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# International Tax and Business Guide

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# Thailand


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# Thailand International Tax and Business Guide

Tax professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Tax and Business Guides, an online series that provides information on investment conditions, tax regimes and regulatory requirements, along with information for executives working abroad. The Guides are supplemented by the Highlights series, an at-a-glance summary of basic information, including tax rates, for over 120 jurisdictions.

# Contents

# 1.0 The investment climate

Thailand is a constitutional monarchy with a parliamentary democracy.

### 1.1 Economic structure

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 decentralise Thailand's industrial base through the creation of investment promotion zones throughout the country.

### 1.2 Banking and financing

A commercial bank, finance company or *crédit foncier* company must operate as a public company under a licence from the Minister of Finance upon a recommendation of the Bank of Thailand (central bank). The Bank of Thailand issues two types of licence to domestic banks: a commercial bank licence and a retail bank licence. A commercial bank licence 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 equity securities (but excluding insurance underwriting). A retail bank licence 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 licence. 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 which may open one branch in Bangkok and its vicinity (i.e. Pathumthani, Nakhonpathom, Nonthaburi, Samutprakarn and Samutsakorn) and three branches elsewhere (with a maximum of one branch each year); or 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.

### 1.3 Foreign trade

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

# 2.0 Business regulations

### 2.1 Registration and licensing

The Department of Intellectual Property is responsible for promoting, developing and protecting intellectual property rights. It also regulates intellectual property registration and compliance, including the registration of patents and other intellectual property rights.

Use of a registered trademark may be licensed to another person, and the licence may be registered with the Department of Intellectual Property. Patent and copyright holders may license their rights (and can be required to do so if they are not making active use of the rights in Thailand). Since most licensing agreements involve the payment of fees overseas, they may require approval by the Bank of Thailand through an authorised commericial bank.

### 2.2 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.

### 2.3 Monopolies and restraint of trade

The Trade Competition Act seeks to promote fair and free trade in a competitive environment. It applies to all types of business operations, except those of the central, provincial and local administrations; state enterprises under the law on budgetary procedures; groups of farmers, cooperatives or cooperative societies recognised by law as businesses operating for the benefit of farmers; and businesses prescribed under ministerial regulations. The Competition Commission (CC) enforces the law.

Under the Act:

- Businesses in dominant positions may not abuse their power in the market.
- A merger that could create monopolistic power or reduce competition is prohibited, unless the merger receives permission from the CC on the grounds that it is necessary for the business and is beneficial to the economy.
- A business operator is prohibited from conspiring, colluding or collaborating with another business operator to create monopolistic power or reduce/limit competition.
- Domestic and overseas business operators may not work together to carry out any activities that will restrict the freedom or opportunity of a person residing in Thailand from purchasing goods or services for its own use directly from business operators outside the country.
- A business operator may not undertake any activity that does not constitute free and fair competition or that results in the destruction, impairment, impediment or restriction of the business operations of other business operators.

Penalties are applicable for failure to comply.

The CC has adopted a code of conduct for retail and wholesale businesses in Thailand, which identifies business practices that could be considered unfair competition. These include the following:

- Fixing of unfair prices;
- Demanding undue economic benefits, including demands from retailers/wholesalers that manufacturers or suppliers pay entrance fees (listing fees) at a higher rate than previously agreed, and any fee unreasonably charged when there is a change to packaging or a minor change to goods already marketed by manufacturers or suppliers;
- Unjustified returns of goods supplied by the manufacturer or supplier;
- Unfair consignment agreements;
- Coercing purchases, such as coercing payments for advertising and promotional activities or the purchase of business data services at unreasonable rates; and
- Any other unfair business practices that could result in damages.

### 2.4 Intellectual property

Thailand has three major laws dealing with intellectual property: the 1992 Patent Act, the Trademark Act and the Copyright Act (1978).

