

## International Tax Thailand Highlights 2018



### Investment basics:

**Currency** – Thai Baht (THB)

**Foreign exchange control** – Repatriation payments may not be made in THB, but may be made in any other currency. An exception applies for the transfer of funds made for the purpose of investing in or lending to business entities in Thailand's neighboring countries; such transfers may be made in THB and/or in another currency.

Most remittances may be made through a commercial bank, and documentation evidencing the purpose of the remittance is required. The Bank of Thailand must approve the remittance of funds exceeding the ceiling set by the bank.

**Accounting principles/financial statements** – Thai Accounting Standards apply. For areas not addressed by Thai Accounting Standards, IAS, IFRS and US GAAP may be consulted. Financial statements that have been audited and signed off by a certified accountant must accompany an entity's annual income tax return.

An entity must electronically file its financial statements with the Department of Business Development within one month from the date of the annual general shareholders' meeting (which public and private limited companies are required to hold within four months of the company's year-end) or five months from the end of the accounting year (for other types of principal business entities). Failure to timely hold the annual general shareholders' meeting and/or timely file the audited financial statements electronically may result in penalties for a company and its directors or representative.

**Principal business entities** – These are the public and private limited company, partnership, sole proprietorship, joint venture and branch or representative or regional office of a foreign corporation.

### Corporate taxation:

**Residence** – A limited company or partnership is considered resident if it is incorporated in Thailand and registered with the Ministry of Commerce.

**Basis** – Residents are taxed on worldwide income; nonresidents are taxed only on Thailand-source income. Foreign-source income derived by resident taxpayers is subject to corporate income tax in the same manner as Thailand-source income. A registered foreign branch or partnership generally is taxed in the same way as a limited company.

Unregistered entities with a taxable presence in Thailand are taxed in the same manner as limited companies.

**Taxable income** – Corporate income tax is imposed on an entity's net taxable profits, which generally consist of business/trading income, passive income and capital gains/losses. Expenses that relate specifically to generating profits for the business or to the business itself may be deducted in determining net taxable profits.

**Taxation of dividends** – Dividends paid by a Thai limited company to another limited company in Thailand may be exempt from corporate income tax if certain conditions are satisfied; otherwise, 50% of the dividends is subject to corporate income tax at the normal rate. Tax withheld on the payment of dividends may be used to

offset the final corporate income tax due for the company in the relevant tax year.

**Capital gains** – Capital gains are subject to the normal corporate income tax rate, with no restrictions on the use of capital losses to offset net taxable profits.

**Losses** – Net operating losses may be carried forward for up to five accounting periods. If the net operating losses relate to a business promoted by the Board of Investment (BOI) during a tax holiday period, the losses may be carried over to the first year after the tax holiday period and subsequently up to five years. The carryback of losses is not permitted.

**Rate** – The corporate tax rate is 20%. Certain small and medium-sized limited companies are subject to lower progressive rates, up to a certain amount of net taxable profits. A bank deriving profits from an International Banking Facility pays a 10% rate for “out-out” deposits.

Foreign companies that carry on the business of international transportation and that have an office in Thailand are taxed on their gross proceeds at a rate of 3%, rather than on net profits at the normal corporate income tax rate, and are exempt from the tax on profit remittances.

**Surtax** – No

**Alternative minimum tax** – No

**Foreign tax credit** – Foreign income tax paid on profits that are subject to corporate income tax in Thailand generally may be credited up to the amount of income tax paid in Thailand on such foreign income.

**Participation exemption** – Yes (subject to certain conditions)

**Holding company regime** – A tax exemption is available for dividend income received from foreign affiliates, provided the foreign profits were subject to a minimum headline income tax rate of at least 15%.

**Incentives** – Tax holidays from three to eight years are available for business activities promoted by the BOI. A regional operating headquarters (ROH) and its foreign expatriate employees working in Thailand may benefit from a 0% to 10% rate on net taxable profits and a fixed personal income tax rate of 15% (or a personal income tax exemption in some cases), respectively.

The International Headquarters (IHQ) and International Trade Center (ITC) regimes grant comprehensive tax privileges, including a 15-year corporate income tax exemption, a personal income tax reduction to a flat 15% rate for expatriate employees (or a personal income tax exemption in some cases) and a specific business tax (SBT) exemption.

