TAXATION

TAXATION

By Waree Shinsirikul, Wichuda Pongsapan, Chaveeporn Vithayanupong, and Suphakorn Chueabunchai

Managing how to finance a company is one vital factor for achieving a business's potential. How to manage the cost of a business requires commercial comprehension in not only capital investments and expenses for administration, operation, production, sale, marketing, and so forth, but also the extrinsic determinants of "taxes and duties". Doing business in Thailand requires substantive comprehension of various types of taxes and duties including income taxes and consumption taxes. This chapter discusses considerations regarding Thai taxes when doing business in Thailand.

The fundamental tax law of Thailand is the Revenue Code, which covers personal income tax, corporate income tax, withholding tax, value added tax, specific business tax, and stamp duty. The Revenue Code also contains laws in relation to tax administration, including the administration of the Revenue Department and appeals procedures. Supplementary to the Revenue Code are various regulations clarifying the broad provisions of the Revenue Code, as well as providing exemptions and reductions to tax charges imposed by the Revenue Code.

Apart from the Revenue Code, there are other specific laws imposing taxes and duties that business operators should be aware of in doing business in Thailand, for example, laws on excise tax, petroleum income tax, customs duty, land and buildings tax, inheritance tax, etc.

It should be noted that Thailand, aiming to be delisted as a Jurisdiction of Relevance pursuant to the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and being a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), has been committed to implement the Common Reporting Standard (CRS), with the first exchange of financial account information relating to calendar year 2022. Accordingly, the Revenue Department of Thailand has since sought to prevent tax evasion or avoidance by adhering to the MAC through the automatic exchange of financial data and tax payments. As part of the commitments, financial institutions in Thailand are now required to collect and report on the financial activities of all their customers who are non-Thai tax residents.

Income Tax

Personal Income Tax

Individuals are taxed mainly on Thailand-sourced income. Foreign-sourced income derived by a Thai tax resident from January 2024 onwards will be taxed whenever it is remitted into Thailand, irrespective of the calendar year in which such income is received. A person residing in Thailand at one or more times for an aggregate period of 180 days in any calendar year shall be deemed a Thai tax resident. If income is derived from a post or office held or business carried on in Thailand, or from the business of an employer in Thailand or from a property situated in Thailand, such income shall be subject to personal income tax, regardless of whether the income is paid within or outside Thailand.

Assessable Income

The Revenue Code has imposed personal income tax on individuals for assessable income, which is classified into eight categories as listed below:

- income derived by virtue of hire of service;
- income derived by virtue of a post, office of employment or of service rendered;
- value received for goodwill, for copyrights or any other rights, annuities or income in the nature of annual payments derived from a will, any other juristic act or judgment of the court;
- income derived from or in relation to investments, e.g., dividends, share of profits, capital gains from the transfer of securities, shares, cryptocurrency and

digital tokens;
- income derived from letting property on hire;
- income derived from liberal professions, namely, legal profession, healing arts, engineering, architecture, accounting, fine arts, or other liberal professions as prescribed by law;
- income derived from a contract of work where the contractor provides essential materials in addition to tools; and
- income from business, commerce, agriculture, industry, transport, or any other activity not specified earlier, generally known as "other income."

Assessable income includes any amount of taxes and duties paid by a payer of the income, or any other person, for the benefit of the taxpayer with respect thereto.

Tax Rate

An individual taxpayer is subject to tax at a progressive rate starting from 5% to 35% based on annual net income. A tax rate of 35% applies to annual net income over 5,000,000 Baht.

Tax Expenses and Allowances

The Revenue Code provides for deductible expenses for personal income tax at variant rates from 10% to 60% with certain ceilings depending on the categories of assessable income. For example, employment income is entitled to 50 % deductible expenses but not exceeding 100,000 Baht, and house rental income is entitled to actual expenses, but not exceeding 30% of the rent.

Apart from the above deductible expenses, Thailand also provides allowances that can be deducted from an individual's assessable income before calculating personal income tax. For example, each individual taxpayer is entitled to personal allowances of 60,000 Baht, spousal allowances of 60,000 Baht, child allowances (maximum of three children) of 30,000 Baht per child, and care allowances for parents over 60 years old of 30,000 Baht per person.

In addition, the Thai government has provided certain allowances specifically based on the country's situation each year such as domestic travel allowances, special donation allowances, shopping allowances, etc.

Tax Filing

An annual income tax return must be filed with the local district office where an individual taxpayer resides before 31 March of the following year. Online filing is available if the deadline for filing is announced by the Revenue Department. Deadlines for online filing will be announced by the Revenue Department on a yearly basis.

