Doing business in Thailand
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Introduction

Geography and population

Thailand is one of the largest countries in the region of South East Asia. The borders are shared with Myanmar to the west, Lao PDR to the north and northeast, Cambodia to the east, and Malaysia to the south. The population of Thailand is estimated at 65 million. With a population of over 10 million, the capital city of Bangkok is the most important city economically and politically.

Thailand’s advantages

Gateway to Asia

Thailand enjoys a strategic location at the heart of Asia – home to what is regarded today as the largest growing economic market. Thailand serves as a gateway to Southeast Asia and the Greater Mekong sub-region, where newly emerging markets offer great business potential. From Thailand, it is convenient to trade with China, India and the countries of the Association of Southeast Asian Nations (ASEAN), which has a cumulative population of more than 500 million.

Hub of ASEAN

Thailand was one of the founding members of ASEAN and has been instrumental to the formation and development of the ASEAN Free Trade Area (AFTA). As a member of ASEAN, Thailand has forged closer economic cooperation with ASEAN member nations, and Thai manufactured products and services have access to the markets of ASEAN, which includes all 10 ASEAN countries. ASEAN is home to more than half a billion people, GDP in excess of US$700 billion and intra-ASEAN trade of more than US$1 trillion per year.

Growing economy

Economically, this country of 65 million people has been characterized by steady growth. Abundant natural resources and a skilled and cost-effective work force help attract foreign investment, enabling them to prosper and help develop industry in Thailand.

Foreign Direct Investment policies

The country's well-defined investment policies focus on liberalization and encourage free trade. Foreign investments, especially those that contribute to the development of skills, technology and innovation are actively promoted by the government. Thailand consistently ranks among the most attractive investment locations in international surveys, and a 2006 World Bank report indicated that Thailand was the 4th easiest country in Asia in which to do business, and the 20th easiest in the world.
Government support and incentives
Numerous government agencies support investors. Through the Board of Investment (BOI), the government offers a range of tax incentives, support services and import duty concessions available to an extensive list of businesses that are regarded as priority or promoted activities.

Under BOI, there are no foreign equity restrictions in the manufacturing sector, no local content requirements and no export requirements, as Thailand’s investment regime is in total compliance with WTO regulations.

The BOI also coordinates the activity of the One-Stop Service Center for Visas and Work Permits, which enables foreign staff of BOI-promoted companies to obtain work permits and long-term visas within 3 hours or less.

Long established and newly emerging industries
With strong economic development and strong support industries, the country's industrial production has grown and diversified rapidly both in the long established and newly emerging industries.

The government has placed emphasis on attracting investment in 6 key sectors that have been determined as key to the country's developmental objectives. These six target industries include: agriculture and agro-industry, alternative energy, automotive, electronics and ICT, fashion, and value-added services including entertainment, healthcare and tourism.

Friendly and rich culture
Thailand has gained a well-known reputation throughout the world for its gracious hospitality. The friendliness of its people and the diverse nature of Thai culture make visitors feel at home in Thailand.

Constitution
Thailand’s government is a constitutional monarchy with the King as the head of state, and the leader of the government is the Prime Minister. Since 1971, Thailand’s government has experienced numerous changes. Throughout all the changes, policies have remained stable as the bureaucracy maintains continuity in policy formulation and implementation.

Communications
Thailand has excellent communication facilities. Barring a few islands and remote areas there is brilliant connectivity throughout Thailand especially in and near tourist spots. Thailand communications includes high quality telephone systems in most of the urban areas like Bangkok.

Language and Currency
Thai is the national language. English is the next most commonly spoken language and is especially prevalent among the business community in Bangkok. Many Thai-Chinese also speak Chinese.

“Baht” is the national currency. One baht is divided into 100 satang. The bank notes come in five denominations: 20, 50, 100, 500, 1000. The coins are 25, 50 satang pieces and 1, 2, 5 and 10 baht pieces.
Legal System

Thailand's legal system combines principles of traditional Thai and Western laws. The Constitutional Court is the highest court of appeal, although its jurisdiction is limited to the clearly defined constitutional issues. Its members are nominated by the Senate and appointed by the King. The Courts of Justice have jurisdiction over criminal and civil cases and are organized in three tiers: Courts of First Instance, the Court of Appeals, and the Supreme Court of Justice. Administrative courts have jurisdiction over suits between private parties and the Government, and cases in which one government entity is suing another.

Major Exports and Imports

Thailand main exports are computer hardware, motor vehicles and auto parts, jewelry and electrical circuits.

Crude oil, machinery and parts, and alloy steel and steel products are the top three import products of Thailand during the past five years.

Government Policy on Foreign Investment in Thailand

The Thai Government has long maintained an open market-oriented economy and encouraged foreign direct investment. Following the 1997-98 Asian financial crisis, the Government embarked on an International Monetary Fund-sponsored economic reform program designed in part to promote a more competitive and transparent climate for foreign investors. Although protracted, the reform process continues to move ahead and Thailand remains committed to economic reform and an open investment regime.

The Foreign Business Act of 1999 governs most investment activities by non-Thai nationals. It opened additional business sectors to foreign investment and increased maximum ownership stakes permitted in some sectors above the standard 49% limitation. It continues to restrict majority foreign participation in certain types of business but this restriction excludes the majority of manufacturing ventures.

