Taxation and Investment in Thailand 2013

Reach, relevance and reliability

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1.0 Investment climate

1.1 Business environment

Thailand is a constitutional monarchy with a parliamentary democracy. The Prime Minister acts as the head of government (the Prime Minister usually is the leader of a majority political party). The King is the head of state, exercising sovereign power through the parliament and the cabinet, and the courts under the provisions of the Constitution.

The Thai economy, traditionally based on agricultural exports, has transformed dramatically over the past few decades, with industry and services assuming a more prominent role. Industrial activity is concentrated in the central region around the capital, Bangkok. However, the government has aimed to decentralize Thailand's industrial base through the creation of investment promotion zones throughout the country.

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

Thailand is a member of the World Trade Organization (WTO). Along with Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore and Vietnam, Thailand is a member of the Association of Southeast Asian Nations (ASEAN), a trade and social alliance intended to foster economic and social cooperation among ASEAN members and to establish a joint market for attracting foreign trade and investment. The regional cooperation has been developed in economic integration by forming an ASEAN Economic Community (AEC), aiming to create a single market and achieve the free movement of goods, services, investment, capital and skilled labor by 2015. Thailand also is a member of the Asia-Pacific Economic Cooperation (APEC).

Price controls

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

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

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

Intellectual property

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

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

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

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

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

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

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

1.2 Currency

The currency is the Thai baht (THB).

1.3 Banking and financing

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

The Bank of Thailand issues two types of license to domestic banks: a commercial bank license and a retail bank license. A commercial bank license is for institutions with minimum registered and paid-up capital of THB 5 billion. These banks provide a wide range of financial services, including broking, trading and underwriting of bonds and investment units (excluding underwriting or dealing with equity securities). A retail bank license is for institutions with a minimum registered and paid-up capital of THB 250 million. These banks offer basic services aimed at small- and medium-sized enterprises (SMEs) and individuals. They face the same restrictions as commercial banks, but are not permitted to deal in foreign exchange, derivatives and other high-risk transactions. After having been in operation for a period of at least three years, a retail bank may request to be upgraded to commercial bank status provided, among other things, it maintains tier 1 capital of not less than THB 5 billion. Institutions unable or unwilling to upgrade to either category are designated credit companies, which are able to offer limited credit services, but are not permitted to take deposits.

A foreign bank also may apply for a commercial or retail license. A foreign bank in Thailand may be a subsidiary of a foreign bank, which may engage in the same activities as a commercial bank, and may open one branch in Bangkok and its vicinity (i.e. Pathumthani, Nakhonpathom, Nonthaburi, Samutprakarn and Samutsakorn) and three branches elsewhere (but only one branch each year). Alternatively, it may be a full branch of a foreign bank, which has the same scope of business as a commercial bank, but is not allowed to open additional branches. The minimum registered and paid-up capital for a subsidiary is THB 4 billion.

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

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

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

1.4 Foreign investment

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

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

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

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

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

1.5 Incentives

A variety of tax and non-tax (i.e. special services, guarantees, approval and other protection) incentives are offered to foreign investors in priority or promoted areas through the BOI. Non-tax benefits are available to all projects receiving BOI promotion, regardless of location, type of production activity or conditions. Tax-based incentives depend on location, the nature of the activities and whether output is intended for export or domestic sale.

A technology, innovation and human resource framework provides tax incentives for projects with high R&D value. Such projects can be divided into two groups:

1. Projects in priority areas classified as being of special importance and benefit to the country will receive an eight-year corporate income tax holiday with no cap and are exempt from import duties on machinery. Activities qualifying for this incentive under the seven main categories of BOI-promoted activities are as follows:

Category 1: Agriculture and agricultural products

- Forestry plantation
- Crop drying and silo facilities
- Manufacturing of alcohol or fuel from agricultural products including scrap, garbage or waste
- Cold storage and cold storage transportation
- Farm management

Category 2: Mining, ceramics and basic metals

- Manufacturing of nano materials or products from nano materials

Category 3: Light industry

- Manufacturing of medical equipment and supplies
- Manufacturing of scientific equipment

Category 4: Metal products, machinery and transport equipment

- Manufacturing of machinery, equipment and parts
- Manufacturing of trains (or electric trains) or equipment or parts
- Manufacturing and repair of aircraft, including parts and on-board equipment
- Manufacturing of fuel cells
- Building or repairing of ships

Category 5: Electric industry and electrical applicances

- Manufacturing of materials for microelectrics
- Electronic design
- Software

Category 6: Chemicals, paper and plastics

- Manufacture of eco-friendly chemicals and products

Category 7: Service and public utilities

- Software parks
- Energy service companies
- Human resource development
- R&D
- Scientific laboratory work
- Calibration services
- Product design
- Design centers
- Gem and jewelery industrial zones
- Science and technology parks

