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# Doing Business in Thailand 2019

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This publication has been prepared for the assistance of those interested in doing business in Thailand. It does not cover exhaustively the subject it treats, but it is intended to answer some of the important broad questions that may arise. When specific issues arise in practice, it will often be necessary to consider the relevant laws and regulations and to obtain appropriate professional advice.

For this reason the publishers and authors are not responsible for the result of any actions which are undertaken on the basis of the information which is contained within this publication, nor for any error in, or omission from this publication.

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## PREFACE

### Who should read this publication?

This publication should be read by anyone who is thinking of establishing or doing business in Thailand either as an entity or as a subsidiary of an existing overseas company, or anyone who is considering coming to work or live permanently in Thailand.

### Scope

Doing business in Thailand describes the business environment, and the financial and legal implications of running, or working for the Thai Branch or subsidiary of a company based in Thailand. All the important issues are included, but it is impossible to discuss every subject in details within this publication. Advice should be sought from Thai Info Group with which you normally deal, or directly from Thai Info Group at:

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## 1. THE BUSINESS ENVIRONMENT

### 1.1 GENERAL INFORMATION

#### 1.1.1 Climate and Geography

Thailand, situated on the Indo-Chinese peninsula, is bordered on the west by Myanmar and the Andaman Sea on the east by Cambodia and the Gulf of Thailand, on the north by Laos and on the south by Malaysia. It covers a land area of 514,000 square kilometers (200,000 square miles). Its 77 provinces are divided into 4 regions: central, northern, north-eastern, and southern.

Thailand lies in the tropical zone and has three distinct seasons: summer, between March to May, with an average temperature of 30 degree Celsius (86°F); the rainy season, between June to October, with an average temperature of 28 degree Celsius (82°F) and high humidity; and the cool season, between November to February, with an average temperature of 20 degree Celsius to 25 degree Celsius (68°F to 77°F) but as low as 3 degree Celsius to 5 degree Celsius (37°F to 41°F) in the northern and north eastern regions.

#### 1.1.2 Government

A constitutional monarchy, His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun ascended the throne as King Rama X of the Royal House of Chakri. Absolute monarchical rule ended in 1932 since then the country has had a series of constitutions and types of government. Despite these changes, Thailand is noted for a long tradition of stability.

In Thailand, the King is head of state, while the leader of the government is the Prime Minister who, in accordance with the Constitution, must be an elected member of, and should be able to command a majority in, the House of Representatives. The legislative body is the National Assembly, of which the Prime Minister and most of his cabinet are members.

#### 1.1.3 Legal system

Thailand's legal system combines principles of traditional Thai and Western laws. Its members are nominated by the Senate and appointed by the King. The Courts of Justice have jurisdiction over criminal and civil cases and are organized in three tiers:

1. Court of First Instance
2. The Court of Appeals
3. The Supreme Court of Justice

Administrative courts have jurisdiction over suits between private parties and the Government, and cases in which one government entity is suing another.

#### **1.1.4 Population and Language**

Thailand has a population of over 67 million, with an annual population growth rate of 2%. Most of the population is Thai; minority groups include Chinese, Indians and Malays.

Approximately 95% of the population are Buddhist, the rest mainly Muslims, Christians and Hindus. Freedom of religious belief is highly emphasized in Thailand, with the king's royal patronage extended to all religions.

Bangkok, the nation's capital, is home to about 15% of the total population. It is situated in the central region.

Thai is the national language. Some 15% of the population are of Chinese ethnic origin. Their principal dialect is Teo Chiew. In commercial and business circles English is widely spoken.

#### **1.1.5 Currency**

The unit of currency is Baht and Satang. One Baht is equal to 100 Satang.

#### **1.1.6 Economy**

The economy of Thailand is an emerging economy which is heavily export-dependent, with exports accounting for more than 2/3 of GDP.

Thailand's main exports are machinery (including computers), electronic equipment, motor vehicles, rubber and gems.

Electrical machinery, mineral fuels, and other machinery (including computers) are the top 3 import products of Thailand.

To encourage export activities, a number of tax incentives are available. The exportation of goods is zero rated for purposes of Value Added Tax (VAT), whilst custom duties already paid will be refunded on materials imported for the production of goods which are then exported.

The Ministry of Commerce designates classes of goods that are subject to import controls, which usually take the form of permission and licensing. Application for the license must be accompanied by a supplier's order, confirmation, invoice, and other pertinent documents. Goods subject to import controls include medicine, minerals, explosives, fireworks, antiques, and cosmetics. Customs duty is also levied on some type of goods imported into Thailand.

## 1.2 BUSINESS ENTITIES

Thailand recognizes several types of legal business entities:

### 1.2.1 Partnership

Three types of partnership in Thailand differ principally in the liability attached to each.

**An unregistered ordinary partnership** has partners who are jointly and wholly liable for all obligations of the partnership. This type of partnership is not a legal entity and is subject to taxation as if it were an individual.

**A registered ordinary partnership** is a juridical entity having a separate and distinct personality from each of the partners by virtue of its registration with the Commercial Registrar. The Partners are all jointly liable for the obligations of the partnership. A registered ordinary partnership is treated as a corporate entity for tax purposes.

**A limited partnership** is one in which there are one or more partners whose individual liabilities are limited to their respective contributions, and one or more partners jointly liable without any limitation on all the obligations of the partnership. A limited partnership must be registered and is taxed as a corporate entity.

### 1.2.2 Limited Company

There are two types of limited company- private limited company and public limited company. Private limited company is governed by the Civil and Commercial Code while Public limited company is governed by Public Limited Company Act.

#### a) Private Limited Company

The Thai private limited company is basically similar to what is commonly referred to as a Western corporation. The company may be wholly owned by aliens. However, in those business activities reserved for Thai nationals, an alien's participation is generally allowed up to 49%.

The liability of shareholders is limited to the par value of the authorized capital. The liability of the directors, however, may be unlimited if so provided in the company's certificate of commercial registration or the articles of incorporation. The limited company is managed by a board of directors according to the company's charter and bylaws.

Although there is no established minimum level of capitalization, the private limited company's capital must be sufficient to accomplish its objectives. All of the shares must be subscribed to, and at least 25% of the subscribed shares must be paid up. Both common and preferred shares of stock may be issued. Thai law prohibits the issuance of shares with no par value; it also stipulates that only shares with par value of Baht 5 or more may be issued. All shares must have voting rights.

Thai corporate law has some features which may be unfamiliar to foreign business people. Among these are the prohibition on treasury shares and a rule that a private limited company's shareholders must never be fewer than 3 at all times. In addition, the original authorized capital stock must be subscribed in full. Prohibited from offering shares to public.

## b) Public Limited Company

A public company is one which has 15 or more shareholders. The procedure for setting up a limited public company is similar to that for a private limited company. The Provisions of the Limited Public Company Act allow a private company to be converted into a public company.

The major difference between a public and a private company is that a private company is prohibited from offering shares to the public. Certain other differences are shown in the table that follows:

	Private Limited Company	Public Limited Company
Min. number of natural persons as promoters( founders)	3	15
Min. number of shareholders required at all times	3	15
Min. number of directors	1	5(*)
Public subscription of shares by prospectus	Not allowed	Allowed (**)
Public subscription of debentures by prospectus	Allowed (**)	Allowed (**)
Registration fee	THB 5,500	THB 2,000-300,000

(\*) 3 must be Thai nationals

(\*\*) subject to Securities and Exchange Commission (SEC) approval

### 1.2.3 Joint Venture

In Thailand, a joint venture is an agreement between 2 or more persons or legal entities for the purpose of carrying on a commercial activity lasting for a limited period, e.g. 2 to 5 years. Joint ventures are not by themselves recognized as legal entities under the Civil and Commercial Code, but could be regarded under tax laws as tax entities for tax declaration purposes; it is then classified as a single business.

### 1.2.4 Branch of a Foreign Corporation

A company incorporated under foreign laws may establish a branch office to do business in Thailand. Branch office is required to maintain only those accounts relating to the activities of the branch in Thailand. It is important, however, to clarify beforehand what constitutes income subject to Thai tax, as the Revenue Department may consider revenues directly earned by the foreign head office from sources within Thailand as subject to Thai tax. One of a key condition for approval of a foreign business license for a branch of a foreign corporation is that minimum capital of at least Baht 3 million or average of 25% of 3 years estimated expenses whichever is higher must be brought into Thailand. This amount may be subject to changes by subsequent Ministerial Regulations.

Branch office may exist for an indefinite period up to its date of termination. The termination of the branch does not require a formal liquidation process as the branch is not a private or public limited company registered under Thai Laws.

### 1.2.5 Representative Office of a Foreign Corporation

A foreign entity may establish a representative office in Thailand to engage in limited non-revenue-earning activities. These activities are restricted to:

- Searching for local sources of goods or services for its head office;
- Inspecting and controlling the quality and quantity of goods procured by its head office;
- Providing advice in various fields relating to products directly sold by its head office to local distributors or consumers;
- Disseminating information about new products and services of its head office; and
- Reporting to its head office on local business developments and activities.

The minimum capital contribution of Baht 3 million is also applied to representative office for immigration purposes.

A representative office is not required to obtain a foreign business license before commencing its activities.

### 1.2.6 Consortium, Agent & Distributor

**Consortium** A consortium is a group made up of two or more individuals, companies, or governments that work together toward achieving a chosen objective. Each entity within the consortium is only responsible to the group in respect to the obligations that are set out in the consortium's contract. Therefore, every entity that is under the consortium remains independent in his or her normal business operations and has no say over another member's operations that are not related to the consortium.

**Agent** An agency agreement is used by one party to designate another party or individual as its agent. Common forms of agency agreements include construction agency agreements, sales agency agreements, and placement agency agreements. The contract should specify the duration of the agreement, whether or not the relationship is exclusive, how fees and commission will be calculated, and how the agreement may be terminated.

**Distributor** A distributor agreement is a contract between channel associates that stipulates the responsibilities of both parties. The agreement is usually between a manufacturer or vendor and a distributor, but in some cases may involve two distributors or a distributor and some other channel entities

## **1.3 LABOR RELATIONS AND WORKING CONDITIONS**

### **1.3.1 Labor Legislation**

Thai labor legislation consists of a section in the Civil and Commercial Code on contracts relating to the hire of services, the Labor Relations Act 1975, the Social Security Act 1990, the Workmen's Compensation Act 1994\*, and the Labor Protection Act 1998\*\*. The Department of Labor Protection and Welfare, an organizational unit to the Ministry of Labor, is in charge of implementing labor laws and performing labor inspections throughout the country in coordination with the Ministry of Public Health and the Ministry of Industry.

(\*In October 2018, the Workmen's Compensation (No. 2) Act 2018 was published in the Royal Thai Government Gazette and became effective in December 2018.)

(\*\*In April 2019, the Labor Protection Act (No. 7) (2019) was published in the Royal Thai Government Gazette and became effective in May 2019.)

### **1.3.2 Labor Regulations**

The Labor Protection Act fixes the maximum working of employment at 8 hours per day and not exceeding 48 hours per week. The exception is when work is deemed by law to be hazardous, in which case working hours are limited to 7 hours per day and not exceeding 42 hours per week.

