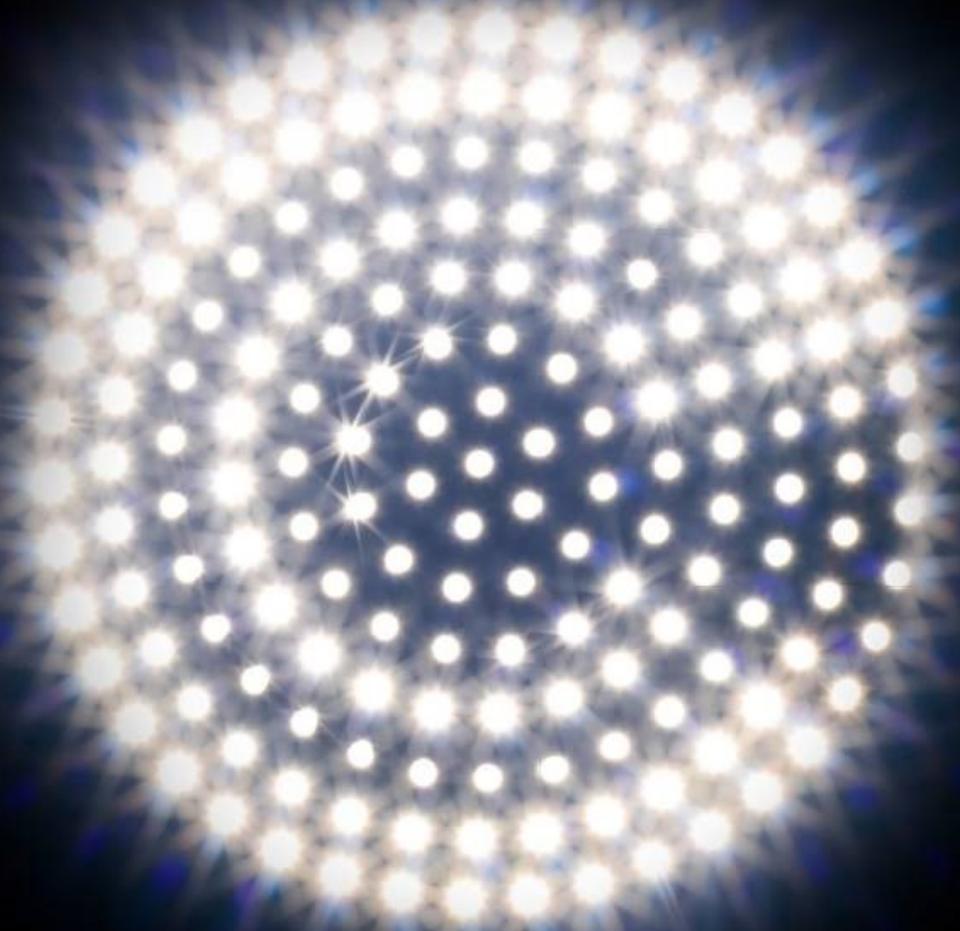


**Deloitte.**



**Taxation and Investment  
in Thailand 2017**

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# 1.0 Investment climate

## 1.1 Business environment

Thailand is a constitutional monarchy with a parliamentary democracy. The prime minister acts as the head of government (the prime minister usually is the leader of a majority political party). The king is the head of state, who exercises sovereign power through the parliament, the cabinet and the courts, under the provisions of the Constitution.

Thailand is divided into 77 provinces, each of which is divided into districts and sub-districts. Bangkok (the capital) and Pattaya are special governed districts.

The Thai economy, traditionally based on agricultural exports, has transformed dramatically over the past few decades, with industry and services assuming a more prominent role. Industrial activity is concentrated in the central region around the capital, Bangkok.

Thailand enjoys Generalized System of Preferences benefits from a number of countries/regions, including Australia, Canada, the EU, New Zealand and the US, and has comparable access to the Japanese market.

Thailand is a member of the World Trade Organization (WTO). Along with Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore and Vietnam, Thailand is a member of the Association of Southeast Asian Nations (ASEAN), a trade and social alliance intended to foster economic and social cooperation among ASEAN members and to establish a joint market for attracting foreign trade and investment. Regional cooperation has developed economic integration by forming an ASEAN Economic Community (AEC), which aims to create a single market and achieve the free movement of goods, services, investment, capital and skilled labor. Thailand also is a member of the Asia-Pacific Economic Cooperation (APEC).

### Price controls

The Department of Internal Trade in the Ministry of Commerce administers price controls under the Price of Goods and Services Act. Price controls apply to certain goods and services, such as petroleum, diesel, delivery and repair services, etc.

The Trade Competition Board can draft and enforce regulations and declare particular goods or businesses to be controlled, subjecting them to price and monopoly controls. These regulations are reviewed at least annually and are subject to change, depending on economic conditions and other factors.

The Price of Goods and Services Act identifies business practices that are considered illegal or an infringement of the free market system.

### Intellectual property

Thailand has three major laws dealing with intellectual property: the Patent Act, Trademark Act and Copyright Act.

The Patent Act adopted internationally recognized rules and principles, including those of the Paris Convention (of which Thailand is a member party), the Patent Co-operation Treaty, the World Intellectual Property Organization Model Law, the Harmonization Treaty and the Draft Agreement on Trade-Related Aspects of Intellectual Property (TRIPs), including Trade in Counterfeit Goods.

The Patent Act recognizes priority rights based on filing dates. An application for a patent filed in Thailand within 12 months (six months for a product design patent) after a prior application has been filed abroad will be deemed to be filed in Thailand on the date the prior application was filed. This priority right may be claimed, provided the foreign country involved offers reciprocal rights to Thai nationals.

Trademark legislation provides protection for international brands registered in Thailand and protects Thai brands registered abroad. The Trademark Act also provides for the registration of service and certification marks. The owner of a registered trademark that has been infringed may file an action claiming compensation.

The Copyright Act and subsequent amendments have brought Thailand more in line with international standards under the Bern Convention and the TRIPs agreement. The Copyright Act protects literary, dramatic, artistic, musical, scientific, audiovisual, cinematographic, sound and video broadcasting works. Computer programs also are protected as a form of literary work.

Thailand's copyright law grants the right to file a civil or criminal complaint to enforce copyright protection. The law covers two types of offenses: direct and secondary infringements. In a direct infringement, exclusive rights for merchandise have been exercised without the authorization of the copyright holder or performer; a secondary offense is deemed to have been committed when infringement occurs without a desire for profit.

The Central Intellectual Property and International Trade Court is responsible for criminal and civil cases relating to violations of trademarks, copyrights and patent law, and/or the counterfeiting or imitation of trademarks. Although jurisdiction of the court technically is limited to Bangkok and its vicinity, the court effectively has jurisdiction throughout the country because there are no regional intellectual property tribunals.

## 1.2 Currency

The currency is the Thai baht (THB).

## 1.3 Banking and financing

Financial institutions in Thailand offer a full range of financial services under the supervision of the Bank of Thailand.

A commercial bank, finance company or *crédit foncier* company must operate as a public company under a license from the Minister of Finance upon a recommendation of the Bank of Thailand (central bank).

The Bank of Thailand issues two types of license to domestic banks: a commercial bank license and a retail bank license. A commercial bank may provide a wide range of financial services, including broking, trading and underwriting of bonds and investment units (excluding underwriting or dealing with equity securities). A retail bank may offer basic services aimed at small and medium-sized enterprises (SMEs) and individuals. Retail banks face the same restrictions as commercial banks, but are not permitted to deal in foreign exchange, derivatives and other high-risk transactions. A retail bank may request to be upgraded to commercial bank status, provided, among other things, it maintains "tier 1" capital of no less than THB 10 billion. Institutions unable or unwilling to upgrade to either category of bank are designated credit companies, which are able to offer limited credit services but are not permitted to take deposits.

A foreign bank also may apply for a commercial or retail license. A foreign bank may operate in Thailand through a subsidiary, which may engage in the same activities as a commercial bank and may open one branch in Bangkok and its vicinity (i.e. Pathumthani, Nakhonpathom, Nonthaburi, Samutprakarn and Samutsakorn) and three branches elsewhere (but only one branch each year). The minimum registered and paid-up capital for a subsidiary is THB 10 billion. Alternatively, a foreign bank may operate in Thailand through a full branch, which has the same scope of business as a commercial bank, but is not allowed to open additional branches.

A foreign bank is permitted to hold a majority shareholding in a Thai commercial bank (known as a "hybrid bank"). Most foreign firms obtain investment capital from overseas and provide local markets for short-term working capital and cash management services. They work primarily with the largest Thai banks and branch banks from their home countries.

Certain banks can operate as International Banking Facilities, which allows them to engage in, *inter alia*, offshore and domestic lending, cross-currency exchange transactions and debt guarantees.

Bangkok, the capital, is the financial center of Thailand.

## 1.4 Foreign investment

Thailand is an attractive destination for foreign investment, with investment policies focusing on the liberalization and promotion of free trade. Foreign investment—especially investment that contributes to the development of skills, technology, innovation and sustainable development—is actively promoted.

The Foreign Business Act is the main law governing foreign investment and defining foreign ownership. The law restricts access to certain businesses (such as transport, retail and wholesale and services) for reasons of security, cultural heritage or perceived competitive disadvantage.