2. Projects that consist of skills technology and innovation-promoting elements that are applied to all business activites receive an additional corporate income tax holiday as follows (however, if the project has been awarded exemptions under other promotions/incentives as well, the total tax holiday may not exceed eight years):

   - One additional year for investment or expenditure in R&D or design, advanced technology training or supporting an educational or research institution or a donation to the Technology and Human Resources Development Fund provided the investment or expenditure is not less than 1% of the income from the investment project in the first three years, or not less than THB 150 million, whichever is less.
   - Two additional years for investment or expenditure in R&D or design, advanced technology training or supporting an educational or research institution or a donation to the Technology and Human Resources Development Fund provided the investment or expenditure is not less than 2% of the income from the investment project in the first three years, or not less than THB 300 million, whichever is less.
   - Three additional years for investment or expenditure in R&D or design, advanced technology training or supporting an educational or research institution or a donation to the Technology and Human Resources Development Fund provided the investment or expenditure is not less than 3% of the income from the investment project in the first three years, or not less than THB 450 million, whichever is less.

The BOI also grants tax incentive for sustainable development projects during 2010-2012 for the following business activities: energy conservation and alternative energy, eco-friendly materials and products, environmental problem solving, high-technology business, and technology upgrades improving the efficiency of manufacturing new products. The tax incentives for these activities are as follows:

- Exemption from corporate income tax for three or eight years, depending on the business activity;
- Exemption from import duty for machinery; and/or
- A 50% reduction in corporate income tax for not more than five years after the corporate income tax exemption period expires. This incentive applies only to "targeted" industries, i.e. energy conservation and alternative energy, eco-friendly materials and products, and the high technology business.

These tax incentives are not available after 2012, although incentives granted for projects approved during 2010-2012 will continue to apply for the remaining term.

Regional operating headquarters

Incentives are available for regional operating headquarters (ROH), which are defined as companies incorporated under Thai law that provide administrative and technology services or other support services to the ROH's foreign branches or its associated enterprises. Qualifying services under the ROH scheme include management and administrative services, technical services and support services, such as business planning and coordination, R&D and corporate financial advisory services. ROHs are entitled to the following incentives offered by the Thai Revenue Department:

- 10% corporate income tax rate on net profits from the provision of qualifying services to affiliates;
- 10% tax rate on interest and royalties received from affiliates;
- Tax exemption on dividends received from domestic and overseas affiliates;
- Tax exemption on dividends paid by an ROH to a company incorporated under foreign law and not carrying on a business in Thailand;
- 25% initial allowance for immovable property acquired by the ROH if the ROH conducts R&D that is used by its related parties, with the balance to be depreciated over 20 years;
- Flat 15% personal income tax rate on income derived by foreign employees of the ROH for the first four years of their employment (an extension to eight years is awaiting implementing guidance); and
- Income tax exemption not exceeding four years on income derived by foreign employees for work performed offshore for the ROH provided the income is not borne by the ROH or its Thailand subsidiary.

To qualify for the incentives, an ROH must (1) provide services to branches or associated enterprises located in at least three other countries; (2) derive income from its branches or associated enterprises in a foreign country that is equal to at least 50% of its total income (except for the first three years of operation during which time the requirement is one-third of total income); (3) have paid-up capital of at least THB 10 million; and (4) be incorporated under Thai law and register as an ROH under the procedures and conditions prescribed by the Director-General of the Revenue Department.

An ROH also can apply for investment promotion from the BOI. If granted, the ROH will be eligible for non-tax incentives, including permits to bring expatriates into Thailand as skilled workers or experts to work in the ROH, permits to own land and permits to remit money outward in foreign currency.

The Thai government has announced new and enhanced incentives to make the country more competitive as an ROH jurisdiction. Some of the key enhanced incentives are a 0% tax rate on net profits derived from ROH services performed for foreign affiliates, a 10% rate on services provided by the ROH for local affiliates and an extension (from four to eight years) of the 15% personal income tax rate for expatriates employed by the ROH. However, stricter conditions must be satisfied to benefit from these incentives

1.6 Exchange controls

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

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

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

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

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

A 15% final withholding tax is imposed on interest earned on nonresident accounts. Commercial banks may process repayments of foreign loans without limit, but evidence of inward remittances of loans over USD 20,000 or its equivalent must be provided. Outward remittances of share sales may be processed by commercial banks without limit. The inward remittance of funds is permitted without limit, although conversion into Thai baht with an authorized financial institution or deposit in a foreign currency account is required within 360 days of receipt of the remittance. Apart from commercial bank lending limits, no restrictions apply to Thai or foreign currency (or negotiable instruments) remitted into Thailand by foreign businesses or individuals.

