue of a post, office of employment, or service rendered;
- c. income from goodwill, copyrights, franchises, patent, other rights, annuity, etc.;
- d. income in the nature of interest, dividends, bonus for investor, reduction of capital, increment of capital, gain on amalgamation, acquisition, or dissolution, and gain on transfer of shares;
- e. income from letting properties, breaches of contracts of installment sale or hire-purchase contracts;
- f. income from liberal professions such as law, engineering, architecture, and accounting;
- g. income from contracting of work whereby the contractor provides essential materials besides tools;

- h. income from business, commerce, agriculture, industry, transport, or any other activity not specified above.

The definition of employment income is broad and inclusive of almost all fringe benefits such as gratuity, pension, meals provided, house rental allowance, monetary value of rent-free accommodation, automobile provided for an employee's private use, tax paid or reimbursed by an employer, life insurance premium paid by an employer, and payment by an employer for settlement of any obligation of an employee.

### **3. Exemptions**

Income specified as exempt from personal income tax is provided under the Revenue Code and by Royal Decrees issued under the Revenue Code. Some examples of income which is exempt from personal income tax are as follows:

- a. per diem or transport expenses spent in good faith by an employee, a holder of office, or a person rendering services necessarily, exclusively, and wholly for carrying out his/her duties;
- b. the portion of traveling expenses paid by an employer to an employee for traveling from another place to take employment for the first time or for returning to his/her place of origin at the termination of employment if such expenses are incurred necessarily for those very purposes (traveling expenses received by an employee who returns to his/her place of origin and then takes up employment with the same employer within 365 days from the expiration of the previous term of employment are not exempted);
- c. medical expenses paid by an employer for an employee and his/her family;
- d. maintenance income derived under a moral obligation, a legacy, or an inheritance, or gifts made in a ceremony or on occasions in accordance with established custom;
- e. proceeds from the sale of movable property acquired by bequest or acquired without a view to trading or profits;
- f. awards for the purpose of education or scientific research;
- g. compensation for wrongful acts, sums derived from insurance or from a funeral assistance scheme;
- h. share of profits obtained from a non-registered ordinary partnership or a group of persons;
- i. income from sale of securities on the Stock Exchange of Thailand, excluding income from sale of debentures and bonds;
- j. compensatory benefit received by an insured person from the social insurance fund under the law governing social insurance.

### **4. Deductions**

a. Deductible Expenses

A standard deduction in percentage of assessable income or the actual expenses incurred in deriving income are allowed, depending on the category of the income. Deductible expenses are as follows:

- (1) For income under Sections 40(1) and 40(2), a standard deduction of 40% with a maximum deduction of Baht 60,000 is allowed. In the case that a lump-sum payment is made because of retirement or termination, a deduction of expenses is available of Baht 7,000 multiplied by the number of years of employment, but not in excess of the payment itself. A further deduction of 50% is available for the balance.
- (2) No deduction of expenses is allowed for income under Sections 40(3) and (4) except for income from copyrights for which a standard deduction of 40%, with a maximum deduction of Baht 60,000, is allowed.
- (3) For income under Sections 40(5) – 40(8), either the actual expenses incurred in deriving such income or alternatively the optional standard deductions ranging from 10% to 85% in respect of each category of income are allowed.

In order for the actual expenses to be deductible, the following rules must be satisfied:

- (1) The expenses must be proved by supporting evidence.
- (2) The expenses must be necessary and reasonable.
- (3) The expenses must not be prohibited from being deducted by the Revenue Code.
- (4) If special rules are provided in the Revenue Code with respect to any expenses, those rules must be followed, e.g. bad debts reserve and depreciation.

b. Allowances

Various kinds of allowances are allowed to be deducted from a taxpayer's total assessable income in order to arrive at taxable income. Such allowances are as follows:

- |     |   |             |
|-----|---|-------------|
| (1) | For taxpayer  | Baht 30,000 |
| (2) | For taxpayer's spouse   | Baht 30,000 |
| (3) | For each child (maximum of 3 children)  | Baht 15,000 |
| (4) | Education allowance for each child studying in Thailand   | Baht 2,000  |
| (5) | Life insurance premium, not exceeding   | Baht 50,000 |
| (6) | Spouse's life insurance premium, not exceeding  | Baht 10,000 |
| (7) | Interest on loan for acquiring houses, not exceeding (for a sum exceeding Baht 10,000, it shall be deducted from the assessable income with a maximum deduction of Baht 40,000) | Baht 10,000 |

(8)	Provident fund contribution (for a sum exceeding Baht 10,000, it shall be deducted from the assessable income with a maximum deduction of Baht 290,000)	Baht 10,000
(9)	Social security allowance in the amount actually paid	
(10)	For an estate of a deceased person	Baht 30,000
(11)	For each partner of a non-juristic partnership or group of persons who reside in Thailand, Baht 30,000 per person but not exceeding	Baht 60,000
(12)	Charity allowance, not exceeding 10% of the balance after deduction of other allowances	

## 5. Non-Deductible Expenses

Regarding non-deductible expenses for corporations (expenses stated under Sections 65 bis and 65 ter of the Revenue Code), such expenses are also prohibited from being deducted from the income of an individual. Examples of such expenses are as follows:

- a. private expenses and gifts;
- b. tax penalties, surcharges and criminal fines under the Revenue Code;
- c. any artificial or fictitious expense;
- d. any damage recoverable under an insurance contract or contract of indemnity;
- e. any disbursement, if the identity of its recipient cannot be proved by the payer.

Losses from operations are not permitted to be carried forward for individuals.