Corporate Income Tax

Corporate income tax is levied on net profits of juristic entities, namely, companies or partnerships incorporated under Thai or foreign laws, joint ventures, businesses operated in a commercial or profitable manner by a foreign government, foundations or associations engaged in any revenue-producing businesses, and any juristic person designated by laws.

A Thai company is subject to tax on income from sources inside Thailand and foreign sources. Foreign companies are subject to tax only on income derived from sources in Thailand.

Tax Rate

The current standard corporate income tax rate is 20%.

The Thai government offers support for small and medium enterprises (SMEs) through a progressive tax structure, with rates ranging from 0% to 20%. SMEs are granted an exemption from corporate income tax for net profits up to 300,000 Baht. For net profits beyond 300,000 Baht and up to 3,000,000 Baht, a 15% tax rate applies. Any net profits over 3,000,000 Baht are taxed at the standard rate of 20%. In order to qualify for this SME classification, a company must meet two specific criteria. By the end of any financial year, the paid-up capital should not surpass 5,000,000 Baht. Furthermore, the annual revenue must not exceed 30,000,000 Baht for the same financial year.

Tax Deductions

Corporate income tax is imposed on net profits, which are computed on an accrual basis. All revenue arising from or in consequence of business carried out in an accounting period will be treated as taxable income and any expenses incurred exclusively for the purpose of acquiring profits or from conducting business in Thailand are treated as tax deductible expenses for corporate income tax computation.

However, some expenses are not allowed as deductions for corporate income tax computation, such as reserves (other than reserves set aside for insurance premiums or doubtful debts of financial institutions), private expenses, capital expenditures and salaries paid to shareholders (only portions that exceed a reasonable amount), etc.

In computing net profit, the taxpayer is allowed to utilize operating losses by carrying forward such losses for five accounting periods to offset against future profits.

Tax Exemptions and Incentives

Corporate income tax exemptions and incentives are provided under the Revenue Code and Royal Decrees issued thereunder, as well as the Investment Promotion Act. Examples of exemptions and incentives are as follows:

A. Tax Exemptions on Dividends

- one-half of the dividends paid by a Thai company to a corporate shareholder are exempt from corporate income tax;
- dividends paid by a SET listed company to its corporate shareholders are exempt from corporate income tax;
- dividends paid by a Thai company to its corporate shareholders holding not less than 25% of its total voting shares are exempt from corporate income tax if the shareholding has existed for not less than three months prior to the dividend payment and not less than three months thereafter; and
- dividends received by a Thai company from foreign subsidiaries or associated companies are exempt from corporate income tax if such shareholding meets certain criteria.

B. Tax Incentives Granted under Board of Investment (BOI) Promotion Certificates

BOI promoted business may be granted different tax incentives, such as:

- exemption from corporate income tax for three to eight years depending on the applicable law, the promoted activities and the location of the business;
- exemption from corporate income tax for dividends received from BOI promoted businesses; or
- exemption from or reduction of customs duty on certain materials and equipment imported by BOI promoted businesses.

C. Tax Incentives for Businesses Located within the Eastern Economic Corridor Area

Eastern Economic Corridor (the "**EEC**") is a master plan to develop communities in designated districts of three provinces - Chonburi, Rayong, and Chachoengsao - to improve the local people's quality of life. Tax incentives will be granted only to EEC-eligible activities, such as robots and automation, smart electronics, digital and software, etc. Granted tax incentives include standard BOI promotional privileges plus additional incentives of a corporate income tax exemption period of up to two years for certain activities or a 50% corporate income tax reduction period of three years after the end of the tax holiday under the BOI promotional privileges.

D. Tax Incentives for International Business Centers (ex-ROH / ex-IHQ)

An International Business Center (the "**IBC**", formerly known as ROH or IHQ) is defined as a company incorporated under Thai law for the purpose of providing administrative services, technical services, support services, or financial management services to its associated enterprises or conducting international trade. An IBC company must have a paid-up capital of at least 10,000,000 Baht with annual operating expenditures in Thailand of at least 60,000,000 Baht, and employ at least 10 knowledgeable and skilled employees. Tax incentives granted to an IBC company for 15 accounting periods, include:

- reduction of corporate income tax on qualifying income at different rates depending on the IBC's Thai operating expenditures in each year, i.e., applicable reduced tax rates of 8%, 5% and 3% on its annual Thai operating expenditures of 60,000,000 Baht, 300,000,000 Baht, and 600,000,000 Baht, respectively;
- exemption from tax on both domestic and foreign-sourced dividends paid by its associated enterprises or affiliates;
- exemption from withholding tax on dividends paid to offshore shareholders and on interest payments to foreign beneficiaries in relation to loans for treasury activities; and
- a flat personal income tax rate of 15% for eligible expatriate employees.