Authorized banks may approve the remittance of USD 1 million or its equivalent at a market rate per year from a Thai national to a relative residing abroad. A person may bring in or take out of Thailand, foreign currency not exceeding USD 20,000 or its equivalent provided the amount is declared to the Customs officials. Up to THB 500,000 can be brought out of Thailand to bordering countries, including Vietnam, and up to THB 50,000 to other countries without authorization.

2.0 Setting up a business

2.1 Principal forms of business entity

Thai law recognizes five types of business organization: ordinary partnership, ordinary registered partnership, limited partnership, limited company and public limited company. The first four types of entity are governed by the Civil and Commercial Code (CCC) and the last by the Public Limited Companies Act of 1992 (PLCA).

The nature of the intended business operations will be an important factor in selecting the appropriate form of business organization. For a private or public limited company, if 50% or more of the company's shares are owned by a foreigner as defined in the Foreign Business Act, the company will be considered foreign and subject to the act, which prohibits the operation of certain businesses unless approval is obtained from the Ministry of Commerce (MOC). Foreign investors usually carry on business through a limited company, branch or representative office.

Formalities for setting up a company

All business organizations must be registered with the Department of Business Development of the MOC, and for tax purposes with the Revenue Department; however, an ordinary partnership is not required to be registered with the MOC.

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

Forms of entity

Requirements of private and public limited companies

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

Founders, shareholders. *Private limited company:* At least three founders (promoters) and shareholders are required. The promoters must be individuals (Thai or foreign) and each founder must subscribe for at least one share of the company (the shares held by promoters may be transferred after incorporation). *Public limited company*: A minimum of 15 promoters is required to incorporate. No nationality restrictions apply, but more than half of the promoters must reside in Thailand. Promoters must subscribe to not less than 5% of the registered capital in the form of fully paid-up shares. Not less than 50% of the number of shares specified in the memorandum of association must be offered to the public. All promoters must hold their shares for at least two years from the date of company registration, unless approval is obtained at the general meeting of shareholders. A public limited company may offer its shares to the public after registering the memorandum of association with the MOC.

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

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

Control. *Private limited company*: Unless otherwise provided by the company's articles of association, most decisions at the shareholders' meeting are made by majority vote. However, for certain matters, such as increases or decreases in capital and amalgamation, a special resolution must be passed in one meeting by three-fourths of the shareholders present and voting. Companies must hold an ordinary shareholders' meeting at least once a year, within four months after the company's fiscal year-end. The general shareholders' meeting is required. Notice of the meeting (whether an annual ordinary meeting or an extraordinary meeting) of a private limited comany must be delivered to all company shareholders by registered mail and advertised at least once in a local newspaper not less than seven days (14 days for a special resolution) before the date of the meeting. *Public limited company*: Except for notice of the shareholders' meeting, the rules generally are the same as for a private limited company. Notice of the shareholders' meeting for a public limited company must be sent to the shareholders and the registrar not less than seven days before the date of the meeting and the meeting must be announced in a newspaper for not less than three days before the date of the meeting.

Types of shares. *Both*: Shares may be divided into common or preferred shares, and multiple voting or varying dividend shares are allowed. Nonvoting shares are not permitted. *Private limited company*: The minimum par value of each share is THB 5. Share certificates may be named or bearer, but bearer shares may be issued only for fully paid-up shares; treasury shares are prohibited. *Public limited company*: All shares must be issued as named certificates.

Taxes and fees. *Both*: As from 1 February 2012, a company must use the company's registration number issued by the Department of Business Development of the MOC (13 digit) as a tax ID number, although taxpayers may use the tax ID number issued by the Revenue Department (10 digit) until 31 January 2013. Operators earning more than THB 1.8 million a year must register for VAT purposes within 30 days of its earnings reaching THB 1.8 million. Shares, bonds and debentures are subject to a stamp tax of THB 0.10 per THB 100 or the nominal value of the instrument or paid-up value of shares (shares only), whichever is greater, upon transfer after the original issue.

Private limited company: The fee for registration of the memorandum of association is 0.05% of registered capital, with a minimum of THB 500 and a maximum of THB 25,000. The government fee for registration of the company as a legal entity after the statutory meeting assigns the operation of the business to the directors is 0.5% of the registered capital, with a THB 5,000 minimum and THB 250,000 maximum. *Public limited company*: The fee for registration of the memorandum of association is 0.10% of registered capital, with a minimum of THB 1,000 and a maximum of THB 50,000. The government fee for registration of the company as a legal entity after the statutory meeting assigns the operation of the business to the directors is 0.10% of the registered capital, with a THB 1,000 minimum and THB 250,000 maximum.