## 6. Tax Rates

Taxable income (net assessable income) is arrived at after all expenses and allowances have been deducted from the assessable income. Taxable income shall be subject to tax at progressive rates ranging from 5% to 37%, with an exemption on the first Baht 100,000 of net assessable income, as follows:

<u>Taxable income from</u>	<u>Tax Rate</u>	<u>Tax Amount</u>	<u>Accumulated Tax</u>
0 - 100,000	Exempt	-0-	-0-
> 100,000 - 500,000	10%	40,000	40,000
> 500,000 - 1,000,000	20%	100,000	140,000
>1,000,000 - 4,000,000	30%	900,000	1,040,000
>4,000,000	37%		

For individuals with a gross income, excluding income under Section 40 (1) of the Revenue Code (employment income), amounting to Baht 60,000 or more, the income tax payable shall not be less than 0.5% of said gross income.

## 7. Territorial Rules

Under the Revenue Code, an individual, Thai or foreign, who derives assessable income from sources in Thailand is liable to pay personal income tax whether or not such income is paid within or outside Thailand.

A person (Thai or foreign) who resides in Thailand at one or more times for an aggregate period of 180 days or more in any tax (calendar) year will be regarded as a

resident of Thailand for tax purposes. A resident of Thailand is liable for personal income tax on income from sources inside Thailand and on assessable income derived from sources outside Thailand. However, the imposition of tax on income derived outside Thailand will apply only to income derived and brought into Thailand in the same year in which such income is earned. A non-resident is subject to pay tax only on income from sources within Thailand (irrespective of the place of payment).

Assessable income from sources in Thailand include the following:

- a. income from a post or an office held in Thailand;
- b. income from a business carried on in Thailand;
- c. income from the business of an employer in Thailand;
- d. income from a property situated in Thailand.

Assessable income from sources outside Thailand include the following:

- a. income from a post or office held abroad;
- b. income from a business carried on abroad;
- c. income from a property situated abroad.

## **8. Withholding Taxes**

Withholding taxes are applied to some categories of income paid to an individual such as employment income, royalties, dividend, capital gain, income from hire of assets, income from hire of work, advertising fee, and professional fee. The amount of tax to be withheld depends on the category of income.

In the case of income received by way of salary (employment income), the withholding tax applied for residents and non-residents is the same. The tax to be deducted from the periodic payment of income is determined by:

- a. projecting the income paid for a full year;
- b. deducting expenses and allowances from the full year's income;
- c. computing the tax on such amount in accordance with the personal income tax rate;
- d. dividing the amount of tax computed by the number of payments.

The tax withheld must be remitted to the local district office within seven days from the last date of the month in which the payment is made.

The tax withheld at source will be credited against the final tax liability of the taxpayer. If the tax withheld is more than the actual tax payable, the excess will be refunded to the taxpayer.

## **9. Filing of Tax Return and Payment of Tax**

Personal income tax is imposed on a preceding year basis. The tax year is determined on a calendar year basis.

Every person, except a minor or a person adjudged incompetent or quasi incompetent, must file an income tax return if such person:

- a. has no spouse and the assessable income of the preceding tax year exceeds Baht 30,000;

- b. has no spouse and the assessable income of the preceding tax year arises exclusively under Section 40(1) and exceeds Baht 50,000;
- c. has a spouse and the assessable income of the preceding tax year exceeds Baht 60,000;
- d. has a spouse and all of the assessable income of the preceding tax year arises exclusively under Section 40(1) and exceeds Baht 100,000.

Generally, personal income tax is due and payable once a year on or before March 31<sup>st</sup> of the following year, except for a taxpayer who derives income under Sections 40(5) to 40(8) who is thus liable to file a half-year tax return and pay tax on or before September 30 of each year, for the income earned between January and June. The tax paid for the half-year is allowed as credit against tax due for the full year.

An individual taxpayer is required to file a tax return and pay tax at the local district office where he/she resides. However, the taxpayer may file the tax return at a Thai commercial bank or through the Internet.

Upon filing an individual tax return, if the tax payable amounts to Baht 3,000 or more, the taxpayer is allowed to pay such tax in three equal installments, without any interest or surcharge. The first installment must be paid together with the filing of the tax return. The second installment must be paid within one month from the date when the first installment was due, and the third installment must be paid within one month from the date when the second installment was due.

## **10. Other Matters of Consequence**

### a. Tax Credit for Dividend

An individual, either a resident of Thailand or domiciled in Thailand, who receives dividends from any company organized under the laws of Thailand is entitled to claim a tax credit equal to the amount of dividend, multiplied by the corporate income tax rate (i.e., 30%) and divided by the result of 100 minus the corporate income tax rate (i.e. 30%). This tax credit is required to be first included as assessable income and then deducted from the total amount of tax payable.

### b. Taxation on Capital Gains

There is no separate capital gains tax in Thailand. Capital gains are taxed as ordinary income.

Gains on the sale of immovable property, other than ships or vessels of six tons or more, steam launches or motor boats of five tons or more, or floating houses, are exempt from income tax if the property was acquired by bequest or was not acquired for trading or profit-making.

Gains on the sale of immovable property are generally subject to personal income tax and the tax is usually withheld at source. The special tax computation is elective and based on the price of the immovable property as appraised by the Land Department and a standard deduction, based on the length of holding period, is applied in case the property was not acquired for trading or profit-making. Gains on sale of securities are generally subject to personal income tax at progressive tax rates from 5% up to 37%, but gains on sale of

securities listed on the Stock Exchange of Thailand (not including gains on sales of debentures and bonds) are exempt from income tax.

c. Taxation of Stock Options

Stock options received are regarded as taxable income of an employee. However, Thai income tax is not imposed when the employee receives the stock option, but when the employee exercises the option to buy shares. The taxable income derived from receiving the stock option is based on the difference between the exercise price and the market price of the shares on the date of receiving the ownership in such shares.

## **II. ALL OTHER TAXES, CONTRIBUTION AND TRANSFER REGIMES**

Apart from income tax, other major taxes and duties in Thailand are value added tax (VAT), specific business tax (SBT), customs duties, excise tax, stamp duties, property tax and signboard tax.