The 1992 Patent Act has adopted internationally recognised 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 Organisation Model Law, the Harmonisation Treaty and the Draft Agreement on TRIPs, including Trade in Counterfeit Goods.

The Patent Act recognises 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 (1978) and subsequent amendments 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 laws grant the right to file a civil or criminal complaint to enforce copyright protection. The Copyright Law covers two types of offences: direct and secondary infringements. In a direct infringement, exclusive rights for merchandise have been exercised without the authorisation 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.

### 2.5 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 and value added tax (VAT).

The Civil and Commercial Code of Thailand 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 recognised 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 Civil and Commercial Code generally governs mergers and acquisitions related to a private company and the Securities and Exchange Act and the Public Limited Company Act generally govern those 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.

# 3.0 Foreign investment

## 3.1 Foreign investment incentives and restrictions

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

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 Board of Investment (BOI). Nontax 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:

- Projects in eight priority areas that receive an eight-year corporate income tax holiday with no cap and are exempt from import duties on machinery. Activities qualifying for this incentive are: manufacturing of medical equipment and supplies; manufacturing of scientific equipment; electronic design; R&D; scientific laboratory work; calibration services; human resource development; and manufacturing and repair of aircraft, including parts or on-board equipment.
- 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 (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 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 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 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.

Tax incentives also are provided by the BOI for sustainable development projects during 2010-2012, focusing on 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 of corporate income tax for a period of three or eight years depending on the business activity;
- Exemption on import duty for machinery; and/or
- A 50% reduction of corporate income tax for not more than five years after the corporate income tax exemption period is over. This incentive applies to “targeted” industries only: energy conservation and alternative energy, eco-friendly materials and products, and high technology business.

Foreign investment in Thailand does not require approval from the BOI as long as the necessary operating permits have been obtained. Investors should determine whether the incentives available through the BOI outweigh the various restrictions involved.

### Foreign ownership

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

A foreign juridical entity is defined as an entity that is not registered in Thailand or that has foreign shareholdings equivalent to 50% or more of the total value of shares. A limited partnership or ordinary registered partnership is classified as foreign if the managing director or manager is a non-Thai. Under current rules, foreigners 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.

### Regional Operating Headquarters

Incentives are available for regional operating headquarters (ROH), 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 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, with the balance to be depreciated over 20 years;
- 15% flat rate of personal income tax 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 its 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 standards, 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 that new and enhanced incentives to make Thailand more competitive as an ROH jurisdiction are available effective 1 June 2010; the relevant terms and conditions to qualify for the incentives will be set out by the Revenue Department and are expected to be released before 31 December 2010. 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% flat rate for personal income tax for expatriates employed by the ROH.

### 3.2 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 centres in Thailand to manage foreign currency for their group companies. An eligible applicant must have at least three affiliates or subsidiaries in Thailand engaged in the manufacturing business and international trade. A qualifying treasury centre may carry out the following activities;

- Sending and receiving foreign funds to/from overseas business counterparts on behalf of the group;
- Offsetting or netting obligations in foreign currency with business counterparts abroad;
- Buying or selling foreign currency after offsetting and managing exchange rate risks;
- Managing liquidity via means of borrowing foreign currency from overseas and lending in Thai Baht to group companies and lending excessive liquidity of group companies in foreign currency abroad; and
- Recording account entries for the group.

The Money Laundering Control Act of 2008 requires all financial institutions to report to the Anti-Money Laundering Office within seven days any transactions 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 two criteria. Any additional facts or information that may be relevant also must be reported to the Anti-Money Laundering Office without delay.

Commercial banks must limit loans for private consumption, holding companies and property firms. Banks must maintain liquid assets in an amount not less than 6% of total deposits, the total amount of foreign loans having a maturity date within one year from the drawdown date, the total amount of foreign loans that are repayable or repayable on demand within one year from the drawdown date and loans with derivatives.

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 authorised 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.

Authorised banks may approve the remittance of USD 1 million or its equivalent at market rate per year from a Thai national to a relative residing abroad. Any 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 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 authorisation.