Branch of a foreign corporation

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

Income earned from branch office activities is subject to the normal Thai corporate income tax, but the company will not be taxed on income earned outside Thailand and unrelated to the business activities of the Thailand office. Thailand also levies a 10% branch remittance tax.

A condition for obtaining approval to set up a branch is that there be an economic benefit for Thailand and no competition with Thai operations. The foreign company also must bring a minimum working capital of THB 5 million to Thailand and within the first three months, not less than 25% of such minimum capital must be remitted, with the remaining amount remitted every year for three years.

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

Representative or regional office

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

At least one director/representative who is in charge of the operation of permitted business of the representative office or regional office must be domiciled in Thailand.

2.2 Regulation of business

Mergers and acquisitions

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

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

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

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

2.3 Accounting, filing and auditing requirements

The board of directors of both private and public limited companies must prepare a balance sheet at least every 12 months that must contain a summary of the assets and liabilities of the company and a profit and loss statement for the fiscal year. The board must have the balance sheet and profit and loss statement examined by an auditor appointed by the general shareholders meeting of the company and the statement must be submitted to the general meeting for approval within four months from the end of the fiscal year. The financial statement must be submitted to the MOC within one month from the day the general meeting approves the financial statements.

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

A branch or regional office or representative office must have its books and records maintained by a Thai accountant and audited by a registered Thai auditor once a year. It must submit financial statement to the MOC within five months from the day the accounts are closed. Thailand implements the Thai Financial Reporting Standard which has the same concept as IFRS.

3.0 Business taxation

3.1 Overview

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

Tax exemptions and various tax incentives are available to all qualified entities, depending upon the conditions of each tax privilege, and there is an ROH scheme (see above under 1.5).

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

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

3.2 Residence

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

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

3.3 Taxable income and rates

Corporate income tax is levied on both Thai and foreign companies. A locally incorporated company is taxed on its worldwide income; a foreign company is taxed only on Thai-source income. A nonresident company is a company registered in a foreign jurisdiction without an agent in Thailand and, therefore, not considered to be carrying on business in Thailand, but may be subject to Thai tax if it receives specific types of income from Thailand, such as dividends, interest, royalties, rent, commission fees, professional income, etc.

The corporate tax rate is 23% (in 2012) and 20% (in 2013 and 2014) of net profits, calculated by deducting all expenses and costs of goods sold from revenue arising from the business during the fiscal accounting period. Petroleum companies pay tax at rates of 50% to 60%.

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

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

The standard company tax rate may be reduced as follows:

- An ROH in Thailand providing qualifying services pays tax at a rate of 0% or 10% of net profits, depending on the source of the profits.
- A bank deriving profits from an International Banking Facility pays a 10% rate for "out-out" deposits (and is exempt from the 3.3% Specific Business Tax).
- A SME whose fiscal year began on or after 1 January 2008 is exempt on the first THB 150,000 of net profits and pays a 15% corporate tax on net profits exceeding THB 150,000 up to THB 1 million, 25% on net profits exceeding THB 1 million up to THB 3 million and 23% (20% in 2013 and 2014) on net profits exceeding THB 3 million. To be eligible for these benefits, the paid-up capital of the SME must not be more than THB 5 million and its gross income may not exceed THB 30 million.
- A foreign company engaged in the business of international transportation pays tax at a rate of 3% of gross receipts (and is exempt from the tax on profit remittances).

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

The remittance tax on "out-out" loans (i.e. funds borrowed abroad to be lent abroad) extended by an International Banking Facility licensed bank is 0% for profits derived from a loan business. The bank is still liable for a withholding tax of 10% or 15% on repatriated interest from "out-in" transactions (i.e. funds borrowed abroad and used in Thailand), unless otherwise provided in an applicable tax treaty.

Taxable income defined

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

Subsidies paid by a foreign parent company to its Thai subsidiaries must be included in the corporate income tax base as revenue arising from, or as a result of, business conducted in Thailand even when there is no requirement for the funds to be repaid. For assessment purposes, there is no distinction between a subsidiary and a branch.

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

The following are exempt from corporate income tax:

- Dividends paid by a Thai limited company to another Thai company where the recipient holds at least 25% of the total shares with voting rights of the payer for three months before and after the dividends are paid, or is a listed company. As noted above, similar rules apply to profits from joint venture activities. In all other cases, a Thai company is required to include only 50% of dividends received from a Thai limited company as taxable income;
- Dividends received from foreign affiliates provided the foreign profits were subject to an income tax at a rate of at least 15%; and
- Income that benefits from tax incentives.

