THAI PERSONAL INCOME TAX FOR EXPATRIATES

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Introduction

Thailand is a major financial centre in South East Asia. After the financial crisis in 1997, successive governments have done brilliantly to restore the country's economic stability. With its location, climate, economic environment, political stability and friendly people, Thailand has attracted expatriates from all over the world to live and work there.

Income derived from working in Thailand will be subject to taxation in Thailand. Therefore, it is vital to learn about Thai taxation. In this article, the principles of Thai Personal income tax will be outlined. Then tax incentives for expatriates will be considered. The practical issues will be considered briefly. Lastly, one will look at recent tax measures.

1 Principles of Taxation in Thailand

In Thailand, taxes can be divided into two levels, national and local taxes. The Revenue Department is a government agency responsible for collecting most national taxes: Personal Income Tax, Corporate Income Tax, Value Added Tax, Specific Business Tax, Stamp Duties and Petroleum Income Tax. The focus of this paper is on the Personal Income Tax. Local taxes are within the power of local authorities.

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2 Personal Income Tax

For personal income tax purpose, a Thai resident is an individual who resides in Thailand in aggregate for at least 180 days in a tax year[2] and a 'Tax year' means a calendar year.[3]

There are two rules which impose liability to personal income tax[4]. Falling within either or both of these rules will result in a taxpayer being subject to tax in Thailand for that tax year.

(i) *Source Rule*: Any taxpayer who derives income from a business carried on in Thailand, an employment exercised in Thailand, or from assets situated in Thailand during a tax year, is liable to pay taxes in Thailand for that year regardless of his age, nationality, or residence.

(ii) *Residence Rule*: Any taxpayer who derives income from working abroad, or from assets situated abroad, during a tax year is liable to pay taxes in Thailand for that year if;

(a) He stays in Thailand in aggregate for at least 180 days during the tax year, and

(b) He remits such income into Thailand.

It should be noted that the Revenue Code does not stipulate clearly that the income must be remitted into Thailand during the year in which it arises. However, the Revenue Department takes the view that foreign sourced income will be subject to personal income tax in Thailand only if it is remitted into the country in the same tax year in which it arises. (Revenue Department letter No.0706/4006 dated 29th April 2003)

Therefore, if a taxpayer derives income from abroad, he will not have to pay personal income tax in Thailand if he remits such income into the country in the following year. He will then be subject to tax only in the country of source.

2 Section 41 paragraph 3 of the Revenue Code

3 Section 39 of the Revenue Code

4 Section 41 of the Revenue Code

Taxpayer:

Apart from individuals, there are other entities which are subject to personal income tax in Thailand. One of these is a 'Non-registered ordinary partnership'. In Thailand there are two kinds of partnership; ordinary partnership and limited partnership.[5] A limited partnership is a juristic entity which has a separate legal status from its partners. For tax purposes, it is subject to Corporate Income Tax. For an 'ordinary partnership', there is an option to register with the Ministry of Commerce. On the one hand, if it is registered, it will become a juristic entity and has separate legal status from its partners. For tax purposes, it is subject to Corporate Income Tax. On the other hand, if it is a non-registered partnership, it does not have a separate legal status from its partners. For tax purposes, it is subject to personal income tax and will be taxed in the name of the partnership. However, profits distributed to its partners are exempted from personal income tax in the hands of the partners.[6]

2.2 Assessable Income

There is no exhaustive definition of an assessable income in the Revenue Code. However, Section 39 of the Revenue Code stipulates that an assessable income includes:

- Cash. Cash in foreign currency must be converted into Thai currency.[7]

- Property received which may be computed into a monetary value. For example, a company's shares received by an employee are treated as the employee's income.[8]

- Benefits received which may be computed into monetary value. For example, in the case where an employer provides free accommodation to

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5 Section 1629 of the Civil and Commercial Code of Thailand

6 Section 42 (14) of the Revenue Code

7 Section 9 of the Revenue Code stipulates that 'Unless stated otherwise, if it is necessary to convert foreign currency into Thai currency in order to comply with this Title, it shall be converted using the exchange rate which the Ministry of Finance announces from time to time.'

8 Ruling of the Commission of Taxation No. 28/2538 Re: Personal Income Tax – Tax treatment in case of receipt of shares allotted or buying of shares at a price lower than market price under special agreement dated 7th February 1995

employees, the employees are deemed to receive benefits equal to a monetary value of 20% of their salaries or wages, excluding bonuses[9].

- Tax paid by someone else on behalf of a taxpayer.