## 4.0 Choice of business entity

### 4.1 Principal forms of doing business

Thai law recognises four types of business organisation: ordinary partnership, registered partnership, limited company and public limited company. The first three types of entity are governed by the Civil and Commercial Code (CCC) and the last by the Public Limited Companies Act of 1992 (PLCA). All companies must be registered with the Department of Business Development of the Ministry of Commerce and, for tax purposes, with the Revenue Department. The requirements to establish a limited company are discussed below.

## Limited company

**Capital.** There is no specific minimum registered capital, but the registrar must be satisfied that the registered capital is sufficient to achieve the purposes of the company. For private companies, the value of each share must not be less than THB 5. For a private limited company, at least 25% of the share value must be paid in (100% for a public limited company). Shares may be allotted as paid-in cash, services or property. The shareholders usually determine the value of equity contributed in kind, but the Registrar of Companies 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 (although the shares may be transferred after incorporation). Public company: a minimum of 15 promoters are 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. Public limited companies may offer their shares to the public after registering with the Ministry of Commerce. Conversion of a private limited company to a public company is required for a company to be listed on the stock exchange.

**Directors, management.** The CCC does not restrict the number or nationality of directors; a director authorised to bind the company can be a Thai citizen or an alien holding a work permit. However, certain 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.

For public limited companies, the PLCA requires the board of directors to have at least five members and more than half of the directors must be permanent residents of Thailand. Shareholders elect directors. At every annual ordinary shareholders’ meeting, one-third of the directors must resign and stand for re-election. Directors may be liable for damages to the company caused by their failure to carry out their duties.

**Disclosure.** Audited balance sheets must be issued each year to the annual ordinary shareholders’ meeting; balance sheets and annual reports must be incorporated into the minutes of the meeting. Books must be maintained, with a Thai translation, in the company’s offices for review by the tax authorities. 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.

**Taxes and fees.** Businesses liable for income tax must obtain an income tax identification card and number from the Revenue Department within 60 days of incorporation or commencement of operations. Operators earning more than THB 1.8 million a year must register for VAT purposes within 30 days of commencing business.

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. 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. 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.

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

**Control.** Most decisions in private limited companies 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 a three-fourths majority of shares present Companies must hold an ordinary shareholders' meeting at least once a year, within four months after the company's fiscal year end. However, notice of shareholders' meeting (both an annual ordinary meeting and 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.

### 4.2 Establishing a branch

A foreign company may set up a branch, regional or representative office 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.

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 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.

Branch offices in Thailand are most useful for project work where expertise and guarantees of a strong head office company are beneficial. A branch and its head office are treated as the same legal entity under Thai law. 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.

A condition for granting a branch approval for an Alien Business Licence is that there be a minimum capital of not less than 25% of the average amount per year of the estimated expenditure for carrying on each business for three years. However, the capital must be at least THB 3 million in foreign exchange and be brought into Thailand within certain intervals over a four-year period. The branch may be allowed to operate with no time limit unless a shorter period is indicated in the application. An extension of the original duration of the licence to operate may be granted if the working capital requirement is met.

### 4.3 Setting up a company

To form a private limited company, promoters must subscribe for shares and once the shares have been subscribed, the shareholders and promoters are required to hold a statutory meeting to elect and register the names of a board of directors, and a minimum of 25% of the registered capital must be paid in. If standard forms are used, the entire incorporation process should take about one week from the time the company name is reserved.

For a public limited company, a minimum of 15 promotores are required as shareholders who subscribe to at least 5% of the outstanding shares. At least half of the promoters must be Thai citizens, and all promoters must hold their shares for at least two years from the date business is commenced. Public limited company directors guilty of misconduct are both criminally liable and liable for indemnifying the company for damages. Only a public company may issue shares, including convertible preferred shares, warrants convertible into common shares and debentures convertible into either listed or unlisted common shares. A public company must obtain approval from the Securities and Exchange Commission before offering its shares to the public; a private limited company must convert to a public company before a market listing. (A shareholders' resolution is necessary if the total value of new shares issued within any 12-month period is less than THB 20 million or if shares are offered to existing shareholders).