### **A. VALUE ADDED TAX (VAT)**

VAT was put into effect on January 1, 1992 to replace the business tax. It is an indirect tax collected upon consumption, i.e. at each stage of production, or distribution of goods, or provision of services.

Generally, the operator charges VAT on the sale of goods or provision of services to the consumer ("Output Tax"). The VAT paid by the operator to other operators for the purchase of goods or services ("Input Tax") is then deducted and the balance remitted to the Revenue Department. Thus, tax will accrue at each stage only on the "value added" to the goods or services at that stage. Under the VAT system, the tax will ultimately be borne by the consumer. The operator is therefore regarded as a collector of tax for the Revenue Department.

#### **1. Persons liable to pay VAT**

Persons liable to pay VAT are as follows:

- a. Operators or persons who sell goods or render services in the course of their business or professional activities. Operators include companies, partnerships, joint ventures, sole proprietors and government enterprises conducting a business.
- b. Importers.
- c. Agents who sell goods or render services in the ordinary course of business for operators residing outside Thailand;
- d. Transferees of goods or services from certain persons or organizations, i.e. the United Nations, consulates, embassies, etc. Sale of goods or provision of services to such persons or organizations is subject to VAT at a zero-percent rate.

- e. Operators residing outside Thailand and the persons with the responsibility to carry on business in Thailand, including their employees or representatives residing in Thailand who have direct or indirect authority to manage for such operators, are jointly liable for VAT.

## **2. Transactions Subject to VAT**

VAT is imposed on the following transactions:

- a. Sale of goods or provision of services by an operator.
- b. Importation of goods by an importer.

Under the given definition, "sale" is the disposition, distribution, or transfer of goods, whether or not for a benefit or consideration. It also includes the delivery of goods on hire-purchase or installment sale, the delivery of goods to an agent for sale or to a foreign country. "Service" is defined as any activity performed with a view to benefits, other than sale of goods, and includes making use of the supplier's own service by any means.

Furthermore, "provision of services in Thailand" means performing a service in Thailand, regardless of whether the use of such service is made locally or overseas. A service that is performed in a foreign country and made use of in Thailand will be regarded as provided in Thailand.

## **3. Exemptions**

- a. Exempt Persons

The following persons are exempted from VAT:

- (1) Small businesses with annual sales volume not exceeding Baht 1,800,000.
- (2) Persons exempted by other laws, such as corporations falling under the Petroleum Income Tax Law.

- b. Exempt Transactions

In general, the sale of goods or provision of services that are necessary for the maintenance of life and social welfare will be exempt from VAT. The exempted transactions also include cultural services, and religious and charitable services. Examples of exempted transactions are as follows:

- (1) Sale of unprocessed agricultural products.
- (2) Provision of educational services.
- (3) Provision of health care services.
- (4) Provision of domestic transportation services and international transportation by land.
- (5) Sale of goods or provision of services exclusively for the benefit of a religion or a public charity in Thailand, provided that the profits are not applied for other purposes.

## **4. Tax Base**

The tax base for sale of goods or provision of services is the total value received or receivable by a supplier from the sale or service inclusive of excise tax.

The value of the tax base includes money, property, compensation, consideration for services, or any benefit ascertainable in terms of money. However, the value of the tax base will not include the following:

- a. Prompt discounts and allowances as clearly stated and deducted from the price of goods or services on the tax invoice.
- b. Rebates, subsidies or compensation prescribed by the Director-General of the Revenue Department, with the approval of the Minister;
- c. Output tax.
- d. Compensation answering to the description and conditions given or prescribed by the Director General, with the approval of the Minister.

The tax base for the import of goods is the C.I.F price of goods plus import duty and excise tax (if any) and surcharges and other taxes and fees.

## **5. Tax Rates**

VAT rates can be classified into two categories:

- a. 10% Rate

The VAT is generally imposed at a standard rate of 10%. This rate includes municipal tax, charged at the rate of one-ninth of the VAT rate. All sales of goods, provision of services and importation of goods are subject to this rate, except the businesses or transactions stated in (2) hereunder. The 10% VAT is currently imposed at a reduced rate of 7% but will go back to 10% from October 1, 2007 onward if the reduced rate is not extended.

- b. 0% Rate

The 0% rate applies only to certain businesses specified under the provisions of VAT. A business that makes only zero-rated supplies will not be required to collect any tax on its supplies and can refund all input tax paid. The following are examples of businesses subject to the 0% rate:

- (1) Exporters of goods.
- (2) Providers of services performed in Thailand but used in a foreign country.
- (3) Providers of international transport services by aircraft or sea-going vessels, organized under Thai or foreign law.
- (4) Sellers of goods and providers of services to the United Nations organization or its specialized agencies or to a foreign embassy or consulate.

## **6. Computation**

VAT is computed monthly by deducting the amount of VAT paid on the purchase of goods and services for sale or utilization in the production process during the month ("Input Tax") from VAT due from the sale of goods or provision of services during

the same month ("Output Tax"). If Output Tax exceeds Input Tax, the operator must remit the excess amount to the Revenue Department. If Input Tax exceeds Output Tax, the excess amount may either be claimed as a tax refund from the Revenue Department or carried forward to offset against the VAT due in the following months.

VAT arising from the purchase of goods or services ("Input Tax") is not always deductible from the total VAT due ("Output Tax"). Examples of non-deductible input tax are as follows:

- a. Input tax without a tax invoice.
- b. Input tax with a tax invoice containing materially inaccurate or incomplete contents.
- c. Input tax which is not related to the operator's business.
- d. Input tax on entertainment expense.
- e. Input tax of a tax invoice issued by non-authorized person.

If an operator carries on business in both categories subject to and not subject to VAT, then the operator is required to apportion Input Tax to each business. Only the Input Tax that is attributable to the business of the category subject to VAT may be deducted from Output Tax.