A foreign juristic entity is defined as an entity that is not registered in Thailand, or that is registered in Thailand and has a foreign shareholding equal to 50% or more of the total registered capital. A limited partnership or ordinary registered partnership is classified as foreign if the managing partner or manager is a non-Thai. Foreigners currently may not retain majority control through nominees, and penalties apply for violations. Notably, however, 100% foreign-owned businesses are permitted, except for 43 restricted businesses in three categories covered in the Foreign Business Act.

Some of Thailand's free trade agreements and certain laws (e.g. the Investment Promotion Act and Industrial Estate Authority of Thailand Act) relax the ownership restrictions under the Foreign Business Law.

The Board of Investment (BOI), which operates under the directives of the Office of the Prime Minister, is the principal government agency for encouraging investment in the country. Foreign investment in Thailand does not require approval from the BOI, provided the necessary operating permits have been obtained. Investors should determine whether the incentives available through the BOI outweigh the various restrictions involved.

## 1.5 Tax incentives

A variety of tax and nontax (i.e. special services, guarantees, approval, etc.) incentives are offered to investors through the BOI, depending on the group classification for their activities. Nontax benefits are available to all projects receiving BOI promotion, regardless of the type of activity or conditions. Tax-based incentives depend on the group classification (Group A or Group B) for the activities and the merit of the project, as determined under the BOI's approach for granting incentives. The BOI's seven-year investment promotion strategy for 2015-2021 applies to all applications submitted. BOI-promoted companies are subject to the policies and criteria for investment promotion under BOI Announcement No. 2/2557 (dated 3 December 2014).

Under the strategy, incentives are granted according to the group classification for the activity, and additional incentives may be available based on the merit of the project, as described below.

- **Activity-based incentives:** These incentives depend on the group classification for the activity, which indicates its importance. Group A activities will receive tax and nontax incentives, while Group B activities will receive mainly nontax incentives and certain import duty benefits (if applicable to the promoted activity).
- **Merit-based incentives:** These incentives are granted to encourage investment/expenditure in certain types of projects (involving enhancement of competitiveness, decentralization or industrial area development) that benefit the country or industry overall.

### Activity-based incentives

The activities falling under each group classification and the incentives granted for each group are listed below.

- **A1 activities:** Knowledge-based activities will receive an eight-year corporate income tax exemption, without a cap; exemptions from import duty on machinery and raw materials; and nontax incentives;
- **A2 activities:** Activities to develop the country's infrastructure will receive an eight-year corporate income tax exemption, with a cap; exemptions from import duty on machinery and raw materials; and nontax incentives;
- **A3 activities:** High-technology activities will receive a five-year corporate income tax exemption, with a cap, unless otherwise provided; exemptions from import duty on machinery and raw materials; and nontax incentives;
- **A4 activities:** Activities that add value to domestic resources and strengthen the supply chain will receive a three-year corporate income tax exemption, with a cap; exemptions from import duty on machinery and raw materials; and nontax incentives;
- **B1 activities:** Certain supporting industry activities will receive exemptions from import duty on machinery and raw materials; and nontax incentives; and

- **B2 activities:** Supporting industry activities not falling in Group B1 will receive an exemption from import duty on raw materials; and nontax incentives.

## Merit-based incentives

Incentives granted based upon the merit of a project are available under three main schemes: (1) enhancement of competitiveness; (2) decentralization; and (3) industrial area development.

1. **Enhancement of competitiveness:** Additional corporate income tax incentives may be granted, depending on the types and ratios of eligible investment or expenditure for the promoted company. The corporate income tax exemption cap may be increased by a specified percentage of eligible investment or expenditure, and the corporate income tax exemption period also may increase, as indicated below.

Types of eligible investment/expenditure	Additional corporate income tax exemption cap
• Research and development (R&D)	200%
• Donations to technology and human resources development funds, educational institutes, specialized training centers, R&D institutions or governmental agencies in science and technology	100%
• Intellectual property acquisition/licensing fees for commercializing technology developed in Thailand	100%
• Advanced technology training	100%
• Development of local suppliers (i.e. those having at least 51% Thai shareholders) in advance technology training and technical assistance	100%
• Product and packaging design	100%

Ratio of qualified eligible investment/expenditure to combined revenue for project's first three years	Additional corporate income tax exemption (with additional cap)
1% or ≥ THB 200 million	1 year
2% or ≥ THB 400 million	2 years
3% or ≥ THB 600 million	3 years

Separate corporate tax incentives, e.g. additional deductions for certain R&D costs and training expenses, may be available under the Revenue Code. See under 3.3, below.

2. **Decentralization:** Under this scheme, additional incentives will be granted to projects located in 20 specified provinces with the lowest per capita income (i.e. the Kalasin, Chaiyaphum, Nakhon Phanom, Nan, Bueng Kan, Buri Ram, Phrae, Maha Sarakham, Mukdahan, Mae Hong Son, Yasothon, Roi Et, Si Sa Ket, Sakhon Nakhon, Sa Kaew, Sukhothai, Surin, Nong Bua Lamphu, Ubon Ratchatani and Amnatcharoen provinces). Projects in these 20 provinces will receive the following additional incentives:
  - Additional three-year corporate income tax exemption;
  - Groups A1 and A2 will receive a 50% corporate income tax reduction for five years upon the expiration of the corporate income tax exemption period;
  - Double deduction for costs of transportation, electricity and water supply for 10 years; and
  - Additional 25% deduction for costs of installation or construction of facilities.

3. **Industrial area development:** An additional one-year corporate income tax exemption will be granted for projects located in industrial estates or promoted industrial zones.

### Other incentives

Certain other incentives may be available for activity/investment in specified locations:

- **Industrial development in border provinces in Southern Thailand:** Certain incentives are applicable for activities in four border provinces in Southern Thailand and four districts in the Songkhla province. These may apply to existing projects, new projects and projects located in industrial estates or industrial zones or clusters in border provinces.
- **Investment in special economic zones:** Certain incentives are available for projects located in special economic zones specified by the Policy Committee. Five border provinces have been identified as special economic zones, i.e. the Tak, Mukdahan, Sa Kaew, Songkhla and Trat provinces.

### International headquarters (IHQ)/International trading center (ITC)/Regional operating headquarters (ROH)

IHQ and ITC schemes have been introduced under the auspices of the BOI to replace the ROH/International Procurement Office (IPO) scheme from a BOI perspective; however, the establishment of the IHQ/ITC regime did not revoke the availability of the ROH tax scheme that operates under the auspices of the Revenue Department. The IHQ and ITC regimes relax some of the conditions that previously were imposed on ROHs/IPOs from a BOI perspective.

An IHQ is a Thai-incorporated company that provides any of the following services to its branches or affiliated Thai or foreign enterprises: managerial or technical services; support services such as general management, procurement of raw materials and parts, research and development of products, technical support, marketing or sales promotion, human resource management or training, financial advisory, etc.; or financial management services, including services by corporate treasury centers, borrowing or lending in Thai baht from financial institutions or associated enterprises in Thailand, etc.

An ITC is a Thai-incorporated company that conducts business activities in relation to the procurement and sale (wholesale only) of goods, raw materials and parts, or provides other relevant services in relation to international trade. There is no specific scope of “other relevant services” in relation to international trade under the BOI; however, the BOI has adopted the scope of businesses/services of an ITC from the Revenue Department, and these may include product procurement, temporary warehousing, product packaging, product transportation, etc.

IHQs, ITCs and ROHs are eligible for different tax incentives available from the Revenue Department, provided the required conditions are fulfilled.

The tax incentives for qualifying IHQs include a corporate income tax exemption or a reduced income tax rate of 10% on certain income, depending on the source of the income (e.g. income from qualifying services, as well as income from R&D, financial management (i.e. treasury center) services, royalties, dividends and capital gains derived from foreign affiliated enterprises). The tax benefits also include withholding tax exemptions for some types of income (for example, interest paid to foreign lenders), and an exemption from the specific business tax on income from financial management services, etc.

The tax incentives for qualifying ITCs include a corporate income tax exemption on income from “out-out” transactions (i.e. the procurement of goods from outside Thailand from a group company and the sale to another group company without importing the goods into Thailand).

The tax incentives for qualifying ROHs include a corporate income tax exemption or a reduced income tax rate of 10% on certain income, depending on the source of the income (e.g. income from qualifying services, as well as income from R&D, marketing, general management, dividends, royalties, etc.).

### Incentives for SMEs

The BOI also has introduced measures to enhance and strengthen the capabilities of SMEs, to enable them to compete more effectively at an international level and to promote investment under the investment promotion strategy for 2015–2021. (These measures are separate from the reduced corporate tax rates for SMEs that are described under 3.3, below.) Under the rules, certain activities carried out by SMEs are eligible for tax benefits and incentives, such as an exemption from corporate income tax from two to eight years (depending on the type of activities) and an exemption from

import duty. Merit-based incentives may be available upon application, and other privileges may be granted.

SMEs wishing to receive the incentives must apply by 31 December 2017 and have a minimum investment capital of THB 500,000 (excluding land and working capital) per project, Thai ownership of at least 51% of the registered capital, a debt-to-equity ratio not exceeding 3:1 and net fixed assets or investment size (excluding land and working capital) not exceeding THB 200 million for all promoted and nonpromoted activities, combined.

Seven overall categories of activities, comprising 38 manufacturing and service activities, will be eligible for incentives, including the following:

- Manufacturing of biological fertilizers and organic fertilizers;
- Manufacturing of glass or ceramic products;
- Manufacturing of musical instruments;
- Manufacturing of metal products or metal parts;
- Manufacturing of rubber tires for vehicles;
- Manufacturing of electrical products and parts;
- Manufacturing of pharmaceuticals;
- Operation of logistic service centers; and
- Provision of motion picture supporting services.