The rates of overtime vary and range from 1.5 times the normal hourly rate on weekdays to 3 times the hourly rate on Sundays and holidays. Certain employees engaged in executive and supervisory work and other types of work prescribed by law are not entitled to overtime.

All permanent employees are entitled to 6 working days of paid vacation every year, in addition to the 13 statutory holidays. A female employee is entitled to maternity leave at 98 days, including 45 days of paid leave. (Leave taken for prenatal care is considered part of maternity leave)

All employees are entitled to sick leave of not more than 30 workdays a year. The employer may require an employee to present a certificate from a qualified doctor for sick leave of 3 days or more.

In addition, employees are also entitled to a minimum of 3 days' business leave a year with full pay for a maximum of 3 working days a year while on leave.

### **1.3.3 Labor Wages and Salaries**

The government has set, with effective from 1 April 2018, the minimum wage of Baht 325 a day for Bangkok and the surrounding area, Baht 330 a day for Phuket, Chonburi and Rayong, and Baht 308 a day for Narathiwat, Pattani and Yala. In total, there are 7 separate minimum wage bands for various provinces.

Salaries for full-time office and management staff range from approximately Baht 15,000 per month for a fresh graduate to over Baht 200,000 per month for management level.

### 1.3.4 Social Security Contributions

The Social Security Act requires all employers to withhold social security contributions of 5% from the monthly salary of all employees, up to a maximum of Baht 750 per person per month. Employees with social security registration may file compensation claims for injury, illness, disability, or death if it is not a consequence of work performance, as well as for childbirth, child welfare, retirement, and unemployment.

### 1.3.5 Severance Pay

Severance pay is mandated according to employment duration under the Labor Protection Act.

### 1.3.6 Workmen's Compensation

The Workmen's Compensation Act requires an employer to provide benefits at rates prescribed by law for employees who suffer injury, illness or death while performing their work.

Significant benefits to be provided to employees under the Workmen's Compensation (No. 2) Act 2018 include:

- a) a full medical expense
- b) a compensation amount for:
  - *illness or injuries* ( at 70 per cent of the employee's monthly wages (Maximum monthly wages limited at Baht 20,000) since the first day they are unable to work but not exceeding 1 year)
  - *loses a limb and/or organ* ( at 70 per cent of the employee's monthly wages not exceeding 10 years)
  - *Disability* ( at 70 per cent of the employee's monthly wages for at least 15 years)
  - *Death or disappearance* ( at 70 per cent of the employee's monthly wages for 10 years)

### 1.3.7 Work regulations

Employers who have 10 or more employees must draw up work regulations and announce them with the employees. The work regulations must contain provisions on working conditions, leave, discipline, submission of grievances and termination of employment.

### 1.3.8 Business Hours

Businesses in Thailand generally operate an 8-hour day between 8.00am. and 5.00pm. A 1-hour lunch period is usually taken between midday and 1.00pm. Most business offices are closed on Saturday and Sunday.

### 1.3.9 Public Holidays

Public Holidays in Thailand are regulated by the government, and most are observed by both the public and private sectors.

As of May 2019, there are 19 annual public holidays, 13 of which are statutory holidays for private businesses required by the Labor Protection Act.

### 1.3.10 Housing

Expatriates generally live in Bangkok, because most businesses and government agencies are concentrated in its metropolitan area. Fully furnished houses, apartments and condominiums are readily available. On average, monthly rentals range between 500-900 Baht per square meter, but may be as high as Baht 200,000 for luxury dwellings. The cost of employing a servant and driver is relatively inexpensive, about Baht 8,000 – 10,000 a month.

## 1.4 VISAS and WORK PERMITS

### 1.4.1 Visas

All people, other than those in transit and Thai nationals, are required to obtain a visa in order to enter Thailand. Foreign nationals who intend to remain in Thailand to work or conduct business must comply with visa requirements, in addition to obtaining a work permit. Visa categories include:

1. **Tourist-** Foreigners who obtain a visa from Thai embassy or consulate will be granted a stay of 60 days. Renewals, at the discretion of the Immigration Department, are normally granted for up to 30 days at a time.
2. **Visitor in transit/on arrival-** Nationals of many countries are able to enter Thailand without a visa and remain for 30 days per visit. Foreigners who have a visa exemption for a 30-day stay will receive one extension of stay for no longer than 30 days from the end of the original 30-day stay .
3. **Immigrant-** A person who wishing to immigrate to Thailand may apply for a certificate of permanent residence. However, the conditions for qualifying as an immigrant are quite restrictive, being covered by annual immigration quotas and other conditions fixed for each country by the Ministry of the Interior.
4. **Non-quota immigrant-** This category includes former residents who have lost their resident status, but who have reapplied to resume their residency, and who are able to provide a convincing reasons for granting this type of visa.
5. **Non-Immigrant-** Foreigners seeking a prolonged stay or looking to work in Thailand, should obtain non-immigrant visas for themselves and all family members before entering Thailand. The visas is generally granted for a initial stay of 90 days, but it may be extended to up to one year, and is renewable each year. A foreigners holding this type of visa is entitled to apply for a work permit. Holders of a transit, tourist or non-immigrant "0" ( non Thai-Spouse) visa cannot apply for a work permit.
6. **Ninety-day report-** Foreigners granted permission to stay in Thailand must report to the Immigration Department every 90 days or 90 days from the date of most recent entry into Thailand.

#### 1.4.2 Work permits

The Foreign Employment Act stipulates numerous rules regarding work permits, summarized here:

1. With a few exceptions, the law requires all non-Thai nationals who work in Thailand to have work permits issued by Department of Employment under the Ministry of Labor. Employers in Thailand may apply for a work permit for prospective foreign employees who wish to work in Thailand before the employee starts working.
2. The use of these work permits is restricted to the particular occupation, particular employers and particular locality for which they are applied. Any change in these restrictions will require a new work permit.
3. Foreigners temporarily working in Thailand under the Foreigners' working Law to perform an essential and urgent assignment for the period not exceeding 15 days do not have to apply for a work permit. However, such foreigner may engage in such work upon notifying the registrar in written. If the foreigner does not complete the work within such prescribed period, the employer may request for extending before the time has lapsed but the extending can not exceeding 15 days.

Activities not requiring a work permit- a foreign national entering into Thailand irregularly for attending a meeting, training, seminar, performance of arts, culture, sports competition or other activities as prescribed by the Council of Ministers will be given an exemption from having to obtain a work permit.

4. The employer who employs the foreigner has to inform the Labor officer the name, nationality and job description of within 15 days as from the day employment and when the foreigner has resigned.
5. A foreigner seeking permission to work in Thailand under a special law must submit an application for positions for foreign skilled workers and experts, then apply for individual placement in the approved position by the governmental authority ( such as the Board of Investment (BOI) , the Industrial Estate Authority of Thailand (IEAT), or the Department of Mineral Fuels (DMF)). Such foreigner may engage in authorized works while the application is being processed.

#### 1.4.3 SMART Visa Program

Smart Visa is a new type of visa specially designed to attract highly skilled manpower, investors, executives and startups entrepreneurs wishing to work or invest in certain targeted industries in Thailand. Smart Visa holders will be granted maximum 4-year permission to stay, exemption from the work permit requirement and entitled to additional privileges.

Dependents( such as a spouse and children) will also be entitled to the same right to live and work in Thailand as a Smart visa holder.

## 2. FINANCE AND INVESTMENT

### 2.1 FINANCE

Thailand has a substantial number of financial institutions, both private and government owned. The financial institutions in Thailand offer a full range of financial services under the supervision of the Bank of Thailand. In general, the Thai banks are reluctant to lend money to start up companies and small international entities. Normally, collateral is needed to secure external funding. The collateral can be in the form of a title deed of land, a bank guarantee from a parent company or a guarantee via the Thai Credit Guarantee Corporation. In addition, Thailand is a member of the World Bank and the Asian Development Bank.

### 2.2 EXCHANGE CONTROLS

The Exchange Control Act, B.E. 2485 (A.D. 1942), as amended, governs all matters involving foreign exchange.

All matters involving foreign currency are regulated by, and require the permission of, the Bank of Thailand. All foreign exchange transactions are generally permissible to be conducted through a commercial bank or other authorized non-banking institutions that are granted foreign exchange licenses by the Minister of Finance, namely authorized money changers, authorized money transfer agents and authorized companies. Any transactions not conducted through these enterprises requires approval from the Bank of Thailand, which will be assessed on an case-by-case basis.

#### 2.2.1 Currency Regulations

##### a. Foreign Currency

Foreign currencies can be transferred or brought into Thailand without limit. Any person receiving foreign currencies from abroad is required to convert such foreign currency into Baht or to deposit the same in a foreign currency account with an authorized bank within 360 days. except for a foreigner temporarily staying in Thailand for no more than 3 months, foreign embassies and international organizations including their staff with diplomatic privileges and immunities, and Thai emigrants who are permanent residents abroad or working abroad.

Purchase of foreign currency from authorized banks is generally allowed upon submission of documents indicating international trade and investment. Companies in Thailand can engage in derivatives transactions with authorized banks to hedge against foreign exchange risk provided that supporting documents indicating future foreign currency receipts or obligations are submitted.

##### b. Local Currency

There is no limit on the amount of Thai Baht bank notes that may be brought into the country. A person traveling to Vietnam, the People's Republic of China (only Yunnan province) and Thailand's bordering countries is allowed to take out up to THB 2,000,000. A person traveling to other countries is allowed up to THB 50,000.

### **c. Custom Declaration**

Any person bringing into or taking out of Thailand Thai Baht bank notes, foreign currency bank notes or negotiable monetary instruments in an aggregate amount exceeding Baht 450,000 or USD 15,000 or its equivalent must declare to Thai customs officer before arriving or departing Thailand.

#### **2.2.2 Bank Deposits**

##### **a. Foreign Currency Accounts of Thai Residents**

Thai residents, both individuals and juristic persons, are allowed to maintain foreign currency accounts with authorized banks, and deposit or withdraw funds from such accounts under the following conditions:

##### Deposit

- (1) Foreign currencies originating from abroad (foreign-source) can be deposited into foreign currency accounts without limit.
- (2) Foreign currencies purchased or borrowed from authorized banks (domestic-source) can be deposited into 2 types of foreign currency accounts:
  - (i) Foreign currency accounts with future obligations: deposits can be made in an amount not exceeding future obligations to pay in foreign currencies to entities abroad. Such obligations include loan repayment to authorized banks.
  - (ii) Foreign currency accounts without future obligations: the total outstanding balance shall not exceed USD 5 million for both a natural person and a juristic person.
- (3) Deposit of foreign currency notes and coins must not exceed USD 10,000 per person per day.

##### Withdrawal

- (1) For payment to entities abroad of the account holder's own obligations or its subsidiaries' obligations.
- (2) For payment to authorized banks of the account holder's own foreign currency liabilities or its subsidiaries' foreign currency liabilities.
- (3) For deposit into another foreign currency account of the same account holder.
- (4) For conversion into another foreign currency, prior to depositing into another foreign currency account of the same account holder, or for payment to an entity abroad, or for payment of liabilities to an authorized bank.
- (5) For conversion into Baht.