Tax Filings

Juristic entities are required to make an annual income tax return filing within 150 days from the closing date of an accounting period, and an interim or a half-year income tax return filing within two months from the end of the first half of an accounting period.

Transfer Pricing

The Revenue Code includes transfer pricing regulations where a Thai tax entity with total revenue of more than 200,000,000 Baht in an accounting year is required to submit a disclosure form together with an income tax return to the Revenue Department within 150 days (or 158 days for online filing) from the closing date of an accounting period.

Withholding Tax

Domestic Payments

Specific categories of income, such as employment income, royalties, dividends, interest, rental fees, transportation fees, and remuneration from hire of work, etc., paid by a juristic company to an individual, another company, or a partnership, are subject to withholding tax. The applicable withholding tax rate is determined by the nature of the income and the tax status of the income recipient, which include the following:

- 1% on interest paid to a Thai tax resident corporation (other than financial institutions);
- 1% on transportation fees;
- 2% on advertising fees paid to a Thai tax resident corporation;
- 3% on royalty/hire of work/professional income fees;
- 5% on rental fees;
- 10% on dividends; and
- 5 – 35% on employment income.

Overseas Payments

Any payments made from or within Thailand to foreign companies are subject to withholding tax. Withholding tax at a rate of 15% is applied to the remittance of income or profits to an offshore company, whereas a 10% withholding tax is levied on dividends and branch profits. Nevertheless, applicable double tax agreements may entitle certain payments to reduced withholding tax rates, or even exempt them from withholding tax altogether.

Double Tax Agreements ("DTAs")

At present, Thailand has entered into DTAs as bilateral treaties with 61 countries. The primary objective of these DTAs is to mitigate or completely eradicate instances of double taxation. Each DTA integrates different methods to eliminate double taxation, such as tax exemptions, tax rate reductions, and tax credits. DTAs predominantly apply to income taxes. Other indirect taxes, for instance, value added tax, specific business tax and stamp duty, fall outside the purview of DTAs.

Value Added Tax ("VAT")

VAT is an indirect, non-cumulative consumption tax levied on the sale of goods, the provision of services and the import of goods. VAT is calculated on the total price of goods delivered or services provided. The provision of services is considered to have been made in Thailand if: (i) the service is performed in Thailand, regardless of where the service is used; or (ii) the service is performed abroad but is used in Thailand.

While the statutory standard rate of VAT stands at 10%, it has been temporarily reduced to 7% (including a local tax of 0.7%) and this reduction is set to remain in effect until 30 September 2024. Some businesses, such as inland transportation service providers, are exempt from VAT altogether. On the other hand, certain businesses, such as those exporting goods or services—provided such services are not utilized in Thailand—are subject to a zero-rated VAT.

Business operators supplying goods or providing services, and having over 1,800,000 Baht annual revenue, must register with the Revenue Office as a VAT operator within 30 days from the date on which annual revenue exceeds 1,800,000 Baht. However, importers of goods are liable to VAT regardless of whether they are VAT registrants.

A VAT operator must file a monthly VAT return within 15 days from the end of the month in which the VAT is accounted for.

Since 1 September 2021, any foreign e-service provider or e-platform operator having derived revenue of over 1,800,000 Baht in an accounting period from e-services provided to recipients in Thailand that are not VAT operators has been required to register with the Revenue Office as a VAT operator. Once registered, the foreign e-service provider or e-platform operator will be liable to pay 7% VAT without being eligible to claim input tax.

Specific Business Tax ("SBT")

SBT is an indirect tax collected from certain types of businesses in Thailand that are excluded from the VAT system, namely:

- banking and similar businesses, finance, securities, and credit fonciers;
- life insurance companies;
- pawnshop brokerages;
- sale of securities on the stock market;
- trading in immovable property; and
- any other businesses as prescribed by a royal decree.

A foreign operator residing outside Thailand may be liable to SBT in cases where such operator carries out a business subject to SBT through a place of business, an agent, or representative in Thailand.

Activities of certain entities are exempted from SBT, such as the business of the Bank of Thailand, business of provident funds under the law governing provident funds and pawnshop brokerages of a ministry, sub-ministry, department, and local government authority.

SBT is calculated as a percentage of monthly gross receipts. The applicable rate varies between 0.1% and 3.3%. An operator who regularly operates an SBT business must register as an SBT operator within 30 days of its first day of operation and must file a monthly SBT return within 15 days from the end of the month in which the SBT is accounted for.