Deductions

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

- Interest, except interest paid on capital, reserves or nondeductible funds;
- Reasonable and justifiable management fees charged at market value;
- Losses;

- Depreciation;
- Taxes, except for corporate income tax and VAT, paid to the Thai government;
- Bad debts, provided there is evidence of reasonable efforts to collect the debt in accordance with the Thai Revenue Code;
- Employer contributions to the provident fund;
- Donations up to specified limits; and
- Entertainment expenses, up to 0.3% of gross revenue or paid-up capital (whichever is higher), depending on the nature of the business and whether the expense is essential, and not exceeding THB 10 million.

Head office charges or shared costs may be deducted provided the company can demonstrate that the services were actually provided and they are related to business in Thailand. Regional distribution centers and international procurement offices are entitled to similar deductions.

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

A company may claim a 200% rebate on R&D costs, and a 200% deduction for job training expenses and for expenditure on salary paid to disabled employees.

The Revenue Department can disallow an expense if it considers the expense not directly related to the earning of taxable income.

Depreciation

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

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

Tax depreciation incentives are available for computers and for SMEs.

Losses

Net operating losses may be carried forward for up to five accounting periods. If the losses relate to a business promoted by the BOI during a tax holiday period, the BOI tax losses may be carried over to the five years after the expiration of the tax holiday. The carryback of losses is not permitted.

3.4 Capital gains taxation

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

Capital gains paid to overseas recipients are subject to a 15% withholding tax, although an exemption may apply to gains derived by investors from certain tax treaty countries. However, if neither the buyer nor the seller is a Thai resident and the sale does not take place in Thailand, there is no mechanism to tax the gain from a sale or transfer under current tax law.

3.5 Double taxation relief

Foreign tax credit

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

Tax treaties

Thailand has a broad tax treaty network, generally formulated along the lines of the OECD model treaty, and containing OECD-compliant exchange of information provisions.

To obtain benefits under a tax treaty, the Thai payer entity must obtain a tax residence certificate from the beneficiary of the income.

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

3.6 Anti-avoidance rules

Transfer pricing

Under Thailand's developing transfer pricing regime, transactions between related parties must be based on market prices. The Revenue Department may adjust the taxpayer's income to disallow the deduction of certain expenses for corporate income tax purposes if it determines that the prices charged, income derived or expenses paid are not at arm's length. The following transfer pricing methods are allowed: comparable uncontrolled price, resale price, cost plus and other methods that are acceptable by international standards and that apply to the actual transactions. Transaction-based methods are preferred over profit-based methods.

Although transfer pricing documentation is not formally required to be maintained, a taxpayer may use these documents to substantiate its transfer pricing if challenged by the tax authorities. A taxpayer may initiate an upward or downward adjustment if there is adequate documentation to substantiate the adjustment. For upward adjustments, a surcharge of 1.5% per month applies.

Advance pricing agreements (APAs) are available. However, based on current practice, the Revenue Department is not willing to accept applications for unilateral APAs. Bilateral agreements may be applied for under the mutual agreement procedure of treaties. The Revenue Department has issued a booklet that includes guidance for bilateral APAs.

Thin capitalization

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

Controlled foreign companies

Thailand does not have CFC rules.

General anti-avoidance rule

Thailand does not have a GAAR.

3.7 Administration

Tax year

A company can choose any accounting period that does not exceed 12 months. Once chosen, the accounting period cannot be changed unless written approval is obtained from the Revenue Department.

Filing and payment

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

A company must make two payments of corporate income tax: at mid-year and year-end. The half-year tax is calculated on an estimated 50% of the full year tax basis and must be remitted within two months of the end of the first six months of the accounting period. If the estimated profit is underestimated by over 25% of the actual year-end profit, the company will be subject to a monthly surcharge of 1.5%, as well as a deficiency tax surcharge. The year-end corporate income tax must be remitted within 150 days of the end of the accounting period. Late filing will result in a fine of THB 2,000 and a monthly surcharge of 1.5%.

Consolidated returns

Thai law does not contain any provisions allowing for the filing of a consolidated corporate income return, nor is provision made for the transfer of losses between members of a group. Each company must file a separate return.

Statute of limitations

The tax authorities may conduct a tax audit on the books and records of a company for two years from the date the corporate income tax return is submitted. The period may be extended to five years if tax avoidance or evasion is suspected. If a tax return has not been submitted, the statutory period for the assessment of tax liabilities is 10 years. A statute of limitations for the collection of tax is not necessary because the tax authorities have the power to seize a taxpayer’s assets if the taxpayer fails to pay tax within 30 days after receiving an assessment notice, regardless of whether the taxpayer disagrees and intends to appeal.

Tax authorities

Three agencies under the Ministry of Finance are responsible for the collection of tax in Thailand: the Revenue Department, the Excise Department and the Customs Department. The Revenue Department's responsibilities are to collect and administer the following taxes: corporate and individual income tax, VAT, Specific Business Tax, stamp duty and petroleum income tax. The Revenue Department also is responsible for ensuring that the administration of tax collection is carried out in accordance with the government's policies. The Excise and Customs Departments collect excise and customs duties, respectively.

