DOING BUSINESS IN THAILAND

2014

MAZARS

MAZARS IN THAILAND

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Skywalk with the Urban city, Bangkok, Thailand

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THIS GUIDE HAS BEEN PREPARED FOR THE ASSISTANCE OF THOSE INTERESTED IN DOING BUSINESS IN THAILAND. IT DOES NOT COVER EXHAUSTIVELY THE SUBJECTS IT TREATS, BUT IT IS INTENDED TO ANSWER SOME OF THE IMPORTANT BROAD QUESTIONS THAT MAY ARISE. WHEN SPECIFIC ISSUES ARISE IN PRACTICE, IT WILL OFTEN BE NECESSARY TO CONSIDER THE RELEVANT LAWS AND REGULATIONS AND TO OBTAIN APPROPRIATE PROFESSIONAL ADVICE.

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GENERAL INFORMATION

OPPORTUNITIES AND POSSIBLE OBSTACLES FOR FOREIGN INVESTORS

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

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

AREA AND POPULATION

Thailand is one of the largest countries in the region of South East Asia. The borders are shared with Myanmar to the west, Lao PDR to the north and northeast, Cambodia to the east, and Malaysia to the south. The population of Thailand is estimated at 67 million. With a population of over 10 million, the capital city of Bangkok is the most important city, economically and politically.

GOVERNMENT AND LAW

Thailand is a constitutional monarchy, with the Prime Minister as the head of government and a hereditary monarch as the head of state. The judiciary is independent of the executive and the legislative branches.

Thailand is divided into 77 provinces (changwat), which are gathered into five groups of provinces by location. There are also two special governed districts - the capital Bangkok (Krung Thep Maha Nakhon) and Pattaya. For administrative purposes, each province is divided into districts and the districts are further divided into sub-districts (tambons).

Thailand's legal system combines principles of traditional Thai and Western laws. Its members are nominated by the Senate and appointed by the King. The Courts of Justice have jurisdiction over criminal and civil cases and are organised in three tiers:

- Court of First Instance
- The Court of Appeal
- The Supreme Court of Justice

Administrative courts have jurisdiction over suits between private parties and the Government, and cases in which one government entity is suing another.

CURRENCY

The baht (฿ or international abbreviation THB) is the currency of Thailand. One baht is divided into 100 satang. Issuing currency is the responsibility of the Bank of Thailand.

ECONOMY

The economy of Thailand is an emerging economy which is heavily export-dependent, with exports accounting for more than two thirds of GDP.

Thailand's main exports are computer hardware, motor vehicles and auto parts, jewellery and electrical circuits.

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

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

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

FINANCE

Thailand has a substantial number of financial institutions, both private and government owned. The financial institutions in Thailand offer a full range of financial services under the supervision of the Bank of Thailand. In general, the Thai banks are reluctant to lend money to start up companies and small international entities. Normally collateral is needed to secure external funding. The collateral can be in the form of a title deed of land, a bank guarantee from a parent company or a guarantee via the Thai Credit Guarantee Corporation. In addition, Thailand is a member of the World Bank and the Asian Development Bank.

IMMIGRATION LAW

Visas

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

- **Tourist** - Foreigners who obtain tourist visas are initially granted a stay of 60 days. Renewals, at the discretion of the Immigration Department, are normally granted for periods of up to 30 days at a time.

- **Visitor transit** - Foreigners who have obtained a transit visa from a Thai Embassy or consulate will be granted a 30-day stay in Thailand. Extensions of stay are normally granted for periods of 7 days. In addition, nationals of many countries are able to enter Thailand without a visa and may remain for 30 days per visit. Foreigners who enter Thailand under the Tourist Visa Exemption category may re-enter and stay in Thailand for a cumulative duration of stay not exceeding 90 days within any 6-month period, from the date of first entry.
- **Immigrant** - A person wishing to immigrate to Thailand may apply for a Certificate of Residence. However, the conditions for qualifying as an immigrant are quite restrictive and covered by annual immigration quotas and other conditions fixed for each country by the Ministry of Interior.
- **Non-quota immigrant** - This category includes former residents who have lost their resident status, but who have reapplied to resume their residency and who are able to demonstrate a convincing reason to support the granting of this type of visa.
- **Non-immigrant** - Foreigners seeking a prolonged stay or for the purpose of work in Thailand should obtain non-immigrant visas for themselves and all family members prior to entering Thailand. The visa is generally granted for an initial stay of 90 days, but it may be extended by up to one year, and is renewable each year. A foreigner holding this type of visa is entitled to apply for a work permit. Holders of a transit or tourist visa cannot apply for a work permit.

Work permits

The Foreign Employment Act stipulates numerous rules regarding work permits, summarised here:

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

REGULATION OF FOREIGN INVESTMENT

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

FOREIGN BUSINESS ACT

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

Definition of 'foreign company'

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

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

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

- **Activities stated in List 1** are designated as "businesses not permitted for foreigners to operate due to special reasons". Foreign companies are completely restricted from engaging in the activities contained in List 1.
- **Activities stated in List 2** are designated as "businesses related to national safety or security, activities affecting arts and culture, traditional and folk handicraft or natural resources and environment". Foreign companies may only engage in the activities stated in List 2 with prior Cabinet approval.
- **Activities stated in List 3** are designated as "businesses in which Thai nationals are not yet ready to compete with foreigners". To engage in activities stated in List 3, the foreign company must apply for and obtain a Foreign Business License prior to commencing the activity.

Companies promoted by the BOI are permitted to engage in certain business activities restricted under the Foreign Business Act by obtaining the foreign business certificate prior to operate its business.