- Tax credit in accordance with Section 47 Bis of the Revenue Code. In general, when a taxpayer receives dividends from Thai companies, he is deemed to receive a tax credit which is assessable income. Then, a taxpayer is entitled to set off the dividend tax credit against his personal income tax liability.

Dividend Tax Credit under Section 47 Bis of the Revenue code

$$\text{Dividend Tax Credit} = \text{Dividend paid} \times \left(\frac{R}{100 - R} \right)$$

'R' is the Corporate Income Tax rate that the company paying the dividend is paying.

Foreign tax credit: for personal income tax, there is no Foreign Tax credit given under the Revenue Code. Thai residents will eligible for credit only in respect of foreign taxes paid in countries with which Thailand has Double Taxation treaty and within which the 'credit' method is available. On the other hand, for corporate income tax, taxpayers enjoy not only foreign tax credit provided for under the Double Taxation agreement, but they are eligible for foreign tax credit granted under the Royal Decree. (No. 300) B.E. 2539 (1996)

Though there is no distinct provision in the Revenue Code which states it clearly, a taxpayer is deemed to receive assessable income in the tax year in which it is received. In other words, the *'cash'* basis as opposed to *'accrual'* basis is applied.

Classes of assessable income[10]

According to the Revenue Code, there are 8 classes of assessable income as follows:

- Class 1: Employment income

- Class 2: Income from rendering service (income derived from a post or from performance of work, or any money, property or benefit derived

9 Revenue Department Statement of Practice No.23/2533 (1990) dated 26th April 1990.

10 Section 40 of the Revenue Code

- from a post or from performance of work, whether such post or performance is permanent or temporary.)

- Class 3: Income from intellectual property rights

- Class 4: Income from capital i.e. interest or dividends

- Class 5: Income from rents

- Class 6: Income from independent professions

- Class 7: Income from a construction business

- Class 8: Income from business, commerce, agriculture, industry, transport or any other activities not falling under Classes 1-7.

2.3 Exemption from Personal Income Tax[11]

The Revenue Code exempts certain taxpayers from paying taxes in Thailand. For example, ambassadors of foreign countries and United Nations personnel posted to Thailand will be exempted from paying personal income tax in Thailand from their remuneration arising directly from their respective posts. Moreover, the Code also exempts certain income from taxes. Those exemptions include, *inter alia*, gains from the selling of shares in the Stock Exchange of Thailand[12].

Non-resident may be entitled to exemption from Personal Income Tax in Thailand provided for in the 'Double Taxation Agreements' which Thailand has entered into with their countries of residence.[13]

2.4 Tax Base

There are two bases for the purpose of Personal Income Tax. There are net income and gross income.

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11 Section 42 of the Revenue Code

12 Ministerial Regulations No.126 B.E. 2509 (1966) Clause 2 (23)

13 Royal Decree (No.18) B.E. 2505 (1962)

2.4.1 Computation of Net Income

Net income shall be computed as follows:

Assessable income

Subtract Allowable expenditure
XXXXXXXX

Subtract Allowances
- Taxpayer
- Taxpayer's spouse
- Child
- Child education
- Life insurance premiums
- Provident Fund Contribution
- Mortgage interest
- Social Security Contribution

XXXXXXXX (1)

Subtract Charitable contribution (actual amount paid but not exceeding 10% of (1))

Net income

Apply Tax rates- 5-37%
Tax liability

Subtract Dividend Tax Credit
XXXXXXXX

Subtract Withholding tax credit
Tax payable / refundable

2.4.2 Gross income

Gross income shall be computed as follows:

Assessable income x 0.005 = tax liability[14]

14 Section 48 (2) of the Revenue Code

A taxpayer needs to compute his tax liability on the basis of gross income only if he has income in classes 2-8 in excess of 60,000 Baht[15] in the tax year. He will then have to compare the result with that derived from the net income computation. He will pay tax according to either the net income or gross income computations, whichever gives the higher amount.

2.5 Allowances[16]

In computing personal income tax liability, the personal allowances which can be claimed are:

2.5.1 Taxpayer: 30,000 Baht

2.5.2 Taxpayer's spouse: 30,000 Baht

Note: An allowance may be claimed only in respect of legal spouses. Co-habitees and partners are not eligible.

2.5.3 Child: 15,000 per child.

Note: For Child allowances, criteria set out below must be met;

First, Age: a child must be a minor (under 20), or older than 20 but not over 25 and still studying at a university or equivalent. An exception to the rule is in the case where a child is a disabled person where there is no age limit.

Secondly, Income: a child must not have income in excess of 15,000 Baht in that tax year.

Thirdly, number of children: the maximum number of children that can be claimed is three.