Rulings

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

3.8 Other taxes on business

Petroleum companies

The Petroleum Income Tax Act governs the levying of petroleum income tax, which is chargeable on the net profits of companies granted a concession to explore for and produce petroleum (e.g. crude oil, natural gas and other forms of natural hydrocarbons). Petroleum companies pay tax at rates of 50% to 60%. A royalty tax also may apply.

International transportation companies

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

4.0 Withholding taxes

4.1 Dividends

A 10% withholding tax is levied on dividends paid to resident and nonresident entities. However, dividends paid by a Thai company to another Thai company are exempt if the recipient is listed on the SET or the company holds at least 25% of the total shares with voting rights. As noted above, a company incorporated in Thailand may exclude from taxable profits 50% of dividends received from other companies incorporated in Thailand provided the relevant investment has been held for at least three months before and three months after receipt of the dividends.

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

4.2 Interest

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

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

4.3 Royalties

Royalties or fees paid within Thailand are treated as normal assessable income for tax purposes and royalties paid abroad are subject to a 15% withholding tax on the gross amount. Tax treaties may reduce the withholding tax charged on royalties paid for the use of copyrighted literary, artistic or scientific works.

When royalty payments are included in an import price for purposes of assessing customs duty, these are deemed to make up part of the purchase price.

4.4 Branch remittance tax

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

4.5 Wage tax/social security contributions

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

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

4.6 Other taxes

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

5.0 Indirect taxes

5.1 Value added tax

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

The standard VAT rate is 7%, which has two components: the standard 6.3% VAT and the municipal tax of 0.7%. The municipal tax is collected at the provincial level. A 0% VAT applies on a range of activities, including the export of goods and services wholly used outside Thailand. The 0% VAT rate also applies to the export of goods or services, i.e. any services rendered in Thailand and used abroad.

VAT is payable on the 15th of the month following the month in which VAT is collected. If a self-assessment of VAT output is required on the payment of certain income to nonresidents (primarily services or royalties used in Thailand), VAT is payable on the 7th of the month following the month of the payment. A company that is exempt still must pay VAT on services and products it purchases, but is not entitled to a VAT refund. Such a company does not have to collect VAT on its sales or file monthly VAT forms. An exempt company, however, may do so voluntarily and thus be entitled to a VAT refund if registered for VAT purposes.

Certain businesses are excluded from VAT; instead, they pay Specific Business Tax (see below).

5.2 Capital tax

The government fee for registration of the company as a legal entity after the statutory meeting assigns the operation of the business to the directors is 0.5% of the registered capital, with a THB 5,000 minimum and THB 250,000 maximum. There is a minimum fee of THB 5,000 and a maximum fee of THB 250,000. The fee for registration of the memorandum of association of a private limited company is 0.05% of registered capital, with a minimum of THB 500 and a maximum of THB 25,000.

5.3 Real estate tax

The municipalities levy a house and land tax and local development tax. The house and land tax is imposed annually on the owners of a house, building structure or land that is rented or otherwise put to commercial use at a rate of 12.5% of the actual or assessed annual rental value of the property.

The local development tax, also an annual tax, is imposed on the owner or land or the person in possession of the land, with the rate depending on the appraised value of the property, as assessed by the local authorities. The rate typically ranges from 0.25% to 0.95%.

5.4 Transfer tax

Stamp duty may apply (see also Specific Business Tax below).

5.5 Stamp duty

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

Stamp duty applies on a range of documents, e.g. 0.1% on leases, the hire of work, transfers of shares/debentures, loans (capped at THB 10,000), etc.

5.6 Customs and excise duties

When a shipment arrives in Thailand, importers are required to file a goods declaration and supporting documents for the imports with a Customs officer at the port of entry. Imported cargo cannot legally enter into Thailand until after the shipment has arrived within the port of entry, delivery of the merchandise has been authorized by Customs, and applicable taxes and duties have been paid. It is the responsibility of an importer to arrange for examination and release of the imported cargo. In addition, depending on the nature of the imports, and regardless of value, the importers may need to obtain a permit to facilitate clearance of the imports. For certain goods requiring a permit, the relevant permit issuing agencies should be contacted before importation.

The excise tax system has been adjusted to complement the VAT system. For products subject to both taxes, the Revenue Department collects the VAT and the Excise Department collects the excess. Both taxes can be paid at the Excise Department, but only VAT can be paid at the Revenue Department. Products subject to both taxes include cars, perfume, alcoholic beverages, tobacco, playing cards, air conditioners that do not exceed 72,000 BTU per hour and petroleum products.