If an SME makes an additional investment or incurs additional expenditure on a project that will benefit the country or the industry as a whole, such as R&D, technology and innovation, expenditure incurred for the acquisition of intellectual property, licensing fees paid for commercializing technology developed in Thailand, advanced technology training, etc., the company will be entitled to additional tax incentives for one to three years, based on the merits of the project.

## 1.6 Exchange controls

Exchange control in Thailand falls under the jurisdiction of the Bank of Thailand, as entrusted by the Ministry of Finance (MOF). The Exchange Control Act and its regulations set out the governing principles.

Thai and multinational companies may operate treasury centers in Thailand to manage foreign currency for their group companies. An eligible applicant must have at least (i) three affiliates or subsidiaries in Thailand or its neighboring countries, or Vietnam; or (ii) two affiliates or subsidiaries in Thailand with affiliates or branches in at least two other countries, engaging in import or export in an international trading business or international service business that is not in a financial business. A qualifying treasury center may carry out the following activities:

- Payment and collection of foreign currency obligations and receipts relating to international trade and services for its group companies;
- Netting of income or obligations and receipts in foreign currency with business counterparties abroad;
- Buying, selling or exchanging of foreign currency for group companies, including the managing of exchange rate risks; and
- Foreign currency liquidity management.

The Money Laundering Control Act requires all financial institutions to report to the Anti-Money Laundering Office within seven days any transaction involving more than THB 2 million in cash or THB 5 million or more in assets, or any suspicious transaction regardless of whether it meets these criteria. Any additional facts or information that may be relevant also must be reported without delay. Imprisonment of no more than two years or a fine of THB 50,000 to THB 500,000, or both, will be imposed for a false report or where the truth has been concealed from the Anti-Money Laundering Office.

Commercial banks must limit loans for private consumption, holding companies and property firms.

A 15% final withholding tax is imposed on interest earned on nonresident accounts. Commercial banks may process repayments of foreign loans without limit, but evidence of inward remittances of loans over USD 50,000 or its equivalent must be provided. Outward remittances of share sales may be processed by commercial banks without limit. The inward remittance of funds is permitted without limit, although conversion into Thai baht with an authorized financial institution or deposit in a foreign currency account is required immediately after payment is received, and within 360 days from the transaction date. Apart from commercial bank lending limits, no restrictions apply to Thai or foreign currency (or negotiable instruments) remitted into Thailand by foreign businesses or individuals.

Outward repatriation payments may not be made in Thai baht, but may be made in any other currency. However, an exception applies for the transfer of funds made for the purpose of investing in or lending to business entities in Vietnam or in Thailand's neighboring countries; such transfers may be made in Thai baht and/or in another currency.

Authorized banks may approve the remittance of USD 1 million or its equivalent at a market rate per year from a Thai national to a relative residing abroad. A person may bring in or take out of Thailand foreign currency exceeding USD 20,000 or its equivalent, provided the amount is declared to the Customs officials. Up to THB 2 million can be brought out of Thailand to bordering countries, including Vietnam and the People's Republic of China (only Yunnan province), and up to THB 50,000 to other countries without authorization. Bringing Thai currency exceeding THB 450,000 out of Thailand to bordering countries, including Vietnam and Republic of China (only Yunnan Province), requires a customs declaration.

# 2.0 Setting up a business

## 2.1 Principal forms of business entity

Thai law recognizes five main types of business organization: ordinary partnership, ordinary registered partnership, limited partnership, limited company and public limited company. The first four types of entity are governed by the Civil and Commercial Code (CCC), and the last type by the Public Limited Companies Act, BE 2535 (AD 1992) (PLCA). Branch offices, representative offices and regional offices are recognized under the Foreign Business Act, BE 2542 (AD 1999) (FBA).

The nature of the intended business operations will be an important factor in selecting the appropriate form of business organization. For a private or public limited company, if 50% or more of the company's shares are owned by a foreigner, as defined in the FBA, the company will be considered foreign and subject to the act, which prohibits the operation of certain business activities unless approval is obtained from the Ministry of Commerce (MOC) or the company is otherwise exempted by minimum capital or other laws (e.g. by virtue of the Investment Promotion Act, BE 2520 (AD 1977) administered by the BOI). Foreign investors usually carry on business through a limited company, branch or representative office.

### Formalities for setting up a company

All business organizations must be registered with the Department of Business Development of the MOC, and with the Revenue Department for certain tax purposes (such as value added tax (VAT) registration or specific business tax purposes); however, an ordinary partnership is not required to be registered with the MOC. Businesses that are subject to corporate income tax in Thailand must obtain a tax identification number from the Revenue Department within 60 days after incorporation or registration.

A limited company is formed through a process that leads to the registration of a memorandum of association (articles of incorporation) and articles of association (bylaws), as its constitutive documents. A public limited company can apply to have its securities listed on the stock exchange of Thailand, provided certain requirements are met.

### Forms of entity

#### Requirements of private and public limited companies

**Capital:** *Both:* There is no specific minimum registered capital requirement. However, for private companies, the value of each share may not be less than THB 5, there must be at least three shareholders at all times and at least 25% of the share value must be paid in. For a public limited company, 100% of the share capital must be paid in. Shares may be allotted as paid in cash, services or property. The shareholders usually determine the value of equity contributed in kind, and the registrar of the MOC will rely on the appraisal value of services or property provided by the shareholders of limited companies (for a public company, the registrar adjudicates on the "reasonable" value of noncash capital contributions). At the time of each dividend distribution, private companies must appropriate at least 5% of the profit arising from the business of the company to a reserve fund, until the fund reaches 10% of the registered capital. A public limited company must allocate at least 5% of after-tax profits minus the accumulated deficit to a reserve fund every year, until the fund reaches 10% of the registered capital.

**Founders, shareholders:** *Private limited company:* At least three founders (promoters) and shareholders are required. The promoters must be individuals (Thai or foreign) and each founder must subscribe for at least one share of the company (the shares held by promoters may be transferred after incorporation). *Public limited company:* A minimum of 15 promoters is required to incorporate. No nationality restrictions apply, but more than half of the promoters must reside in Thailand. Promoters must subscribe to at least 5% of the registered capital, in the form of fully paid-up shares. At least 50% of the number of shares specified in the memorandum of association must be offered to the public. All promoters must hold their shares for at least two years from the date of company registration, unless approval to transfer the shares is obtained at the general meeting of shareholders. A public limited company may offer its shares to the public after registering the memorandum of association with the MOC.

**Directors, board members:** *Both:* The CCC does not restrict the number or nationality of directors; a director authorized to bind the company can be a Thai citizen or an alien. If an alien director works in Thailand, he/she must hold a work permit. However, businesses that are subject to specific laws may be required to maintain a specific ratio of Thais to aliens on the board or in management. *Public limited company:* The board of directors must have at least five members and at least half of the directors must reside in Thailand. Shareholders elect directors. At every annual ordinary shareholders' meeting, one-third of the directors must resign and stand for re-election. Directors may be liable for damages to the company caused by their failure to carry out their duties. The director of a limited company must attend the board of directors' meetings; a proxy is not allowed and conference calls or circular meetings are not accepted.

**Management:** *Both:* The board of directors is responsible for the day-to-day management of the company. There is no requirement that labor be represented in management.

**Control:** *Private limited company:* Unless otherwise provided by the company's articles of association, most decisions at the shareholders' meeting are made by majority vote. However, for certain matters, such as increases or decreases in capital and amalgamation, a special resolution must be passed in one meeting by three-fourths of the shareholders present and voting. Companies must hold an ordinary shareholders' meeting at least once a year, within four months after the company's fiscal year-end. The general shareholders' meeting is required. Notice of a meeting (whether an annual ordinary meeting or an extraordinary meeting) of a private limited company must be delivered to all company shareholders by registered mail and advertised at least once in a local newspaper at least seven days (14 days for a special resolution) before the date of the meeting. *Public limited company:* Except for notice of the shareholders' meeting, the rules generally are the same as for a private limited company. Notice of the shareholders' meeting for a public limited company must be sent to the shareholders and the registrar at least seven days before the date of the meeting and the meeting must be announced in a newspaper for three continuous days, at least three days before the date of the meeting.

**Types of shares:** *Both:* Shares may be divided into common or preferred shares, and multiple voting or varying dividend shares are allowed. Nonvoting shares are not permitted. *Private limited company:* Share certificates may be named or bearer, but bearer shares may be issued only for fully paid-up shares; treasury shares are prohibited. *Public limited company:* All shares must be issued as named certificates.

**Taxes and fees:** *Both:* A company must use its registration number issued by the Department of Business Development of the MOC (13 digits) as a tax ID number. Operators earning more than THB 1.8 million a year (from the VAT business activity, e.g. the provision of sales and services) must register for VAT purposes within 30 days of their earnings reaching THB 1.8 million. A company that operates specific businesses, e.g. commercial banks, sales of immovable property, etc., must register for specific business tax within 30 days of the date of commencement of business. *Private limited company:* The fee for registration of the memorandum of association is 0.05% of registered capital, with a minimum of THB 500 and a maximum of THB 25,000. The government fee for registration of the company as a legal entity after the statutory meeting assigns the operation of the business to the directors is 0.5% of the registered capital, with a THB 5,000 minimum and a THB 250,000 maximum. *Public limited company:* The fee for registration of the memorandum of association is 0.10% of registered capital, with a minimum of THB 1,000 and a maximum of THB 50,000. The government fee for registration of a company as a legal entity after the statutory meeting assigns the operation of the business to the directors is 0.10% of the registered capital, with a THB 1,000 minimum and a THB 250,000 maximum.