## **7. VAT Registration**

An operator must apply for VAT registration within 30 days after its annual revenue exceeds Baht 1,800,000. However, an operator still has the right to apply for VAT registration before commencing business.

An application for VAT registration must be filed with the local district office where the place of business is located.

If the operator has several offices or branches, the application for VAT registration must be filed at the local district office of the Revenue Department which has jurisdiction over the operator's head office.

The registered operator is required to issue a "Tax Invoice" when VAT liability arises in respect of sale of goods or provision of services. The Tax Invoice must contain all the particulars as prescribed by law. The original Tax Invoice must be given to the purchaser and copies of all invoices must be maintained for at least 5 years.

## **8. Filing VAT Returns and Payment of Tax**

A registered operator must file a VAT return and pay tax (if any) to the local district office within 15 days from the end of the month in which the VAT is to be accounted for.

If an operator has several places of business, the filing of a VAT return and payment of tax must be made separately for each place of business, unless otherwise permitted by the Director-General of the Revenue Department.

Besides the duty to file VAT returns and pay tax, registered operators who make payments for the following transactions are also required to remit VAT to the

Revenue Department within 7 days from the end of the month in which the payment is made:

- a. Payment for goods or services to a supplier residing outside Thailand and temporarily carrying on business in Thailand without being recorded for temporary VAT registration.
- b. Payment for services to a supplier providing services in a foreign country and the use of which is made in Thailand.

## **B. SPECIFIC BUSINESS TAX (SBT)**

SBT is imposed on certain types of businesses that provide services whose “value added” is difficult to define. Such businesses are considered to be outside the VAT system and therefore are not subject to VAT.

SBT is computed on monthly gross receipts, at the applicable rate stipulated in the law. Unlike the VAT system, operators who are subject to SBT cannot claim payment as a credit for VAT paid and are not entitled to charge VAT to customers. In other words, they are characterized as ultimate consumers in the VAT system.

Operators residing outside Thailand may be liable to SBT if they carry on business through a place of business, an agent, a representative, or an employee residing in Thailand.

An operator subject to SBT must apply for SBT registration within 30 days from the date of commencing business. Business in the sale of securities and temporary business are exempted from SBT registration.

The types of business, tax base, and tax rates under the SBT are as follows:

Type of Business	Tax Base	Tax Rate (as Percentage of Gross Receipts)
1. Banking or similar business, finance, credit foncier and securities business	1.1 Interest, discounts, fees, service charges or profits before deduction of any expenses from the purchase or sale of negotiable instruments or documents of indebtedness	3.0
	1.2 Gross profits before deduction of any expenses from the exchange or sale of currencies, issuance of negotiable instruments or documents of indebtedness, or remittance of currencies to a foreign country	3.0
2. Life Insurance	Interest, fees or service charges	2.5
3. Pawnshop	3.1 Interest, fees	2.5
	3.2 Money, property, consideration or benefit of value received or receivable from sale of forfeited pawned goods	2.5
4. Sale of immovable property in a commercial manner or for profits.	Gross receipts before deduction of any expenses	3.0
5. Sale of securities in SET	Gross receipts before deduction of any expenses (to be exempted by Royal Decree No. 240)	0.1

The aforesaid SBT rates do not include municipal tax. When SBT is paid, an additional amount of 10% of SBT is levied as municipal tax.

SBT returns must be filed monthly within 15 days from the end of the month in which the SBT is to be accounted for.

In addition to SBT, an operator liable for SBT may also be subject to pay VAT on the following business transactions:

1. Business transactions that are not directly related to the specific businesses.
2. Business transactions which, though directly related to specific businesses, are prescribed by Royal Decree as business subject to VAT, e.g. provision of letting out movable properties on hire, provision of credit card services, provision of securities underwriting services, etc.

If an operator carries on not only a business that is subject to SBT but also a business subject to VAT, such operator must allocate its Input Tax between the business subject to SBT and the business subject to VAT. Only Input Tax related to VAT taxable supplies will be credited against the Output Tax.

### **C. CUSTOM DUTIES**

Customs duty is imposed mainly on imported and selected exported goods, specified by the Law on Customs Tariff. Most tariffs are *ad valorem*. In certain cases, however, both *ad valorem* and *ad naturam* rates are given and the tariff that gives the most revenue will apply. In general, the invoice price is the basis for the computation of duty and duty is normally applied to the C.I.F. value.

Customs duty is levied in accordance with the Harmonized Commodity Description and Coding System or Harmonized System. Most imported goods are subject to customs duty rates of 0% to 100%. Exemption from customs duties on imported goods is granted to promoted persons under the Investment Promotion Act and to petroleum concessionaires under the Petroleum Act. Reduction of or exemption from customs duties on imported goods is also granted to members of the Association of Southeast Asian Nations (ASEAN), the ASEAN Free Trade Area (AFTA), the General Agreement on Tariffs and Trade (GATT), and the World Trade Organization (WTO). Thailand has amended the definition of the term "value" under Thai Customs law to be in accordance with GATT regulations.

### **D. EXCISE TAX**

Excise Tax is levied on selected goods (mainly luxury goods) such as petroleum products, tobacco, liquor, beer, soft drinks, crystal glasses, perfume and cosmetic products, air-conditioners not over 72,000 BTU, and passenger cars with 10 seats/or less.

Excise Tax is computed on an *ad valorem* basis or at a specific rate, whichever is greater. All goods subject to excise tax remain subject to VAT. The excise tax is collected by the Excise Department and usually imposed at the time of delivery of the goods from factories.

### **E. STAMP DUTIES**

Stamp duty is levied on 28 classes of instruments specified in the Stamp Duty Schedule of the Revenue Code. The rates vary according to the nature or content of the instrument. Examples of instruments subject to stamp duties are powers of attorney, letters of credit,

checks, bills of lading, memorandum of association of limited companies, articles of association of limited companies, and partnership contracts.