Excise taxes take the form of an ad valorem duty (a percentage of the price of the goods) or a specific charge (based on the quantity or weight of the goods). Most goods and services are subject to ad valorem tax, but the rate is either ad valorem or specific (whichever is greater) for petroleum and petroleum products and for non-alcoholic beverages.

5.7 Environmental taxes

Thailand does not have s specific environmental tax, although environment-related tax measures are in the form of tax privileges, such as additional deductions.

5.8 Other taxes

Specific Business Tax

Specific Business Tax applies to banking or similar transactions (regardless of whether business operator is an individual or company), the sale of immovable property in a profit-seeking manner and to certain businesses such as factoring, pledge and repos.

Specific Business Tax applies to the gross proceeds from the transfer of immovable property at a rate of 3.3% (including a municipal tax of 10%), a withholding tax of 1% of the gross proceeds from the transfer and a transfer fee of 2% of the appraisal value. An exemption from the tax is available in certain cases involving the whole or partial transfer of a business. Furthermore, 2.75% SBT 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%.

A person or entity subject to Specific Business Tax must register within 30 days from the date of commencing business and file a monthly Specific Business Tax return, regardless of whether the business generates income.

Signboard Tax

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

6.0 Taxes on individuals

6.1 Residence

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

6.2 Taxable income and rates

Taxable income

All individuals who receive assessable income arising in Thailand are liable for personal income tax, whether or not resident and regardless of where the income is actually paid. Income derived abroad by a resident of Thailand is subject to tax when the income is brought into Thailand. A nonresident is subject to tax only on Thailand-source income.

Taxable income includes employment income, business income and investment income, as well as income from a broad range of activities. It includes income in cash and in-kind. Benefits provided by an employer are treated as taxable income, including rent-free housing, cars and drivers provided for personal use, or any tax paid by the employer on behalf of the employee. Capital gains of individuals are treated as ordinary income, except that a scale of standard deductions applies to gains from certain sales of immovable property. Taxable income is divided into the following categories:

- Income from personal services rendered to an employer;
- Income by virtue of jobs, positions, commission fees or services rendered;
- Income from goodwill, copyrights, franchises, other rights, annuities or income in the nature of annual payments derived from a will or court judgment;
- Income from dividends, interest on deposits with banks in Thailand, income from shares of profits or other benefits from a company, partnership or mutual fund, payments received as a result of a reduction of capital, bonuses, increased capital holdings, gains from the amalgamation, acquisition or dissolution of companies or partnerships and gains from the transfer of shares or partnership holdings;
- Income from the letting out of property under hire or hire-purchase contracts;
- Income from liberal professions (e.g. law, medicine, engineering, architecture, accountancy, etc.);
- Income from construction and other work contracts; and
- Income from business, commerce, agriculture, industry, transport or other activities not specified above.

With proper documentation, the following types of income are exempt:

- Capital gains from the sale of movable property acquired with no intent to earn a profit (however, gains from the sale of immovable property or a residence is still subject to personal income tax, but the tax paid at the land office can be excluded from the annual tax return if the sale of the property is not for profit-seeking purposes; and gains may be exempt if the proceeds are used to purchase a new home within one year before or after the sale of the primary residence);
- Awards for the purpose of education or scientific research;
- Interest from government bonds provided the bonds are sold abroad and the person who derives the interest is a nonresident;
- Interest from savings deposits in commercial banks where the aggregate amount of interest received is not more than THB 20,000 a year;

- Gains from mergers or acquisitions between limited companies that were valued higher than shareholder equity;
- Gifts made in a ceremony or on an occasion in accordance with established customs, and inheritances;
- Income from a tax treaty country in certain circumstances; and
- Income earned abroad by a nonresident.

Deductions and reliefs

A personal allowance of THB 30,000 is available to a taxpayer and his/her spouse and a THB 15,000 allowance for each dependent child up to a maximum of three children. Married persons filing separately may each claim 50% of the child allowances. For wage earners, there also is a deduction of 40% of gross income, up to a maximum of THB 60,000. The same deduction and ceiling apply to income derived from copyrights. Deductions between 10% and 30% are available on income from the letting out of property, depending on the type of property.

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

Rates

The personal income tax rates range from 0% to a top marginal rate of 37%. An individual's first THB 150,000 net income (income after the personal standard deduction and allowances) generally is exempt; for individuals older than 65, the exemption amount increases to THB 190,000 of assessable gross income.

Tax normally is withheld from payments of dividends to resident and nonresident individuals at a rate of 10%; the rate in the latter case may be reduced under an applicable tax treaty. Tax is withheld from most payments of interest to individuals at 15% if the payer is a bank or financial institution. Withholding taxes paid generally can be credited against a resident taxpayer's final income tax liability.