EXCHANGE CONTROLS

Foreign currency

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

Local Currency

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

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

GOVERNMENT INCENTIVES

RESEARCH & DEVELOPMENT (R&D)

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

INVESTMENT PROMOTION ACT

Through the Board of Investment (BOI), the government offers a range of tax incentives, support services and import duty concessions. These are available to an extensive list of businesses that are regarded as priority or promoted activities. The structure, role and policies of the BOI currently follow the guidelines provided in the Investment Promotion Act.

Under BOI, there are no foreign equity restrictions in the manufacturing sector, no local content requirements and no export requirements. This is because Thailand's investment regime complies fully with WTO regulations.

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

FOREIGN EQUITY PARTICIPATION

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

Criteria	Maximum foreign equity participation
1. Projects in agriculture, animal husbandry, fishery, mineral exploration and mining and service business under Schedule One of the Foreign Business Act 1991	49%
2. Manufacturing projects, in all zones	100%
3. The Board may specifically fix the shareholding of foreign investors on some promoted projects when it is deemed appropriate.	

Investment Promotion Zones

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

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

Tax-based incentives

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

Non-tax incentives include:

- Permission for full or majority foreign ownership of the company
- To bring in foreign workers
- To own land and
- To take or remit foreign currency abroad.

Action required after the project is approved for promotion

- The BOI will inform the applicant in writing within seven working days of the approval date, detailing the conditions, privileges and benefits granted. An application form for the promotion certificate will be attached, together with the notification of approval.
- Upon receipt of the BOI letter approving the project, the applicant must reply by completing the form of promotion acceptance and sending it back to the BOI within one month. If any changes or special conditions and privileges are sought, they should be requested at that time.
- If the applicant is unable to reply within the stated time limit, an extension letter should be sent to the BOI, which will consider extending the deadline by no more than one month at a time, up to a maximum of three times.
- In order to receive the investment promotion certificate, the applicant must set up the company within six months of accepting the approval, and submit all of the required documents to the BOI.
- If the applicant is unable to submit the documents within the required time frame, an explanatory letter must be sent to the BOI, which will consider extending the deadline by four months at a time, up to a maximum of three times.
- The BOI will issue the investment promotion certificate after receipt of all specified documents, and the promoted company must follow the conditions stipulated in the Certificate.

REGIONAL OPERATING HEADQUARTERS (ROH)

The Revenue Department has a number of tax privileges that are provided to the business sector, one of which is the Regional Operating Headquarters (ROH) incentive. A ROH is a suitable corporate structure for an entity that provides managerial, administrative and technical support services for other affiliated companies operating in the region and wanting to set up in Thailand. Both tax privileges and non-tax privileges are granted to the ROH. The Revenue Department introduced ROH Scheme I in 2002 and approved the ROH Scheme II in November 2010. The taxpayer is entitled to apply for either scheme.

Outlined below are the tax incentives and conditions for both schemes.

Tax privileges and conditions of ROH

ROH Scheme I (Royal Decree No.405)

Tax incentive

- 10% corporate income tax on service income, interest income and royalty income derived from all related companies and branches of the ROH (both in Thailand and overseas).
- Exemption from corporate income tax on dividend income received from all related companies and branches of the ROH.
- Exemption from withholding tax on dividend income paid to any related companies or branches outside Thailand.
- 15% flat rate of tax on salaries paid to expatriate employees for hire of labour in Thailand for a period of four years and exemption from tax on salaries paid to expatriate employees for hire of labour outside of Thailand.
- Accelerated depreciation write-off on the purchase or acquisition of buildings used in carrying out the operation of the ROH - a deduction of 25% of the asset value is allowed as an initial allowance and the remaining balance can be deducted over 20 years.

Conditions

- The ROH shall be a company incorporated under the laws of Thailand with paid up capital of at least THB 10 million.
- The ROH shall provide its services to at least three related companies and branches of the ROH outside Thailand.
- The ROH shall earn at least one-third of its total income from related companies and branches of the ROH outside Thailand for the first three years, and thereafter, not less than 50% of its total income from related companies and branches outside Thailand.
- The ROH shall notify the Revenue Department of its status as a ROH under Section 10 and its intention to apply the tax privileges under such Scheme.

All conditions need to be satisfied in order to be entitled for tax incentives under the ROH Scheme I.

ROH Scheme II (Royall Decree No.508)

Tax incentives

- Exemption from corporate income tax on service income from related companies and branches of the ROH outside Thailand for a period of 10+5* years:
  - 10% corporate income tax on service income from related companies and branches of the ROH in Thailand for a period of 10+5* years
  - 10% corporate income tax on interest income and royalty income from all related companies and branches of the ROH (both in Thailand and overseas) for a period of 10+5* years
- Exemption from corporate income tax on dividend income received from all related companies and branches of the ROH for a period of 10+5* years.
- Exemption from withholding tax on dividends paid to any related companies or branches outside Thailand.
- 15% flat rate of tax on salaries paid to expatriate employees for hire of labour in Thailand for a period of eight years and tax exemption on salaries paid to expatriate employees for hire of labour outside of Thailand.

Conditions

- The ROH shall be a company incorporated under the laws of Thailand with paid up capital of at least THB 10 million.
- The ROH shall provide its services to at least three related companies and branches of the ROH outside of Thailand within the following time frame:
  - At least one outside Thailand in the first and second years;
  - At least two outside Thailand in the third and fourth years;
  - At least three outside Thailand in the fifth and subsequent years.
- The affiliated companies or branches outside of Thailand shall be fully established with genuine operations, including the set up of management and employees.
- The ROH shall earn not less than 50% of its total income from related companies and branches outside of Thailand.
- The ROH shall incur expenditures in Thailand of at least the following:
  - Operating expenditure (not including depreciation or payments made to recipients outside Thailand) of THB 15 million per year **or**
  - Capital investment expenditure (not including investment in shares on the stock exchange) of THB 30 million per year.