A service provider deriving revenue from both SBT and VAT business activities, such as credit card services and securities underwriting services, is required to register as an operator of both SBT and VAT businesses.

Stamp Duty

Stamp duty is imposed on certain types of instruments executed in Thailand. The Revenue Code sets forth a Stamp Duty Schedule listing 28 types of instruments and fixes applicable rates of stamp duty. Some instruments are subject to stamp duty at fixed rates and some are subject to stamp duty calculated based on the amount of the instrument's value. The nature of the instruments subject to stamp duty includes, for example, a hire of work contract (i.e., a written service agreement), a share transfer instrument and a loan agreement. The Stamp Duty Schedule generally imposes stamp duty liability on the party deriving income or holding benefit under the underlying instrument. However, such stamp duty liability may be varied by the parties' agreement. An exception applies in the case of a stamp-dutiable instrument made outside of Thailand in which case stamp duty must be paid by the first holder in Thailand.

Instruments that are subject to stamp duty must be duly stamped at the time of their execution. Stamp duty is deemed duly stamped when the obligated party affixes the required stamp duty, which is then cancelled by the other party involved, or when the appropriate amount not less than the duty chargeable has been paid directly in cash at the Revenue Office. Certain instruments, such as a hire-of-work contract valued at more than 1,000,000 Baht, or an agreement for a loan granted by a commercial bank, necessitate the stamp duty being paid explicitly in cash at the Revenue Office.

In line with the growing digitization of the Thai economy, the payment of stamp duty on electronically executed instruments, as prescribed in the notification of the Director-General of Revenue Department, such as hire of work contracts, loan agreements, guarantee agreements, power of attorneys, proxy letters for voting at company meetings, share transfer instruments, etc., can be made electronically via the Revenue Department's website or the Revenue Department's Application Programming Interface, or otherwise made in cash at the Revenue Office.

In the absence of stamp duty, such an instrument is not admissible in any Thai civil court. In addition, a surcharge of up to six times the duty may be imposed where instruments are not duly stamped as prescribed within 15 days from their execution date. In cases where the instrument was executed outside Thailand but later brought into Thailand, the person who brings in or holds such instrument must affix and cancel such legally required stamp duty within 30 days from the date of receiving such instrument.

Tax Assessment

Thailand uses a self-assessment system where a taxpayer is liable to file a tax return with the Revenue Office and make a tax payment. A Revenue official is empowered to review a tax return and assess such tax payment.

The Revenue Department maintains the power to examine the tax return so submitted for accuracy or to inspect a business operation for its tax compliance. If any incorrectness or non-compliance leading to tax underpayment is found, the Revenue officials are empowered to conduct further enquiry and issue a tax assessment requiring the taxpayer to rectify such underpayment or non-compliance, as well as to pay certain penalties and surcharges.

Tax Disputes

A taxpayer has the right to appeal against the Revenue official's assessment with the Board of Tax Appeals in the province where the relevant Revenue Office is located within 30 days from the date of receiving a tax assessment notice.

Pending the Board of Tax Appeals' review, the tax assessment in question remains effective and the relevant taxpayer is required to pay tax including penalties and surcharges accordingly. However, deferral of such payment may be granted by the Director-General of the Revenue Department upon the taxpayer's request and provision of collateral in the form of a bank guarantee. Payment according to the tax assessment may be made while preserving the taxpayer's right to receive a refund upon the final revocation of the relevant tax assessment.

A ruling made by the Board of Tax Appeals shall become final if no further appeal is filed with the Central Tax Court within 30 days starting from the date of receipt of the ruling. An appeal against the Central Tax Court's decision may be lodged with the Court of Appeals for Specialized Cases within a period of one month from the date of pronouncement of the Central Tax Court's judgment. A judgment rendered by the Court of Appeals for Specialized Cases is deemed final unless permission for a further appeal is granted by the Supreme Court.

Other Taxes

Inheritance Tax

Thailand introduced inheritance tax in 2016. The tax is imposed on individuals or Thai juristic persons inheriting assets from an estate. If a foreign juristic person receives inherited assets located in Thailand, such foreign juristic person is subject to Thai inheritance tax for those assets. If the tax payable has not been paid when it becomes due, the Revenue Department is empowered to issue an order to seize or attach and sell by auction the assets of the person liable to pay such inheritance tax throughout Thailand, without having to request the court to issue a writ of seizure or order. Inheritance tax also applies to non-Thai nationals having a residence in Thailand according to immigration laws, and to non-Thais having inherited assets located in Thailand.