## Withholding tax:

**Dividends** – Dividends paid to another Thai company are subject to a 10% withholding tax, or are exempt if certain conditions are satisfied under the Revenue Code or investment promotion law. Dividends paid to a nonresident company are subject to a 10% withholding tax. Dividends paid to an individual (resident or nonresident) are subject to a 10% withholding tax that is considered a final tax. The withholding tax rate on dividends paid to a nonresident may be reduced under a tax treaty.

**Interest** – Interest paid to a nonresident company is subject to a 15% withholding tax, unless the rate is reduced under a tax treaty.

Interest paid on loans from a bank, financial institution or an insurance company is subject to a 10% withholding tax if the lender is resident in a country that has concluded a tax treaty with Thailand, but an exemption applies if the interest 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.

Interest paid to a resident individual is subject to a 15% withholding tax that can be considered either as a final tax or as an advance tax payment to be used as a credit against the personal income tax due for a tax year.

**Royalties** – Royalties paid to another Thai 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 to a nonresident are subject to a 15% final withholding tax, unless the rate is reduced under a tax treaty.

**Technical service fees** – Technical service fees paid to another Thai company are subject to a 3% advance withholding tax, which may be used as a credit against the final corporate income tax due for the accounting period. Technical service fees paid to a nonresident are subject to a 15% final withholding tax, unless the rate is reduced under a tax treaty.

**Branch remittance tax** – A 10% branch remittance tax is imposed on after-tax profits paid or deemed paid to a head office.

### Other taxes on corporations:

**Capital duty** – No, but fees apply for registration of a company.

**Payroll tax** – Tax on employment income is withheld by the employer and remitted monthly to the tax authorities.

**Real property tax** – A tax of 12.5% is levied on the appraised rental value of real property, pursuant to the House and Land Tax Act. The tax is deductible for purposes of calculating corporate income tax. The House and Land Tax Act is expected to be replaced by the Land and Construction Tax Act in 2018, whereby various tax rates would be imposed depending on the nature of the assets. The maximum tax rate would depend on the type of land/building, but rates are expected to range from 0.2% to 5% on the appraisal value of the land/building. The actual rates would be announced by royal decree.

**Social security** – The employer and the employee are required to contribute 5% of an employee's monthly compensation, up to a specified monthly cap.

**Stamp duty** – Stamp duty applies on certain instruments specified under the revenue code at various rates depending on the type of instruments, e.g. 0.1% on leases, hire of work agreements, transfers of shares/debentures and loans, and 0.05% (capped at THB 10,000) on loan agreements, etc.

**Transfer tax** – SBT applies to the gross proceeds from the transfer of immovable property (see under "Other," immediately below), in addition to a withholding tax of 1% of the gross proceeds from the transfer and a transfer fee of 2% of the appraisal value.

**Other** – SBT applies to banking or similar transactions (regardless of whether the operator of the business is an individual or a company), the sale of immovable property in a profit-seeking manner and to certain other businesses.

SBT applies to the gross proceeds from the transfer of immovable property at a rate of 3%. An exemption from the tax is available in certain cases involving the 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 applicable SBT is increased by an additional 10%, which is levied as a municipal tax.

A person or entity subject to SBT must register within 30 days from the date of commencing business, except in certain circumstances.

SBT is payable by the 15th day of the following month.

### Anti-avoidance rules:

**Transfer pricing** – Under Thailand's transfer pricing rules, a taxpayer must declare in its annual corporate tax return whether revenue and expense transactions are based on market prices and, if this is not the case, the tax authorities may make adjustments to reflect a market price.

Advance pricing agreements (APAs) may be obtained and, while transfer pricing documentation is not formally required to be maintained, there is an assumption (based on filing requirements and directives to revenue officers) that documentation should be available by the corporate income tax return filing date. A taxpayer may initiate an adjustment (up or down) if there is adequate documentation to substantiate the adjustment.

A new transfer pricing rule is expected to be introduced under which taxpayers would be required to report related party transactions in formats/forms to be specified by the tax authorities. The report would have to be filed with the annual corporate income tax return.

**Thin capitalization** – No

**Controlled foreign companies** – No

**Disclosure requirements** – No

### Compliance for corporations:

**Tax year** – The tax year is 12 months (a shorter year is allowed only in the year of incorporation, when there is a change of accounting period or in the year of dissolution).

**Consolidated returns** – Consolidated returns are not permitted for corporate income tax purposes; each company must file its own tax return.

**Filing requirements** – A taxpayer must self-assess and make an advance corporate income tax payment for the first six months of the tax year (half-year return). The half-year return must be filed within two months after the first six months of the tax year. The annual income tax return must be filed within 150 days from the company's year-end. Extensions are not available. Corporate income tax paid with the half-year return is creditable against the total tax payable for the tax year.