## 5.0 Business taxation

### 5.1 Overview

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

A foreign company not doing business in Thailand and receiving dividends from Thailand pays 10% of gross revenue and 15% on income from, for example, interest and goodwill. Tax on this income is levied by withholding tax at source, with the payer entity obligated to withhold tax. The rate can be reduced or exempted under a tax treaty. Foreign contractor income earned in Thailand, management fees and fees for professional services (such as architectural, legal and accounting activities) are subject to a 15% withholding tax.

### 5.2 Taxable income and rates

The corporate tax rate is a flat 30% of net profits, calculated by deducting all expenses and costs of goods sold from revenue arising from the business during the fiscal accounting period except for petroleum companies, which 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 is also 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.

The standard company tax rate of 30% 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 those 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% SBT).
- A SME whose fiscal years 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 30% 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.
- A company listed on the SET, including the Market for Alternative Investment (MAI), is taxed as follows:
  - A company listed on the SET between 6 September 2001 and 31 December 2005 pays a 25% tax on net profits for five consecutive accounting periods.
  - A company listed on the MAI between 6 September 2001 and 31 December 2005 pays a 20% tax on net profits for five consecutive accounting periods.
  - A company that requested SET registration between 1 January 2007 and 31 December 2007 and was listed on the SET by 31 December 2008 pays a 25% tax on net profits for three consecutive accounting periods.
  - A company that requested MAI registration between 1 January 2007 and 31 December 2007 and was listed on the MAI by 31 December 2008 pays a 20% tax on net profits for three consecutive accounting periods.
- A foreign company engaged in the business of international transportation pays tax at a rate of 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 an SME: any dividends received from a SME and gains arising from the transfer of shares in a SME are exempt from corporate tax.

The remittance tax on "out-out" loans (i.e. funds borrowed abroad to be lent abroad) extended by an International Banking Facilities-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), depending on the provisions of any applicable tax treaty.

### Taxable income defined

A locally incorporated company is taxed on worldwide income; a branch of a foreign firm pays income tax only on Thai-source profits. 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. For payments made to a firm not engaged in business in Thailand, the rates vary depending on the type of fees. Tax must be withheld at source on behalf of the offshore firm and remitted to the Revenue Department.

A Thai company is required to include only 50% of dividends received from a Thai limited company as taxable income. However, a full exemption applies if the receipient holds at least 25% of total shares with voting rights of the payer or is a listed company (unless the recipient company has held the shares for less than three months before or after the dividends are paid). Similar rules apply to profits from joint venture activities.

Generally, a foreign firm is taxed on dividends, interest from securities investments and capital gains.

### Deductions

Normal expenses connected with earning income are deductible. The Revenue Department can disallow expenses if it considers them not directly related to the earning of taxable income. All taxes, except for the corporate income tax itself and claimable input VAT, are deductible in calculating taxable profits. Depreciation and operating expenses are deductible, as is interest expense, except interest incurred on capital reserves or funds of the company. Entertainment expenses may be deducted 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. 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.

Thai-incorporated companies may write off reasonable management services, interest charges and royalties. Bad debts may be written off if there is evidence of reasonable efforts to collect the debt in accordance with the Revenue Code. Employer contributions to registered employee compensation funds are deductible. Head office charges or shared costs may not be deducted if the company is unable to prove that the services were actually provided and that they are related to business in Thailand. Regional distribution centres 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.

Special limits apply to the deductibility of gifts and charitable contributions. Firms may deduct as much as 2% of net profits for contributions to authorised public charities and social welfare concerns.

### 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 instalments 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

Tax losses can be carried forward for five consecutive accounting periods but not carried back.