### Branch of a foreign corporation

A foreign company may set up a branch office in Thailand. A branch and its head office are treated as the same legal entity under Thai law; the branch will be considered a permanent establishment of the foreign corporation in Thailand. Lawsuits against the branch also may be brought against the foreign head office. The head office will be liable for tax on direct transactions in Thailand, even where the branch is not involved. At least one director/representative who is in charge of the operations of the permitted business of the branch office must be domiciled in Thailand.

A condition for obtaining approval to set up a branch is that there must be an economic benefit for Thailand and no competition with Thai operations. The approval for setting up a branch office by obtaining a foreign business license is at the MOC's discretion. The foreign company also must bring a minimum working capital of 25% of the average amount per year of the three-year expenditure budget submitted with the license application, with a minimum of THB 3 million per business entering into Thailand, within the following periods:

- Where the period of business operations in Thailand is less than three years, the minimum capital must be brought or remitted into Thailand within six months.
- Where the period of business operations in Thailand is three years or more, the minimum capital must be brought or remitted into Thailand within three years:
  - During the first three months, at least 25% of the minimum capital must be brought or remitted into Thailand;
  - Within one year, 50% of the minimum capital must be brought or remitted into Thailand; and
  - The remaining minimum capital must be brought or remitted into Thailand in an amount equal to at least 25% of the minimum capital each year (i.e. 75% within two years and 100% within three years).

The amount of minimum capital must be brought or remitted into Thailand in foreign currency and converted into Thai baht at the reference exchange rate on the date of bringing or remitting the minimum capital into Thailand.

After obtaining a foreign business license from the MOC, the branch office must comply with certain obligations, such as preparing an annual operation report, reporting the remittance of the minimum capital, preparing a technology transfer report, etc.

Branches are taxed at the same rates as domestic companies, but only on Thai-source profits. A 10% branch remittance tax also is imposed on after-tax profits paid or deemed paid to a head office.

Branch offices in Thailand may be useful for project work, where the expertise and guarantees of a strong head office company are beneficial.

### Representative or regional office

A foreign company may set up a representative or regional office in Thailand. A representative or regional office may be established for limited business purposes and cannot render services to any person other than its head office or affiliated/group companies, or earn income from any transaction; such offices can only receive funds for payment of their expenses from their head office. In addition, a representative office or a regional office has no authority to sell goods or provide services, accept purchase orders or make offers for sale or negotiate for the carrying out of business with any individual or legal person in Thailand. At least one director/representative who is in charge of the operations of the permitted business of the representative office or regional office must be domiciled in Thailand.

A representative or regional office operating a business restricted under the FBA must obtain a foreign business license from the MOC. The conditions for approval for setting up a representative or regional office are the same as for a branch office. The approval for obtaining a foreign business license is at the MOC's discretion. After obtaining the foreign business license, the representative or regional office must comply with the same obligations as a branch office.

## 2.2 Regulation of business

### Mergers and acquisitions

There are several options to merge or acquire a business in Thailand: amalgamation, asset purchase or share purchase. Where a transfer qualifies as the transfer of an "entire" business in accordance with the Thai Revenue Code, the asset transfer may be exempt from corporate income tax, VAT, specific business tax and stamp duty, if prescribed conditions are satisfied.

The CCC specifically regulates only amalgamations, which require the dissolution of the previous corporate entities and incorporation of a new entity (strictly speaking, the concept of "merger" is not recognized in Thai law; instead, the concept of "amalgamation" is used). Thai civil law requires merging companies to consolidate their accounts before completing the process.

The CCC generally governs mergers and acquisitions related to a private company, and the Securities and Exchange Act and the PLCA generally govern such activities for a public company. For a public company that is listed on the stock exchange of Thailand (SET), the rules and regulations of the SET and the Securities Exchange Commission must be taken into consideration.

## Monopolies and restraint of trade

The Trade Competition Act prohibits business operators from merging businesses if the merger could result in a monopoly or unfair competition, unless permission is obtained from the Trade Competition Commission.

### 2.3 Accounting, filing and auditing requirements

Thai Financial Reporting Standards (TFRS) are required to be applied in the preparation and presentation of financial statements of publicly accountable entities. For non-publicly accountable entities (NPAEs), "TFRS for NPAEs" are required to be applied, but NPAEs can elect to apply TFRS. Both TFRS and TFRS for NPAEs are based on International Financial Reporting Standards (IFRS), and they are mandatory under all relevant laws. The standards are issued by the Federation of Accounting Professions under the Thai Accounting Professions Act and the Thai Accounting Act.

The Thai Accounting Professions Act requires certified public accountants (CPAs) who audit the financial statements of any entities that report to Thai regulators to apply the Thai Standards of Auditing and other Thai standards on review and other assurance engagements issued by the Federation of Accounting Professions. When submitting the financial statements and tax returns of entities to the relevant regulators, an audit opinion issued by a CPA is required. However, only limited partnerships that submit their tax returns to the Revenue Department may engage tax auditors regulated by the Revenue Department to audit their financial statements.

The board of directors of a private or public limited company must prepare a statement of financial positions at least every 12 months. The statement must contain a summary of the assets and liabilities of the company and a profit and loss statement for the fiscal year. The board must have the statement of financial positions and the statement of income audited by a CPA who is appointed by the general shareholders meeting of the company, and those statements must be submitted to the general meeting for approval within four months from the end of the fiscal year. The financial statements must be submitted to Department of Business Development via electronic systems using XBRL (the same standard as is applied in many developed countries). Those statements must be submitted within one month from the day on which the general meeting approves the audited financial statements.

Public limited companies must disclose the following information in their annual reports: company name, location of the head office, type of business, details of shares issued and shares held in subsidiaries (if any), details of directors regarding any conflict of interest in service contracts entered into by the company during each financial year and their shareholdings in the company or in subsidiaries and any changes during the year.

A branch, regional office or representative office must have its books and records maintained by a Thai accountant and audited by a registered Thai auditor once a year. It must submit an audited financial statement to the MOC via e-filing within five months from the day the accounts are closed.

# 3.0 Business taxation

## 3.1 Overview

Companies registered under the CCC and foreign companies carrying on business in Thailand through an office or a branch generally are subject to Thai corporate income tax, the latter unless exempted under a tax treaty. There are withholding taxes and a branch profits remittance tax. A company also may be required to register its business for VAT purposes. Specific business tax applies on certain business transactions, such as banking business, interest on loans and sales of immovable assets. Stamp duty is levied on certain contracts or instruments. Other taxes include the property tax, a sign board tax, customs duty and excise tax, etc.

Tax exemptions and various tax incentives are available to all qualified entities, depending upon the conditions of each tax privilege (e.g. the ROH scheme or activities promoted under BOI measures, etc.). See under 1.5, above.

The main tax law is the Thai Revenue Code, which governs corporate income tax, VAT, specific business Tax and stamp duty. Customs duties are regulated by the Customs Act. The Excise Act governs excise tax and the Petroleum Income Tax Act governs petroleum income tax.

Taxes are administered by the Revenue Department, the Customs Department and the Excise Department.

### Thailand Quick Tax Facts for Companies

Corporate income tax rate	20%
Income tax rate for petroleum companies	50%
Branch corporate income tax rate	20%
Capital gains tax rate	20%
Basis	Worldwide
Participation exemption	Yes

#### Loss relief

<ul style="list-style-type: none"><li>Carryforward</li><li>Carryback</li></ul>	5 years No
Double taxation relief	Yes
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	No
Controlled foreign company rules	No
Tax year	Accounting period not exceeding 12 months
Advance payment of tax	Yes
Return due date	150 days after end of accounting period

#### Withholding tax

<ul style="list-style-type: none"><li>Dividends</li><li>Interest</li><li>Royalties</li><li>Capital gains</li><li>Branch remittance tax</li></ul>	10% 0%/1%/10%/15% 3%/15% 0%/15% 10%
Capital tax	No

Social security contributions	5% of monthly remuneration
Real estate tax	12.5% of annual rental value
Specific business tax	3.3% (including municipal tax of 10%)
Stamp duty	0.1%, or as provided under the Revenue Code
VAT	0%/7% (reduced from 10% until 30 September 2017)

## 3.2 Residence

A company is resident in Thailand if it is incorporated in Thailand.

A branch of a foreign corporation is considered resident if it is registered to do business in Thailand. A nonresident company is treated as carrying on business in Thailand, and subject to the Thai tax regime, if it has an agent, employee or intermediary to generate income or profit in Thailand.

## 3.3 Taxable income and rates

Corporate income tax is levied on both Thai and foreign companies. A locally incorporated company is taxed on its worldwide income; a foreign company is taxed only on Thai-source income.

The corporate tax rate is 20% of net profits, calculated by deducting all expenses and costs of goods sold from revenue arising from the business during the fiscal accounting period. Petroleum companies pay tax at a rate of 50% of net profits.