2.5.4 Child Education: 2,000 Baht per child

Note: If a taxpayer is entitled to claim a child allowance in respect of a child, the taxpayer may claim child education allowance for education undertaken in Thailand.

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15 The exchange rate is £1.00 = 74.00 Baht (March 2005)

16 Section 47 of the Revenue Code

2.5.5 Life insurance premiums allowances: actual amount but not exceeding 10,000 Baht.

Note:

1. The life insurance policy must be with an insurance company which carries on business in Thailand. Moreover, the insurance policy must last at least ten years.

2. For a married couple who live together for the full tax year, each spouse is entitled to an allowance stipulated above.

2.5.6 Provident Fund Contribution: actual amount but not exceeding 10,000 Baht.

2.5.7 Mortgage interest relief: actual amount but not exceeding 10,000 Baht.

Note: An amount of mortgage interest in excess of 10,000 Baht will be deducted from gross income. Basically, the government will allow the maximum amount of Mortgage interest allowances to be 50,000 Baht per Tax year. That is 10,000 Baht as an allowance and 40,000 Baht as exempted income.

2.5.8 Social Security Contribution: actual amount contributed.

2.5.9 For non-residents, the allowance under 2.5.2 or 2.5.3 will be available only if the husband or wife or children resides in Thailand for that tax year.

2.5.10 After deducting the allowances from 2.5.1-2.5.8 above, a taxpayer will be entitled to an allowance for charitable donation made to State hospitals or schools or other institutions as stipulated by a Royal Decree. The allowance is the lower amount of charitable donation made or 10 % of income after deduction of allowances under 2.5.1-2.5.8

Taxation of the family

Thailand has an aggregation system of taxation for married couples. Under section 57 Ter of the Revenue Code, a wife's income is deemed to belong to her husband and the husband has the duty to file a tax return and pay taxes. However, under section 57 Quinque of the Revenue Code, a married woman can elect to file her income from employment (assessable income class 1) separately from her husband and compute her income tax liability in her name as if she was single. If she does elect to file in her own account, the husband cannot claim a spouse allowance.

It should be noted, therefore, that a female expatriate who is married to a Thai man will have her income classes 2-8 included in her husband income tax bills. Thus, if she has a lot of income classes 2-8 (mainly unearned income) and marries a Thai man who has no income, then her tax bills would be reduced. Nevertheless, one should be aware that according to Thai family law, assets accruing to married couples during the marriage will be divided equally upon divorce.

2.6 Filing of tax returns and payment of tax

A taxpayer needs to obtain a Tax Identification Number (TIN) within 60 days after starting to work.

Thailand has a self assessment system. At the end of the year, each taxpayer will be sent a form, based on his previous year's return, to fill in and assess tax by himself and return the form and the payment to the Revenue offices.

Taxpayers who have only income Classes 1-4 in a tax year have to compute their tax liability once a year. They will have to file their tax returns and pay taxes, if any, to the Revenue Department by the end of March of the following year. For taxpayers with assessable income class 1 only, the form used is Form.91 (Por. Ngor. Dor.91). However, if a taxpayer has more than one class of income, the form used is Form.90 (Por. Ngor. Dor.90).

Taxpayers who have income Classes 5-8 in a tax year will have to compute their tax liability twice a year. The first computation, an interim computation, is to take income arising between January to June of a tax year and compute the tax liability using the methods explained above. They must file and pay taxes to the Revenue Department by the end of September. The interim tax paid can be used as a tax credit for the computation at the end of year. The form used is Form 94 (Por. Ngor. Dor. 94). The second computation is the end of year computation. The taxpayers bring into account all classes of income arising during the tax year. They will then compute his tax liability as explained above. They will have to file his tax returns and pay taxes, if any, to the Revenue Department by the end of March of the following year. The form used is Form.90 (Por. Ngor. Dor. 90).

For an expatriate who works for Regional Operating Headquarters in Thailand, the form used in Form.95 (Por.Ngor.Dor.95)

It should be noted that the official language in Thailand is Thai and therefore all the official forms are in the Thai language. English translations may be available from time to time, but have no legal status.

2.7 Withholding Tax

2.7.1 Thailand imposes withholding tax on many types of income. The major ones are on income from employment, interest, dividends, and rental income.

Tax withheld can be set off against the taxpayer's liabilities at the end of the tax year.

Withholding rates on major types of unearned income are as follows:

Dividends: 10% for both residents and non-residents but residents will be entitled to a tax credit.

Interest: 15% for both residents and non-residents.

Rental income: 5% for residents and 15% for non-residents.