However, the Thai Government offers a range of incentives to investors, administered by the Board of Investment (BOI) and the Industrial Estate Authority of Thailand (IEAT) and these incentives often come with permission for full foreign ownership. The BOI issued a new policy which took effect on August 1, 2000. In principle, the BOI maintains a policy of giving special consideration to investment projects where the operations are located in provincial areas (in preference to Greater Bangkok). The IEAT carries out the government's industrial development policy, which includes allocating land for further expansion, improving land conditions and providing accommodations and facilities to assist entrepreneurs.

Import Controls

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

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

Exchange Controls

Foreign Currency
Foreign currencies can be transferred or brought into Thailand without limit. With limited exceptions, any person receiving foreign currencies from abroad is required to convert such foreign currency into Thai baht or to deposit the same in a foreign currency account with an authorized financial institution. A Foreign Exchange Transaction must be submitted to authorized commercial banks for each transaction involving the purchase, sale, deposit or withdrawal of such foreign currency valued at US$20,000 or more.

Local Currency
There is no restriction on the amount of Thai Baht that may be brought into the country. A person traveling to Thailand's bordering countries including Vietnam is allowed to take out Thai Baht up to 500,000 Baht and to other countries up to 50,000 Baht respectively without authorization.

All foreign exchange transactions are to be conducted through commercial banks and through authorized non-banks that are granted foreign exchange licenses by the Minister of Finance namely authorized money changers, authorized money transfer agents and authorized companies. Any transactions not conducted through the above-mentioned licensees require approval from the Competent Officer on a case by case basis.

Source of Finance

Thailand has a substantial number of financial institutions and a number of specialized financial institutions, namely the Government Savings Bank, the Bank of Agriculture and Agricultural Cooperatives, the Export Import Bank of Thailand and Small and Medium Enterprise Development Bank of Thailand. The financial institution in Thailand offers a full range of financial services under the supervision of the Bank of Thailand. In addition, Thailand is a member of the World Bank as well as the Asian Development Bank.
Business Structures

Types of Business Structures

Thailand recognizes three types of business structures: partnerships, limited companies and joint ventures.

Partnerships

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

*Unregistered ordinary partnerships* have partners that are jointly and wholly liable for all obligations of the partnership. This form of partnership is not a juristic entity and is treated, for tax purposes, as an individual.

*Registered ordinary partnerships* that are registered with the Commercial Registrar are legal entities, separate and distinct from the individual partners, and are taxed as a corporate entity.

*Limited partnerships* comprise one or more partners, whose individual liability is restricted to the amount of capital contributed to the partnership, and one or more of the partners are jointly liable without any limitation for all obligations of the partnership. A limited partnership must be registered and is taxed as a corporate entity.

Limited companies

There are two types of limited companies, i.e. private or closely held companies and public companies. The first is governed by the Civil and Commercial Code, the second by the Public Limited Company Act.

**Private Limited Companies**

A Thai private limited company has basic characteristics similar to those of Western corporations. A private limited company is formed through a process that leads to the registration of a memorandum of Association (Articles of Incorporation) and Articles of Association (By-laws), as its constitutive documents.

**Public Limited Companies**

The procedure for setting up a limited public company is similar to that for a private limited company. A Thai public limited company may, subject to compliance with the prospectus, Securities and Exchange Commission (SEC) approval and other requirements, offer shares, debentures and warrants to the public and may apply to have their securities listed on the Stock Exchange of Thailand (SET).

Below is the table showing differences in procedures for establishing a private limited company and a public limited company.
<table>
<thead>
<tr>
<th></th>
<th>Private Limited Company</th>
<th>Public Limited Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum number of natural persons as promoters</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>Minimum number of shareholders required at all times</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>Public subscription of shares by prospectus</td>
<td>Not allowed</td>
<td>Allowed*</td>
</tr>
<tr>
<td>Public subscription of debentures by prospectus</td>
<td>Allowed*</td>
<td>Allowed*</td>
</tr>
<tr>
<td>Registration fee per Baht million of capital</td>
<td>5,500 Baht</td>
<td>2,000 Baht</td>
</tr>
</tbody>
</table>

* Subject to SEC approval.

**Directors**

Every company must have at least one director to act as an agent of the company. The number of directors of a private company shall not be fixed under Thai laws but set by the shareholders’ general meeting. A director shall be appointed or removed only by general meeting. For public companies, there shall be at least 5 directors and at least three of whom are Thai nationals.

The directors are jointly responsible to ensure that the payment of shares by the shareholders have actually been made as well as the proper distribution of any dividend or interest as prescribed by law. In addition, the directors have a statutory obligation to keep the books and documents prescribed by law and to enforce the resolution of the general meetings.

**Joint Ventures**

A joint venture may be described in accordance with general practice as a group of persons (natural and/or juristic) entering into an agreement in order to carry on a business together. It has not yet been recognized as a legal entity under the Civil and Commercial Code. However, income from a joint venture is subject to corporate taxation under the Revenue Code, which classifies it as a single entity.

**Other forms of corporate presence**

**Branch of a Foreign Corporation**

Foreign companies may carry out certain business in Thailand through a branch office. Branch offices are required to maintain accounts only relating to the branch in Thailand.

It is important to clarify beforehand what constitutes income subject to Thai tax because the Revenue Department may consider revenues directly earned by the foreign head office from sources within Thailand as subject to Thai taxes.