Thai companies having export proceeds in foreign currency from overseas are allowed to transfer funds from their foreign-source foreign currency accounts to deposit into foreign currency accounts of their counterparties in Thailand for payment of goods or services.

##### **b. Foreign Currency Account of Non-residents**

Non-residents may maintain foreign currency accounts with authorized banks in Thailand without limit. The accounts can be freely credited with funds originating from abroad. Payments from Thai residents or borrowing from authorized banks can be deposited subject to supporting evidences. Balances on such accounts may be freely withdrawn.

### **c. Non-resident Baht Account**

Non-residents may open Thai Baht accounts with authorized banks in Thailand as follows:

(1) Non-resident Baht Account for Securities (NRBS): The account may be debited or credited for the purpose of investment in securities and other financial instruments such as equity instruments, debt instruments, unit trusts, derivatives transactions traded on the Thailand Futures Exchange and the Agricultural Futures Exchange of Thailand.

(2) Non-resident Baht Account (NRBA): The account may be debited or credited for general purposes (i.e. other than investment in securities) such as trade, services, foreign direct investment, investment in immovable assets, and loans.

The total daily outstanding balances for each type of account shall not exceed THB 300 million per nonresident. Transfers between different types of accounts are not allowed.

### **2.2.3 Trade and Services**

#### **a. Exports**

Export proceeds in an amount equivalent to USD 50,000 or above shall be repatriated immediately after payment is received and within 360 days from the export date. The proceeds must be sold to or deposited in a foreign currency account with an authorized bank in Thailand within 360 days of receipt.

#### **b. Imports**

Importers may purchase or withdraw foreign currencies from their own foreign currency accounts for import payments upon submission of supporting documents. Letters of credits may also be opened without authorization.

#### **c. Services**

All proceeds from services in an amount equivalent to USD 50,000 or above shall be repatriated immediately after payment is received and within 360 days from the transaction date. The proceeds must be sold to or deposited in a foreign currency account with an authorized bank in Thailand within 360 days of receipt

Outward remittances of amounts properly due to nonresidents are permitted for items of a non-capital nature such as service fees, interest, dividends, profits, or royalties provided that supporting documents are submitted to an authorized bank. Traveling expenses or educational expenses of residents are also freely permitted upon submission of supporting documents

### **2.2.4 Foreign Investments**

Transfers in foreign currency for direct and portfolio investments in Thailand are freely permitted. Proceeds must be surrendered to an authorized bank or deposited in a foreign currency account with an authorized bank in Thailand within 360 days.

Repatriation of investment funds and repayment of overseas loans can be remitted freely upon submission of supporting documents to an authorized bank. For repatriation of investment funds, evidence of sale or transfer of such investment shall be submitted. For loan repayment, evidence of inward remittance of such loan and loan agreement shall be submitted.

## 2.2.5 Capital Transfers by Thai Residents

### a. Direct Investment and Lending Abroad

(1) A Thai company is allowed to invest in an overseas business entity whose shares are held by the Thai company by not less than 10%, or to invest or lend to affiliated business entities abroad as necessary.

(2) A Thai company is allowed to lend to non-affiliated business entities abroad up to USD 50 million per year.

(3) A Thai natural person is allowed to invest in an overseas business entity whose shares are held by that person by not less than 10%, or to invest or lend to its affiliated business entities abroad as necessary.

Fund transfers for such investment or lending to business entities abroad must be in foreign currencies only, whereas fund transfers for investment or lending to business entities in Vietnam or Thailand's neighboring countries for trade and investment in Thailand or those countries can be in foreign currencies or in Thai Baht.

### b. Portfolio Investment Abroad

(1) Institutional investors, namely Government Pension Fund, Social Security Office, provident funds, mutual funds (excluding private funds), securities companies, insurance companies, specialized financial institutions, Thai juristic persons with assets of at least Baht 5,000 million, companies listed in the Stock Exchange of Thailand and brokers in Thailand Futures Exchange (TFEX) are allowed to invest in foreign securities without limit. Such investment shall not exceed the limit set by the supervisory authority, directors or managements of each institutional investor.

(2) Thai juristic persons or Thai natural persons having deposits or investments in securities or derivatives of at least Baht 50 million but less than Baht 100 million and at least Baht 100 million (Qualified Investor) can invest in foreign securities without the need to go through investment agent in an aggregate amount not exceeding USD 1 million and USD 5 million per person per year respectively

(3) Other investors can invest in foreign securities through investment agent, such as securities companies, authorized banks, private funds and derivatives brokerages, without limit provided that such investment shall be subject to the guidelines of and not exceed the limit set by the Securities and Exchange Commission.

### c. Transfers for Other Purposes

(1) Outward remittances to Thai emigrants who are permanent residents abroad provided that funds are derived from their own assets, from their families or relatives, or from their inheritances are allowed up to USD 1 million per recipient per year for each purpose. Fund transfers to public for donation are allowed up to USD 1 million per person per year.

(2) Purchase of shares, warrants and options of related companies abroad under employee benefit plans is allowed up to USD 1 million per person per year.

(3) Purchase of immovable properties abroad is allowed up to USD 50 million per person per year.

## 2.2.6 Reporting

Any person purchasing, selling, depositing, or withdrawing foreign currencies with an authorized bank shall notify details of foreign exchange transactions to the authorized bank. After conducting transactions, the authorized bank will issue an evidence of such transaction as prescribed by the Competent Officer to such person.

## **2.3 INVESTMENT INCENTIVES**

The Thai government aims to boost economic growth in Thailand by providing incentives to encourage investment from both local and foreign investors.

Major investment incentives include:

### **2.3.1 The Board of Investment (BOI) Promotion Scheme**

The Investment Promotion Act gives authority to the Board of Investment (BOI) to grant tax and non-tax incentives to foreign and Thai investors who are engaged in promoted business activities as designated by the BOI. The BOI operates under the authority of the Office of the Prime Minister.

#### **Seven-year Investment Promotion Strategy (2015 – 2021)**

According to the Announcement of the Board of Investment No.2/2557 Policies and Criteria for Investment Promotion announced in December 2014 which is enforced on BOI applications submitted from January 2015 onward

#### **Criteria for Granting Investment Incentives**

The BOI classifies 2 types of incentives according to business activities for the investors who wish to invest in Thailand :

- 1.Basic incentive(Activity-based Incentives) and
- 2.Additional incentives (Merit-based Incentives)

## 1. Activity-based Incentives

The Activity-based Incentives fall into two (2) group types ( 6 different packages) as follows

Package	Incentives
<b>GROUP A</b>	
<b>A1</b> Knowledge-based activities focusing on R&D and design to enhance the country's competitiveness	<ul style="list-style-type: none"> <li>• 8-year corporate income tax(CIT)exemption(no cap) (*)</li> <li>• Exemption of import duties on machinery/ raw materials</li> <li>• Non-tax incentives(***)</li> </ul>
<b>A2</b> Activities in infrastructure for the country's development, activities using advanced technology to create value – added, with no or very few existing investments in Thailand	<ul style="list-style-type: none"> <li>• 8-year CIT exemption (with a cap) (**)</li> <li>• Exemption of import duties on machinery/ raw materials</li> <li>• Non-tax incentives (***)</li> </ul>
<b>A3</b> High technology activities which are important to the country's development, with a few investments already existing in Thailand	<ul style="list-style-type: none"> <li>• 5-year CIT exemption (with a cap) (**)</li> <li>• Exemption of import duties on machinery/ raw materials</li> <li>• Non-tax incentives (***)</li> </ul>
<b>A4</b> Activities with lower technology than Group A1 through A3 above, but which add value to domestic resources and strengthen the supply chain	<ul style="list-style-type: none"> <li>• 3-year CIT exemption (with a cap) (**)</li> <li>• Exemption of import duties on machinery/ raw materials</li> <li>• Non-tax incentives (***)</li> </ul>
<b>GROUP B</b>	
<b>B1-B2</b> Supporting industries that do not use high technology but are still important to the value chain	<ul style="list-style-type: none"> <li>• Exemption of import duties on machinery(GroupB1)</li> <li>• Exemption of import duties on raw materials (GroupB1 and B2)</li> <li>• Non-tax incentives* (***)(GroupB1and B2)</li> </ul>

(\*) Without being subject to a CIT exemption cap

(\*\*) Subject to a CIT exemption cap

(\*\*\*) Non-tax incentives included

- Permit for foreign nationals to enter the Kingdom for the purpose of studying investment opportunities.
- Permit to bring into the Kingdom skilled workers and experts to work in investment promoted activities
- Permit to own land
- Permit to take out or remit money abroad in foreign currency.

Activities in Group B1 and Group B2 shall receive additional three-years CIT exemption on the revenue in case of:  
 -investments in automation systems, the CIT exemption cap will be raised to 100% of the investment excluding land cost and working capital if the value of linkages to the Thai automation industry reaches at least 30% of the total value of the automation system.

- Application is submitted by December 30, 2020

## 2. Merit-based

In order to attract and stimulate more investment or spending on activities that benefit the country or industry at large, the BOI stipulates additional incentives based on the merits of the project, as follows:

### Merit Type

### Incentives

#### **2.1 Merit for Competitiveness Enhancement**

Investing in 6 eligible investments/expenditures

Additional qualified investment or expenditures of 1%, 2%, and 3% of the total revenue during the first 3 years of operation or Baht 200, Baht400, Baht600 million, depending on whichever is the lesser value, will be entitled to

- additional CIT exemption for 1 to 3 years and
- increase in the CIT exemption cap up to 300%

#### **2.2 Merit on decentralization**

Projects located in the 20 provinces with lowest per capita income

- Activities in Group A3, A4, B1 and B2 shall receive additional 3-years corporate income tax exemption
- Activities in Group A1 or A2 shall not receive additional CIT exemption but shall receive a 50% reduction in CIT for 5 years
- Double deductions from the costs of transportation, electricity and water supply for 10 years
- Additional 25% deduction of the cost of installation or construction of facilities

#### **2.3. Merit on industrial area development**

Projects located within industrial estates or promoted industrial zones

Shall be granted one additional year of corporate income tax exemption

### 2.3.2 Investment incentives and measures in EEC

By virtue of the Investment Promotion Act, the BOI issued BOI Announcement No. 6/2018 dated 3 August 2018 offering higher tax privileges to private investors who conduct business in the EEC area, which covers three provinces: Chachoengsao, Chonburi and Rayong.

The tax privileges to be offered to investors under this announcement will be determined based on the zone in which the investor's project is located and upon meeting the following three criteria:

1. The investor must conduct business in the specific targeted industries.
2. The investor must cooperate with educational institutions, research institutes and the Center of Excellence in manner approved by the BOI.
3. The investor 's project must be located in Chachoengsao, Chonburi or Rayong Provinces and in any of the following designated zones:

*A. Investment incentive zones for special activities currently consisting of 3 activities("Zone A")*

*B. Investment incentive areas for targeted industries designated by the Eastern Economic Corridor Policy Committee currently consisting of 21 areas ("Zone B")*

*C. BOI-promoted industrial estates or zones consisting of 19 areas ("Zone C")*

Investors entitled to the rights and incentives under the EEC measures cannot apply for merit-based industrial area development incentives under BOI Announcement No. 2/2014.