2.7.2 Election not to declare certain income at the end of the tax year (Section 48 (3)(4)(5) of the Revenue Code)

In principle, when a taxpayer derives assessable income which is subject to tax even if tax has been withheld at source, the taxpayer has the duty to file a tax return and pay taxes as required by law. Nevertheless, he can use the tax withheld as a tax credit to set off against his total tax liability. However, there are certain cases where a taxpayer can elect not to declare a certain amount of income at the end of the tax year on condition that he does not claim a refund of tax withheld. The following are the cases where a taxpayer can elect not to declare his income when filing a personal income tax return:

- interest on a bond, interest on a deposit with a bank in Thailand, interest on a deposit with a Co-operative, interest on a debenture, interest on a bill received from a company or juristic partnership or any other juristic person, interest received from a financial institution established under a specific law in Thailand for the purpose of providing a loan in order to promote agriculture, commerce or industry.

- Discount from a bill or debt instrument issued by a company or juristic partnership or any other juristic person.

- Gains derived from transfer of a bond, debenture, bill or debt instrument issued by a company or juristic partnership.

2.8 Capital Gains Tax

There is no separate Capital Gains Tax Act in Thailand. However, capital gains are taxed as part of a taxpayer's income. Therefore, for personal income tax, it is not necessary to differentiate between 'revenue income' and 'capital income' because both are liable to personal income tax. Nevertheless, for corporate income tax, it is vital to determine whether expenditure is a 'revenue expense' or a 'capital expense'. This is because under Revenue Code section 65 Ter (5) capital expenditure cannot be deducted in the computation of corporate income tax but it is subject to the rules on the depreciation of assets. The Tax Court takes the view that 'capital expenditure' is an expense in return for assets which can be used for more than one accounting period. The Revenue Department takes the same view.

3 Tax privileges and tax incentives for expatriates working in Thailand

3.1 Double Taxation Agreements (DTAs)

Thailand has 48 DTAs with other countries. The Thai model is a mixture of the United Nations and Organisation for Economic Cooperation and Development (OECD) models. It should be pointed out that in most of its DTAs, Thailand insists on giving taxing rights, with a reduction of tax rate, to the country of source for income from international transportation by ship. Thailand imposes corporate income tax of 3% on gross receipts of a foreign company or juristic partnership which carries on international transportation business through Thailand.[17] Other issues seem to follow international practices.

3.2 Regional Operating Headquarters (ROH)

In 2001, the government proposed new tax incentives in order to attract multinational companies to set up their bases in Thailand. For a regional

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17 Section 67 of the Revenue Code

operating headquarters, which has to be a company incorporated under Thai laws, the corporate income tax rates will reduce from 30% to 10% of net profits.

For an expatriate working for ROH, the major tax incentives are as follows:

1. Election to pay personal income tax on his wages or salaries at the normal rates or to pay a flat 15% on gross wages or salaries. This privilege is available for two 'calendar' years. In order to regain the privilege, the expatriate must stop working for any ROH company for one year. Then, he may regain the privilege for two more years.

2. Expatriates who are being sent to work in another country by ROH will receive a tax exemption in Thailand on their income paid by the foreign company for services rendered abroad, provided that such income is not directly or indirectly deducted as ROH or its associated enterprise's expenses in Thailand.

The term "expatriate" means a person who is not a Thai national and is employed by ROH.[18]

There are also non-tax privileges that an expatriate working for ROH can enjoy, for instance, fast track service for visa and work permit applications.

4 Practical issues

If a non-resident pays personal income tax in Thailand and would like to claim a tax credit at his country of residence under the provisions provided for in the DTAs, he should ask the Regional Revenue Office to provide him with a certificate in the English language. For Thai residents deriving income from abroad and who would like to claim a tax credit under the DTAs, similar documents are required to show to the Thai Revenue officers.

5 Recent developments in the Thai tax system

In 2004, the major changes to Thai taxes were as follows:

1. Exemption of the taxable income in excess of 80,000 but not exceeding 100,000 Baht. In other words, the first 100,000 Baht of taxable income is tax free.

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18 Section 3 of Royal Decree No.405, 2001

2. Increase in the VAT threshold from 1.2 million Baht to 1.8 million Baht. This change takes effect from 1 April 2005.

Personal Income Tax Rates

Net Income (Baht)	Rate (%)
0 – 100,000	Exempt
100,000 – 500,000	10
500,000 – 1,000,000	20
1,000,000 – 4,000,000	30
Exceeding 4,000,000	37

References

For further information, the reader is referred to:

Paijit Rojjanavanij, Chumporn Sensai and Saroch Thongparcum. Revenue Law (2003)

Revenue Code

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