A condition for approval of a Foreign Business License to a branch of a foreign corporation is that minimum capital, amounting to not less than three million Baht, must be brought into Thailand. This amount may be changed by subsequent Ministerial Regulations.
Representative Office of a Foreign Corporation

Foreign corporations may establish representative offices in Thailand to engage in limited non-revenue-generating activities. These activities are restricted to:

- Sourcing of goods or services in Thailand for the head office or inspecting and controlling the quality of goods that the head office purchases in Thailand.
- Providing advice in various fields relating to products directly sold by its head office to local distributors or consumers.
- Disseminating information about new products and services of the head office.
- Reporting to its head office on local business developments and activities.

The minimum capital contribution for branches also applies to representative offices.

Regional Operating Headquarters (ROH)

A ROH is a juristic company or partnership organized under Thai law that provides services to its domestic or overseas affiliated companies/or branches. Such services relate to administrative, technical, management and other supporting roles, including research and development and training.

The government provides tax breaks and incentives to attract foreign companies to set up a ROH in this country. However, to set up a ROH, the following requirements must be met:

- The ROH must have at least 10 million baht in paid-up capital on the closing date of any accounting period.
- The ROH must provide services to its overseas affiliated companies and/or branches in at least three countries.
- At least half of the revenue booked by the ROH must be derived from service provision to its overseas affiliated companies and/or branches, although this requirement will be reduced to not less than one third of the ROH’s revenue for the first three years.
- Other requirements may be imposed by the Director-General of the Revenue Department.

Corporate Registration Procedures

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

Branch, Representative Office and ROH. Foreign corporations wishing to do business in Thailand through a branch, representative office or ROH shall submit the required documents. Documents issued by the Head Office must be notarized by a Notary Public or certified by the local Thai consulate or embassy.
Public Securities. In offering newly issued securities for sale to the public, companies shall apply for an approval from the Securities and Exchange Commission (SEC) in compliance with the rules and regulations issued by the SEC Board according to the Securities and Exchange Act B.E. 2535. However, the offering of existing securities by its holders can be done without the SEC approval on the condition that the company shall disclose information prior to offering securities for sale.

Before offering securities to the public, the companies or existing shareholders shall generally need to file a registration statement and a draft prospectus to the SEC in order to provide the information to potential investors.

Tax Registrations

An individual person who is subject to personal income tax must obtain a tax identification number from the Revenue Department within 60 days from the date of earning income.

A business, which is subject to corporate income tax, must obtain a tax identification number from the Revenue Department within 60 days after its incorporation or registration.

All persons whose annual turnover exceeds Baht 1.8 million must register for value added tax within 30 days after the annual turnover has exceeded that amount, unless specifically exempted.

The application for VAT registration before the date of commencing business is also allowed under the conditions specified by the Director-General of the Revenue Department.

Licensing a Factory

Under the Factory Act B.E. 2535 (1992), factories are divided into three groups as follows:

- Group 1 – Factories that can function immediately without licensing.
- Group 2 – Factories that only require notification to officials in advance of the start of operations. Operators may commence operations upon the acquiring of a receipt from the Ministry stating their report has been received.
- Group 3 – Factories that require the application for a factory license before the establishment of the factory.

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

The factory license is valid up to the last day of the fifth calendar year from the year of commencement, and is renewable. An application for renewal of the factory license must be filed to the authority prior to the expiration of that license. While the factory license is valid, the licensee must pay an annual fee for the said license as scheduled by the authority.

Prior permission from the Ministry of Industry must be obtained for any factory expansion, transfer of machinery to other sites or transfer of a factory site. To transfer, lease, assign or sell a factory operation, the same permission must also be obtained.
Audit Requirements and Practices

Audited financial statements of a juristic entity, including a limited company, registered partnership, branch office and joint venture must be audited by a Thai certified public accountant and submitted to the Revenue Department and the Department of Business Development for each accounting year. The audited financial statements must be prepared in compliance with Thai Accounting Standards and approved by the shareholders in a general meeting within 4 months after the ending accounting period.

The companies listed on the Stock Exchange of Thailand or the Market for Alternative Investment in Thailand shall also prepare financial statements which have been reviewed by Thai auditors on a quarterly basis.

Shareholdings by Non-residents

Shareholders in a Thai company can be resident of any country. However, some specific businesses limit the percentage of foreign ownership according to the Foreign Business Act B.E. 2542.
Taxation

Overview

The principal taxation law of Thailand is the Revenue Code 1938. In Thailand, taxes are collected in two ways. There are direct taxes (personal and corporate income taxes and petroleum income tax) and indirect taxes (Value Added Tax, excise tax, customs duties, stamp duties and specific business tax). Generally, income tax in Thailand is by self-assessment whereby tax declarations and payments are assumed to be correct. However, the Revenue Department has the power to audit taxes and taxpayer financial records. The Value Added Tax (VAT) is collected upon consumption of goods and services and is also levied on imports.