## **F. PROPERTY TAXES**

Property tax is imposed and collected annually. There are two kinds of property tax in Thailand: House and Land Tax and Local Development Tax. Owners of land and/or buildings in designated areas may be subject to either House and Land Tax or Local Development Tax.

### **1. House and Land Tax**

House and Land Tax is imposed on owners of a house, building, structure or land that is rented or otherwise put to commercial use. Taxable property under the House and Land Tax includes houses not occupied by the owner, industrial and commercial buildings and land used in connection therewith. The tax rate is 12.5% of the assessed annual letting value of the property.

### **2. Local Development Tax**

Local Development Tax is imposed on a person who either owns land or possesses land. The tax rate varies according to the estimated land value. An appraisal will be conducted by the local authorities. Allowances are granted for land utilized for personal dwellings, the raising of livestock, and the cultivation of crops by the owner. The extent of the allowances permissible to any land depends on the location of the land.

## **G. SIGNBOARD TAX**

This tax is levied on signboards which show names, symbols or marks of business or advertisements. The rates specified in the Signboard Tax Act are computed on signboard size, ranging from Baht 3 to Baht 40 per 500 square centimeters (but not less than Baht 200 per signboard).

## **III. INHERITANCE AND GIFT TAXES**

There is no specific law on inheritance or gift taxes in Thailand.

## **IV. REGISTRATION DUTIES FOR BUSINESS ENTITIES**

An application for registration of a company must be filed with the Department of Business Development, Ministry of Commerce, if the principal registered office of the company is in Bangkok Metropolis. If the registered office is outside Bangkok, the application must be filed with the Provincial Registration Office in the province where the registered office is located.

### **A. REGISTRATION DUTIES DUE UPON THE INCORPORATION OF A COMPANY**

The registration duties due upon the incorporation of a company (except public companies) are as follows:

**1. Fee for Registering the Memorandum of Association**

The fee payable will depend on the size of the company's registered capital. The fee is charged at the rate of Baht 50 for every Baht 100,000 registered capital or a fraction thereof, but not less than Baht 500 and not exceeding Baht 25,000.

In addition to the aforesaid fee, stamp duties of Baht 200 are required to be affixed to the Memorandum of Association submitted to the registrar.

**2. Fee for Approving Incorporation Registration**

The fee is charged at the rate of Baht 500 for every Baht 100,000 registered capital or a fraction thereof, but not less than Baht 5,000 and not exceeding Baht 250,000.

The company's Articles of Association must be submitted to the registrar as part of the application. Stamp duties of Baht 200 must be affixed to the company's Articles of Association submitted to the registrar.

**B. REGISTRATION DUTIES DUE UPON AN INCREASE IN CAPITAL**

The fee for registration of an increase in capital is charged at the rate of Baht 500 for every Baht 100,000 increase or a fraction thereof, but not exceeding Baht 250,000.

The company's Memorandum of Association must be amended in respect of an increase in capital and the fee for registration of an amendment of the Memorandum of Association is Baht 200. The amended Memorandum of Association submitted to the Registrar must have the required stamp duties affixed at the amount of Baht 50.

**C. REGISTRATION DUTIES DUE UPON THE TRANSFER OF A COMPANY'S SHARES**

There is no registration fee for the transfer of a company's shares. However, stamp duties are required to be affixed to the share transfer instruments at the rate of Baht 1 for every Baht 1,000 or a fraction thereof of the paid-up value of the shares or of the nominal value of the instrument, whichever is greater.

**D. REGISTRATION DUTIES DUE UPON THE TRANSFER OF A COMPANY'S ASSETS**

There are no registration duties for the transfer of a company's asset(s). However, the transfer of land and/or building is subject to a government fee at the rate of 2.5% of the transfer price. The said transfer price of the land and/or building must not be less than the assessed price prescribed by the Land Department.

**E. OTHER REGISTRATION DUES**

**1. Registration Fees**

- a. Registration fees for amendment of the Memorandum of Association of a company: Baht 400.
- b. Registration fees for amendment of the Articles of Association of a company: Baht 400.

- c. Registration fee for the appointment of new directors: Baht 400 for each director.
- d. Registration fees for a decrease in capital: Baht 400.

## **2. Stamp Duties**

Stamp duties must be affixed to the following documents:

- a. New Articles of Association, copy of amended Memorandum of Association or Articles of Association submitted to the registrar: Baht 50 for each instrument.
- b. Share Certificate issued by a company: Baht 5.
- c. Proxy for voting at a meeting of a company: Baht 20 for one meeting and Baht 100 for more than one meeting.
- d. Power of Attorney:
  - (1) appointing one or more persons to perform an act once only: Baht 10.
  - (2) authorizing one or more persons jointly to perform acts more than once: Baht 30.
  - (3) authorizing several persons, who may act independently of one another, to perform acts more than once: Baht 30.

## **V. OTHER MATTERS**

### **A. TAX INCENTIVES**

Thailand was the first country in Asia to introduce investment promotion laws (tax and non-tax incentives) to encourage investors to invest in Thailand. Investment Promotion laws were first enacted in 1954 and have been revised several times since then. Under the investment promotion laws, the Board of Investment (“BOI”) – a policy-making body – was established to promote domestic and foreign investments considered important and useful to the country’s economic and social development. The BOI defines priority areas for investment, identifies investment opportunities, provides services to investors, and decides which investments will qualify for promoted status and privileges.

The privileges that the BOI offers are not absolute. The BOI still retains the right to stipulate certain conditions, such as the amount and the source of capital, the nationality and number of shareholders, training of manpower and distribution of products, all of which the investors must comply with in order to qualify for privileges.

The BOI has also published a list of activities that are eligible for promotion. The list covers mainly manufacturing and agricultural activities but also includes mineral exploration, mining, service sectors, etc.