* 10+5 years means the tax privileges are granted for 10 years, and subject to the ROH having complied with all the conditions for that 10 year period and having expended a total of THB 150 million over that 10 year period on operating expenses (not including depreciation and operating expenses paid to recipients outside of Thailand, raw materials, goodwill, copyrights, or any other rights, component parts, and packing charges). If these conditions are satisfied, the ROH shall be entitled to apply to the Revenue Department for an extension of the tax privileges for five more years.

- The ROH shall have employees:
  - With the minimum skills and knowledge as prescribed by the Revenue Department,
  - In and from the fourth year onwards, 75% of the total number of ROH employees shall have those minimum skills and knowledge,
  - In and from the fourth year onwards, at least five of those employees shall earn a salary of at least THB 2.5 million each per annum.
- The ROH shall notify the Revenue Department of its status as a ROH under Section 11/6 and its intention to apply the tax privileges under such Scheme, and such notification shall be made within five years of the law governing its entry into force (for example, by 5 November 2015).
- The ROH shall, in addition, comply with the tax compliance procedural rules.

All conditions need to be satisfied in order to be entitled for tax incentives under the ROH Scheme II.

Types of services that qualify for ROH

Both Scheme I and Scheme II have the same service qualifications:

- Management services
- Technical services
- Supporting services, including:
  - General administration, business planning and coordination
  - Procurement of raw materials and components
  - Product R&D
  - Technical assistance
  - Marketing and sales promotion
  - Personnel management and regional training
  - Financial advisory
  - Economic and investment feasibility and analysis
  - Credit control and management

INDUSTRIAL ESTATE AUTHORITY OF THAILAND ACT

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

Investment in a General Industrial Zone (GIZ)

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

1. **Permission to operate service businesses in the GIZ**
   IEAT offers industrial operators in a GIZ with comprehensive services essential for industrial operations – such as transportation, warehouses, training centres and clinics.
2. **Non-Tax privileges for operators in a GIZ**
   - The right to own land in an industrial estate
   - The right to bring in foreign skilled workers, plus their spouses or dependents
   - The right to remit money abroad

Investment in Export Processing Zone (EPZ)

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

1. Operators in an EPZ are afforded the privilege of exporting products without any restrictions and with the added convenience of being able to bring merchandise or raw materials into an EPZ.
2. Supplies taken into an EPZ are entitled to improved tax and duty privileges, such as:
   - Tax burden relief for products taken out of an EPZ for domestic use or consumption. Contrary to the previous Act, content or raw material components, if produced domestically, can be granted tax and duty exemptions.
   - Operators in an EPZ remain entitled to claim privileges specified in the previous Industrial Estate Authority of Thailand Act. These include:
     - Tax privileges, including import/export tax and duty exemptions, as well as exemptions on Value Added Tax (VAT) and excise tax on machinery, equipment, components, raw materials and supplies used for the production of goods and other merchandise.
     - General privileges, comprising the right to own land, ability to bring in technical experts (and family members and dependents), as well as the ability to remit foreign currency to their home countries.

PETROLEUM LAWS

To develop Thailand's natural resources, the Petroleum Act and the Petroleum Income Tax Act of Thailand offers special incentives in relation to petroleum surveying, exploration and production.

Petroleum related investment incentives include:

- **Import duty** - imported machinery, spare parts and materials required for business or for the use of drilling and oil field service contractors are exempt from tariffs.
- **Land ownership** - the business is permitted to own land used for its operation.
- **Immigration** - relaxed work permits and visa rules exist for foreign experts, technical staff and their dependents, including contractors.
- **Other incentives** - the government shall not restrict the export of petroleum except in very exceptional circumstances and will also provide a guarantee that it will not nationalise any private industrial activity.

BUSINESS ORGANISATIONS AVAILABLE TO FOREIGNERS

Thailand recognises three types of legal business entities:

- Partnerships
- Limited companies
- Joint ventures

PARTNERSHIPS

There are three types of partnerships in Thailand, differing principally by the liability attached to each.

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

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

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

LIMITED COMPANIES

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

Private limited company

A Thai private limited company has basic characteristics that are similar to Western corporations. A private limited company is formed through a process that leads to the registration of a memorandum of Association (Articles of Incorporation) and Articles of Association (By-laws). These are the company's registered constitutive documents

Public limited company

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

The table below illustrates the different procedures involved in establishing a private limited company and a public limited company.

	Private limited company	Public limited company
Minimum number of natural persons as promoters	3	15
Minimum number of shareholders required at all times	3	15
Public subscription of shares by prospectus	Not allowed	Allowed*
Public subscription of debentures by prospectus	Allowed*	Allowed*
Registration fee per Baht (THB) million of capital	THB 5,500	THB 2,000

* Subject to SEC approval.

Appointing directors

Every company must appoint at least one director to act as an agent of the company. The number of directors of a private company is not fixed under Thai laws, but set by the shareholders' general meeting. A director is appointed or removed only by general meeting. For public companies, there must be at least five directors of which three must be Thai nationals.

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

JOINT VENTURES

A joint venture may be described, in accordance with general practice, as a group of persons (resident and/or non-resident) entering into an agreement in order to conduct a business activity together. It is not yet recognised as a legal entity under the Thai Civil and Commercial Code. However, income from a joint venture is subject to corporate taxation under the Thai Revenue Code, which classifies it as a single entity.

OTHER FORMS OF CORPORATE ENTITIES

Branch of a foreign corporation

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

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

A condition for approval of a Foreign Business License for a branch of a foreign corporation is that minimum capital, amounting to not less than THB 3 million, must be brought into Thailand. This amount may be subject to changes by subsequent Ministerial Regulations.