The inheritance tax rate is 10%. However, for a taxpayer with ascendant or descendant status, the tax rate is reduced to 5%. Inheritance tax is calculated based on inherited assets with a value of more than 100,000,000 Baht obtained from a descendant or an ascendant, inherited on one or several occasions. If the value of an inheritance received is less than 100,000,000 Baht, inheritance tax is not imposed. The inheritance received by the spouse of a decedent is not subject to any inheritance tax.

Inherited assets subject to inheritance tax are:

- immovable property;
- securities under the law on securities and exchange;
- deposits or any other monies of the same characteristics that may be withdrawn or claimed by a deceased owner from a financial institution or person who has received such monies;
- vehicles with registration; and
- financial assets to be prescribed in Royal Decrees.

A taxpayer must file a tax return within 150 days from the day of receiving an inheritance.

Gift Tax

Concurrently with the imposition of inheritance tax, gift tax has also been legislated under the Revenue Code to counter any possible avoidance of inheritance tax. Gift tax is imposed on individuals who receive gifts from a living person. Gift tax is effectively levied in the form of personal income tax on the value or amount of the gifted assets that exceeds specific thresholds as listed below:

Table 1 - Rates of Gift Tax

Type of income	Tax exemption	Subject to personal income tax
Income derived in the form of without-consideration transfer of ownership or possessory rights in immovable property from a parent to a legitimate child, excluding adopted children	only for the portion not exceeding 20,000,000 Baht per person per calendar year	the portion exceeding 20,000,000 Baht
Income derived in the form of maintenance or gifts bestowed by an ascendant, a descendant, or a spouse	only for the portion not exceeding 20,000,000 Baht	the portion exceeding 20,000,000 Baht
Income derived in the form of maintenance under moral obligations or gifts received in a ceremony or on occasions in accordance with customs and traditions bestowed by any person who is not an ascendant, a descendant, or a spouse	only for the portion not exceeding 10,000,000 Baht	the portion exceeding 10,000,000 Baht

Excise Tax

In Thailand, excise tax is used as a government tool to control public consumption of certain goods and services that, in the government's view, impact the health and behavior of people, e.g., the consumption of alcoholic beverages and tobacco, the purchase of luxury or unnecessary goods, yachts, cars, motorcycles, crystals, etc.

The excise tax rates vary depending on the types of goods and services listed below:

- oil and oil products;
- beverages;
- electrical appliances;
- batteries;
- lead crystal and other crystal glass;
- automobiles;
- motorcycles;
- yachts and water vehicles for recreational use;
- perfumes, perfume essences and cosmetics;
- carpets and other floor covering textiles;
- marble and granite;
- chlorofluorocarbons (CFC);
- liquor;
- tobacco;
- playing cards;
- sugary and soluble powdered drinks or concentrated liquids;
- nightclubs and discotheques;
- horseracing tracks;
- golf courses; and
- telecommunication businesses.

With respect to excise tax on beverages, the Excise Department added a levy on sugar-based sweeteners on top of the excise duty charged on beverages in 2017, by determining tax rates in four phases. This sugary drink tax has passed the 1st phase and 2nd phase readings, and the rate was planned to be adjusted again in the 3rd phase on 1 October 2021 onwards. However, due to the COVID-19 pandemic, the Excise Department announced that it considered delaying the increase of such tax rate in the 3rd phase to alleviate any adverse economic effect on businesses and people.

Customs Duty

Like other countries, Thailand imposes customs duty on the import and export of goods. All goods imported into Thailand, save for those specifically exempt, are subject to customs duty. All possible trade goods (in cross-border traffic) are listed in the customs tariff scheme, i.e., harmonization system adopted amongst ASEAN countries. Each classification of goods is assigned to a specific eight-digit code number to identify the applicable tariff.

Tariff classification disputes often occur when importers and Thai Customs interpret the definition of a product in question differently. For example, while an importer may declare the importation of parts/goods, which are subject to a lower rate, Thai Customs may consider such parts or goods as incomplete or unfinished articles having the essential character of the complete or finished article, and subject to another tariff code with a higher rate of customs duty. Therefore, it is our recommendation to consider precedent interpretation made by the Court and the Thai Customs, as well as the criteria and conditions of duty exemptions or reductions to avoid the risk of having a dispute with the Thai Customs on tariff classifications. At a trader's or prospective importer's request, the Thai Customs offers an advance ruling for tariff classification.

Land and Building Tax

The Land and Building Tax Act regulates property tax on land and buildings that are used for agricultural, residential, as well as other purposes, and those left unused. The tax rate, ranging from 0.01% to 0.7% of the official value, depends on the property's use, its official value, and the status of its ownership or occupancy right holder, whether a natural person (an individual) or a juristic person (a legal entity).