Gains from the sale of a residence are exempt from tax if the proceeds are used to purchase a new home within one year before or after the sale of the primary residence.

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

Special expatriate regime

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

6.3 Inheritance and gift tax

Thailand does not levy an inheritance or gift tax.

6.4 Net wealth tax

Thailand does not levy a net wealth tax.

6.5 Real property tax

The municipalities levy a house and land tax and local development tax. The house and land tax is imposed annually on the owners of a house, building structure or land that is rented or otherwise put to commercial use at a rate of 12.5% of the actual or assessed annual rental value of the property.

The local development tax, also an annual tax, is imposed on the owner or land or the person in possession of the land, with the rate depending on the appraised value of the property, as assessed by the local authorities. The rate typically ranges from 0.25% to 0.95%.

6.6 Social security contributions

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

6.7 Other taxes

None

6.8 Compliance

The tax year for individuals is the calendar year.

Personal income tax returns must be filed by 31 March following the taxable year (the tax year is the calendar year). The employer withholds tax on employment income and pays it to the Revenue Department.

7.0 Labor environment

7.1 Employee rights and remuneration

In addition to the CCC, which governs the hiring of services, labor issues are governed by the Social Security Act, Labor Relations Act (LRA) and Labor Protection Act, as amended. Employment and the engagement of foreign nationals in Thailand also are governed by the Foreign Business Act and Alien Working Act.

7.2 Wages and benefits

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

The minimum wage for Phuket, Bangkok and nearby Samut Sakhon, Samut Prakan, Nonthaburi, Pathum Thani and Nakhon Pathom provinces is THB 300 per day. Few fringe benefits are compulsory under the law (e.g. paid holidays, sick leave, maternity leave, injury benefits and other basic benefits under the Social Security Act and Labor Protection Act).

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

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

7.3 Pensions and social security

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

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

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

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

The fund applies to all companies having one or more employees and aims at providing better welfare benefits to individuals in the workforce, particularly in the event of illness, accidents, unemployment or death. The normal contribution rate is equally shared between the employer and the employees at a rate of 5% of the employees’ salary, while the government contributes at a rate of 2.75%. The minimum salary covered under the fund is THB 1,650 per month up to a maximum of THB 15,000 per month (even if the salary exceeds that amount), resulting in a maximum contribution of THB 750 per month.

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

7.4 Termination of employment

An employee that is dismissed without cause is entitled to severance pay, depending on the length of employment. Severance pay is not required in the following cases: where the employee is dishonest; intentionally commits a criminal act against the employer; intentionally causes the employer to suffer loss; is grossly negligent; neglects duties for three consecutive work days without reasonable cause; is imprisoned under a final judgment (except for offenses arising from negligence or for petty offenses that do not cause damage to the employer); or violates the employer's work rules, regulations or orders that are legal and fair, and the employer has previously given a written warning. (The Labor Protection Act requires an employer with 10 or more employees to submit "work regulations" to the Director-General or a delegated person within 15 days from the date on which the employer has 10 employees or more. The employer also is required to submit an employment condition and working condition form in January of each year.)

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

7.5 Labor-management relations

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

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

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

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

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

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

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

7.6 Employment of foreigners

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

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

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

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

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

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

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

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

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

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

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

8.0 Deloitte International Tax Source

Professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Tax Source (DITS), an online resource that assists multinational companies in operating globally, placing up-to-date worldwide tax rates and other crucial tax material within easy reach 24/7.

Connect to the source and discover:

A unique tax information database for 65 jurisdictions including –

- Corporate income tax rates;
- Domestic withholding rates;
- Historical corporate rates;
- In-force and pending tax treaty rates on dividends, interest and royalties;
- Indirect tax rates (VAT/GST/sales tax); and
- Holding company and transfer pricing regimes.

Guides and Highlights – Deloitte's Taxation and Investment Guides provide an analysis of the investment climate, operating conditions and tax system of most major trading jurisdictions while the companion Highlights series summarizes the tax landscape of nearly 150 jurisdictions.

Tax publications – Global tax alerts and newsletters provide regular and timely updates and analysis on significant cross-border tax legislative, regulatory and judicial issues.

Tax tools – Our suite of tax tools include annotated, ready-to-print versions of the holding company and transfer pricing matrices; expanded controlled foreign company coverage for DITS countries; monthly tax treaty update; and expanded coverage of VAT/GST/Sales Tax rates.

Webcasts – Live interactive webcasts and Dbriefs by Deloitte professionals give you valuable insights into important tax developments affecting your business.

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9.0 Office locations

To find out how our professionals can help you in your part of the world, please contact us at the offices listed below or through the "contact us" button on **http://www.deloitte.com/tax** or visit the Deloitte New Zealand site at **http://www.deloitte.com/view/en_TH/th/index.htm.**

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