Representative office of a foreign corporation

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

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

The minimum capital contribution of THB 3 million for branches also applies to representative offices.

Regional Operating Headquarters (ROH)

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

The government provides tax breaks and incentives to attract foreign companies to set up a ROH in Thailand. There are two schemes of a ROH model which the investors can choose (for details see section 3.3).

SETTING UP AND RUNNING BUSINESS ORGANISATIONS

CORPORATE REGISTRATION PROCEDURES

Limited company

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

Branch, representative office and RO

Foreign corporations wishing to do business in Thailand through a branch, representative office or RO must submit the required documents. Documents issued by the Head Office must be notarised by a Public Notary or certified by the local Thai consulate or embassy.

Public securities

In order to offer newly issued securities for sale to the public, companies must apply for approval from the Securities and Exchange Commission (SEC), complying with the rules and regulations issued by the SEC Board according to the Securities and Exchange Act B.E. 2535. However, the offering of existing securities by holders can be done without the SEC's approval, on the condition that the company discloses information to the SEC prior to offering securities for sale.

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

TAX REGISTRATION

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

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

All persons whose annual turnover exceeds THB 1.8 million must register for VAT within 30 days after the annual turnover has exceeded that amount, unless specifically exempt.

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

LICENSING A FACTORY

The Factory Act B.E. 2535 (1992) divides factories into three groups:

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

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

A factory licence is valid up to the last day of the fifth calendar year from the year of issue, and is renewable. An application for the renewal of a factory licence must be filed to the authority prior to the expiration of the current licence. While the factory licence is valid, the licensee must pay an annual fee for the said licence, as determined by the authority.

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

AUDIT AND ACCOUNTING REQUIREMENTS

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

Companies listed on the Stock Exchange of Thailand or the Market for Alternative Investment in Thailand must also prepare financial statements, which are reviewed by Thai auditors on a quarterly basis

SHAREHOLDINGS BY NON-RESIDENTS

Shareholders in a Thai company can be resident of any country. However, some specific business activities do limit the percentage of foreign ownership, as detailed in the Foreign Business Act 1991.

LABOUR LAW

Thailand's codified employment laws, administered by the Department of Labor, Protection and Welfare, stipulate working conditions, such as maximum work hours, holidays, sick leave, minimum wage and severance pay. The laws, which may significantly affect a firm's decision to do business in Thailand, also give employers some flexibility with regard to managing labour, such as staff recruitment processes, retrenchment policies and employee transfers.

The maximum number of work hours is eight per day or 48 per week. The exception is when work is deemed by law to be hazardous, in which case working hours are limited to seven hours per day and 42 hours per week. Overtime compensation must be paid at a rate of between 1.5 to three times the normal hourly rates to qualifying employees.

Employees are entitled to a minimum of 13 national holidays per year, plus a minimum of six vacation days after one year of consecutive work.

Thirty annual paid sick days is standard. An employer may require a doctor's certificate for sick leave that is three consecutive days or more.

Female employees are entitled to 90 days of maternity leave, including 45 days of paid leave.

The government has recently introduced a minimum wage of 300 Baht. Salaries for full-time office and management staff range from approximately THB 15,000 per month ($500 USD) for a fresh graduate to over THB 200,000 per month ($6,667 USD) for management level.

Staff recruitment and transfers

Employers often recruit staff through advertisements in either Thai or English language newspapers, and there are several domestic and international personnel recruitment services. Employers may specify criteria, such as preferences for an applicant's age and gender. Employers have the right to transfer staff to other locations, providing the transfer is not ordered with the intent to create personal hardship. An employee's refusal to transfer is legal cause for dismissal.

Social security contributions

The Social Security Act requires all employers to withhold social security contributions of 5% from the monthly salary of all employees, up to a maximum of THB 750 ($25 USD) per person per month. Employees with social security registration may file compensation claims for injury, illness, disability or death if it is not a consequence of work performance, childbirth, child welfare, retirement and unemployment.

Severance pay

Severance pay is mandated according to employment duration. If business conditions necessitate cutbacks, firms have freedom in determining retrenchment policies. There is no 'first in, last out' requirement in Thailand.

Workmen's compensation

The Workmen's Compensation Act requires an employer to provide benefits at rates prescribed by law for employees who suffer injury, illness or death while performing their work. In general, the compensation amount is paid monthly at a rate of 60% of monthly wages, between a minimum of THB 2,000 ($67 USD) and a maximum of THB 9,000 ($300 USD) per month. Actual and necessary medical expenses must be paid up to THB 35,000 ($1,167 USD) for normal cases and THB 50,000 ($1,667 USD) for a serious injury.

PROTECTION OF INTELLECTUAL PROPERTY

Copyright

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

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

- For unpublished work, the creator must be of Thai nationality or reside in Thailand or be a national of or reside in a country which is a member of the Convention on the Protection of Copyright, of which Thailand is a member, providing that the residence, at all times or most of the time, is spent on the creation of the work.

- For published work, the first publication must be made in Thailand or in a country that is a member of the Convention on the Protection of Copyright. If the first publication was made outside of Thailand or in a country which is not a member of the Convention, the work created must have been published in Thailand or in a country which is a member of the Convention within 30 days from the first publication. Alternatively, the creator must have the qualification, as prescribed above, when the work was first published.

Copyright is valid for the period of the creator's life, plus an additional 50 years thereafter. Where the creator is a juristic person, the protection period is 50 years from the date of creation or 25 years when the copyright application is for art.

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

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

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

Trademarks

The Trademark Act of Thailand governs registration of and provides protection for trademarks. The Act defines a trademark as a symbol used in connection with goods, for the purpose of indicating that they are the goods that belong to the owner of the trademark. The trademark must be distinctive and not identical or similar to those registered by others.