A branch of a foreign company pays income tax at the corporate income tax rate, but only on Thai-source profits. A branch also is liable for a 10% levy on profits remitted or booked to the foreign head office. If profits cannot be determined, an official assessment may be made based on 5% of gross receipts at the discretion of the Thai tax authorities, i.e. gross receipts-based tax is not an option taxpayers may elect.

A foreign company not carrying on business in Thailand, but deriving certain types of income from Thailand, such as dividends, interest, royalties, rents, service or professional fees, etc., is subject to tax on the gross amount received, which is collected via withholding at source.

The standard company tax rate may be reduced, e.g. under the incentives for IHQs/ITCs/ROHs described in 1.5, above, and in the following cases:

- A bank deriving profits from an International Banking Facility pays a 10% rate for “out-out” deposits (and is exempt from the 3.3% specific business tax). The remittance tax on “out-out” loans (i.e. funds borrowed abroad to be lent abroad) extended by an International Banking Facility licensed bank is 0% for profits derived from a loan business.
- For accounting periods beginning on or after 1 January 2017, a SME is exempt on the first THB 300,000 of net profits and will pay tax at a 15% rate on net profits over THB 300,000 and up to THB 3 million, and a 20% rate on net profits over THB 3 million. (For accounting periods beginning on or after 1 January 2015 but no later than 31 December 2016, a 10% rate applied to all net profits exceeding THB 300,000.)

To be eligible for these benefits, the paid-up capital of the SME must not exceed THB 5 million, and its gross income may not exceed THB 30 million.

However, where a SME has been granted a tax audit exemption due to the 2016 tax amnesty law and such tax audit exemption status has not been withdrawn by the Revenue Department, for the accounting period beginning on or after 1 January 2017 but no later than 31 December 2017, the first THB 300,000 of the SME's net profits will be exempt, and a 10% corporate tax rate will apply on the net profits exceeding THB 300,000 (for the accounting period beginning on or after 1 January 2016 but no later than 31 December 2016, the SME's total net profits were exempt).

Tax incentives offered by the BOI for SMEs (including a temporary exemption from corporate income tax) are described under 1.5, above.

- A tax exemption is available for a qualified venture capital company investing in a SME: dividends received from the SME and gains arising from the transfer of shares in the SME are exempt from corporate tax if certain requirements are met.

- A new tax exemption is available for a qualified venture capital company established between 1 January 2016 and 31 December 2016 and registered with the Thailand Stock Exchange Commission. Qualifying companies may receive an exemption for up to 10 years for income from dividends from a targeted business or gains from a transfer of shares in a targeted business. The incentive aims to encourage investment into businesses and start-ups operating within 10 supported industries, for example, food, energy, biotechnology, medical treatment, services, electronics, auto parts, etc.

### Taxable income defined

Taxable income includes business profits and passive income (i.e. dividends, interest, royalties, capital gains, etc.). Corporate income tax is computed by taking into account all revenue arising from a business carried on in an accounting period, and deducting all allowable expenses.

The tax rates on payments made to a firm not engaged in business in Thailand vary depending on the type of fees. A foreign firm generally is taxed on dividends, interest from securities investments and capital gains. Tax must be withheld at source by the Thai payer and remitted to the Revenue Department.

The following are exempt from corporate income tax:

- Dividends paid by a Thai limited company to another Thai company with no cross shareholding, where the recipient holds at least 25% of the total shares with voting rights of the payer for three months before and after the dividends are received or is a listed company. Similar rules apply to profits from joint venture activities. In all other cases, a Thai company is required to include only 50% of dividends received from a Thai limited company as taxable income, provided the relevant investment is held for at least three months before and three months after receipt of the dividends;
- Dividends received by a Thai company from foreign affiliates, provided the foreign profits were subject to an income tax at a rate of at least 15% (headline tax) and the Thai parent company held at least 25% of the shares in the foreign subsidiary for at least six months; and
- Income that benefits from tax incentives.

### Deductions

Most normal expenses connected with earning income are deductible, including:

- Interest, except interest paid on capital;
- Reasonable and justifiable management fees charged at market value;
- Losses;
- Depreciation;
- Taxes, except for corporate income tax and VAT, paid to the Thai government;
- Bad debts, provided there is evidence of reasonable efforts to collect the debt in accordance with the Thai Revenue Code;
- Employer contributions to the provident fund;
- Donations up to specified limits; and
- Entertainment expenses, up to 0.3% of gross revenue or paid-up capital (whichever is higher), and not exceeding THB 10 million.

Head office charges or shared costs may be deducted, provided the company can demonstrate that the services are actually provided and related to business in Thailand.

Inventory must be valued at the lower of cost or the market price, but may not be written down unless sold or otherwise disposed of.

Special rules apply to certain expenses, as follows:

- An additional deduction of up to 200% on R&D costs;

- An additional 100% deduction for job training expenses and for expenditure on salary paid to disabled employees; and
- An additional 100% deduction for the amount of expenses actually paid for the betterment, modification or expansion (other than repairs) of the assets used for the business operations under the conditions stated by the Revenue Code.

(Separate merit-based corporate tax incentives, e.g. for certain R&D costs and training expenses, may be available through the BOI. See under 1.5, above.)

Certain expenses may not be deducted for tax purposes (e.g. entertainment or service fees, capital expenses, reserves (subject to certain exceptions), fines and penalties, etc.). The Revenue Department can disallow an expense if it considers the expense not directly related to the earning of taxable income.

## Depreciation

Depreciation must be based on the original cost of the asset, but any system of proportional calculation is acceptable, provided it does not result in a faster rate of deduction than the straight-line method. The Revenue Code specifies maximum, but not minimum, percentages for depreciation. For hire-purchase contracts, depreciation in a certain period must not exceed installments paid during that period. Once a depreciation system has been adopted, it may be changed only with the permission of the Revenue Department.

The maximum annual depreciation rate for machinery used in R&D is 40%. There is a 20% rate for equipment, vehicles and R&D costs, and a 5% rate for buildings. Land generally is not depreciable. The annual depreciation rate for intellectual property rights with no fixed term is 10%; for fixed-term agreements, it is 100% divided by the number of years of use. Computer hardware and software may be depreciated within three years. Temporary buildings may be written off over one year. Cars and mini-buses have a 20% rate, but the depreciable value is limited to THB 1 million.

Tax depreciation incentives are available for many assets, for example, computers and assets of SMEs, etc.

## Losses

Tax net operating losses may be deducted in computing net taxable income, with excess losses carried forward for up to five accounting periods. If the losses relate to a business promoted by the BOI during a tax holiday period, the BOI tax losses may be carried over to the five years after the expiration of the tax holiday. The carryback of losses is not permitted.

## 3.4 Capital gains taxation

Capital gains are treated as ordinary income and taxed accordingly for corporate income tax purposes.

Capital gains paid to overseas recipients are subject to a 15% withholding tax, although an exemption may apply to gains derived by investors from certain tax treaty countries.

## 3.5 Double taxation relief

### Unilateral relief

Thailand grants a foreign tax credit for tax paid on foreign income, which may be set off against Thai income tax, up to the amount of Thai tax payable.

### Tax treaties

Thailand has an extensive tax treaty network. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other and protect companies resident in one country from discriminatory taxation in the other. Thailand's treaties generally contain OECD-compliant exchange of information provisions.

There are no specific requirements or documentation needed to claim the benefits of an applicable tax treaty. However, in practice, a revenue officer may request documentation (e.g. the tax residency certificate, etc.).

## Thailand Tax Treaty Network

Armenia	Finland	Malaysia	Slovenia
Australia	France	Mauritius	South Africa
Austria	Germany	Myanmar	Spain
Bahrain	Hong Kong	Nepal	Sri Lanka
Bangladesh	Hungary	Netherlands	Sweden
Belarus	India	New Zealand	Switzerland
Belgium	Indonesia	Norway	Taiwan
Bulgaria	Ireland	Oman	Tajikistan
Canada	Israel	Pakistan	Turkey
Chile	Italy	Philippines	Ukraine
China	Japan	Poland	United Arab Emirates
Cyprus	Korea (ROK)	Romania	United Kingdom
Czech Republic	Kuwait	Russia	United States
Denmark	Laos	Seychelles	Uzbekistan
Estonia	Luxembourg	Singapore	Vietnam

### 3.6 Anti-avoidance rules

#### Transfer pricing

Under Thailand's transfer pricing regime, transactions between related parties must be based on market prices. The Revenue Department may adjust the taxpayer's revenue and expenses if it finds that the revenues received or expenses paid are not at arm's length. The following transfer pricing methods are allowed: comparable uncontrolled price, resale price, cost plus and other methods that are acceptable by international standards (e.g. profit split method and transactional net margin method).

Although transfer pricing documentation currently is not legally required to be maintained, a taxpayer is expected to provide documentation to substantiate its transfer pricing if challenged by the tax authorities. A taxpayer may initiate an upward or downward adjustment if there is adequate documentation to substantiate the adjustment. For voluntary upward adjustments, a surcharge of 1.5% per month applies if the taxpayer appears to be underreporting corporate income tax in the annual tax return. A penalty of 100% and surcharge of 1.5% per month will be applied in the case of a formal tax assessment by the tax authorities.

Advance pricing agreements (APAs) are available. However, based on current practice, the Revenue Department does not formally accept applications for unilateral APAs. Bilateral agreements may be applied for under the mutual agreement procedure of the relevant tax treaty. The Revenue Department has issued a booklet that provides guidance for bilateral APAs.

A transfer pricing law has been drafted that would require transfer pricing documentation to be prepared by the due date for filing the annual tax return.