## 5.3 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.

## 5.4 Withholding tax

### Dividends

A 10% withholding tax is levied on dividends paid to resident and nonresident entities. However, dividends paid by one 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. 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.

Since 2004, the government has waived corporate tax liability on dividends earned abroad by Thai companies. To qualify for the exemption, the Thai company must have held at least 25% of the foreign company for at least six months and the overseas company must be in a country that imposes at least a 15% tax on net profits.

### Interest

Interest paid to nonresident companies 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 to a resident corporation or bank, 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.

### Royalties and fees

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 lower the withholding tax charged on royalties paid for the use of copyrighted literary, artistic or scientific works. Rental payments also are subject to a 15% withholding tax.

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.

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 treaty.

## 5.5 Foreign income and tax treaties

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.

Thailand has concluded tax treaties with over 50 countries, including most of its major trading partners. The table below sets out the withholding tax rates on dividend, interest and royalty payments made by a Thai company to a nonresident. If the domestic rate is lower than the treaty rate, the domestic rate applies. Additionally, as indicated by "D" in the chart, certain categories of dividend, interest or royalty income may not be addressed under the treaty and domestic rates would apply in those instances, as well.

| Withholding tax rates under Thailand's tax treaties | | | |
|---|---|---|---|
| **Treaty Partner** | **Dividends** | **Interest** | **Royalties** |
| **Armenia** | 10 | 10/D | 15 |
| **Australia** | 15/20 | 10/25 | 15 |
| **Austria** | 15/20 | 10/25 | 15 |
| **Bahrain** | 10 | 10/15 | 15 |
| **Bangladesh** | 10/15 | 10/15 | 15 |
| **Belgium** | 15/20 | 10/25 | 5/15 |
| **Bulgaria** | 10 | 10/15 | 5/15 |
| **Canada** | 15/20 | 10/25 | 5/15 |
| **China** | 15/20 | 10/D | 15 |
| **Cyprus** | 10 | 10/15 | 5/10/15 |
| **Czech Republic** | 10 | 10/D | 5/10/15 |
| **Denmark** | 10 | 10/15 | 5/15 |
| **Finland** | 15/20 | 10/25 | 15 |
| **France** | 15/20 | 3/10/D | 5/15 |
| **Germany** | 15/20/25 | 10/25 | 5/15 |
| **Hong Kong** | 10 | 10/15 | 5/10/15 |
| **Hungary** | 15/20 | 10/25 | 15 |
| **India** | 15/20 | 10/25 | 15 |
| **Indonesia** | 15/20 | 10/25 | 15 |
| **Israel** | 10 | 10/15 | 5/15 |
| **Italy** | 15/20 | 10 | 5/15 |
| **Japan** | 15/20 | 10/25 | 15 |
| **Korea (R.O.K.)** | 10 | 10/15 | 5/10/15 |
| **Kuwait** | 10 | 10/15 | 20 |
| **Laos** | 15 | 10/15 | 15 |

| Withholding tax rates under Thailand's tax treaties | | | |
|---|---|---|---|
| **Treaty Partner** | **Dividends** | **Interest** | **Royalties** |
| **Luxembourg** | 15 | 10/15 | 15 |
| **Malaysia** | 15/20 | 10/25 | 15 |
| **Mauritius** | 10 | 10/15 | 5/15 |
| **Nepal** | 10/15 | 10/15 | 15 |
| **Netherlands** | 10/15/20 | 10/25 | 5/15 |
| **New Zealand** | 15 | 10/15 | 10/15 |
| **Norway** | 10/15 | 10/15 | 5/10/15 |
| **Oman** | 10 | 10/15 | 15 |
| **Pakistan** | 15/25 | 10/25 | 10/20 |
| **Philippines** | 15/20 | 10/25 | 15/25 |
| **Poland** | 20/D | 10/D | 5/15 |
| **Romania** | 15/20 | 10/20/25 | 15 |
| **Russia** | 15 | 10/D | 15 |
| **Seychelles** | 10 | 10/15 | 15 |
| **Singapore** | 20 | 10/25 | 15 |
| **Slovenia** | 10 | 10/15 | 10/15 |
| **South Africa** | 10/15 | 10/15 | 15 |
| **Spain** | 10 | 10/15 | 5/8/15 |
| **Sri Lanka** | 15/20 | 10/25 | 15 |
| **Sweden** | 15/20 | 10/25 | 15 |
| **Switzerland** | 10/15 | 10/15 | 5/10/15 |
| **Turkey** | 10/15 | 10/15 | 15 |
| **Ukraine** | 10/15 | 10/15 | 15 |
| **United Arab Emirates** | 10 | 10/15 | 15 |
| **United Kingdom** | 15/20/D | 10/25 | 5/15 |