In granting privileges, the BOI does not discriminate between foreign and Thai investors. However, under certain circumstances, the BOI may impose conditions on foreign investors who wish to enter into joint ventures with Thai investors.

## 1. Tax Incentives According to Investment Zones

At present, the BOI, in its attempts to urbanize the country, places top priority on encouraging investors to locate their projects to upcountry areas. To achieve this goal, tax incentives are given to investors to locate to rural areas. The BOI sets the amount of incentives granted according to the level of development of particular regions and has thus divided Thailand into three zones:

- 1.1 Zone 1 is the highly developed area, which includes Bangkok and five surrounding provinces, namely Samut Prakarn, Samut Sakhon, Pathum Thani, Nonthaburi, and Nakhon Pathom.

Qualified projects located in Zone 1 may receive the following tax incentives:

- (1) A 50% import duty reduction on machinery that is subject to import duty greater than or equal to 10%.
- (2) Corporate income tax exemption for 3 years for projects located within their industrial estate zones, provided that such a project with capital investment of Baht 10 million or more (excluding cost of land and working capital) obtains ISO 9000 or similar international standard certification within 2 years from its start-up date, otherwise the corporate income tax exemption will be reduced by 1 year.
- (3) Import duty exemption on raw or essential materials used in export products for 1 year.

- 1.2 Zone 2 is a developing area comprising 12 provinces around Zone 1, namely Samut Songkram, Ratchaburi, Kanchanaburi, Suphanburi, Ang Thong, Ayutthya, Saraburi, Nakhon Nayok, Chachaoengsao, Phuket, Rayong, and Choburi.

Qualified projects located in Zone 2 may receive the following tax incentives:

- (1) A 50% import duty reduction on machinery that is subject to import duty greater than or equal to 10%.
- (2) Corporate income tax exemption for 3 years, increased to 7 years, for projects located within industrial estates or promoted industrial zones, provided that such a project with capital investment of Baht 10 million or more (excluding cost of land and working capital) obtains ISO 9000 or similar international standard certification within 2 years from its start-up date, otherwise the corporate income tax exemption will be reduced by 1 year.
- (3) Import duty exemptions on raw or essential materials used in export products for 1 year.

- 1.3 Zone 3 covers the remaining 58 provinces throughout the country.

Qualified projects located in Zone 3 may receive the following tax incentives:

- (1) Import duty exemption on machinery.
- (2) Corporate income tax exemption for 8 years provided that a project with capital investment of Baht 10 million or more (excluding cost of land and working capital) obtains ISO 9000 or similar international standard certification within 2 years from its start-up date, otherwise the corporate income tax exemption will be reduced by 1 year.

- (3) Import duty exemption on raw or essential materials used in export products for 5 years.
- (4) Deduction can be made from net profit of 25% of the project's infrastructure installation or construction cost for 10 years from the date of first sale, and net profit for one or more years of any year can be chosen for such deduction. The deduction is in addition to normal depreciation.
- (5) A project located in one of the 36 more developed provinces (including Laem Chabang Industrial Estate or promoted industrial zones in Rayong province) will be granted tax and duty privileges under (1) – (4) plus further privileges, as follows:

A project located within industrial estates or promoted industrial zones is entitled to the following privileges:

- (i) 50% reduction of corporate income tax for 5 years after the exemption period.
  - (ii) Double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from promoted activity.
  - (iii) 75% import duty reduction on raw or essential materials used in manufacturing for domestic sales for 5 years, based on annual approval (this incentive is not available to projects in Laem Chabang Industrial Estate or promoted industrial zones in Rayong province.)
- (6) A project located in one of the 22 less developed provinces will be granted tax and duty privileges under (1) – (4) plus further privileges, as follows:
    - (i) 50% reduction of corporate income tax for 5 years after the exemption period.
    - (ii) Double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from promoted activity.
    - (iii) 75% import duty reduction on raw or essential materials used in manufacturing for domestic sales for 5 years, based on annual approval, for projects located in industrial estates or promoted industrial zones.

## **2. Tax Incentives for BOI Priority Activities**

Although any industry may apply for promotional privileges, the BOI target industries are agricultural products, direct involvement in technological and human resource development, public utilities and infrastructure, environmental protection and conservation, and other targeted industries. Certain promotional activities are identified as priority activities. Projects within these fields will receive corporate income tax exemptions for 8 years and import duty exemption on machinery, regardless of location, in addition to privileges entitled to each zone.

## **3. Tax Incentives for Research and Development Projects**

Research and development projects are identified as priority activities entitled to full privileges.

#### **4. Tax Incentives for Export-Oriented Projects**

The BOI no longer imposes the export requirement as a criterion for investment promotion. Export-oriented projects will receive import duty exemption on raw or essential materials used in export products or products imported for re-export.

Additional incentives from other government organizations are also available for goods produced for export. For example, VAT is applied at a 0% rate to exported goods. The imports of raw materials, parts, and components for export projects are also generally exempt from import duty. Investors of these projects can apply for import duty exemptions not only at the office of the BOI but also at other government organizations such as the Customs Department and the Industrial Estate Authority of Thailand.

Agreements can be made with the Customs Department to refund any import duty payment or to have a bank guarantee provided in lieu of payment of duty. For projects located in the export-processing zone, investors may apply for duty free rate for the importation of raw materials or parts or components at the Industrial Estate Authority of Thailand.

Furthermore, financial assistance is available to exporters from banks in the form of packing credits (pre-shipment finance) through the means of discounting promissory notes at a rate of not more than 13% per year. The Bank of Thailand provides 60% of the packing credits offered by the banks at an interest rate of 5% per year.