Applications to receive the rights and incentives under EEC measures must be submitted to the BOI by 30 December 2019.

### 2.3.3 International Business Centre (IBC) Regime

In response to the Harmful Tax Practices 2017 Progress Report on Preferential Regimes (Inclusive Framework on Base Erosion and Profit Shifting (BEPS)) , in March 2019, the Thai Cabinet passed a resolution approving the issuance of three Royal Decrees proposed by the Ministry of Finance cancelling all tax incentives granted by the Revenue Department under the International Headquarters (“IHQ”), Regional Operating Headquarters (“ROH”) and International Trading Center (“ITC”) regimes with effect from 1 June 2019 onwards for corporate income tax incentives and 1 January 2020 for personal income tax incentives.

The above tax measures have been cancelled following the introduction of tax measures to promote the establishment of International Business Centre (IBC) to replace ROH, IHQ and ITC. The new IBC tax measures will promote investment in Thailand as the centre of the Southeast Asian region, as well as align Thailand’s tax measures with international standards.

#### Nature of IBC

An IBC is defined as a Thai company that operates a business of providing management services, technical services, support services or treasury management services to its affiliates (in Thailand and/or in foreign countries) or operates an international trading business that meets the requirements specified by the Director-General of the Revenue Department.

#### Tax Benefits

Under the Royal Decree, qualifying companies under the new IBC regime will be eligible for a number of tax benefits for a standard period of 15 years, including:

- Reduced corporate income tax (CIT) rate to 8%, 5% or 3% on their net profits on qualifying income, where the IBC’s annual expenditure in Thailand for each fiscal year is at least Baht 60 million, Baht 300 million or Baht 600 million respectively.
- The exemption from CIT on dividends received from affiliates (in Thailand and/or in foreign countries)
- Withholding tax exemption on dividends paid to offshore shareholders and on interest payments to foreign beneficiaries in relation to loans for treasury activities
- Exemption from specific business tax on qualifying treasury centre income
- The reduction in personal income tax rate from the progressive rates (maximum 35%) to 15% for expatriate employees working for the IBC

A company must apply to the Revenue Department in order to obtain approval to use the tax benefits.

### **Conditions to qualify as an IBC**

- IBCs must be incorporated under Thai law and have paid-up capital of at least Baht 10 million at end of accounting period.
- IBCs must have annual operating expenses of at least Baht 60 million paid to Thai recipients.(Existing ROH or IHQ which chooses to convert its status to IBC does not have to meet this condition)
- IBCs must have at least 10 employees (at least 5 employees for a treasury services centre).

### **Conversion to IBC**

Thailand encourages the existing ROH and IHQ companies to convert to IBC companies. Thailand also encourages the existing ITC companies to expand their businesses to include headquarters business or treasury centre business and apply for IBC's tax benefits.

### **Non-Tax Benefits available**

In accordance with the government's policy to promote the new IBC regime, Thailand's Board of Investment (BOI) also offers non -tax incentives.

An IBC promoted by the BOI would be entitled to receive non-tax incentives, such as:

- Permission for 100% foreign ownership of the IBC
- Visa and work permit privileges for foreign nationals working for the IBC
- Permission to own land for use in the business of the IBC

Machinery used for R&D or in training can receive import duty exemption

#### **2.3.4 Industrial Estates Authority of Thailand**

The Industrial Estate Authority of Thailand (IEAT) , a state enterprise under the Ministry of Industry, is responsible for the development and establishment of industrial estates where factories for various industries are orderly and systematically clustered together. The IEAT also serves as a governmental mechanism to decentralize industrial development to provincial areas throughout the country. Industrial estates are divided into two zones: General Industrial Zones (GIZ) and IEAT Free Zones/Export Processing Zones (EPZ)

##### **General Industrial Zones (GIZ)**

1. IEAT offers industrial operators in GIZ essential comprehensive services –such as transportation, warehouses, training centers and clinics.
2. Non-tax privileges for operators including the right to own land in industrial estates ,the right to bring foreign skilled worker (plus spouses or dependents) and the right to remit money abroad.

##### **IEAT Free Zones/Export Processing Zones (EPZ)**

Under the most recent Industrial Estate Authority of Thailand (IEAT) Act,

1. Operators in EPZ are offered the privilege of exporting products without any restrictions and with the added convenience of being able to bring merchandise or raw materials into EPZ.
2. Supplies taken into EPZ are entitled to certain additional tax and duty privileges such as:
  - Tax burden relief for products taken out of EPZ for domestic use or consumption. Contrary to the previous Act, raw material components, if produced domestically, can be granted tax and duty exemption
  - Operators in EPZ remain entitled to claim privileges specified in the previous IEAT Act. These include:
    - Tax privileges, including import/export tax and duty exemptions, as well as exemption from VAT and excise tax on machinery, equipment, components, raw materials and supplies used for the production of goods and other merchandise.
    - General privileges, such as the right to own land, the ability to bring technical experts (plus spouses or dependents) and the ability to remit foreign currency to their home country.

### **2.3.5 Petroleum Laws**

To develop Thailand's natural resources, the Petroleum Act and the Petroleum Income Tax Act of Thailand offer special incentives in relation to petroleum surveying, exploration and production.

Petroleum-related investment incentives include:

1. Import duty- imported machinery, spare parts and material required for business or for the use of drilling and oil field service contractors are exempt from tariffs.
2. Land ownership- the business is permitted to own land used for its operation.
3. Immigration- relaxed work permits and visa rules exist for foreign experts, technical staff and their dependents including contractors.
4. Other incentives- the government will not restrict the export of petroleum, except in very exceptional circumstances and will not nationalize any private industrial activity.

### **2.3.6 Corporate Income Tax Incentives**

#### **Research & Development Costs**

Under the Research & Development (R&D) provisions of income tax legislation, companies or legal partnerships may take a double corporate tax deduction for payments made for eligible R&D costs to governmental or private agencies that are approved providers of R&D services. In addition, for machinery and equipment acquired for use in R&D activities, an initial depreciation allowance of 40% of the cost is granted on the date of its acquisition and the residual value can be depreciated over its effective life( but not less than 5 years).

#### **Staff Training**

Under Royal Decree No. 437, companies or legal partnerships may take a double corporate tax deduction for costs incurred for training employees at certain educational or vocational training institutions, as well as for costs incurred for organizing approved in-house training for their employees.

### **2.3.7 Export Incentives**

To encourage export activities, several incentives are available to exporters, including an exemption from export duties and concession of zero rated Value Added Tax (VAT) on export sales, exemptions from customs duties on imported materials used in export manufacturing, and credits for taxes paid on raw materials. In addition, the Ministry of Finance grants exporters tax coupons, which may be used for payment of taxes and duties. The rates of export incentives vary with the type of exported products.

The Bank of Thailand offers a packing credit (pre-shipment finance) through EXIM Bank and the exporter's commercial bank, which is subject to a low interest rate.

## 2.4 RESTRICTIONS ON FOREIGN INVESTMENT

Foreign investment is generally welcomed by the government, but the Foreign Business Act stated that certain business activities may not be carried out by foreigners, foreign entities or locally incorporated companies that have 50% or more of their equity shares held by foreigners or foreign entities.

The Act puts the types of restricted businesses into 3 categories.

- **Category One** prohibits businesses that are not allowed to be operated by aliens due to “special reasons” (See Annex 1).
- **Category Two** prohibits businesses for aliens because they involve national safety or security, or affecting arts, culture, traditional customs and folk handicrafts, or affecting natural resources and the environment, unless permitted by the Minister with the approval of the Cabinet (See Annex 2).
- **Category Three** prohibits businesses in which Thai nationals are not yet ready or prepared for competition with aliens, unless permitted by the Director General of the Commercial Registration Department of the Ministry of Commerce, with the approval of the Alien Business Operations Committees (See Annex 3). If successful, the enterprise may be 100% foreign owned.

Foreign majority owned businesses under the Annexes of restricted business are required to have a minimum capital of Baht 3,000,000 while businesses which do not fall within the 3 categories of restricted businesses are required to have a minimum capital of Baht 2,000,000.

Companies promoted by the BOI are permitted to engage in certain business activities restricted under the Foreign Business Act by obtaining the foreign business certificate prior conducting its business.

The prescribed activities restricted by the Foreign Business Act are as follows:

## **ANNEX 1**

### **Businesses prohibited to foreigners for special reasons**

1. Newspaper publication, radio or television broadcasting
2. Rice farming, arable farming or orchard farming
3. Rearing livestock
4. Forestry and the processing of wood from forests (naturally grown)
5. Fishery, only in relation to the catching of marine life in Thai waters and the Thai economic zone
6. Extraction of Thai medicinal herbs
7. Trading and auctioning of Thai antiques, or antiques which are of historical value to the country
8. Manufacture or casting of Buddha images and alms bowls
9. Trade in real estate

## **ANNEX 2**

### **Businesses concerning national safety and security, or which have an impact on arts, culture, traditional customs, folk handicrafts or natural resources and the environment.**

#### Chapter 1: Businesses concerning national safety and security

- 1.1 Manufacture, distribution, and maintenance of:
  - firearms, ammunition, gunpowder and explosives
  - components of firearms, ammunition and explosives
  - weapons of war, ships, aircraft or military vehicles
  - accessories or components of all types of weapons of war
- 1.2 Domestic transportation by land, water or air, including aviation businesses

#### Chapter 2: Businesses which have an impact on art, culture, customs and local handicrafts

- 2.1 Trading of old objects or artifacts which are Thai works of art or handicrafts
- 2.2 Manufacture of wood carvings
- 2.3 Breeding of silkworms, manufacture of Thai silk thread, Thai silk weaving or printing of patterns on Thai silk
- 2.4 Manufacture of Thai musical instruments
- 2.5 Manufacture of products from gold, silver, niello, bronze or lacquer
- 2.6 Manufacture of crockery or ceramics relating to Thai art and culture

### Chapter 3 : Businesses which have an impact on natural resources and the environment

- 3.1 Production of cane sugar
- 3.2 Salt farming, including the production of efflorescent salt
- 3.3 Production of rock salt
- 3.4 Mining, including stone quarrying and crushing
- 3.5 Wood processing for the manufacture of household furnishings and utensils

### **ANNEX 3**

#### **Businesses in which Thais are not yet prepared for competition with foreigners**

1. Rice milling and the manufacture of flour from rice and field crops
2. Fishery, only in relation to the cultivation of marine life
3. Forestry (plantations)
4. Manufacture of plywood, wood veneer, chip-board or hard-board
5. Manufacture of lime
6. Accounting services
7. Legal services
8. Architectural services
9. Engineering services
10. Construction, except:
  - the construction of things providing fundamental services to the public such as public utilities, technology or transportation where special equipment and machinery, technology or expertise are required and where the minimum capital of foreigners is Baht 500 million or more.
  - other types of construction as prescribed in Ministerial Regulations
11. Brokerage or agency Businesses, except:
  - brokerages or agencies trading securities or services connected with the forward trading of agriculture commodities of financial instruments or securities.
  - brokerages or agencies providing goods and services necessary for manufacture or provision of services to an affiliate's enterprise.
  - brokerages or agencies trading, purchasing or distributing or procuring markets both domestic and foreign for the sale of goods manufactured in Thailand or imported from abroad, which involve international trade and where the minimum capital of foreigners is Baht 100 million or more.
  - other types of brokerage or agency as prescribed in Ministerial Regulations

12. Public auctions, except:
  - public auctions involving international bidding and which does not involve the bidding for old objects, antiques, or artifacts which are Thai works of art, handicrafts or antiques or which are of historical value to the nation.
  - other types of public auction as prescribed in Ministerial Regulations
13. Domestic trade in indigenous agricultural products which are not prohibited by law
14. Retail businesses trading all types of products, with a total minimum capital of less than Baht 100 million or a minimum capital for each establishment of less than Baht 20 million
15. Wholesale businesses trading all types of products, with a total minimum capital of less than Baht 100 million per establishment
16. Advertising
17. Hotels, except hotel management services
18. Tourism
19. Sale of food and beverages
20. Cultivation, reproduction and improvement of plant species
21. Other service businesses except those prescribed in Ministerial Regulations

## **2.5 FOREIGNERS INVESTMENT PORTFOLIO**

### **2.5.1 Stock Exchange of Thailand**

A foreign individual that invests in securities listed on the Stock Exchange of Thailand (SET) is exempt from any tax on the capital gain made from the sale of shares. A foreign corporation will be subject to a 15% withholding tax on the capital gain under Thai law. However, this tax rate may be reduced or the gain may be exempt from tax under the Double Tax Agreement (See Page [54](#) ). Dividends received on shares are subject to a domestic withholding tax rate of 10%.