#### Thin capitalization

Although Thailand does not have thin capitalization rules, for a taxpayer to obtain a BOI certificate to promote its business or obtain a foreign business license from the MOC, the taxpayer must maintain a debt-to-equity ratio of 3:1 (for BOI projects) or 7:1 (under the Foreign Business Act), including the minimum registered capital required by the authorities.

#### Controlled foreign companies

Thailand does not have CFC rules.

## General anti-avoidance rule

Thailand does not have a GAAR.

## BEPS

The Thai tax authorities currently are reviewing the BEPS action plan, but there has been no public announcement on the extent to which these items will be implemented.

## 3.7 Administration

### Tax year

The tax year generally is the 12-month period ending on 31 December. However, a company may choose any accounting period that does not exceed 12 months (a shorter year is allowed only in the year of incorporation, when there is a change of accounting method or in the year of dissolution). Once chosen, the accounting period cannot be changed unless written approval is obtained from the Revenue Department.

### Filing and payment

Thailand applies a self-assessment system, under which the taxpayer must declare its income to the revenue office. The tax authorities can challenge the amount of tax remitted and may conduct a tax audit.

Thai and foreign companies carrying on business in Thailand must file the annual corporate income tax return within 150 days of the end of the accounting period, and pay corporate tax due at the time of filing. In addition to the end-of-year tax payment, a mid-year payment of tax also is due. The mid-year tax is calculated on an estimated 50% of the full-year tax basis, and must be remitted within two months of the end of the first six months of the accounting period.

If an entity underestimates its profits for an entire year by more than 25%, a maximum 20% fine is charged on the mid-year installment. In other circumstances, a surcharge of 1.5% per month on outstanding tax applies.

### Consolidated returns

Thai law does not contain any provisions allowing for the filing of a consolidated corporate income tax return or for the transfer of losses between members of a group. Each company must file a separate return.

### Statute of limitations

The tax authorities may conduct a tax audit on the books and records of a company for two years from the date the corporate income tax return is submitted. The period may be extended to five years if tax avoidance or evasion is suspected. The statutory period for the assessment of tax liabilities is 10 years. The tax authorities have the power to seize a taxpayer's assets if the taxpayer fails to pay tax within 30 days after receiving an assessment notice, regardless of whether the taxpayer disagrees and intends to appeal.

### Tax authorities

Three agencies under the Ministry of Finance are responsible for the collection of tax in Thailand: the Revenue Department, the Excise Department and the Customs Department. The Revenue Department's responsibilities are to collect and administer the following taxes: corporate and individual income tax, VAT, specific business tax, stamp duty and petroleum income tax. The Excise and Customs Departments collect excise and customs duties, respectively.

### Rulings

A taxpayer may request a private letter ruling on a tax issue from the Revenue Department. The tax officials generally follow such rulings, but they are not binding for purposes of legal proceedings.

## 3.8 Other taxes on business

### Petroleum companies

The Petroleum Income Tax Act governs the levying of tax on income derived from petroleum operations. The tax is chargeable on the net profits of companies granted a concession to explore for

and produce petroleum (e.g. crude oil, natural gas and other forms of natural hydrocarbons). Petroleum companies pay tax at a rate of 50%. A royalty tax also may apply.

### **International transportation companies**

International transportation companies are subject to a 3% tax on gross receipts derived from freight fees on exports and airfare collected in Thailand. Other types of income still are subject to net profit-based tax.

# 4.0 Withholding taxes

## 4.1 Dividends

A 10% withholding tax is levied on dividends paid to resident and nonresident entities. However, as noted under 3.3, above, dividends paid by a Thai company to another Thai company may be exempt if the recipient is listed on the SET or the recipient holds at least 25% of the total shares with voting rights, with no cross-ownership structure. Otherwise, a company incorporated in Thailand may exclude from taxable profits 50% of dividends received from other companies incorporated in Thailand, provided the relevant investment has been held for at least three months before and three months after receipt of the dividends.

Dividends paid to an individual (resident or nonresident) are subject to a 10% withholding tax that is considered a final tax.

The withholding tax on dividends paid to a nonresident may be reduced under an applicable tax treaty.

## 4.2 Interest

Interest paid to a nonresident company is subject to a 15% withholding tax. Interest paid on loans from a bank, financial institution or insurance agency is taxed at a 10% rate if the lender is resident in a country that has concluded a tax treaty with Thailand, but interest is exempt if it is paid by the government or a Thai financial institution on loans granted under a law intended to promote agriculture, industry or commerce.

A 1% advance withholding tax applies to interest payments made by a corporation to a corporation carrying on business in Thailand, or by a corporation to a financial institution for interest on debentures or bonds, except for interest on deposits or negotiable instruments paid between banks or finance companies. A 10% advance withholding tax is deducted on interest paid to a foundation or an association.

## 4.3 Royalties

Royalties or fees paid within Thailand are treated as normal assessable income for tax purposes. Royalties paid to another Thailand company are subject to a 3% advance withholding tax, which may be credited against the final corporate income tax due for the accounting period. Royalties paid abroad are subject to a 15% withholding tax on the gross amount. Tax treaties may reduce the withholding tax charged on royalties paid for the use of copyrighted literary, artistic or scientific works, etc.

## 4.4 Branch remittance tax

Thailand levies a branch remittance tax at 10%. The only country that currently is exempt from the branch profit tax is Hong Kong, under the Thailand-Hong Kong tax agreement.

## 4.5 Wage tax/social security contributions

Tax on employment income is withheld by the employer and remitted to the tax authorities, generally on a monthly basis.

The employer and the employee are required to contribute 5% of monthly compensation (up to THB 15,000) paid to the employee (i.e. the monthly contribution cap is THB 15,000 times 5% or THB 750).

## 4.6 Other taxes

Rental payments paid to a nonresident are subject to a 15% withholding tax. Payers of fees for a variety of professional services (e.g. medical, architectural, engineering or legal fees) to nonresident companies must deduct a 15% withholding tax and remit it to the Revenue Department, unless the rate is reduced under a tax treaty.

Capital gains paid to overseas recipients are subject to a 15% withholding tax, although an exemption may apply to gains derived by investors from certain tax treaty countries.

# 5.0 Indirect taxes

## 5.1 Value added tax

VAT is imposed on the supply of goods and services, and on imports.

VAT applies to all retailers, wholesalers, manufacturers, importers, producers and others supplying goods and services, unless exempt under the Revenue Code. Firms with turnover not in excess of THB 1.8 million per year are exempt from VAT, as are certain other business activities, including the sale and import of raw agricultural products and related goods; the sale and import of newspapers, magazines and textbooks; and basic services, such as health and educational services, domestic transport and the leasing of immovable property. Goods exempt from import duty and destined for export-processing zones are included in this category, along with research and technical services, labor contracts, auditing and legal services.

Certain businesses are excluded from VAT; instead, they pay specific business tax (see under 5.8, below).

The standard VAT rate is 10%, although this rate has been reduced to 7% until 30 September 2017. There are two components: the standard 6.3% VAT and the municipal tax of 0.7%. The municipal tax is collected at the provincial level. A zero rate applies on a range of activities, including the export of goods and services wholly used outside Thailand, i.e. any services rendered in Thailand and used abroad.

A VAT-registered person must issue a tax invoice for each transaction; the invoice must include specific details about the nature and value of goods sold or services supplied, as well as the amount of VAT due.

The VAT period is the calendar month. VAT is payable by the 15th day of the month following the month in which VAT liability arises. If a self-assessment of VAT output is required on the payment of certain income to nonresidents (primarily services or royalties used in Thailand), VAT is payable on the seventh day of the month following the month of the payment. A company that is exempt still must pay VAT on services and products it purchases, but is not entitled to a VAT refund. Such a company does not have to collect VAT on its sales or file monthly VAT forms. An exempt company, however, may do so voluntarily and thus may be entitled to a VAT refund if registered for VAT purposes.

A person that is liable to VAT in Thailand must register for VAT purposes.

The VAT registrant may request VAT consolidation of headquarters and branches.

## 5.2 Capital tax

None

## 5.3 Real estate tax

The municipalities levy a house and land tax and a local development tax. The house and land tax is imposed annually on the owners of a house, building structure or land that is rented or otherwise put to commercial use, at a rate of 12.5% of the actual or assessed annual rental value of the property. The local development tax, also an annual tax, is imposed on the owner of land or the person in possession of the land, with the rate depending on the appraised value of the property, as assessed by the local authorities.

The Thai Cabinet has approved the repeal of the house and land tax and the local development tax, and their replacement by a new land and building tax as from 2018. Persons liable to the new tax will be the owners of land or buildings and persons in possession of state land or buildings, and the tax base will be the appraisal value of the land and buildings. The maximum rate will depend upon the type of land, but rates are expected to range from 0.2% to 5%; the actual tax rates will be announced by royal decree.

## 5.4 Transfer tax

Stamp duty may apply (see also specific business tax under 5.8, below).

## 5.5 Stamp duty

Stamp duty is levied on most documents, and applies to any instrument, as set out in the Revenue Code. In the absence of stamp duty, such an instrument is not admissible in court. The stamp duty is necessary for the issuance of new instruments or for additions to the value of an instrument, such as an increase in funds lent under a loan agreement.

Examples of stamp duty are as follows: 0.1% on leases, the hire of work, transfers of shares/debentures, loans (capped at THB 10,000), etc.