#### **5. Additional Incentives**

In addition to the foregoing incentives, the BOI also grants additional tax and non-tax incentives as follows:

##### **5.1 Additional tax incentives**

- (1) Losses incurred during the tax exemption period by a promoted activity may be carried over and set off for 5 years against the net profits accruing after the exemption period.
- (2) Dividends derived from a promoted activity will be exempted from income tax in the hands of the recipient for a period equal to the exemption period from the corporate income tax of a promoted person.
- (3) Fees for goodwill, copyright or other rights received from a promoted activity, according to the contract approved by the BOI, will be exempt in the hands of the recipient for 5 years from the date the promoted person first derived income from the promoted activity.

##### **5.2 Additional non-tax incentives**

The BOI offers several non-tax incentives to promote foreign investment such as granting permission to own land for carrying on promoted projects, permission to bring in foreign technicians and experts to work on promoted projects, and permission to take or remit abroad foreign currency.

#### **6. Investment Services and the BOI Application Procedure**

Potential investors who wish to explore business opportunities in Thailand may contact the Investment Service Center for general as well as specific information and

advice. The Center also offers matchmaking services to both Thai and foreign potential investors who seek cooperation concerning technology and marketing as well as joint venture partners.

A detailed manual on how to apply for investment promotion is available, in both Thai and English, to assist investors in preparing their applications. The applications take 2-3 months to process. If an application is not approved, the applicant can appeal to the Secretary General of the BOI, in writing, within 60 days after receiving notification.

## **B. EXCHANGE CONTROL**

Exchange control restrictions are set forth in the Exchange Control Act, B.E. 2485 (A.D. 1942) as amended from time to time, empowering the Ministry of Finance and the Bank of Thailand to issue the relevant regulations and notifications to control inward and outward remittance of foreign exchange, and are administered by the Bank of Thailand under the supervision of the Ministry of Finance. As a general rule, all matters involving foreign currency are regulated by and require permission of the Bank of Thailand. In particular, except for the sale of foreign exchange by authorized dealers (i.e. authorized banks, companies, or persons) which have been authorized and delegated certain powers to approve certain foreign exchange transactions on behalf of the Bank of Thailand, no person other than such authorized dealers may buy, sell, lend, exchange, or transfer any foreign exchange without permission of the Bank of Thailand.

### **1. Permitted Transactions**

Unlimited amounts of Thai Baht or foreign currency may be brought into Thailand. However, as a general rule, such foreign currency must be sold or converted into Thai Baht or deposited into a foreign currency account with authorized financial institutions located in Thailand within fifteen (15) days from the date of receipt, except foreigners temporarily staying in Thailand for not more than three months, foreign embassies, and international organizations.

On December 18, 2006, the Bank of Thailand announced the implementation of a 30% reserve requirement on short-term capital inflows. Such measure was intended primarily to help maintain the stability of the Thai Baht which is conducive to sustained long-term growth of the Thai economy and also to limit Thai Baht speculation. Under the 30% foreign currency reserve requirement, banks/financial institutions are generally required to withhold 30% of foreign currencies remitted from abroad into Thailand and bought or exchanged against the Thai Baht for a period of 1 year, with the following exceptions: (a) foreign currency of less than US\$20,000 or equivalent; (b) foreign exchange transactions related to current account activities, including transactions related to exchange of goods, services, income, transfers and aid; (c) inflows for equity investment in companies listed in the Stock Exchange of Thailand and Market for Alternative Investment (excluding mutual funds and warrants), investment in the Thai Futures Exchange and investment in the Agricultural Futures Exchange of Thailand (funds destined for aforementioned investments must be deposited in Special Non-Resident Baht Account for Securities); (d) investment in real estate such as land and condominiums (excluding real estate mutual funds); (e) foreign currency borrowings transacted prior to December 19, 2006; (f) currency swap transactions associated with rolling over existing exchange rate hedging contracts with original financial institution; (g) foreign currency for clients or authorized money changers in form of travelers' cheques and bank notes; (h) foreign currency from foreign embassies, foreign consulates, specialized agencies

of the United Nations, international organizations/institutions situated in Thailand, Thai embassies, Thai consulates or other Thai government entities located outside Thailand; and (i) foreign currency borrowings of government entities. To be exempted from the 30% reserved requirement on certain inward remittances, such fund shall be fully hedged through FX Swap or Cross Currency Swap Agreement for the whole amount and throughout the term of the loan or up to 1 year if the term of the loan exceeds 1 year with authorized financial institutions in Thailand under certain conditions.

Under the following conditions, Thai Baht may be taken out of Thailand without permission of the Exchange Control Office of the Bank of Thailand: (i) into Vietnam and countries immediately bordering Thailand, i.e. Laos, Cambodia, Malaysia and Myanmar, up to Baht 500,000 per trip; or (ii) into other countries up to Baht 50,000 per trip.

## **2. Transactions to be Approved by Authorized Commercial Banks**

Commercial banks are authorized by the Bank of Thailand to approve certain foreign exchange transactions, in its name, including:

- a. Remittance of unlimited amount in payment of imported goods. However, importer importing goods valued at more than Baht 500,000 or its equivalent per transaction must submit application to Customs official when submitting bill of lading.
- b. Remittance of up to US\$10 million or its equivalent per year per remittee for direct foreign investment or for lending to subsidiaries in foreign countries.
- c. Remittance of up to US\$100,000 or its equivalent per year per remittee to relatives or family members permanently living abroad.
- d. Remittance of up to US\$1 million or its equivalent belonging to Thai national permanently living abroad per year.
- e. Remittance of inherited money to heir living permanently abroad of up to US\$1 million or its equivalent per year per remittee.
- f. Remittance of up to US\$500,000 or its equivalent per remittee for purchase of real property in a foreign country.
- g. Remittance of up to US\$100,000 or its equivalent per remittee per year for purchase of any affiliate company's shares in a foreign country in the form of employees' benefits.
- h. Remittance of up to US\$100,000 or its equivalent per remittee per year for public donation.
- i. Remittance of unlimited amount in repayment of foreign loan and payment of accrued interest and other related fees and costs, net of all taxes, with proper documentary evidence.
- j. Unlimited remittance of proceeds from sale of shares, warrants, investment units, mutual funds or any financial instrument with required documentary evidence.