Corporate Income Tax

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

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

Taxable entity

Corporate income tax is levied on both Thailand and foreign companies. A Thailand company means a company incorporated in Thailand. A Thailand company is subject to tax in Thailand on its worldwide net profit at the end of each accounting period (12 months). A foreign company means a company incorporated under foreign law. Generally, a foreign company is treated as carrying on business in Thailand if it has an office, a branch or any other place of business in Thailand or has an employee, agent or representative for carrying on business in Thailand. A foreign company carrying on business in Thailand is subject to CIT only for net profit arising from or in consequence of business carried on in Thailand at the end of each accounting period. A separate profit remittance tax of 10% of the amount remitted is imposed on foreign companies that remit their Thailand based profits offshore. Profit means any sum set aside out of profits as well as any sum which may be regarded as profit.

A foreign company, not carrying on business in Thailand but deriving certain types of income from Thailand, such as service fees, interests, dividends, rents or professional fees, may be subject to CIT on the gross amount received. It is collected in the form of withholding tax by which the payer of income shall deduct the tax from the income at the rate shown in Section 3 of Withholding Tax heading (Tax Rates – Payments to Non Resident Countries). A foreign company engaged in international transport is also only subject to tax on its gross receipts.
**Fiscal Year**

The ordinary fiscal year for tax submission is for the 12 month period ending 31 December.

However, with the consent of the Director-General, corporate taxpayers may choose a substituted accounting period for the purpose of determining taxable income.

**Determination of Company taxable income**

The CIT of a company carrying on business in Thailand is calculated from the company's net profit on the accruals basis. A company shall take into account all revenue arising from or in consequence of the business carried on in an accounting period and may deduct all expenses in accordance with the conditions prescribed by the Revenue Code. The corporate income tax rate in Thailand is 30% on net profit. However, the rates vary depending on the types of taxpayers. Additional deductions on certain types of expenditure may also be allowable.

**Foreign tax relief**

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

**Losses and Consolidation**

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

**Dividends**

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

Dividend paid by a foreign company to a Thai company after November 2005 will be exempt from Thai corporate income tax if the paying company has a minimum corporate tax rate of 15% and the Thai company has a 25% or more equity interest in the foreign entity and maintains its shareholding in that company for a 6 month period.

**Repatriation of Profits and Transfer Pricing**

In addition to paying dividends, profits may be repatriated through various other means including payment of royalties and/ or service fees. Although there is no separate transfer pricing legislation, guidelines have been issued to counter aggressive inter-company pricing practices and to ensure such payments are reflected at market value. These guidelines are intended to prevent the manipulation of profits and losses within a group of related companies and ensure that goods and services traded between the related companies are priced at an arm’s length value. The Revenue Department also has the power to assess income resulting from transfers which it deems is below market value.
**Personal Income Tax**

Personal Income Tax (PIT) is a direct tax levied on the taxable income of a person. A person means an individual, an ordinary partnership, a non-juristic body of persons, a deceased person and an undivided estate. In general, a person liable to PIT has to compute his tax liability, file tax returns and pay tax, if any, on a calendar year basis. Taxpayers are classified into "resident" and "non-resident". A "resident" means any person residing in Thailand for a period or periods aggregating 180 days or more in any tax (calendar) year. A resident of Thailand is liable to pay tax on income from sources in Thailand on a cash basis, regardless where the money is paid, as well as on the portion of income from foreign sources that is brought into Thailand in the same year that the foreign income is derived. A non-resident is, however, subject to tax only on income from sources in Thailand.

**Income**

Income chargeable to PIT is called "assessable income". The term covers income both in cash and in kind. Therefore, any benefits provided by an employer or other persons, such as rent-free housing or the amount of tax paid by the employer on behalf of the employee, are also treated as assessable income of the employee for the purpose of PIT.

Assessable income is divided into 8 categories. Certain deductions and allowances can be offset against assessable income in order to calculate taxable income. Taxpayers shall make deductions from assessable income before the allowances are granted.

<table>
<thead>
<tr>
<th>Type of Income</th>
<th>Deductions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Income from employment</td>
<td>40% but not exceeding Baht 60,000</td>
</tr>
<tr>
<td>2. Income from hire of work</td>
<td>40% but not exceeding Baht 60,000</td>
</tr>
<tr>
<td>3. Income received from copyright</td>
<td>40% but not exceeding Baht 60,000</td>
</tr>
<tr>
<td>4. income in the nature of interest, dividend, capital gain</td>
<td>-</td>
</tr>
<tr>
<td>5. Income from letting out of property on hire</td>
<td>-</td>
</tr>
<tr>
<td>– building and wharves</td>
<td>30%</td>
</tr>
<tr>
<td>– agricultural land</td>
<td>20%</td>
</tr>
<tr>
<td>– all other types of land</td>
<td>15%</td>
</tr>
<tr>
<td>– vehicles</td>
<td>30%</td>
</tr>
<tr>
<td>– any other type of property</td>
<td>10%</td>
</tr>
<tr>
<td>6. Income from professional services</td>
<td>30% except for the medical profession where 60% is allowed</td>
</tr>
<tr>
<td>7. Income derived from contract of work whereby the contractor provides essential materials besides tools</td>
<td>actual expense or 70%</td>
</tr>
<tr>
<td>8. Income derived from business, commerce, agriculture, industry, transport, or any other activities not specified earlier</td>
<td>actual expense or 40% to 85% depending on the types of income</td>
</tr>
</tbody>
</table>
### Tax Rates for Resident and Non Resident Individuals (2008 and subsequent years)

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Tax Rate (%)</th>
<th>Tax Amount</th>
<th>Accumulated Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 150,000</td>
<td>Exempt</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>150,001 - 500,000</td>
<td>10</td>
<td>35,000</td>
<td>35,000</td>
</tr>
<tr>
<td>500,001 - 1,000,000</td>
<td>20</td>
<td>100,000</td>
<td>135,000</td>
</tr>
<tr>
<td>1,000,001 - 4,000,000</td>
<td>30</td>
<td>900,000</td>
<td>1,035,000</td>
</tr>
<tr>
<td>4,000,001 and over</td>
<td>37</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

### Separate taxation

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

**Income from sale of immovable property:** There are special rules applicable to calculating the gains on sale of immovable property which may allow the taxpayer to pay a final withholding tax to the Land Department in lieu of including the gain on sale as normal assessable income.