## 5.6 Customs and excise duties

In general, under Thai Customs law, importers and exporters are required to file a customs declaration, including supporting documents (e.g. invoice, packing list, etc.), at the port of entry for customs clearance purposes. For importation, before the imported goods can be released from the port, the importer is required to pay customs duty, import VAT (currently at the rate of 7%) and other taxes (if any). Depending on the nature of the imports, and regardless of value, the importers may need to obtain a permit or license to facilitate clearance of prohibited or restricted goods (e.g. drugs, medical devices, etc.).

The customs clearance process in Thailand generally relies on self-assessment by the importer; the Customs officer generally will rely on the information or documents submitted by the importer. The price of obtaining quick clearance of the imported goods, however, is that importers will be randomly audited by the Post-Clearance Audit Bureau of the Customs Department on a regular basis.

Regarding the export control of dual-use items (including transit and transshipment), the MOC has announced an integrated export control system, which is expected to apply as from January 2018. After the implementation, Thai exporters of controlled dual-use items will need to obtain export approvals (licenses) from the MOC prior to the physical export of dual-use items. The trial version of e-Trade Management on Dual-Use Goods (e-TMD), a system that supports the export controls, also has been announced and is expected to be fully launched in January 2018.

The excise tax system has been adjusted to complement the VAT system. For products subject to both taxes, the Customs Department will collect VAT for the Revenue Department, and excise tax for the Excise Department. Products subject to both VAT and excise tax include cars, perfume, alcoholic beverages, tobacco, playing cards and petroleum products.

Excise taxes take the form of an *ad valorem* duty (a percentage of the price of the goods) or a specific charge (based on the quantity or weight of the goods).

The new excise tax law is under review by the National Legislative Assembly. Under the new law, the excise tax calculation structure is expected to be amended to change the basis from “ex-factory” or “CIF” prices to state-recommended retail prices in the near future.

## 5.7 Environmental taxes

Thailand does not have a specific environmental tax, although certain environment-related tax measures take the form of tax privileges, such as additional deductions.

## 5.8 Other taxes

### Specific business tax (SBT)

Certain businesses are subject to the SBT instead of VAT. The SBT applies to banking or similar transactions (regardless of whether the business operator is an individual or a company), the sale of immovable property in a profit-seeking manner and to certain businesses, such as factoring, pledges and repos.

SBT applies to the gross proceeds from the transfer of immovable property at a rate of 3%. An exemption from the SBT is available in certain cases involving the whole or partial transfer of a business. A 2.5% rate applies to life insurers and pawnbrokers. A 3% rate applies to financial institutions and businesses of a similar nature; however, some transactions (e.g. interest income on debt instruments) are taxed at a rate of 0.1%.

The above rates do not include a municipal tax, which is charged at 10% on the amount of SBT payable.

A person or entity subject to the SBT must register within 30 days from the date of commencing business and file a monthly specific business tax return, regardless of whether the business generates income, except in certain circumstances.

### **Signboard tax**

Signboard tax is collected by reference to the size and types of fonts of each signboard. The tax is assessed by the tax officer. The signboard tax is collected by the local administrative bodies.

# 6.0 Taxes on individuals

Individuals in Thailand generally are subject to personal income tax, withholding tax on passive income and inheritance tax, and are required to make social security contributions.

## Thailand Quick Tax Facts for Individuals

Income tax rates	0%-35%
Capital gains tax rates	0%-35%
Basis	Worldwide (with an exemption for foreign-source income repatriated after the year derived)
Double taxation relief	Yes
Tax year	Calendar year
Return due date	31 March of the following tax year

### Withholding tax

• Dividends	10%
• Interest	15%
• Royalties	Progressive tax rates (residents)/15% (nonresidents)
Net wealth tax	No
Social security	5% of remuneration
Inheritance tax	10% (in general)/5% (for an ascendant or a descendant)
VAT	0%/7% (reduced from 10% until 30 September 2017)

## 6.1 Residence

An individual who is present in Thailand for 180 days or more in a calendar year is deemed to be a Thai resident for tax purposes.

## 6.2 Taxable income and rates

### Taxable income

All individuals who receive assessable income arising in Thailand are liable for personal income tax, whether or not they are resident and regardless of where the income is actually paid.

A Thai tax resident is liable to tax on income from sources in Thailand, as well as on income derived from foreign sources that is brought into Thailand in the same year it is derived (repatriation in later years is exempt from personal income tax). Similarly, foreign capital gains of individuals are treated as income only if remitted into Thailand in the same year derived and the individual is a Thai tax resident. A nonresident is subject to tax only on income from sources in Thailand.

Taxable income includes employment income, business income and investment income, as well as income from a broad range of activities. It includes income in cash and in kind. Benefits provided by an employer are treated as taxable income, including rent-free housing, cars and drivers provided for personal use and any tax paid by the employer on behalf of the employee. Taxable income is divided into the following eight categories:

- 1) Income from personal services rendered to an employer;
- 2) Income from employment, positions, commission fees or services rendered;
- 3) Income from goodwill, copyrights, franchises, other rights, annuities or income in the nature of annual payments derived from a will or court judgment;

- 4) Income from dividends; interest on deposits with banks in Thailand; income from shares of profits or other benefits from a company, partnership or mutual fund; payments received as a result of a reduction of capital; bonuses; increased capital holdings; gains from the amalgamation, acquisition or dissolution of companies or partnerships; and gains from the transfer of shares or partnership holdings;
- 5) Income from the letting out of property under hire or hire-purchase contracts;
- 6) Income from liberal professions (e.g. law, medicine, engineering, architecture, accountancy, etc.);
- 7) Income from construction and other work contracts; and
- 8) Income from business, commerce, agriculture, industry, transport or other activities not specified above.

The following types of income are exempt:

- Capital gains from the sale of movable property acquired with no intent to earn a profit (however, gains from the sale of immovable property or a residence still are subject to personal income tax, but the tax paid at the land office can be excluded from the annual tax return if the sale of the property is not for profit-seeking purposes; and gains may be exempt if the proceeds are used to purchase a new home within one year before or after the sale of the primary residence);
- Capital gains from the sale of shares of a public company registered on the stock exchange of Thailand;
- Awards for the purpose of education or scientific research;
- Interest from government bonds, provided the bonds are sold abroad and the person who derives the interest is a nonresident;
- Interest from savings deposits in commercial banks where the aggregate amount of interest received is no more than THB 20,000 a year;
- Gains from mergers or acquisitions between limited companies that were valued higher than shareholder equity; and
- Gifts made in a ceremony or on an occasion in accordance with established customs, with a value not exceeding THB 10 million or THB 20 million (depending on the circumstances), and inheritances not exceeding THB 100 million (see under 6.3, below).

## Deductions and reliefs

A personal allowance of THB 30,000 is available to a taxpayer and his/her spouse and a THB 15,000 allowance is available for each dependent child, up to a maximum of three children. Married persons filing separately each may claim 100% of the child allowances. For wage earners, there also is a deduction of 40% of gross income, up to a maximum of THB 60,000. The same deduction and ceiling apply to income derived from copyrights. Deductions between 10% and 30% are available on income from the letting out of property, depending on the type of property.

Taxpayers caring for elderly parents are granted a deduction of THB 30,000 per year. Taxpayers are allowed an exemption of up to THB 15,000 on health insurance premiums they provide for their parents. Deductions of up to 10% of income are allowed for donations to registered charities. A deduction of THB 60,000 is available for each disabled spouse, parent, child or other dependent.

Some of the allowances described above would be increased for the 2017 tax year, under a MOF proposal approved by the Thai Cabinet; official notification for the changes to become effective is pending.

## Rates

The personal income tax rates range from 0% to a top marginal rate of 35%. An individual's first THB 150,000 of net income (income after the personal standard deduction and allowances) generally is exempt; for individuals older than 65, the exemption amount increases to THB 190,000 of assessable gross income.

Tax normally is withheld from payments of dividends to resident and nonresident individuals at a rate of 10%, except for dividends paid by certain companies benefitting from a BOI incentive regime, which may be subject to a 0% rate.

Tax is withheld from payments of interest to individuals at 15% if the payer is a Thai bank or Thai financial institution. Withholding taxes paid generally can be credited against a resident taxpayer's final income tax liability.

A flat withholding tax of 15% applies to earnings from the transfer of bonds and other corporate debt instruments, rental fees and income paid to nonresidents for the provision of services.

### Special expatriate regime

A reduction in the progressive income tax rates to a 15% flat rate generally is applicable to assessable income an expatriate receives through the hire of labor by a qualifying ROH or IHQ in Thailand that provides management, technical or support services to its branches or associated enterprises in Thailand and abroad. Expatriates are entitled to these benefits while working in Thailand for a period not exceeding four consecutive years, or up to eight or 15 years in certain cases. Additional requirements may be applicable in order to apply the 15% flat rate.

A reduction in the progressive income tax rates to a 15% flat rate is applicable to assessable income an expatriate receives through the hire of labor by a qualifying ITC. The reduced rate is available from the date the ITC receives the tax benefits until the last day of employment at the ITC, or until the ITC's tax benefits under the regime expire.

## 6.3 Inheritance and gift tax

A 10% tax is levied on the portion of an inheritance exceeding THB 100 million, which may be reduced to a 5% rate if the beneficiary is an ascendant or descendant. Items subject to inheritance tax include immovable property, securities, deposits, vehicles with registration and financial assets, as set out in the relevant royal decree.