Registration of a trademark may be completed by the trademark proprietor or through an agent. Application for registration must be made on official forms duly signed either by the proprietor or the agent and filed with the Trademark Office. If an application is approved, the registration will be published in the Official Journal. Once published and not opposed, the proprietor has the exclusive right to use the registered mark on all of the products for which registration has been granted.

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

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

Patents

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

Under the Patent Act, patents for inventions are valid for 20 years, and patents for designs valid for 10 years.

The invention must be patentable under the following requirements:

- Having novelty
- Involving an inventive step
- Capable of being made or used for some kind of production activity

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

- Microbes and any components thereof which exist naturally, for example animal, plant and extracted substances from animals or plants
- Scientific or mathematical rules or theories
- Computer programmes
- Methods of diagnosis, treatment and care of human and animal diseases
- Inventions that are contrary to public order or morality, public health or welfare

CORPORATE TAXES

The principal taxation law of Thailand is the Revenue Code 1938. In Thailand, taxes are collected in two ways. There are direct taxes (personal and corporate income taxes and petroleum income tax) and indirect taxes (Value Added Tax, excise tax, customs duties, stamp duties and specific business tax).

Generally, income tax in Thailand is by self-assessment whereby tax declarations and payments are assumed to be correct. However, the Revenue Department has the power to audit taxes and taxpayers' financial records. Value Added Tax (VAT) is collected upon consumption of goods and services and is also levied on imports.

CORPORATE INCOME TAX

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

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

TAXABLE ENTITIES

Corporate income tax is levied on both Thailand and foreign companies. A Thailand company means a company incorporated in Thailand. A Thailand company is subject to tax in Thailand on its worldwide net profit at the end of each accounting period (12 months).

A foreign company means a company incorporated under foreign law. Generally, a foreign company is treated as conducting business in Thailand if it has an office, a branch or any other place of business in Thailand, or if it has an employee, agent or representative that is conducting business in Thailand. A foreign company conducting business in Thailand is subject to CIT only for net profit arising from, or in consequence of, business conducted in Thailand at the end of each accounting period.

A separate profit remittance tax of 10% of the amount remitted is imposed on foreign companies that remit their Thailand based profits offshore. Profit means any sum set aside out of profits, as well as any sum which may be regarded as profit.

A foreign company, not conducting business in Thailand, but deriving certain types of income from Thailand, such as service fees, interests, dividends, rents or professional fees, may be subject to CIT on the gross amount received. It is collected in the form of withholding tax, by which the payer of income shall deduct the tax from the income at the rate shown in section 8 (Withholding tax rates – payments to non-resident countries). A foreign company engaged in international transport is also only subject to tax on its gross receipts.

FISCAL YEAR

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

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

DETERMINING COMPANY TAXABLE INCOME

The CIT of a company conducting business in Thailand is calculated from the company's net profit on an accrual basis. A company must take into account all revenue arising from, or in consequence of, the business conducted in an accounting period and may deduct all expenses in accordance with the conditions prescribed by the Revenue Code. For the accounting period commencing on or after 1 January 2012 year, the corporate income tax rate in Thailand is 23% on the net profits. Starting from 1 January 2013 the rate is reduced to 20 % for the next 2 accounting periods. However, the rates vary depending on the type of taxpayer. Additional deductions on certain types of expenditure may also be allowed.

FOREIGN TAX RELIEF

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

LOSSES AND CONSOLIDATION

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

DIVIDENDS

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

Dividend paid by a foreign company to a Thai company after November 2005 will be exempt from Thai CIT if:

- The paying company has a minimum corporate tax rate of 15% **and**
- The Thai company has a 25% or more equity interest in the foreign entity **and**
- The Thai company maintains its shareholding in that company for a 6 month period.

REPATRIATION OF PROFITS AND TRANSFER PRICING

In addition to paying dividends, profits may be repatriated through other various means, including payment of royalties and/or service fees.

Although there is no separate transfer pricing legislation in Thailand, guidelines have been issued to counteract aggressive inter-company pricing practices and to ensure such payments reflect the true market value. These guidelines are intended to prevent the manipulation of profits and losses within a group of related companies and ensure that goods and services traded between the related companies are priced at an arm's length value. The Revenue Department also has the power to assess income resulting from transfers which it deems is below market value.

PERSONAL TAXATION

Personal Income Tax (PIT) is a direct tax levied on the taxable income of a person. A person is defined as an individual, an ordinary partnership, a non-juristic body of persons, a deceased person and an undivided estate.

In general, a person liable to PIT has to calculate his or her tax liability, file tax returns and pay tax, if any, on a calendar year basis. Taxpayers are classified into 'resident' and 'non-resident'.

A resident applies to any person residing in Thailand for a period, or periods, aggregated at 180 days or more in any tax (calendar) year. A resident of Thailand is liable to pay tax on income from sources in Thailand on a cash basis, regardless of where the money is paid, and on the portion of income from foreign sources that is brought into Thailand in the same year that the foreign income is derived.

A non-resident is, however, only subject to tax on income from sources in Thailand.