### **2.5.2 Thai Real Estate**

Foreign investment in Thai real estate is restricted under the Alien Business Act 1999. However, the Land code 1954 allows foreigners, under certain rules and conditions set out under the Department of Land's regulations, to have a proprietary right in immovable property.

Thus, a foreigner, with limited exceptions, cannot own land, but can own a building on land. Many foreigners therefore choose to obtain long-term leases. Depending on a quota based on total area size, a foreigner can own a condominium outright ( for example, through freehold purchase) because the underlying land is owned by a Thai legal entity.

### 3. SET UP BUSINESS

#### 3.1 CORPORATE AND TAX REGISTRATION

##### 3.1.1 Corporate Registration Procedures

###### a. Limited Company

1. Before forming a limited company, the chosen corporate name must first be registered and approved by the Thai Commercial Registrar.
2. A Memorandum of Association must be filed, which contains the approved name of the company, its business address, its objectives, the personal details about the promoters and the shares subscribed for by each, and data on the authorized capital of the company.
3. The next step is to hold a statutory meeting of shareholders, during which:
  - the articles of incorporation and by-laws are approved;
  - the board of directors is elected;
  - the transactions and expenditures of the founders are ratified; and
  - the authorized auditor is appointed.
4. The directors may then register the company with the Commercial Registrar.

A limited company that has registered capital of more than Baht 5 million must file evidence issued by a commercial bank to prove that share payments have been made to the company's bank account no later than 15 days after incorporation.

###### b. Branch, representative office and regional office

Prior to the new Ministerial Regulations of the Department of Business Development becoming effective in May 2017, foreign corporations wishing to do business in Thailand through a branch, representative office, or regional office had to submit certain required documents, including the application for a foreign business license.

Currently, in order to set up a representative office or regional office, it is only necessary to apply for a company registration number and corporate taxpayer number from the governmental authorities. However, in order to set up a branch office, it is still necessary to apply for a foreign business license (except for a branch office which has contracts with the governmental authorities or a state enterprise to render service activities).

###### c. Public securities

In order to offer newly issued securities for sale to the public, companies must apply for approval from the Securities and Exchange Commission (SEC), complying with the rules and regulations issued by the SEC Board according to the Securities and Exchange Act, 2535 B.E. However, existing securities can be offered for sale without the SEC's approval, on the condition that the company discloses information to the SEC prior to offering those securities for sale. Before offering securities to the public, the company or existing shareholders will generally need to file a registration statement and a draft prospectus with the SEC. This is in order to provide information to potential investors.

### 3.1.2 Tax Registration

An individual person who is subject to Thai personal income tax and has no Thai identification number (such as an expatriate employee) must obtain a tax identification number from the Thai Revenue Department within 60 days of the date of deriving taxable income.

A legal entity which is subject to corporate income tax, except for Thai incorporated companies which have a 13-digit registration number issued by the Ministry of Commerce, must obtain a tax identification number from the Thai Revenue Department within 60 days of the date of commencing business in Thailand.

All entities that have annual turnover exceeding Baht 1.8 million must register for VAT within 30 days of the annual turnover exceeding the threshold, unless specifically exempt. It is possible to apply for VAT registration before the date of commencing business under conditions specified by the Director-General of the Thai Revenue Department.

## 3.2 FACTORY LICENSE

The Factory Act, (1992), divides factories into three groups:

1. **Group 1** - factories that can function immediately without licensing.
2. **Group 2** - factories for which notification to officials is required only prior to the start of operations. Operators may commence operations upon acquiring a receipt from the Ministry stating that their report has been received.
3. **Group 3** - factories for which a factory license is required before the establishment of the factory.

Before the establishment of a factory under Group 3, the operator must obtain a factory license from the Department of Industrial Works and Ministry of Industry. The operator of a Group 3 factory must notify the authorities at least 15 days before a factory test-run commences, and again 15 days before actual manufacturing operations start.

A factory license is valid up to the last day of the fifth calendar year from the year of issue, and is renewable. An application for the renewal of a factory license must be filed with the authorities prior to the expiration of the current license. While the factory license is valid, the licensee must pay an annual fee for the license, as determined by the authorities. Prior permission from the Ministry of Industry must be obtained for any factory expansion, transfer of machinery to other sites, or transfer of a factory site, as well as to transfer, lease, assign, or sell a factory operation.

## 3.3 PROTECTION OF INTELLECTUAL PROPERTY

### 3.3.1 Copyright

The Copyright Act protects works in the categories of literary work, including computer programs; dramatic, artistic, and musical work; audio-visual material, cinematic films or recorded material; disseminated pictures or disseminated audio; or any other works in the fields of literature, science, or the fine arts.

Copyright belongs to the creator of a work, subject to the following conditions:

1. For unpublished work, the creator must be of Thai nationality or reside in Thailand, or be a national of or reside in a country which is a member of the Convention on the Protection of Copyright, of which Thailand is a member, provided that the creator spends all or most of the time residing in Thailand on the creation of the work.
2. For published work, the first publication must be made in Thailand or in a country that is a member of the Convention on the Protection of Copyright. If the first publication was made outside of Thailand or in a country which is not a member of the Convention, the work created must have been published in Thailand or in a country which is a member of the Convention within 30 days of the first publication. Alternatively, the creator must have met the criteria set out in the paragraph above at the time that the work was first published.

Copyright is valid for the period of the creator's life, plus an additional 50 years thereafter. Where the creator is a legal entity, the protection period is 50 years from the date of creation, or 25 years if the copyright application is for art. The following are not deemed eligible for copyright protection under the Act:

1. Daily news and facts that are, by nature, merely news items
2. The Constitution and laws
3. Announcements, orders, and regulations of ministries, bureaus, departments, or any other agency of the state or local jurisdiction
4. Court judgments, orders, rulings, and official reports
5. Translations and collections of items specified above, which are prepared by government agencies or local administrations

Thailand is a member of the Berne Convention for the Protection of Literary and Artistic Works. This allows certain copyrights registered in other Berne Convention countries to be enforced in Thailand.

### 3.3.2 Trademarks

The Trademark Act of Thailand governs the registration and protection of trademarks. The Act defines a trademark as a symbol used in connection with goods, for the purpose of indicating that they belong to the owner of the trademark. The trademark must be distinctive, and not identical or similar to those registered by others.

Registration of a trademark may be completed by the trademark proprietor, or through an agent. Application for registration must be made on official forms duly signed either by the proprietor or the agent, and filed with the Trademark Office. If an application is approved, the registration will be published in the Official Journal. Once published, if not opposed, the proprietor has the exclusive right to use the registered mark on all of the products for which registration has been granted. Trademark registration is valid for 10 years from the date of application. It is renewable for an unlimited number of periods of 10 years each. Renewal of the registered trademark must be made 90 days before the date of expiration.

The Trademark Act allows the protection of service marks, service names, collective marks, certification marks, and trade names.

### 3.3.3 Patents

The Patent Act protects both inventions and product designs and pharmaceuticals. Thailand has numerous bilateral agreements enabling citizens of other countries to file patent applications in Thailand. However, Thailand is neither a signatory to the Paris Convention for the Protection of Industrial Property, nor a signatory of any other international convention for the reciprocal protection of patents. Under the Patent Act, patents for inventions are valid for 20 years, and patents for designs are valid for 10 years.

The invention must be patentable by meeting the following requirements:

1. Being novel
2. Involving an inventive step
3. Capable of being made or used for some kind of production activity

Any patent that is widely published and/or patented or registered in a different place prior to the filing date of the Thai application is not patentable in Thailand. In addition, the following are not patentable in Thailand:

1. Microbes and any components thereof which exist naturally, such as animals, plants, and extracted substances from animals or plants
2. Scientific or mathematical rules or theories
3. Computer programs
4. Methods of diagnosis, treatment, and care of human and animal diseases
5. Inventions that are contrary to public order or morality, public health, or welfare

## 4. AUDITING AND ACCOUNTING REQUIREMENTS

### 4.1 AUDITING

#### 4.1.1 Audit Requirements

Entities incorporated in Thailand are required by statute to provide annual financial statements prepared according to Thai Financial Reporting Standards (TFRSs).

The financial statements must be audited and certified by a licensed independent auditor. An exception applies for the financial statements of a registered partnership, established under Thai law, whose capital, assets, or income, any one or all of them, are not more than those values prescribed in the Ministerial Regulations .

The auditor is required to examine the books of account of the entity in accordance with Thai Standards on Auditing (TSA) and to give opinion on the financial statements as to whether they present fairly the financial position and results of operations for the period under audit.

A public limited company's financial statements are required to be audited each quarter, whereas a private limited company's financial statements are required to be audited annually.

#### 4.1.2 Filing Requirements of Limited Company

Within 4 months after the date of the financial year end, the audited financial statements of companies incorporated in Thailand must be submitted for shareholders' adoption at the annual general meeting and, within 1 month after such approval, filed with the Department of Business Development of the Ministry of Commerce. In addition, such audited financial statements are to be filed, along with the annual income tax returns, with the Revenue Department within 150 days after the financial year end.

### 4.2 ACCOUNTING

#### 4.2.1 Accounting and Financial Reporting Requirements

Under the Thai Civil and Commercial Code, a shareholders' register and accounting records that accurately reflect company transactions and assets and liabilities must be kept at the registered office of the company. Such accounting records and books of account must be kept for a period of 5 years to meet the requirement of accounting law and for tax inspection purposes.

A company's accounting period may not exceed 12 months. The year-end for the first accounting period must be consistently used for future accounting periods, unless a request is made to change the year-end.