**Interest:** Interest income may, at the taxpayer's election, be excluded from the computation of PIT provided that tax at 15 per cent is withheld at source. However, the following forms of individual's interest income are exempt from any tax:

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

**Dividends:** A resident individual taxpayer that derives dividends has a choice of including the dividend in assessable income or paying a final withholding tax at 10% and excluding such dividend from their income. Taxpayers who choose the first option must gross up the dividend to include the 10% withholding tax deducted as well as the company tax paid on that dividend (normally 30%). A tax credit is however granted for both the withholding tax and company tax deducted.

### Tax payment

A taxpayer is liable to file a Personal Income Tax return (Form PND 90 or 91) and make a payment to the Area Revenue Branch Office within the last day of March following the taxable year. A taxpayer who derives categories of income [5] – [8] (as highlighted in the deduction table above) during the first six months of the taxable year is also required to file a half-yearly return (Form PND 94) and make a payment to the Area Revenue Branch Office within the last day of September of that taxable year. Any withholding or half-yearly tax, which has been paid, can be used as a credit against the tax liability at the end of the year.

### Withholding Tax

1. **Withholding Tax - Payments to resident individuals**

For certain categories of income, the payer of income has to withhold tax at source, file the necessary return (Form PND 1, 2, or 3 as the case may be) and submit the amount of tax withheld to the District Revenue Office. The tax withheld shall then be credited against tax liability of a taxpayer at the time of filing the PND return. The following are the withholding tax rates on some categories of income.
1. Types of income Withholding tax rate

1. Employment income/hire of work 0 - 37 %
2. Interest 15 %
3. Dividends 10 %
4. Royalty 0-37 %
5. Rents 5 %
6. Prizes 5 %
7. Service and professional fees 3 %
8. Public entertainer remuneration 5 %
9. Advertising fees 2 %
10. Capital Gain 0 - 37 %

1. Not applicable if an individual is the payer of income
2. Not applicable for sale of shares on the SET

2. Withholding tax rates - Payments to resident corporations and branches of foreign companies

Certain types of income paid to companies are subject to withholding tax at source. The withholding tax rates depend on the types of income and the tax status of the recipient. The payer of income is required to file the return (Form PND 53) and submit the amount of tax withheld to the District Revenue Offices within seven days of the following month in which the payment is made. The tax withheld will be credited against final tax liability of the taxpayer. The following are the withholding tax rates on some important types of income.

<table>
<thead>
<tr>
<th>Types of income</th>
<th>Withholding tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Interest</td>
<td>10 % if paid to associations or foundations or 1 % in other cases</td>
</tr>
<tr>
<td>2. Dividends</td>
<td>10 %</td>
</tr>
<tr>
<td>3. Royalties</td>
<td>10 % if paid to associations or foundations or 3 % in other cases</td>
</tr>
<tr>
<td>4. Rents</td>
<td>5 %</td>
</tr>
<tr>
<td>5. Prizes</td>
<td>5 %</td>
</tr>
<tr>
<td>6. Service and professional fees</td>
<td>3 % if paid to Thailand company or foreign company having permanent branch in Thailand 5% if paid to foreign company not having permanent branch in Thailand</td>
</tr>
<tr>
<td>7. Advertising Fees</td>
<td>2 %</td>
</tr>
</tbody>
</table>

Government agencies are required to withhold tax at the rate of 1% on all types of income paid to Thai companies.

3. Withholding Tax Rates – Payments to Non Resident Countries

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

VAT replaced sales tax on 1 January 1992. It is an indirect tax imposed on the value added of each stage of production and distribution.

Any person or entity, that regularly supplies goods or provides services in Thailand and has an annual turnover exceeding 1.8 million Baht, is subject to VAT in Thailand. A supplier of services to an offshore person will also attract VAT if the service is used in Thailand. VAT will also apply to any import of goods or services. Suppliers of goods and services collect VAT output tax. Purchasers of goods and services pay VAT input tax. Input tax is deducted from output tax to determine VAT liability.

VAT is currently levied at a rate of 7% on gross receipts, although a zero rate applies to exported goods and services (that are totally used abroad). Certain businesses are exempt from VAT.