| Withholding tax rates under Thailand's tax treaties | | | |
|---|---|---|---|
| **Treaty Partner** | **Dividends** | **Interest** | **Royalties** |
| **United States** | 10/15 | 10/15 | 5/8/15 |
| **Uzbekistan** | 10 | 10/15 | 15 |
| **Vietnam** | 15 | 10/15 | 15 |

## 5.6 Transactions between related parties

### 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 they determine that the prices charged, income derived from or expenses paid are not at arm's length. Although transfer pricing documentation is not formally required to be maintained, a taxpayer may use these documents to substantiate its transfer princing 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.

A taxpayer may obtain an advance pricing agreement to have its transfer pricing method approved by the tax authorities.

### Thin capitalisation

Although Thailand does not have thin capitalisation rules, for a taxpayer to obtain a BOI certificate to promote its business or obtain a foriegn business licence from the Ministry of Commerce, the taxpayer must maintain a debt-to-equity ratio of 3:1 or 7:1, respectively, including minimum registered capital required by the authorities.

### Controlled foreign companies

Thailand does not have CFC rules.

### Consolidated returns

Thailand does not allow the filing of consolidated returns; each company must file a separate return.

## 5.7 Turnover and other indirect taxes and duties

### 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 a turnover of less than THB 1.8 million a 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, labour 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 zero-rate VAT applies on a range of activities, including the export of goods and services wholly used outside Thailand. The standard rate is scheduled to increase to 10% in October 2012.

VAT is payable on the 15th of the month following the month in which the 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 must still 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 SBT on their revenue. Businesses required to pay SBT are banking, finance, repurchasing and factoring (3.3%) businesss, and life insurance and pawn brokerages (2.75%). Like VAT, the SBT includes a local tax element. A company that sells its factories and land to move to an industrial estate may be entitled to a waiver of the 3.3% SBT if the company moves to the industrial estate within one year of selling its property and completed the move by 30 September 2010. The SBT is waived for mergers of financial institutions and firms undergoing debt restructuring. A person or entity subject to SBT must register within 30 days from the date of commencing business and file a monthly SBT return regardless of whether the business generates income.

### Excise tax

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.

### 5.8 Other taxes

Other taxes include stamp duty, alien registration fees, residence fees, a slaughter tax (levied on butchers) and a tobacco tax. A 12.5% property tax is levied on lease or rental income. Landowners must also pay a development tax. There are no provincial or municipal income taxes.

### 5.9 Tax compliance and administration

The tax year is 12 months or the period for which accounts are prepared. The tax year normally may not exceed 12 months.

Companies (both Thai and foreign) are required to file a tax return and make a tax payment within 150 days of the end of the accounting period. In addition, companies must pay taxes twice a year -- an estimated 50% of the full year tax within two months of the end of the first six months of the tax year and the remainder within 150 days of the end of the accounting period. If a firm underestimates its profits for an entire year by more than 25%, a 20% deficiency tax surcharge is imposed on the first half-year instalment.

## 6.0 Personal taxation

### 6.1 Residency

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. Resident taxpayers also may be subject to income tax on foreign-source income brought into Thailand in the year the income is received. 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. A nonresident is subject to tax only on Thailand-source income.