#### 4.2.2 Accounting Principles and Practices

The Federation of Accounting Professions (FAP) of Thailand is responsible for developing the Thai accounting standards, and accounting practice guides and interpretations (collectively referred to as Thai Financial Reporting Standards (TFRSs). The TFRSs are based on the International Financial Reporting Standards (IFRSs).

Presently, the FAP has developed and issued 2 sets of TFRSs. The first one is TFRSs for publicly accountable entities (TFRSs for PAEs) which is mandatory for publicly accountable entities, such as listed companies or financial institutions. The second one is TFRSs for non-publicly accountable entities (TFRSs for NPAEs). Non-publicly accountable entities, such as a private limited company, may choose to apply either TFRSs for PAEs or TFRSs for NPAEs.

## 5. THE TAX SYSTEM

### 5.1 PRINCIPAL TAX

Thailand's principal taxes include corporate income tax, personal income tax, value added tax, specific business tax, excise tax, and custom duties. Other taxes of relatively minor significance include the stamp duty, and property tax.

#### 5.1.1 Source of Tax Law

The Thai Revenue Code governs corporate and individual income taxes, branch profit remittance tax, value added tax, specific business tax and stamp duty. Customs duties are regulated by the Customs Act, and the Excise Act governs the excise tax.

### 5.2 ADMINISTRATION

Tax collections are administered by the Ministry of Finance through 3 departments. The Customs Department, which is responsible for import and export duties; the Revenue Department, which is responsible for the collection of income tax, value added tax, specific business tax, and stamp duty; and the Excise Department, which is in charge of the collection of excise tax levied on certain specific commodities. The local governments are the recipients of the property tax.

In general, Thailand's tax administration follows a self-assessment system. Taxpayers have a legal duty to declare their income and pay the related tax to the authorities. The declaration and tax payment are regarded as correct and complete unless subsequently called for examination by the authorities.

Apart from the duty to pay taxes, companies are also required to withhold taxes on payments they make to outside parties. The taxes withheld have to be remitted to the tax authorities within a prescribed time frame.

#### 5.2.1 Filing and Payment

Mid-year (interim) tax returns are required to be filed with the Revenue Department within 2 months after the end of the first half year. For listed companies, financial institutions and companies specially approved by the Director-General of the Revenue Department, their interim tax shall be based on the actual operating results for the first half year as substantiated by the audited/reviewed financial statements. For other companies, their interim tax shall be based on half of the projected annual income; and no audited financial statements need to be submitted in this case. The interim tax is creditable against the annual tax payable at the end of the year. Companies must then file their annual income tax returns and audited financial statements with the Revenue Department within 150 days after the end of their accounting year. The remaining corporate income tax due is paid when the return is filed.

Branch profit remittance tax returns must be filed and the related tax paid to the Revenue Department within 7 days of the following month.

Individual income tax returns must be filed and related income tax paid to the Revenue Department by March of the year following the tax year (the calendar year).

Generally, value added tax returns must be filed and related tax paid to the Revenue Department within 15 days after the end of each month.

Import and export entry forms must be filed and related customs duties paid to the Customs Department before goods are released from a port.

Excise taxes on manufacture goods generally must be paid and the return filed before goods leave the factory. Excise taxes on imported goods such as petroleum products, must be paid and the return filed before the goods can be cleared from the port.

### **5.2.2 Tax Audit and Assessment**

Revenue authorities may generally issue a summons within 2 years after a return is filed (5 years in exceptional case) requiring a taxpayer to respond to questions or submit books of account or other relevant documents for examination. If tax deficiencies are found, the authorities can assess additional taxes, provided the assessment is made within 10 years after the return is filed. The tax assessment is regarded in laws as tax due to the authorities.

### **5.2.3 Appeals**

Within 30 days after the receipt of a notice for additional tax assessment, a taxpayer must either pay the additional tax or file an appeal with the Tax Appeal Committee. Security such as a bank guarantee has to be given to delay the tax payment. If disagreeing with the ruling of the Tax Appeal Committee, the taxpayer may take the case to the Central Tax Court and then the Supreme Court.

### **5.2.4 Tax Penalties**

Taxpayers failing to pay taxes when due or paying insufficient taxes may be liable to a tax penalty of up to 200% of the unpaid tax. The Revenue authorities have the rights, however, to reduce the rate depending on the circumstances. In addition, taxpayers are liable to a tax surcharge of 1.5% a month on the amount of the unpaid tax, but the surcharge shall not exceed the amount of the unpaid tax.

## 6. TAXES ON BUSINESS

### 6.1 CORPORATE INCOME TAX

Corporate Income Tax (CIT) is a direct tax levied on juristic persons (companies) established under Thailand or foreign law and conducting business in Thailand, or which derives certain types of income from Thailand.

The term of 'juristic person' (company) means a juristic company or partnership operating in Thailand. Companies incorporated in Thailand are subject to corporate income tax on all profit derived from both domestic and foreign sources. The term also includes any joint venture and any trading or profit-seeking activity conducted by a foreign government or its agency, or by any other juristic body incorporated under a foreign law.

#### 6.1.1 Taxable Entities

CIT is levied on both Thai and foreign companies. A Thai company means a company incorporated in Thailand and is subject to tax in Thailand on its worldwide net profit at the end of each accounting period (12 months).

A foreign company means a company incorporated under foreign law. Generally, a foreign company is treated as conducting business in Thailand if it has an office, a branch, or any other place of business in Thailand, or if it has an employee, agent, or representative that is conducting business in Thailand. A foreign company conducting business in Thailand is subject to CIT only for net profit arising from, or in consequence of, business conducted in Thailand at the end of each accounting period.

A separate profit remittance tax of 10%(whether by dividend or other distribution) of the amount remitted is imposed on foreign companies that remit their Thailand -based profits offshore. Profit means any sum set aside out of profits, as well as any sum which may be regarded as profit.

A foreign company, not conducting business in Thailand, but deriving certain types of income from Thailand, such as service fees, interests, dividends, rents, or professional fees, may be subject to CIT on the gross amount received. It is collected in the form of withholding tax, by which the payer of income shall deduct the tax from the income. A foreign company engaged in international transportation is also only subject to tax on its gross receipts.

#### 6.1.2 Fiscal Year

The ordinary fiscal year for tax submission is for the 12-month period ending 31 December. However, with consent from the Director-General, corporate taxpayers may choose on alternative accounting period for the purpose of determining taxable income.

### 6.1.3 Determining Company Taxable Income

CIT of a company conducting business in Thailand is calculated from the company's net profit on an accrual basis. A company must take into account all revenue arising from, or in consequence of, the business conducted in an accounting period and may deduct all expenses in accordance with the conditions prescribed by the Revenue Code.

### 6.1.4 Tax Rates

- 1) The standard corporate income tax rate is 20% of net profit
- 2) A progressive tax rate applies to small and medium-sized enterprises( SMEs\*) as follows:

Net Profit (Baht)	Tax Rate
0-300,000	Nil
300,001-3,000,000	15%
Over 3,000,000	20%

*(An 'SME' means a company which has paid-up capital at the end of any accounting period not exceeding Baht 5 million and which has revenue from the sales of goods or services in any accounting period not exceeding Baht 30 million.)*

### 6.1.5 Foreign Tax Relief

For income derived from countries that do not have a Double Taxation Agreement (DTA) with Thailand ( See Page 54), foreign tax credits are allowed. These foreign tax credits are subject to certain criteria and conditions, up to the amount of Thailand tax that would have been payable had the income been derived in Thailand. The same rules apply with regard to foreign tax relief for DTA countries.

### 6.1.6 Losses and Consolidation

Each company is taxed as a separate legal entity. Losses incurred by one affiliate may not be offset against profits made by another affiliate. Losses can only be carried forward for a maximum of 5 years.

### 6.1.7 Dividends

Dividends received by a company listed on the Stock Exchange of Thailand (SET) are exempt from tax. Exemptions also apply to dividends received by any other company incorporated in Thailand that holds at least 25% of the voting shares in another Thai company, without any cross shareholding, either directly or indirectly, providing that the related investments have been held for a period of at least 3 months before and 3 months after the receipt of the dividends. Where a Thai company does not qualify for the shareholding period specified, it will nevertheless only need to include in its assessable income an amount of 50% of a dividend received from another company incorporated in Thailand.

Dividend paid by a foreign company to a Thai company will be exempt from Thai CIT if:

- The paying company has a minimum corporate tax rate of 15% **and**
- The Thai company has a 25% or more equity interest in that foreign company **and**
- The Thai company maintains its shareholding in that foreign company for a 6 month-period.

### 6.1.8 Repatriation of Profits and Transfer Pricing

In addition to paying dividends, profits may be repatriated through other various means, including payment of royalties and/or service fees.

Although, in the past, there was no separate transfer pricing legislation in Thailand, guidelines had been issued to counteract aggressive inter-company pricing practices and to ensure such payments reflected the true market value. These guidelines were intended to prevent the manipulation of profits and losses within a group of related companies and ensure that goods and services traded between the related companies were priced at an arm's length value. The Revenue Department also had the power to assess income resulting from transfers which it deems were made at below market value.

In September 2018, the National Legislative Assembly approved Thailand's new transfer pricing law and the Revenue Code Amendment Act (No. 47) (2018), which was issued to amend the Revenue Code to introduce the transfer pricing law, was published in the Royal Thai Government Gazette in November 2018.

Key Point under the new transfer pricing law include:

**a) Specific powers of Assessment Officers to impose transfer pricing adjustments**

The Revenue Department's tax auditors will be granted the authority to adjust corporate taxpayers' revenue and expenses in relation to related-party transactions that were not at arm's length according to the rules, procedures, and conditions set out in the related Ministerial Regulation.

**b) Taxpayer and Taxpayer's Duties**

A company or juristic partnership who has related parties under the definition, and which have annual turnover exceeding the threshold specified in the related Ministerial Regulation (200 million Baht or more), is required to mandatory submit to the Revenue Department , along with the annual corporate income tax return, a report disclosed relationships with related parties and the total value of related-party transactions during the accounting period. Additionally, upon request by a Revenue Department officer, which can be made within five years after the filing of the Report, submit to the Revenue Department any evidence showing necessary information for the Revenue Department 's analysis of the related party transactions within specific time frame.

**c) Penalty for non-compliance**

Failure to comply with the transfer pricing disclosure, or submitting incorrect information, would be subject to a penalty of not exceeding Baht 200,000.

The law will be effective for the accounting periods beginning on or after 1 January 2019. Therefore, the deadline for the first transfer-pricing disclosure forms for taxpayers having an accounting period from 1 January through 31 December 2019 will be 29 May 2020.

## 6.2 VALUE ADDED TAX (VAT)

Under this tax regime, value added at every stage of the production process is subject to value added tax (currently at 7%). Those who are affected by this tax are: producers, providers of services, wholesalers, retailers, exporters and importers.

VAT must be paid on a monthly basis, and is calculated as follows:

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

Where output tax is the VAT which the operator collects from the purchaser when a sale is made, and input tax is the VAT which an operator pays to the suppliers of goods or services used in the operator's business.