**Specific Business Tax (SBT)**

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

<table>
<thead>
<tr>
<th>Business</th>
<th>Tax Base</th>
<th>Tax Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Banking, Finance and similar business</td>
<td>Interest, discounts, service fees, other fees, profits from foreign exchange</td>
<td>3.0</td>
</tr>
<tr>
<td>2. Life Insurance</td>
<td>Interest, service fees and other fees</td>
<td>2.5</td>
</tr>
<tr>
<td>3. Pawn Brokerage</td>
<td>Interest, fees, remuneration from selling overdue property</td>
<td>2.5</td>
</tr>
<tr>
<td>4. Real estate¹</td>
<td>Gross receipts</td>
<td>3.0</td>
</tr>
<tr>
<td>5. Factoring</td>
<td>Interest, discounts, service fees and other fees</td>
<td>3.0</td>
</tr>
</tbody>
</table>

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

¹ Specific Business Tax has been reduced to 0.1% from 29 March 2009 to 28 March 2010. After this period, the normal rate at 3% will apply.

**Other Taxes**

**Petroleum Income Tax**

Income derived from petroleum operations is subject to the Petroleum Income Tax Act.

**Stamp Duty**

Stamp duties are payable on most documents filed by companies with the Government agencies or entities and on official documents of the company, including transfers of land, leases, stock transfers, debentures, mortgages, life assurance policies, annuities, power of attorney, promissory notes, letters of credit, cheques etc. Stamp duties are taxed on instruments and not on transactions or persons. For the purposes of stamp duty, an instrument is defined as any document chargeable with duty under the Revenue Code. The stamp duty rules are contained in Chapter VI of Title II of the Revenue Code.
Only instruments listed in the stamp duty schedule are subject to stamp duty and the persons liable to pay stamp duty are those associated with the instrument. They are, for example, the persons executing the instrument, the holders of the instrument or the beneficiary. General exemptions are available under the Revenue Code. Rates vary according to the class of the instrument. Non compliance can result in a penalty or surcharge of tax.

**Excise Tax**

Excise tax is levied on certain types of products such as alcoholic beverages, tobacco and fruit juice.

**Customs Duty**

Tariff duties on goods are levied on an ad valorem or a specific rate basis. The majority of goods imported by businesses are subject to rates ranging from 5-60%. The majority of imported articles are subject to two different taxes: Tariff duty and VAT. Tariff duty is computed by multiplying the CIF value of the goods by the duty rate. The duty thus determined is added to the value of the goods determined with reference to the CIF price. VAT is then levied on the total sum of the CIF value, duty, and excise tax, if any. Goods imported for re-export are generally exempted from import duty and VAT. Export duties are imposed on only a few items, including rice, hides, skins and leather, scrap iron or steel, rubber, teak and other kinds of wood.

Two exceptions to the obligation to pay customs duties apply to the importation of machinery, equipment and materials for the use by:
- Oil and gas concessionaires and their contractors
- Certain companies promoted by the BOI.

**Signboard Tax**

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

**Property Tax**

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

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

**Capital Gains Tax**

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

**Branch Profits Tax**

There is no branch profits tax in Thailand. The Thai branches of foreign companies will generally only be taxed in Thailand on the net profit arising from the business carried on in Thailand. The Thai branches are subject to the same rate of tax as resident companies. A separate profit remittance tax, however, is imposed on such profits remitted out of Thailand.
Investment Incentives

Incentives for Research and Development (R&D)

The R&D provisions of the income tax legislation allows a company to claim deductions of 200% of eligible expenditure incurred on payment to government or certain private agencies for costs of R&D of technology. In addition, assets used for R&D activities can be depreciated at an accelerated rate.

Incentives under the Investment Promotion Act

The Board of Investment (BOI) is the government agency charged with organizing incentives to encourage private-sector investment in specific areas. The structure, role and policies of the BOI today basically follow the guidelines provided in the Investment Promotion Act.

Foreign Equity Participation

The BOI uses the following criteria in considering the extent of foreign equity participation allowed in a promoted investment project:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Maximum foreign equity participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Projects in agriculture, animal husbandry, fishery, mineral exploration and mining and service business under Schedule One of the Foreign Business Act B.E. 2542</td>
<td>49%</td>
</tr>
<tr>
<td>2. Manufacturing projects, in all zones,</td>
<td>100%</td>
</tr>
<tr>
<td>3. The Board may specifically fix the shareholding of foreign investors on some promoted projects when it is deemed appropriate.</td>
<td></td>
</tr>
</tbody>
</table>

Investment Promotion Zones

To comply with the national objectives of decentralizing and spreading the benefits of development to the country’s provinces, the BOI has divided all provinces of Thailand into three investment zones. Investors who set up their operations in provinces outside the central region of Thailand are entitled to a wider range of tax incentives. The investor is able to establish factories in all investment zones except for certain activities for which a specific zone is stipulated.

The BOI offers two kinds of incentives to promoted projects, regardless of location: tax incentives and non-tax incentives.
Tax-based incentives

1. Exemption or reduction of tariffs on imported machinery and equipment, as well as raw materials for the promoted activity, and
2. Exemption from income tax on net profits and dividends. The extent of these incentives varies according to the location of the promoted company.

Non-tax incentives include permission for full or majority foreign ownership of the company, to bring in foreign workers, to own land and to take or remit foreign currency abroad.