TAXABLE INCOME

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

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

Types of Income	Deductions
1. Income from employment	40% but not exceeding THB 60,000
2. Income from hire of work	40% but not exceeding THB 60,000
3. Income received from copyright	40% but not exceeding THB 60,000
4. Income in the nature of interest, dividend, capital gain	N/A
5. Income from letting out of property on hire	
– building and wharves	actual expense or 30%
– agricultural land	actual expense or 20%
– all other types of land	actual expense or 15%
– vehicles	actual expense or 30%
– any other type of property	actual expense or 10%
6. Income from professional services	actual expense or 30%, except for the medical profession where 60% is allowed
7. Income derived from contract of work whereby the contractor provides essential materials besides tools	actual expense or 70%
8. Income derived from business, commerce, agriculture, industry, transport, or any other activities not specified	actual expense or between 40% and 85%, depending on the types of income

Tax rates for resident and non-resident individuals (2013 and subsequent years)

Taxable Income THB	Tax Rate (%)	Tax Amount	Accumulated Tax
0 - 150,000	Exempt	-	-
150,001 - 300,000	5	7,500	7,500
300,001 - 500,000	10	20,000	27,500
500,001 - 750,000	15	37,500	65,000
750,001 – 1,000,000	20	50,000	115,000
1,000,001 – 2,000,000	25	250,000	365,000
2,000,001 – 4,000,000	30	600,000	965,000
4,000,001 and over	35		

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

SEPARATE TAXATION

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

Income from the sale of immovable property

Special rules apply to calculating the gains on the sale of immovable property. This may allow a taxpayer to pay a final withholding tax to the Land Department in lieu of including the gain on sale as normal assessable income.

Interest

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

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

Dividends

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

PIT FILING AND PAYMENT

A taxpayer is liable to file a PIT return (Form PND 90 or 91) and make a payment to the Area Revenue Branch Office by the last day of March following the taxable year. A taxpayer who derives categories of income 5 to 8 (as indicated in the types of income in the previous page) during the first six months of the taxable year is also required to file a half-yearly return (Form PND 94), and make a payment to the Area Revenue Branch Office by the last day of September of that taxable year. Any withholding or half-yearly tax that has been pre-paid can be used as a credit against the end of year tax liability.

WITHHOLDING TAX

Payments to resident individuals

For certain categories of income, the payer of income has to withhold tax at source, file the necessary return (Form PND 1, 2, or 3) and submit the amount of tax withheld to the District Revenue Office. The tax withheld is then credited against the tax liability of the taxpayer when the PND return is filed. This table illustrates the withholding tax rates for some categories of income.

Types of income	Withholding tax rate
1. Employment income/hire of work	0-35%
2. Interest	15 %
3. Dividends	10 %
4. Royalty	0-35%
5. Rents[1]	5 %
6. Prizes	5 %
7. Service and professional fees[1]	3 %
8. Public entertainer remuneration	5 %
9. Advertising fees[1]	2 %
10. Capital Gain[2]	0-35%

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

Payments to resident corporations and branches of foreign companies

Certain types of income paid to companies are subject to withholding tax at source. The withholding tax rates depend on the types of income and the tax status of the recipient. The payer of income is required to file the return (Form PND 53) and submit the amount of tax withheld to the District Revenue Offices within seven days of the following month in which the payment is made. The tax withheld is credited against the final tax liability of the taxpayer. This table illustrates the withholding tax rates on some important types of income. Government agencies are required to withhold tax at the rate of 1% on all types of income paid to Thai companies.

Types of income	Withholding tax rate
1. Interest	10% if paid to associations or foundations, or 1 % in other cases
2. Dividends	10%
3. Royalties	10% if paid to associations or foundations, or 3 % in other cases
4. Rents	10% if paid to associations or foundations, or 5% in other cases
5. Prizes	5%
6. Service and professional fees	3% if paid to Thailand company or foreign company that has a permanent branch in Thailand 5% if paid to foreign company without a permanent branch in Thailand
7. Advertising Fees	2%

Payments to non-resident countries

Apart from dividends, which attract withholding tax at 10%, most other payments applicable to a non-resident that resides in a non-DTA country (including interest, royalties, rent, management fees, consultancy payments and capital gains) would attract withholding tax at 15%. A DTA, however, exists with many countries. The rates of withholding tax may therefore be reduced, depending on the rate specified by the applicable DTA (see Section 8).

DOUBLE TAXATION AGREEMENTS

Thailand concluded its first double tax agreement (DTA) with Sweden in 1963. The Thai DTA network continues to be expanded and updated.

The DTA applies to persons who are residents of the Contracting States. In order to be classified as a Thai resident and be entitled to treaty benefits, a person must be one of the following:

- An individual who stays in Thailand for a period/periods of 180 days or more in a calendar year.
- A company that is incorporated under the Civil and Commercial Code of Thailand.

TAXES COVERED BY DTAS

DTAs apply only to income taxes, namely personal income tax, corporate income tax and petroleum income tax. Other indirect taxes such as VAT and specific business tax (SBT) are not covered by a DTA.

INCOME TYPES

In general, a DTA does not stipulate any specific item of income and tax rate. What it states is whether the source or resident country is entitled to tax certain income. If the source country has taxing rights, the income will be subject to tax according to the domestic laws of that country.

The DTA also prescribes a tax rate level on investment income, namely dividends, interest and royalties. This means the source country can tax investment income at a rate not exceeding the rate prescribed within the agreement. In many cases, tax rates within the DTA are lower when compared to domestic tax rates, in order to reduce tax impediments for cross border trade and investments.

Some Articles of the DTAs clearly do not allow the source country to exercise taxing rights on certain income, for example income from international air transport and business profits, providing the business is not conducted through a PE in the source country.

TAX RATES

Withholding tax is generally applied at a rate of 10% for dividends and 15% for interest and royalties. However, for treaty countries, the lower rate of withholding tax is provided, on the condition that the recipient of dividends, interest and royalties does not have a PE or fixed base in Thailand. The following table outlines the general tax applicable to dividends, interest and royalty payments under Thailand's DTAs.