A 5% gift tax is levied on the portion of a gift exceeding THB 10 million for any tax year that is received from a person other than an ascendant, a descendent or a spouse; only the portion exceeding THB 20 million will be taxable if the gift is received from an ascendant, a descendant or a spouse.

## 6.4 Net wealth tax

Thailand does not levy a net wealth tax.

## 6.5 Real estate tax

See under 5.3, above.

## 6.6 Social security contributions

The employer and the employee are required to contribute 5% of monthly compensation (up to THB 15,000) paid to the employee (i.e. the monthly contribution cap is THB 15,000 times 5% or THB 750) (see also section 7.2).

## 6.7 Other taxes

None

## 6.8 Compliance

The tax year for individuals is the calendar year.

A married couple may opt for joint or separate filing on all kinds of personal income. The spouses may agree to file tax returns separately with respect to employment income and to file tax returns jointly on other kinds of personal income.

Personal income tax returns must be filed by 31 March following the taxable year. The employer withholds tax on employment income and pays it to the Revenue Department. Other withholding taxes could be imposed at various rates, depending on the other types of income paid.

# 7.0 Labor environment

## 7.1 Employee rights and remuneration

In addition to the CCC, which regulates the hiring of services, labor issues are regulated by the Social Security Act (SSA), Labor Relations Act (LRA) and Labor Protection Act (LPA), as amended.

Employment and the hiring of foreign nationals in Thailand also are regulated by the Foreign Business Act and Alien Working Act.

### Working hours

The maximum number of working hours for employees is eight hours per day and 48 hours per week under the LPA. An agreement on the terms of employment must include provisions on working hours.

## 7.2 Wages and benefits

The government sets wages for state enterprise employees under the State Enterprise Labor Relations Act. The MOF determines wages for civil servants.

The minimum wage throughout the country varies, depending on the province. The daily rates are THB 300, THB 305, THB 308 and THB 310, the latter of which applies to the Bangkok metropolis, Nakorn Pathom, Nonthaburi, Pathumthani, Phuket, Samutprakarn and Samutsakorn provinces. Few fringe benefits are compulsory under the law (e.g. paid holidays, sick leave, maternity leave, injury benefits and other basic benefits under the SSA and LPA).

The SSA provides for a fund to cover payments for sickness, disability, death, maternity leave, child support and retirement. Unemployment benefits also are available. Employees who are laid off may be entitled to severance payments.

Sick leave is payable for a maximum of 30 days per year, and maternity leave is payable up to a maximum of 45 days.

### Pensions and social insurance

Retirement schemes are a part of the Social Security Fund, under which employees receive benefits at age 55. Employee contributions to the retirement fund are included in the Social Security Fund contributions. Employees contributing to the fund for 180 months or more will receive, as a form of pension upon retirement, at least 20% of their average salary over the past 60 months.

A similar scheme for public employees, the Government Pension Fund, has been implemented on a voluntary basis. Employees contribute 3% of wages.

Provident funds, governed by the Provident Fund Act, can be established by the employer on a voluntary basis and together with the employees; employers can contribute an amount equal to 2%-15% of the employees' salary to the fund.

The Social Security Fund, administered by the Social Security Officer under the Ministry of Labor, is funded from monthly salary deductions from employees and a corresponding contribution from employers, as well as government contributions.

The fund applies to all companies having one or more employees, and aims at providing better welfare benefits to individuals in the workforce, particularly in the event of illness, accidents, unemployment or death. The SSA requires all employers to contribute to the fund by withholding 5% from the monthly salaries of all employees and contribute an equal amount on its own behalf. The government contributes at a rate of 2.75%. The minimum salary covered under the fund is THB 1,650 per month, up to a maximum of THB 15,000 per month (even if the salary exceeds that amount), resulting in a maximum contribution of THB 750 per month.

A firm may opt out of the Social Security Fund if it can prove that its employees receive better welfare benefits.

## 7.3 Termination of employment

An employee that is dismissed without cause is entitled to severance pay, depending on the length of employment. Severance pay is not required in the following cases: where the employee is dishonest; intentionally commits a criminal act against the employer; intentionally causes the employer to suffer

a loss; is grossly negligent; neglects duties for three consecutive work days without reasonable cause; is imprisoned under a final judgment (except for offenses arising from negligence or for petty offenses that do not cause damage to the employer); or violates the employer's work rules, regulations or orders that are legal and fair, and the employer has previously given a written warning. (The LPA requires an employer with 10 or more employees to submit "work regulations" to the Director-General or a delegated person within 15 days from the date on which the employer reaches 10 employees or more. The employer also is required to submit an employment condition and working condition form in January of each year.)

The employer must make payment for accumulated unused annual holidays and unused annual holidays in the year of termination, in an amount to which the employee is entitled, except where the cause of termination is attributable to the employee or where the employee terminates the employment agreement.

## 7.4 Labor-management relations

The LRA, administered by the Labor Department, generally deals with (1) agreements on the mandatory terms of employment for workplaces with 20 or more employees (unless the company already has work rules under the LPA); (2) labor dispute resolution mechanisms; (3) organizations for employers and employees established by virtue of the LRA; and (4) unfair acts.

An agreement on the terms of employment must have particulars as prescribed by the LRA, e.g. working conditions, work days, hours, wages, benefits, termination conditions, compliance procedures, provisions for amending the employment agreement, etc. The agreement will be effective for a period as agreed, but for no more than three years. If there are no further negotiations at the time the agreement expires, the agreement will continue to be effective on a year-to-year basis.

The LRA enables employees to demand legal entitlements. If no agreement is reached after negotiations, a government conciliator may be appointed. If the conciliation fails, the employees may strike and the employer may choose to lock employees out.

Although the Labor Court rules on contractual disputes (generally complaints relating to severance, overtime or holiday pay), appeals may be made to the Supreme Court on points of law.

The LRA provides for the establishment of four types and levels of private sector labor organizations for employees:

1. *Employee committee*: Such a committee may be established in companies with more than 50 employees. An employer must arrange to meet with the committee at least once every three months, or as otherwise requested by a majority of the committee with reasonable cause.
2. *Labor union*: At least 10 employees working with the same employer or with different employers working in the same category of work have the right to form a labor union. A labor union has its own bylaws and will become a legal person upon registration as stipulated by the LRA.
3. *Labor federation*: This is a collective, formed by two or more labor unions whose membership is derived from the same employer or the same type of work. Upon registration, a labor federation will become a legal entity with its own bylaws for administration of the union.
4. *Labor council or congress of employees' organization*: Such an organization may be established by forming at least 15 labor unions or labor federations to promote education and labor relations and, upon registration, it will become a legal entity with its own bylaws.

The State Enterprise Labor Relations Act provides the framework for state enterprise employees to form unions. It allows each state enterprise to have only one union, and each employee to be a member of only one union. At least 10 employees are needed to apply to set up a union, and at least 10% of all full-time employees must sign a petition announcing their intention to become members. Civil servants, including public school teachers, are prohibited from forming unions—they are permitted only to establish associations, which have no right to engage in collective bargaining.

## 7.5 Employment of foreigners

Employment of foreign nationals in Thailand is governed by the Alien Employment Act, administered by the Department of Employment of the Ministry of Labor. The act outlines the procedures for the procurement and maintenance of a work permit and sets out prohibited activities for a foreigner.

*Work permit:* A company with fully paid-up capital of at least THB 2 million may have one foreign employee. For each additional THB 2 million in paid-up capital, one more foreign employee is permitted, up to a maximum of 10 persons (subject to the discretion of the Ministry of Labor). Companies that already have 10 foreign employees (and that meet the fully paid-up capital criteria) must comply with one of the following criteria to have additional foreign employees:

- Pay at least THB 3 million in corporate income tax during the previous year;
- Derive at least THB 30 million through an export business;
- Bring in at least 5,000 foreign tourists in the previous year through a tourism business; or
- Employ at least 100 Thai nationals.

The Ministry of Labor may grant exceptions on a case-by-case basis.

The paid-up-capital requirement is reduced by half for a foreign employee married to a Thai national.

*Visa:* Foreign nationals who wish to work or undertake business in Thailand must apply for a nonimmigrant visa, which will fall into one of the following categories:

- Nonimmigrant visa category "B" (business visa);
- Nonimmigrant visa category "B-A" (business approved visa), which is under the jurisdiction of the Office of Immigration Bureau;
- Nonimmigrant visa category "IB" (investment and business visa) issued under the auspices of the BOI; and
- Nonimmigrant visa category "B" (teaching visa).

Supplementary documentation must be submitted, depending on the Thai embassy or consulate and the type of visa requested. Once a work permit is issued, a foreigner may work and/or conduct business in Thailand. Penalties are imposed for failure to comply.

Foreign nationals can extend their visas in Thailand if the following requirements are met:

- The foreign national's salary exceeds the minimum salary listed by the Immigration Department;
- The company has paid-in capital of THB 2 million per foreign national;
- For each foreign national employed, the employer has four Thai employees (or one Thai employee per foreign national if the employer is a representative office, regional office or branch office); and
- The employer operates a business continuously and is stable, reliable and genuine.

The minimum monthly wage rates vary by nationality. Special rules apply to individual investors, consultants and journalists. The immigration regulations recognize short visits by business persons for legitimate trading purposes, conferences or seminars. Immigration legislation provides for permanent residence status for foreign investors and employees who meet qualifications and have financial support documents.

# 8.0 Deloitte International Tax Source

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