Action required after the project is approved for promotion

- The BOI will inform the applicant in writing within 7 working days of the approval date, detailing the conditions, privileges and benefits granted. An application form for the promotion certificate will be attached, together with the notification of approval.
- Upon receipt of the BOI letter approving the project, the applicant must reply by completing the form of promotion acceptance and sending it back to the BOI within one month. If any changes or special conditions and privileges are sought, they should be requested at that time.
- If the applicant is unable to reply within the stated time limit, an extension letter should be sent to the BOI, which will consider extending the deadline by not more than one month at a time, up to a maximum of three times.
- In order to receive the investment promotion certificate, the applicant must set up the company within six months of accepting the approval, and submit all of the required documents to the BOI.
- If the applicant is unable to submit the documents within the required time frame, an explanatory letter must be sent to the BOI, which will consider extending the deadline by four months at a time, up to a maximum of three times.
- The BOI will issue the investment promotion certificate after receipt of all specified documents, and the promoted company must follow the conditions laid out in the Certificate.

Incentives under Regional Operating Headquarters

The criteria for establishing an ROH was discussed in the section entitled “Business Structures”. Outlined below is a summary of the main tax incentives granted for such companies operating as a ROH.

Corporate income tax

- **Business income**: tax rate of 10% on income derived from the provision of qualifying services to the ROH’s associated companies or branches.
- **Royalties**: tax rate of 10% on royalties received from associated companies or branches arising from R&D work carried out in Thailand.
- **Interest**: tax rate of 10% on interest income derived from associated companies or branches on loans made by ROH.
- **Dividend**: tax exemption on dividend received by ROH from associated companies and dividend paid to companies incorporated outside Thailand which do not carry on business in Thailand.

Accelerated depreciation allowances

Accelerated depreciation for buildings used in carrying out the operation of a ROH can be claimed at a rate of 25% of the purchase price on the date of acquisition and the residual value can be depreciated at a rate not exceeding 5 percent per annum.
Personal income tax

- Tax exemption on income received by ROH expatriates assigned to work outside Thailand provided neither the ROH nor any affiliated company in Thailand claims a corporate income tax deduction for this cost.
- Expatriates may elect to pay personal income tax at a flat rate of 15% for a period not exceeding 4 years.

Incentive under the Industrial Estate Authority of Thailand Act

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

**Investment in General Industrial Zone**

Investors in a GIZ are eligible for the following opportunities, options and privileges:

1. Permission to operate service businesses in the GIZ
   IEAT provides industrial operators in a GIZ with comprehensive services essential for industrial operation – such as transportation, warehouses, training centers and clinics – as well as permission to own land required for their operations.

2. Non-Tax privileges for operators in a GIZ
   - The right to own land in an industrial estate
   - The right to bring in foreign skilled workers as well as their spouses or dependents
   - The right to remit money abroad

**Investment in Export Processing Zone**

Under the most recent Industrial Estate Authority of Thailand Act, investors in an EPZ are entitled to additional tax and other privileges:

- Operators in an EPZ are afforded the privilege of exporting products without any restrictions and with the added convenience of being able to bring merchandise or raw materials into an EPZ.
- Supplies taken into an EPZ are entitled to improved tax and duty privileges.
  > Tax burden relief for products taken out of an EPZ for domestic use or consumption. Contrary to the previous Act, content or raw material components, if produced domestically, are entitled to tax and duty exemptions.
  > Operators in an EPZ remain entitled to privileges indicated in the previous Industrial Estate Authority of Thailand Act:
    - Tax privileges including import/export tax and duty exemptions; value-added tax (VAT) as well as excise tax on machinery, equipment, components, raw materials and supplies used for the production of goods and other merchandise
    - General privileges consisting of the right to own land, bring in technicians, experts, their family members and dependents, as well as the ability to remit foreign currency to their home countries
Incentives under the Petroleum Laws

To develop Thailand's natural resources, the Petroleum Act and the Petroleum Income Tax Act of Thailand provide special incentives concerning petroleum survey, exploration and production.

**Investment Incentives include:**

*Import duty:* imported machinery, spare parts and materials required for its business or for the use of its drilling and oil field service contractors are exempt from tariffs.

*Land ownership:* The business is permitted to own land used for its operation.

*Immigration:* Relaxed work permit and visa rules exist for foreign experts, technical staff and their dependents, including those of its contractors.

*Other incentives:* The government shall not restrict the export of petroleum except in very exceptional circumstances and will also provide a guarantee that it will not nationalize any private industrial activity.
Protection of Intellectual Property

Copyright

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

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

- In the case of unpublished work, the creator must be of Thai nationality or reside in Thailand or be a national of or reside in a country which is a member of the Convention on the Protection of Copyright, of which Thailand is a member, provided that the residence at all times or most of the time is spent on the creation of the work;
- In the case of published work, the first publication must be made in Thailand or in a country that is a member of the Convention on the Protection of Copyright. In the case where the first publication was made outside Thailand or in a country which is not a member of the Convention, the work created must have been published in Thailand or in a country which is a member of the Convention within 30 days from the first publication, or the creator must have the qualification as prescribed above at the time of the first publication.

A copyright is valid for the period of the life of the creator and an additional 50 years thereafter. Where the creator is a juristic person, the protection period is 50 years from the date of creation or 25 years where the copyright is for applied art.

The following are not deemed eligible for copyright protection under the Act:

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

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

Trademarks

The Trademark Act of Thailand governs registration of and provides protection for trademarks. The Act defines a trademark as a symbol used in connection with goods for the purpose of indicating that they are the goods of the owner of the trademark. The trademark must be distinctive and not identical or similar to those registered by others.
Registration of a trademark may be completed by the trademark proprietor or through an agent. Application for registration must be made on official forms duly signed either by the proprietor or the agent and filed with the Trademark Office. If an application is approved, the registration will be published in the Official Journal. Once published and not opposed, the proprietor has the exclusive right to use the registered mark for all the products which registration has been granted.