If the result of this calculation is a positive figure, the operator must submit the remaining tax to the Revenue Department within 15 days from the end of each month. However, for a negative balance the operator is entitled to a refund in the form of cash or a tax credit.

### 6.2.1 Business Transactions with Zero-Rate VAT

- Exports
- International transport service by aircraft or sea – going vessels by a juristic person supplier
- Sale of goods or services to the civil service or state enterprises under foreign loan or aid schemes
- Sale of goods or services to the UN and its agencies, foreign embassies and consulates
- Sale of goods or services between bonded warehouses, between operators in export processing zones, or between the former and the latter

### 6.2.2 Business Transactions Which Are VAT – Exempt

- Operators earning less than Baht 1.8 million per year
- Sale or import of agricultural products, dead or live animals, and agricultural inputs, such as fertilizer, feed and chemicals
- Sale or import of newspapers, journals or text books
- Auditing, legal services, health services and other professional services
- Cultural and religious services
- Research and technical services
- Hire of services
- The sale of goods as specified by royal decree
- Goods exempt from import duties, such as personal effects

## 6.3 SPECIFIC BUSINESS TAX (SBT)

Some business that are not subject to VAT are instead subject to SBT, although certain entities and activities may be exempt from SBT. The tax is imposed on gross revenue and the rate of tax differs according to the nature of the business performed:

Business	Tax Base	Tax Rate (%)
1. Banking, Finance, and similar business	Interest, discount, service fees, other fees, and profits from foreign exchange	3.0
2. Life Insurance	Interest, service fees, and other fees	2.5
3. Pawn Brokerage	Interest, fees, and remuneration from selling overdue property	2.5
4. Real Estate	Gross receipts	3.0
5. Factoring	Interest, discount, service fees, and other fees	3.0

*Note: Local tax at the rate of 10% is imposed on top of SBT.*

## 6.4 SPECIAL TAXES

### 6.4.1 Petroleum Income Tax

The tax rate for most operators is 50% of the annual net profit from operations, including other activities incidental to petroleum operations.

### 6.4.2 Stamp Duty

Stamp duty is payable on most documents filed by companies with government agencies or entities and on official company documents. This includes transfers of land, leases, stock transfers, debentures, mortgages, life assurance policies, annuities, powers and attorney, promissory notes, letter of credit and cheques.

Instruments, not transactions or persons, are subject to stamp duty. For stamp duty purposes, an instrument is defined as any document chargeable with duty under the Revenue Code. The stamp duty rules are contained VI of Title II of the Revenue Code.

Only instruments listed in the stamp duty schedule are subject to stamp duty, and the persons liable to pay stamp duty are those associated with the instruments. For example, the persons executing the instruments, the holders of the instruments or the beneficiary. General exemptions are available under the Revenue Code. Rates vary according to the class of the instruments. Failure to pay stamp duty can result in a penalty or tax surcharge.

### 6.4.3 Excise Tax

Excise tax is levied on certain specific commodities or services, such as petroleum products, tobacco, liquor, soft drinks, electrical appliances, motor vehicles, telecommunications, golf courses, massage parlors, and etc.

#### **6.4.4 Customs Duty**

Tariff duties on goods are levied on an ad valorem (according to value) or a specific rate basis. The majority of goods imported by businesses are subject to rates ranging from 5% to 60%. The majority of imported articles are subject to two different taxes.

1. Tariff duty, calculated by multiplying the Cost, Insurance and Freight value(CIF value) of the goods by the duty rate. The duty determined is then added to the CIF value of the goods.
2. VAT is then levied on the total sum of the CIF value, duty and excise tax, if any.

Goods imported for re-export are generally exempt from import duty and VAT. Export duties are imposed on only a few items, including rice, hides, skins and leather, scrap iron or steel, rubber, teak and other kinds of wood.

Two exceptions to mandatory customs duties apply to the importation of machinery, equipment and materials for use by:

1. Oil and gas concessionaires and their contractors ; and
2. Certain companies receiving investments from the BOI.

#### **6.4.5 Capital Gains Tax**

There is no capital gains tax in Thailand. Capital gains are treated as ordinary income for the purpose of calculating income tax.

#### **6.4.6 Branch Profits Tax**

There is no branch profits tax in Thailand. Thai branches of foreign companies will generally only be taxed in Thailand on the net profit arising from business conducted in Thailand. Thai branches are subject to the same tax rate as resident companies. However, a separate profit remittance tax is imposed on profits that are remitted outside of Thailand.

#### **6.4.7 Signboard Tax**

This tax may be imposed at various rates per square metre (depending on the language) on any signs or billboards that display a name, trademark, or product for the purpose of advertising or providing information about the business.

#### **6.4.8 Property Tax**

Owners of land and buildings in designated areas may be subject to either local development tax (based on the unimproved capital value of land), or house and land tax (calculated as a percentage of actual or imputed annual rental value). Local development tax is based on the appraised value of land, as determined by the local authorities. Land that is subject to house and land tax is not subject to local development tax.

House and land tax covers all properties, with the exception of owner-occupied residences. The annual value is the official assessment of rental income that could be derived from such premises.

#### 6.4.9 New Land and Building Tax

In November 2018, the National Legislative Assembly passed a long-delayed bill on new land and building tax, which will replace the house and land tax and the local development tax, and which will come into effect on 1 January 2020. The new property tax rates are based on the appraisal value of the property and the category of the property, as follows.

Category of property	Statutory ceiling rate (As a percentage)	Appraisal value (Unit: million)	Applicable rate (As a percentage) of Thai baht)
<b>1. Agricultural use</b>	0.15	0 - 75	0.01
		> 75 - 100	0.03
		> 100 - 500	0.05
		> 500 - 1,000	0.07
		> 1000	0.1

Note: There is a tax exemption for agricultural land worth up to Baht 50 million belonging to individuals, and the new law will not be applicable to individual owners for the first three years.

<b>2. Residence</b>	0.3	0 - 50	0.02
		> 50 - 75	0.03
		> 75 - 100	0.05
		> 100	0.1

Note: For first homes, there is a tax exemption of up to Baht 50 million for owners of both the land and home, and whose names are on household registration documents, and up to Baht 10 million for those who own homes only and whose names are on household registration documents.

<b>3. Commercial use</b>	1.2	0 - 50	0.3
		> 50 - 200	0.4
		> 200 - 1,000	0.5
		> 1,000 - 5,000	0.6
		> 5000	0.7
<b>4. Undeveloped land</b>	3	0 - 50	0.3
		> 50 - 200	0.4
		> 200 - 1,000	0.5
		> 1,000 - 5,000	0.6
		> 5000	0.7

Note: Rates will be raised by 0.3% every three years, but will not exceed 3%.

#### 6.4.10 Inheritance Tax

In February 2016, the Inheritance Tax Act came into effect in Thailand. The act does not apply to an inheritance where the owner dies before the date that the act is effective, or to an inheritance received by the spouse of the owner.

The following recipients of an inheritance will be liable to pay the tax:

1. A person who has Thai nationality - This includes: (1) a legal entity organized under Thai law; (2) a foreign legal entity in which shareholders of Thai nationality hold more than 50% of the share capital at the time that the legal entity has the right to receive an inheritance; and (3) a foreign legal entity where more than 50% of those who have managing power have Thai nationality. This applies regardless of where the property making up the inheritance is situated.
2. A person who does not have Thai nationality, but who has permanent residence in Thailand under the immigration law, regardless of where the property making up the inheritance is situated.
3. A person who does not have Thai nationality, but who is receiving an inheritance of property situated in Thailand.

The following persons are exempt from the tax:

1. A person who receives an inheritance from the owner of the inheritance, where the owner has expressed his intention that the inheritance is to be used for the purposes of religion or education, or in the public interest.
2. A legal entity and governmental organization for religious, educational, or public purposes.
3. A person or international organization to which Thailand has an obligation under the United Nations or under international law, or in accordance with a treaty or agreement between Thailand and another country.

The following assets, received as an inheritance, are subject to the tax:

1. immovable property;
2. securities under the law governing securities and the securities market;
3. money that has been deposited, or other forms of money, where the owner of the inheritance has the right to withdraw it or claim it from the financial institution or person who accepted the deposit;
4. a registered vehicle; and
5. other assets as specified by a Royal Decree.

If the inheritance received has a value exceeding Baht 100 million, no matter where received, or if received all at once or over a period of time, only that portion which exceeds the value of Baht 100 million shall be taxed. For the purposes of this inheritance tax, the value of the inheritance subject to tax means the value of the asset received as an inheritance offset by the liabilities inherited.

The tax rate is 10% of the value of the inheritance subject to tax. However, if the recipient is a descendant or ancestor of the owner of the inheritance, the rate is reduced to 5%.

#### 6.4.11 Gift Tax

A new regulation on gift tax, as part of personal income tax, was announced in August 2015, and became effective from February 2016 onwards. The following items will be assessable for personal income tax purposes:

1. Immovable property or rights of occupation of immovable property given to a legitimate son or daughter (but not including an adopted child) without compensation, the value of which exceeds Baht 20 million in that calendar year;
2. Gifts (such as cash, shares, and other property), except for the following:
  - gifts received from an ancestor, a descendant, or spouse, the value of which does not exceed Baht 20 million in that calendar year;
  - gifts received under moral obligation or gifts received in a ceremony or on occasions in accordance with established custom from a person who is not an ancestor, descendant, or spouse, the value of which does not exceed Baht 10 million in that calendar year; and
  - gifts received for religious, educational, and public expenditure. A taxpayer can choose to pay tax of 5% of the taxable portion without having to include the amount in the calculation of net taxable income for the year-end.

## 7. TAXES ON INDIVIDUALS

### 7.1 PERSONAL INCOME TAX

Personal Income Tax (PIT) is a direct tax levied on the taxable income of a person. A person is defined as an individual, an ordinary partnership, a non-juristic body of person, a deceased person, and an undivided estate. In general, a person liable to PIT has to calculate his or her tax liability, file tax returns, and pay tax, if any, on a calendar year basis. Taxpayers are classified into 'resident' and 'non-resident'.

A resident applies to any person residing in Thailand for a period, or periods, aggregated at 180 days or more in any tax (calendar) year. A resident of Thailand is liable to pay tax on income from sources in Thailand on a cash basis, regardless of where the money is paid, and on the portion of income from foreign sources that is brought into Thailand in the same year that the foreign income is derived. A non-resident is, however, only subject to tax on income from sources in Thailand.

#### 7.1.1 Taxable Income

Income chargeable to PIT is called 'assessable income'. The term covers income both in cash and in kind. This means that any benefits provided by an employer or other persons, such as rent-free housing or the amount of tax paid by the employer on behalf of the employee, will also be treated as assessable income of the employee for the purpose of PIT. Assessable income is divided into 8 categories. Certain deductions and allowances can be offset against assessable income in order to calculate taxable income. Taxpayers must make deductions from assessable income before the allowances are granted.