	Dividends (1) (%)	Interest (2) (%)	Royalties (3) (%)
Armenia	10	10, 15	15
Australia	10	10, 15	15
Austria	10	10, 15	15
Bahrain	10	10, 15	15
Bangladesh	10	10, 15	15
Belgium	10	10, 15	5, 15
Bulgaria	10	10,15	5,15
Canada	10	10, 15	5, 15
Chile	10	10, 15	5, 15
China	10	10, 15	15
Cyprus	10	10, 15	5, 10, 15
Czech Republic	10	10, 15	5, 10, 15
Denmark	10	10, 15	5, 15
Finland	10	10, 15	15
France	10	3, 10, 15	5, 15
Germany	10	10, 15	5, 15
Hong Kong	10	10, 15	5, 10, 15
Hungary	10	10, 15	15
India	10	10, 15	15
Indonesia	10	10, 15	15
Israel	10	10, 15	5, 15
Italy	10	10, 15	5, 15
Japan	10	10, 15	15
Korea	10	10, 15	15
Kuwait	10	10, 15	15
Laos	10	10, 15	15
Luxembourg	10	10, 15	15
Malaysia	10	10, 15	15

	Dividends (1) (%)	Interest (2) (%)	Royalties (3) (%)
Mauritius	10	10, 15	5, 15
Myanmar	10	0, 10	5, 10, 15
Nepal	10	10, 15	15
Netherland	10	10, 15	5, 15
New Zealand	10	10, 15	10, 15
Norway	10	10, 15	5, 10, 15
Oman	10	10, 15	15
Pakistan	10	10, 15	10, 15
Philippines	10	10, 15	15
Poland	10	10, 15	5, 15
Romania	10	10, 15	15
Russia	10	10, 15	15
Seychelles	10	10, 15	15
Singapore	10	10, 15	15
Slovenia	10	10, 15	10, 15
South Africa	10	10, 15	15
Spain	10	10, 15	5, 8, 15
Sri Lanka	10	10, 15	15
Sweden	10	10, 15	15
Switzerland	10	10, 15	5, 10, 15
Taiwan	10	10,15	10
Turkey	10	10, 15	15
Ukraine	10	10, 15	15
United Arab Emirates	10	10, 15	15
United Kingdom	10	10, 15	5, 15
United States	10	10, 15	5, 8, 15
Uzbekistan	10	10, 15	15
Vietnam	10	10, 15	15

1. The lower rate generally applies if certain conditions are met, including having a specified minimum percentage of equity in the company paying the dividend.
2. The lower rate generally applies to interest for which a financial institution is beneficially entitled.
3. The lower rate generally applies to payments made as consideration for the right to use any copyright of literary, artistic or scientific work.

SALES, VAT AND OTHER TAXES

VALUE ADDED TAX (VAT)

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

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

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

SPECIFIC BUSINESS TAX (SBT)

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

Business	Tax Base	Tax Rate (%)
1. Banking, Finance and similar business	Interest, discounts, service fees, other fees, profits from foreign exchange	3.0
2. Life Insurance	Interest, service fees and other fees	2.5
3. Pawn Brokerage	Interest, fees, remuneration from selling overdue property	2.5
4. Real estate	Gross receipts	3.0
5 . Factoring	Interest, discounts, service fees and other fees	3.0

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

PETROLEUM INCOME TAX

Income derived from petroleum operations is subject to the Petroleum Income Tax Act. Petroleum companies are taxed at the rate of 50% on the annual net profit from operations including other activities incidental to petroleum operations.

STAMP DUTY

Stamp duties are payable on most documents filed by companies with Government agencies or entities, and on official company documents. This includes transfers of land, leases, stock transfers, debentures, mortgages, life assurance policies, annuities, power of attorney, promissory notes, letters of credit, cheques etc.

Instruments and not transactions or persons are subject to stamp duty tax. For the purposes of stamp duty, an instrument is defined as any document chargeable with duty under the Revenue Code. The stamp duty rules are contained in Chapter VI of Title II of the Revenue Code.

Only instruments listed in the stamp duty schedule are subject to stamp duty and the persons liable to pay stamp duty are those associated with the instrument. For example, the persons executing the instrument, the holders of the instrument or the beneficiary. General exemptions are available under the Revenue Code. Rates vary according to the class of the instrument. Non compliance can result in a penalty or tax surcharge.

EXCISE TAX

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

CUSTOMS DUTY

Tariff duties on goods are levied on an ad valorem or a specific rate basis. The majority of goods imported by businesses are subject to rates ranging from between 5% and 60%. The majority of imported articles are subject to two different taxes:

1. Tariff duty, calculated by multiplying the CIF value of the goods by the duty rate. The duty determined is then added to the CIF value of the goods.
2. VAT is then levied on the total sum of the CIF value, duty, and excise tax, if any.

Goods imported for re-export are generally exempt from import duty and VAT. Export duties are imposed on only a few items, including rice, hides, skins and leather, scrap iron or steel, rubber, teak and other kinds of wood.

Two exceptions to mandatory customs duties apply to the importation of machinery, equipment and materials for use by:

- Oil and gas concessionaires and their contractors;
- Certain companies promoted by the BOI.

SIGNBOARD TAX

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

PROPERTY TAX

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

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

CAPITAL GAINS TAX (CGT)

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

BRANCH PROFITS TAX

There is no branch profits tax in Thailand. Thai branches of foreign companies will generally only be taxed in Thailand on the net profit arising from business conducted in Thailand. Thai branches are subject to the same rate of tax as resident companies. However, a separate profit remittance tax is imposed on profits that are remitted outside of Thailand.

PORTFOLIO INVESTMENT FOR FOREIGNERS

STOCK EXCHANGE OF THAILAND

A foreign individual that invests in securities listed on the Stock Exchange of Thailand (SET) is exempt from any tax on the capital gain made from the sale of shares. A foreign corporation will be subject to a 15% withholding tax on the capital gain, according to Thai domestic laws. However, this may be reduced or exempt under the provisions of a DTA. Dividends received on these shares are subject to a domestic withholding tax rate of 10%.