- k. Remittance of unlimited amount in returning investment funds of branch office or representative office or from dissolution of business, or decrease of capitals or value of shares.
- l. Remittance of unlimited amount from providing rental services or sale of a foreigner's real property.
- m. Remittance of unlimited amount from payment of dividend or profits to a head office in a foreign country.
- n. Remittance of unlimited amount in payment of certain types of service fees including transport and communication, or any cost or expense arising from an agreement charged from abroad, with appropriate documentary evidence.
- o. Sale of unlimited amount of foreign currency to any buyer for traveling purposes with appropriate documentary evidence, i.e. passport and air ticket or ticket of traveling vehicle. When purchasing foreign currency for one of aforesaid purposes in an amount exceeding US\$5,000 or its equivalent, application must be submitted to authorized banks, together with appropriate supporting documentary evidence.

If purchasing any lesser amount or equivalent according to market rate for any purpose other than payment of goods or purchase of immovable property and/or securities abroad, purchasers must complete a foreign currency purchase form as documentary evidence of currency sale.

### **3. Transactions to be Approved by the Bank of Thailand**

Foreign exchange transactions involving amounts in excess of above limitations or for purposes other than those mentioned above require approval of the Bank of Thailand.

## **C. TAX TREATIES**

The main purpose of Thai tax treaties is the avoidance of double taxation. The general principle is that the country in which the income arises (source country) has the prior right to tax and the country of residence will grant relief (tax exemption or tax credit) from paying taxes twice on the same income.

In addition, the treaties also provide for cooperation between governments in preventing the evasion of taxes.

### **1. Tax Treaties in Effect**

At present, Thailand has double taxation treaties with the following countries:

Armenia	Malaysia
Australia	Mauritius
Austria	Nepal
Bahrain	Netherlands
Bangladesh	New Zealand
Belgium	Norway

Bulgaria	Oman
Canada	Pakistan
China (Peoples Republic of China)	Philippines
Cyprus	Poland
Czech Republic	Romania
Denmark	Seychelles
Finland	Singapore
France	Slovenia
Germany	South Africa
Hong Kong	Spain
Hungary	Sri Lanka
India	Sweden
Indonesia	Switzerland
Israel	Turkey
Italy	Ukraine
Japan	United Arab Emirates
Korea (Rep.)	United Kingdom
Kuwait	U.S.A.
Laos	Luxembourg
Uzbekistan	Vietnam

## 2. Tax Covered Under the Treaties

The aforesaid tax treaties cover taxes on income and on the capital of individual and juristic entities. The Petroleum Income Tax is covered under most treaties except the treaty with The Netherlands. Local Development Tax is also covered under some treaties, but Value Added Tax and Specific Business Tax are not covered under any tax treaty.

## 3. Benefits Under Tax Treaties

In general, tax treaties place a resident of a Contracting State in a more favorable position for Thai tax purposes than under the domestic law (Thai Revenue Code). The provisions of tax treaties minimize or exempt certain types of income from taxation.

### a. Business Profits

Business profits (industrial and commercial profits) earned in Thailand by a resident of a Contracting State will generally be exempt from income tax in Thailand unless it has a permanent establishment ("PE") here.

The Thai Revenue Code does not give a definition of PE. However, the definition in the old tax treaties follow that given by the OECD model of tax treaties, while the new tax treaties follow the definition provided under the UN model. The treaties provide a list of situations which would be regarded as a PE. These situations are classified into three types:

- (a) Asset-type PE
- (b) Activity-type PE
- (c) Agent-type PE

In Thailand, in addition to the OECD criteria, a person is deemed to be a dependent agent if he/she habitually secures orders in Thailand, wholly or almost wholly, for a foreign enterprise or related foreign enterprises. In such

cases, the person is deemed to be an agent-type PE and has the duty to file a tax return and pay income tax on behalf of the enterprise.

b. Shipping and Aircraft

Thai tax treaties (except for some treaties, e.g. Poland and the United Kingdom) allow shipping income to be taxed by the other Contracting State but only at half the rate normally imposed. This means at a rate of 1.5% on the freight, fees and any other benefits collectible, whether in Thailand or elsewhere, in respect of transport of goods from Thailand before deduction of any expenses.

For aircraft, Thai tax treaties (except for some treaties, e.g. the Philippines) exempt income tax on the operation of aircraft in international traffic derived by an enterprise of a Contracting State.

c. Dividends

Under the Thai Revenue Code, dividends paid to non-residents are subject to withholding income tax at the rate of 10%. There is no treaty that provides for a lower rate.

d. Interest

Pursuant to the Thai Revenue Code, the withholding tax rate on interest paid to an individual and an ordinary company abroad is 15%. However, under most tax treaties, the withholding tax rate on interest paid to foreign banks or financial institutions (including insurance companies) is generally reduced to 10%. Furthermore, interest paid to the government of a Contracting State, or a local authority thereof, the Central Bank or any other financial institution wholly owned by the government of the Contracting State, may be exempt from income tax under some treaties.

e. Royalties

According to the Thai Revenue code, the withholding tax rate on royalties paid to non-residents is 15%. However, under some tax treaties, the rate may be reduced to 5% or 10% on royalties paid for the alienation or the use of, or the right to use any copyright of literary, artistic, or scientific work. The tax exemption on royalties may be provided on royalties paid to a Contracting State or a State-owned company in respect of films or tapes.

f. Capital Gains

Capital gains paid to non-residents are generally subject to 15% withholding tax under the Thai Revenue Code. Tax may be exempted under tax treaties for gains on the alienation of any property, other than immovable property or movable property of a PE or movable property of a fixed base, for the purpose of performing professional services.