Types of Income	Deductions
1. Income from employment	50% but not exceeding Baht 100,000
2. Income from independent personal services	50% but not exceeding Baht 100,000
3. Income from goodwill , copyright and other right	50% but not exceeding Baht 100,000
4. Income in the nature of interest, dividend, capital gain	N/A
5. Income from letting out of property <ul style="list-style-type: none"> <li>▪ building and wharves</li> <li>▪ agricultural land</li> <li>▪ all other types of land</li> <li>▪ vehicles</li> <li>▪ any other type of property</li> </ul>	Actual expenses or 30% Actual expenses or 20% Actual expenses or 15% Actual expenses or 30% Actual expenses or 10%
6. Income from professional services (law, medical practice, engineering, architecture, accountancy and fine arts)	Actual expense or 30%, except for the medical profession where 60% is allowed
7. Income from the hire of work where the taxpayer is obliged to provides essential materials besides tools	Actual expense or 70%
8. Income derived from business, commerce, agriculture, industry, transport, or any other activities not specified	Actual expense or between 40% and 60%, depending on the types of income

### 7.1.2 Tax Rates for Resident and Non-Resident Individuals

Taxable Income (Baht)	Tax Rate (%)	Tax Amount	Accumulated Tax
0 – 150,000	Exempt	0	0
150,001 – 300,000	5	7,500	7,500
300,001 – 500,000	10	20,000	27,500
500,001 – 750,000	15	37,500	65,000
750,001 – 1,000,000	20	50,000	115,000
1,000,001 – 2,000,000	25	250,000	365,000
2,000,001 – 5,000,000	30	900,000	1.265,000
5,000,001 and over	35		

Persons over the age of 65 are granted an exemption on the first Baht 190,000 of taxable income instead of the normal Baht 150,000 threshold.

### 7.1.3 Separate Taxation

There are several types of income that a taxpayer may elect to be assessed on separately.

#### Income from the Sale of Immovable Property

Special rules apply to calculating the gains on the sale of immovable property. This may allow a taxpayer to pay a final withholding tax to the Land Department in lieu of including the gain on sale as normal assessable income.

#### Interest

Interest income may, at the taxpayer's choice, be excluded from the calculation of PIT, providing that tax at 15% is withheld at source. However, the following forms of an individual's interest income are exempt from any tax:

1. Interest on bonds or debentures issued by a government organization,
2. Interest on saving deposits in commercial banks if the aggregate amount of interest received is not more than Baht 20,000 during a taxable year.

#### Dividends

A resident individual taxpayer that derives dividends has a choice of including the dividend in PIT assessable income or paying a final withholding tax at 10% and excluding such dividend from their income. Taxpayers who choose the first option must gross up the dividend to include the 10% withholding tax deducted, as well as, the company tax paid on that dividend. However, a tax credit is granted for both the withholding tax and company tax deducted.

## 7.2 FILING AND PAYMENT

A taxpayer is liable to file a PIT return (Form PND 90 or 91) and makes a payment to a district Revenue Department office by the last day of March following the taxable year. A taxpayer who derives categories of income 5 to 8 (as indicated earlier in this section) during the first 6 months of taxable year is also required to file a half-yearly return (Form PND 94), and makes a payment to a district Revenue Department office by the last day of September of that taxable year. Any withholding or half-yearly tax that has been pre-paid can be used as a credit against the end of year tax liability.

## 8. WITHHOLDING TAXES

### 8.1 PAYMENTS TO RESIDENT INDIVIDUALS

For certain categories of income, the payer of income has to withhold tax at source, file the necessary return (Form PND 1, 2, or 3) and submit the amount of tax withheld to the district Revenue Department office. The tax withheld is then credited against the tax liability of the taxpayer when the PND return is filed. The following table illustrates the withholding tax rates for some categories of income.

Types of Income	Withholding Tax Rate
1. Employment income / independent personal services	0 – 35%
2. Interest	15%
3. Dividends	10%
4. Royalty fees	0 – 35%
5. Rents (*)	5%
6. Prizes	5%
7. Hire of work and professional services (*)	3%
8. Public entertainer remunerations	5%
9. Advertising fees (*)	2%
10. Capital gains (**)	0 – 35%

(\*) Not applicable if an individual is the payer of income.

(\*\*) Not applicable for sale of shares on the SET

### 8.2 PAYMENTS TO RESIDENT CORPORATIONS AND BRANCHES OF FOREIGN COMPANIES

Certain types of income paid to companies are subject to withholding tax at source. The withholding tax rates depend on the types of income and the tax status of the recipient. The payer of income is required to file the return (Form PND 53) and submit the amount of tax withheld to the district Revenue Department offices within 7 days of the following month in which the payment is made. The tax withheld is credited against the final tax liability of the taxpayer. The following table illustrates the withholding tax rates on some important types of income. Government agencies are required to withhold tax at the rate of 1% on all types of income paid to Thai companies.

Types of Income	Withholding Tax Rate
1. Interest	10% if paid to associations or foundations, or 1% in other cases
2. Dividends	10%
3. Royalty fees	10% if paid to associations or foundations, or 3% in other cases
4. Rent	10% if paid to associations or foundations, or 5% in other cases
5. Prizes	5%
6. Service and liberal profession	3%
7. Hire of work	3% if paid to Thai company or foreign company that has a permanent branch in Thailand  5% if paid to foreign company without a permanent branch in Thailand
8. Advertising fees	2%

### 8.3 PAYMENTS TO NON-RESIDENT COUNTRIES

Apart from dividends, which attract withholding tax at 10%, most other payments applicable to a non-resident that resides in a non-DTA country (including interest, royalties, rent, management fees, consultancy payments, and capital gains) would attract withholding tax at 15%. A DTA, however, exists with many countries. The rates of withholding tax may therefore be reduced, depending on the rate specified by the applicable DTA ( See the following section on Double Taxation Agreements).

## 9. DOUBLE TAXATION AGREEMENTS

### 9.1 DOUBLE TAXATION AGREEMENTS

Thailand concluded its first Double Tax Agreement (DTA) with Sweden in 1963. The Thai DTA network continues to be expanded and updated.

The DTA applies to persons who are residents of the Contracting States. In order to be classified as a Thai resident and be entitled to treaty benefits, a person must be one of the following:

- An individual who stays in Thailand for a period/periods of 180 days or more in a calendar year
- A company that is incorporated under the Civil and Commercial Code of Thailand.

#### 9.1.1 Taxes Covered by DTAs

DTAs apply only to income taxes, namely personal income tax, corporate income tax, and petroleum income tax. Other indirect taxes such as VAT and specific business tax (SBT) are not covered by the DTAs.

#### 9.1.2 Income Types

In general, a DTA does not stipulate any specific item of income and tax rate. What it states is whether the source of resident country is entitled to tax certain income. If the source country has taxing rights, the income will be subject to tax according to the domestic laws of that country.

The DTA also prescribes a tax rate level on investment income, namely dividends, interest, and royalty fees. This means the source country can tax investment income at a rate not exceeding the rate prescribed within the agreement. In many cases, tax rates within the DTA are lower when compared to domestic tax rates, in order to reduce tax impediments for cross border trade and investments.

Some Articles of the DTAs clearly do not allow the source country to exercise taxing rights on certain income, for example income from international air transport and business profits, providing the business is not conducted through a permanent establishment (PE) in the source country.

### 9.2 TAX RATES

Withholding tax is generally applied at a rate of 10% for dividends and 15% for interest and royalty fees. However, for treaty countries, the lower rate of withholding tax is provided, on the condition that the recipient of dividends, interest, and royalty fees does have a PE or fixed base in Thailand. The following table outlines the general tax applicable to dividends, interest, and royalty payments under Thailand's DTAs:

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Country	Dividends (1)	Interest (2)	Royalty Fees (3)
1. Armenia	10%	10%, 15%	15%
2. Australia	10%	10%, 15%	15%
3. Austria	10%	10%, 15%	15%
4. Bahrain	10%	10%, 15%	15%
5. Bangladesh	10%	10%, 15%	15%
6. Belarus	10%	10%, 15%	15%
7. Belgium	10%	10%, 15%	5%, 15%
8. Bulgaria	10%	10%, 15%	5%, 15%
9. Cambodia	10%	10%, 15%	10%
10. Canada	10%	10%, 15%	5%, 15%
11. Chile	10%	10%, 15%	5%, 15%
12. China	10%	10%, 15%	15%
13. Cyprus	10%	10%, 15%	5%, 10%, 15%
14. Czech Republic	10%	10%, 15%	5%, 10%, 15%
15. Denmark	10%	10%, 15%	5%, 15%
16. Estonia	10%	0%, 10%	8%, 10%
17. Finland	10%	10%, 15%	15%
18. France	10%	3%, 10%, 15%	5%, 15%
19. Germany	10%	10%, 15%	5%, 15%
20. Hong Kong	10%	10%, 15%	5%, 10%, 15%
21. Hungary	10%	10%, 15%	15%
22. India	10%	10%, 15%	15%
23. Indonesia	10%	10%, 15%	15%
24. Ireland	10%	10%, 15%	5%, 10%, 15%
25. Israel	10%	10%, 15%	5%, 15%
26. Italy	10%	10%, 15%	5%, 15%
27. Japan	10%	10%, 15%	15%
28. Korea	10%	10%, 15%	15%
29. Kuwait	10%	10%, 15%	15%
30. Laos	10%	10%, 15%	15%
31. Luxembourg	10%	10%, 15%	15%
32. Malaysia	10%	10%, 15%	15%

Country	Dividends (1)	Interest (2)	Royalty Fees (3)
33. Mauritius	10%	10%, 15%	5%, 15%
34. Myanmar	10%	0%, 15%	5%, 10%, 15%
35. Nepal	10%	10%, 15%	15%
36. Netherland	10%	10%, 15%	5%, 15%
37. New Zealand	10%	10%, 15%	10%, 15%
38. Norway	10%	10%, 15%	5%, 10%, 15%
39. Oman	10%	10%, 15%	15%
40. Pakistan	10%	10%, 15%	10%, 15%
41. Philippines	10%	10%, 15%	15%
42. Poland	10%	10%, 15%	5%, 15%
43. Romania	10%	10%, 15%	15%
44. Russia	10%	10%, 15%	15%
45. Seychelles	10%	10%, 15%	15%
46. Singapore	10%	10%, 15%	15%
47. Slovenia	10%	10%, 15%	10%, 15%
48. South Africa	10%	10%, 15%	15%
49. Spain	10%	10%, 15%	5%, 8%, 15%
50. Sri Lanka	10%	10%, 15%	15%
51. Sweden	10%	10%, 15%	15%
52. Switzerland	10%	10%, 15%	5%, 10%, 15%
53. Taiwan	10%	10%, 15%	10%
54. Tajikistan	10%	10%	5%, 10%
55. Turkey	10%	10%, 15%	15%
56. Ukraine	10%	10%, 15%	15%
57. United Arab Emirates	10%	10%, 15%	15%
58. United Kingdom	10%	10%, 15%	5%, 15%
59. United States	10%	10%, 15%	5%, 8%, 15%
60. Uzbekistan	10%	10%, 15%	15%
61. Vietnam	10%	10%, 15%	15%

1. The lower rate generally applies if certain conditions are met, including having a specified minimum percentage of equity in the company paying the dividend.
2. The lower rate generally applies to interest for which a financial institution is beneficially entitled.
3. The lower rate generally applies to payments made as consideration for the right to use any copyright of literary, artistic, or scientific work.