THAI REAL ESTATE

Foreign investment in Thai real estate is restricted under the Alien Business Act 1999. However, the Land Code 1954 allows foreigners to have a proprietary right in immovable property. The entitlement of real estate conforms to conditions and regulations specified by the ministerial regulation and authorised by the minister.

To summarise, a foreigner, with limited exceptions, cannot own land but can own the building on the land. Many foreigners therefore choose to obtain long term leases. Depending on the quota based on total area size, a foreigner can own a condominium outright (for example, freehold purchase) because the underlying land is owned by a Thai juristic person.

TRUSTS

The concept of trusts and taxing trust income, which is prevalent in many western countries, does not exist in Thailand. There is no separate tax return that needs to be filed for trusts and accordingly there is no separate taxation for trust income either to the trustee or beneficiary.

Recently, however, trusts have been recognized purely for the purpose of conducting transactions within the Stock Exchange of Thailand. In order to ensure that the trustee is not taxed on income derived, an exemption has been specifically granted on that i nvestment income.

PRACTICAL INFORMATION

TRANSPORT

Bus transport dominates for long distances and in Bangkok, with motorbikes and bicycles dominating in rural areas. Road transportation is the primary form of freight transport. Slow rail travel has been used for many decades for rural long distance transportation, though plans are underway to expand services with high speed rail lines extending to several major regions of Thailand. There has also been a significant rise in domestic air transport.

LANGUAGE

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

TIME RELATIVE TO GREENWICH MEAN TIME (GMT)

Thailand is seven hours ahead of GMT year round, as it does not operate daylight saving time.

BUSINESS HOURS

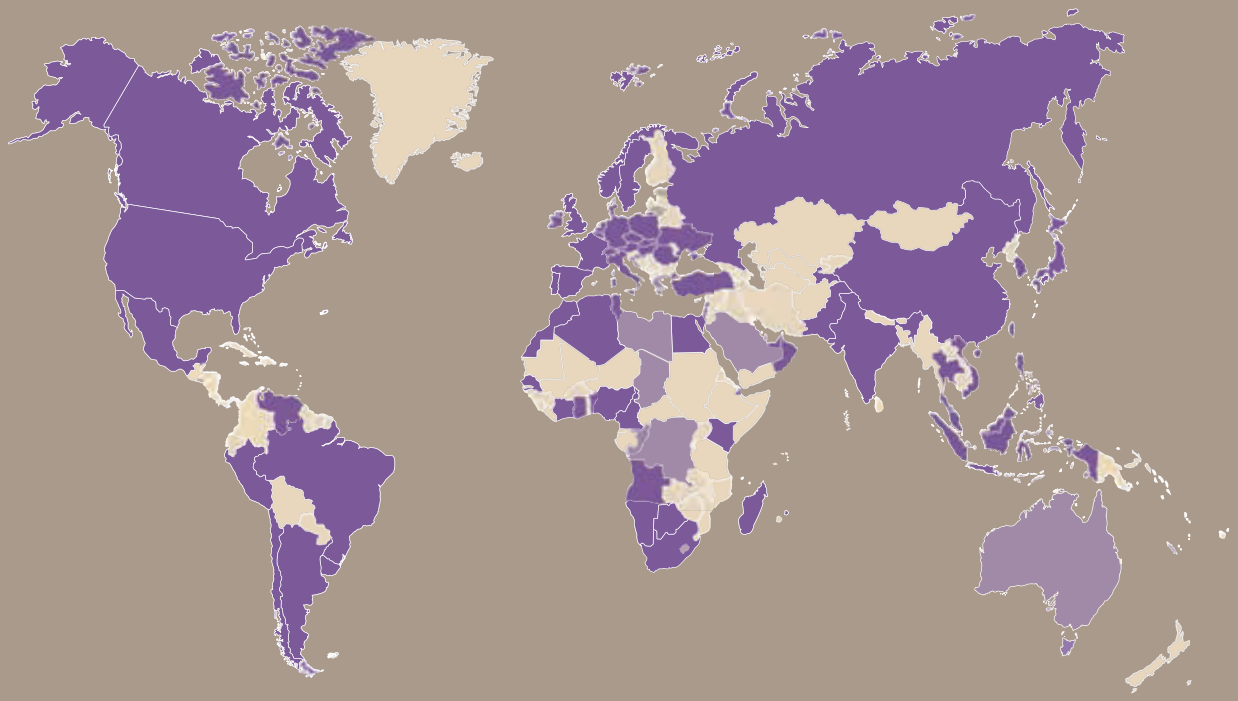
Businesses in Thailand generally operate an eight-hour day between 8.00am and 5.00pm. A one-hour lunch period is usually taken between midday and 1.00pm. Most business offices are closed on Saturday and Sunday.

PUBLIC HOLIDAYS

The holidays observed by most businesses and government offices are:

- New Year's Day – 1 January (or nearest weekday)
- Makha Bucha Day* – around third week of February
- Chakri Memorial Day – 6 April
- Songkran Day – 13 to 15 April
- National Labour Day – 1 May
- Coronation Day – 5 May
- Visakha Bucha Day* – around third week of May
- Asarnha Bucha Day* – around third week of July
- H.M. The Queen's Birthday – 12 August
- Chulalongkorn Memorial Day – 23 October
- H.M. The King's Birthday – 5 December
- Constitution Day – 10 December
- New Year's Eve Day – 31 December

* Dates are dependent on the Thai Lunar calendar.



Integrated countries

Non-integrated countries: Mazars correspondents, country local correspondents, joint ventures and representative offices

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Mazars is present in 5 continents.

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