Registration is valid for 10 years from the date of application and is renewable for an unlimited number of periods of 10 years each. Renewal of the registered trademark must be made within 90 days prior to the date of expiration.

The Trademark Act allows the protection of Service Marks, Service Names, Collective Marks, Certification Marks and Trade Names.

**Patents**

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

Under the Patent Act, patents for inventions shall be valid for 20 years, whereas patents for designs shall be valid for 10 years.

The invention shall be patentable under the following requirements:

- Having novelty;
- Involving an inventive step;
- Being capable of being made or used for some kind of production activity.

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

- Microbes and any components thereof which exist naturally; animal, plant and extracted substances from animals or plants
- Scientific or mathematical rules or theories
- Computer programs
- Methods of diagnoses, treatment and care of human and animal diseases
- Inventions that are contrary to public order or morality, public health or welfare
Foreign Investment and Immigration

Foreign Business Act

The Foreign Business Act regulates the activities in which companies designated as “foreign” may engage in. While some activities are completely prohibited, some may be engaged in with prior approval from a designated government agency and some do not require any special approval.

Definition of “foreign company”

According to Thai law, a company registered under the following laws shall be deemed a foreign company:

- The laws of another country (including all branches, representative offices and regional offices of overseas companies operating in Thailand)
- Thai law whereby 50 percent or more of its shares are held by non-Thais (individuals or business entities)

The Foreign Business Act has identified three lists of activities in which foreign participation may be prohibited or restricted.

Activities stated in List 1 are designated as “businesses not permitted for foreigners to operate due to special reasons”. Foreign companies are completely restricted from engaging in the activities contained in List 1.

Activities stated in List 2 are designated as “businesses related to national safety or security, activities affecting arts and culture, traditional and folk handicraft or natural resources and environment”. Foreign companies may only engage in the activities stated in List 2 with prior Cabinet approval.

Activities stated in List 3 are designated as “businesses in which Thai nationals are not yet ready to compete with foreigners”. To engage in activities stated in List 3, the foreign company must apply for and obtain a Foreign Business License prior to commencing the activity.

Companies promoted by the Board of Investment are permitted to engage in certain business activities restricted under the Foreign Business Act.

Visas

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

Tourist - Foreigners who obtain tourist visas are initially granted a stay of 60 days. Renewals by the discretion of the Immigration Department are normally granted for periods up to 30 days at a time.
Visitor transit - Foreigners who have obtained a transit visa from a Thai Embassy or consulate will be granted a 30-day stay in the Kingdom. Extensions of stay are normally granted for periods of 7-10 days. In addition, nationals of many countries will be able to enter Thailand without a visa and may remain for 30 days per visit. Foreigners who enter the Kingdom under the Tourist Visa Exemption category may re-enter and stay in Thailand for a cumulative duration of stay not exceeding 90 days within any 6-month period from the date of first entry.

Immigrant - A person wishing to immigrate to Thailand may apply for a Certificate of Residence. However, the conditions for qualifying as an immigrant are quite restrictive and covered by annual immigration quotas and other conditions fixed for each country by the Ministry of Interior.

Non-quota immigrant - This category includes the former residents who have lost their resident status but who have reapplied to resume their residency and who have been able to demonstrate a convincing reason to support the granting of this type of visa.

Non-immigrant - Foreigners seeking a prolonged stay or for the purpose of work in Thailand should obtain non-immigrant visas for themselves and all family members prior to entering the Kingdom. The visa is generally granted for an initial stay of 90 days, but it may be extended up to one year and is renewable each year. The foreigner holding this type of visa is entitled to apply for a work permit. Holders of a transit or tourist visa cannot apply for a work permit.

Work Permits

The Foreign Employment Act also stipulates numerous rules regarding work permits which are summarized as follows:

1. With a few exceptions, the law requires all non-Thai nationals who work in Thailand to have work permits issued by the Ministry of Labor. Employers in Thailand may apply for a work permit for prospective foreign employees who wish to work in the Kingdom before the employees start working.
2. The use of these work permits is restricted to the particular occupation, particular employer and particular locality for which they are applied; any change in these restrictions will necessitate a new work permit.
3. Foreigners temporarily working in Thailand under the Immigration Law to perform an essential and urgent assignment for the period not exceeding 15 days do not have to apply for a work permit. However, such foreigner may engage in work only after a written notification on a prescribed form has been issued by the Director-General of Department of Employment or his assignee.
4. A foreigner seeking permission to work in the Kingdom under the Investment Promotion Law must submit an application for a work permit within 30 days of notification by the BOI that the position has been approved. Such foreigner may engage in authorized work while the application is being processed.
5. Foreigners working in Thailand under special conventions between Thailand and other countries, including international organizations such as the World Bank, are exempted from obtaining work permits.

APEC Business Travel Card

APEC business travel card holders are allowed to visit participating countries without the need for a visa. The participating APEC countries are Australia, Brunei, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, New Zealand, Peru, the Philippines, Papua New Guinea, Singapore, Taiwan, Vietnam and Mexico.