**Penalties** – If an entity underestimates its profits for an entire year by more than 25%, a maximum 20% surcharge is imposed on the first half-year installment. In other circumstances, a surcharge of 1.5% per month on outstanding tax applies. A penalty of up to 100% of the tax due will apply when the income tax liability is formally assessed by the tax authorities.

**Rulings** – A taxpayer may request a nonbinding private

letter ruling, and APAs are available under the transfer pricing regime.

#### Personal taxation:

**Basis** – Thai residents and nonresidents are taxed on their Thailand-source income. Thai residents are taxed on foreign-source income only if the income is brought into Thailand in the year derived (repatriation in later years is exempt from personal income tax).

**Residence** – An individual is resident in Thailand for personal income tax purposes if he/she is present in Thailand for 180 days or more in a (calendar) tax year.

**Filing status** – A married couple may opt for a joint or separate filing on all types of personal income. The spouses also may agree to file tax returns separately with respect to employment income and file tax returns jointly on other types of personal income.

**Taxable income** – Gains or benefits derived by individuals are subject to personal income tax, e.g. employment income including employment-related benefits (unless exempted), profits derived by an individual from the carrying on of a trade or profession, passive income, etc.

**Capital gains** – Capital gains are considered taxable income.

**Deductions and allowances** – Subject to certain restrictions, deductions are granted for first-time purchases of a personal residence, insurance, mortgage interest, retirement or long-term equity plans, charitable contributions, etc. Personal allowances are available to a taxpayer, his/her spouse, children and parents in certain cases.

**Rates** – Assessable income is subject to progressive rates, up to a maximum rate of 35% on income of THB 5 million or greater. Expatriate employees of an ROH, IHQ or ITC may be entitled to a flat income tax rate of 15% for four to eight years, depending on the status of the ROH, IHQ or ITC.

Dividends and interest are taxed at source at a rate of 10% and 15%, respectively. Capital gains from the sale of shares of a public company registered on the stock exchange of Thailand are exempt from personal income tax; otherwise, gains are subject to the normal progressive personal income tax rates.

#### Other taxes on individuals:

**Capital duty** – No

**Stamp duty** – See “Stamp duty” under “Other taxes on corporations,” above.

**Capital acquisitions tax** – No

**Real property tax** – See “Real property tax” under “Other taxes on corporations,” above.

**Inheritance/estate tax** – A 10% tax is levied on the beneficiary's portion of an inheritance exceeding THB 100 million (a 0% or 5% rate may apply in certain circumstances).

A 5% gift tax is levied on the beneficiary's portion of assets exceeding THB 20 million (or THB 10 million in the case of persons that are not ascendants, descendants or spouses).

**Net wealth/net worth tax** – No

**Social security** – An employee must contribute 5% of his/her monthly compensation to social security. The employer also is required to contribute.

#### Compliance for individuals:

**Tax year** – Calendar year

**Filing and payment** – Tax on employment income is withheld by the employer and remitted to the tax authorities, generally on a monthly basis. An individual must file an annual personal income tax return on or before 31 March of the following year and pay any additional income tax due at that time.

**Penalties** – A monthly surcharge of 1.5% applies to underpayments of tax, up to the additional tax amount due, and a penalty of up to 100% of the tax due will apply when the income tax liability is formally assessed by the tax authorities.

#### Value added tax:

**Taxable transactions** – VAT is levied on the sale of goods and the provision of services. A VAT exemption applies to certain business activities, such as the sale of raw agriculture products, the sale of newspapers, domestic transportation, etc.

**Rates** – The standard VAT rate is 10%, which has been reduced to 7% until 30 September 2018. A 0% rate applies to exported goods and services.

**Registration** – The registration threshold for VAT is turnover exceeding THB 1.8 million for any given tax period. Nonresident suppliers that carry on business in Thailand on more than a temporary basis must register.

**Filing and payment** – VAT is payable by the 15th day of the month following the month in which the VAT liability arises. Self-assessment of VAT is required on the payment of certain types of income to overseas suppliers (primarily services or royalties on rights utilized in Thailand), whereby VAT is payable on the seventh day of

the month following the month in which the VAT liability arises (i.e. the payment is made).

**Source of tax law:** Revenue Code

**Tax treaties:** Thailand has concluded 60 income tax treaties.

**Tax authorities:** Thai Revenue Department

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