### 6.2 Taxable income and rates

The top marginal personal income tax rate is 37%. Generally, an individual’s first THB 150,000 net income (income after the personal standard deduction and allowances) is exempt; for individuals older than 65, the exemption amount increases to THB 190,000 assessable gross income.

Taxable income includes employment income, business income and investment income, as well as a wide range of activities and/or benefits, including housing rent, education allowances, home leave and the personal use of a car provided by an employer. Tax enforcement is strict, with penalties levied on overdue taxes and underpayments.

Personal income tax returns must be filed by 31 March following the taxable year (the tax year is the calendar year). Payroll tax deducted by an employer must be filed by the seventh day of the following month.

### Determination of taxable income

Taxable income 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. Taxable income is divided into the following categories:

- Income from personal services rendered to employers;
- Income by virtue of jobs, positions 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;
- 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.

The tax rules for dividend and interest income are complex. To increase compliance, a 10% withholding tax is imposed on dividends received from companies and a 15% withholding tax applies to interest on bank and finance company deposits. Interest received from a Thai financial institution that deals in lending money to promote agriculture, commerce or industry is exempt. For fixed deposits, the withholding tax rate is 10% in certain cases. 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. 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 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 is also 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. Taxpayers over 65 enjoy an income exemption of THB 190,000. 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 and other dependent.

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.

### 6.3 Special expatriate tax 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 labour 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 (however, an extension to eight years is awaiting implementing guidance).

### 6.4 Capital taxes

There are no capital taxes.

## 7.0 Labour environment

### 7.1 Employees' rights and remuneration

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

#### Working hours

The normal working hours are eight hours per day and no more than 48 hours per week, although employees working in facilities that are considered harzardous to health or safety are limited to seven hours per day and not exceeding 42 hours per week.

An employee must consent to work longer than the normal working hours. Overtime work entitles an employee to payment of no less than 1.5 times the normal hourly wage or unit of work and three times the normal hourly wage or unit of work for overtime on holidays, as the case may be.

### 7.2 Wages and benefits

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

The current minimum wage for Bangkok and nearby Samut Sakhon, Samut Prakan, Nonthaburi, Pathum Thani and Nakhon Pathom provinces is THB 203 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 Labour 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.

### Pensions Fund Scheme

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

### Social Security 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 the 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.

### Other benefits

An employee who has been working continuously for one year is entitled to at least six work days of paid annual leave. All employees must receive 13 publicly observed holidays.

## 7.3 Termination of employment

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

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

## 7.4 Labour-management relations

The LRA, administered by the Labour 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 Labour Protection Act); (2) labor dispute resolution mechanisms; (3) organisations 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 for a year at a time.

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 Labour 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 labour organisations 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) *Labour 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 labour union. A labour union has its own bylaws and, upon registration as stipulated by the Labour Relations Act, will become a legal person.
3) *Labour federation*: A collective, formed by two or more labour unions whose membership is derived from the same employer or the same type of work. Upon registration, a labour federation will become a legal entity with its own bylaws for administration of the union.
4) *Labour council or congress of employees organization*: May be established by forming at least 15 labour unions or labour federations to promote education and labour relations which, upon registration, will become a legal entity with its own bylaws.

The State Enterprise Labour 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 for establishment of 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.

### 7.5 Employment of foreigners

Employment of foreign nationals in Thailand is governed by the Alien Employment Act, administered by the Department of Employment if the Ministry of Labour. 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 a Ministry of Labour official's discretion). 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 Labour 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 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 the Immigration Department;
- The company has paid in capital of THB 2 million per foreign national;
- For each foreign national employed, the employer has 4 Thai employees (or 1 Thai employee per foreign national if the employer is a representative office, regional office or branch office);
- 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 recognise 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 Office locations

To find out how our professionals can help you in your part of the world, please contact us at the office listed below or through the “contact us” button on http://www.deloitte.com/tax.

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