

CHAPTER 14 CORPORATE INCOME TAX

Juristic person In Thailand, a business entity that has a legal personality separate from those who own or manage it is referred to in English translations as a *juristic person*.

Examples of juristic persons are: public companies, private companies, limited partnerships and registered ordinary partnerships. Contractual joint ventures and foreign companies and partnerships are also juristic persons, for tax purposes.

Most forms of business organization existing under Thai law and foreign business organizations doing business in Thailand or deriving income from Thailand, whether they do business in Thailand or not, are subject to juristic person income tax, which will be referred to below as corporate income tax.

What entities are liable to corporate income tax? Corporate income tax is levied on both Thai and foreign companies. A Thai company is subject to tax in Thailand on its worldwide net profit at the end of each accounting period.

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

Foreign companies engaged in international transport are subject to tax on gross receipts. When a foreign company sends profits out of Thailand, such profit will be subject to tax on the amount transferred. Profit also means any sum set aside out of profits as well as any sum which may be regarded as profit.

A foreign company not carrying on business in Thailand, but deriving certain types of income from Thailand, such as service fees, interests, dividends, rents, professional fees, is subject to corporate income tax on the gross amount received. It is collected in the form of withholding tax under which the payer of income must deduct the tax from particular rates (see further below). See also discussion below on foreign companies deemed to be doing business in Thailand.

Sole proprietorships and unregistered partnerships Individuals, sole proprietorships and ordinary (unregistered) partnerships existing under Thai law are not subject to corporate income tax as juristic persons, but are subject to income tax as natural persons and pay tax at progressive natural person rates of 10% - 37%.

Calculation of corporate income tax Tax is calculated on the company's net profit on the accrual basis. A company must take into account all revenue arising from or in consequence of the business carried on in an accounting period less permitted expenditure.

Expenditure may be deducted as follows:

1. Ordinary and necessary expenditure. However, the deductible amount of the following expenditure is allowed at a special rate:
 - 200% deduction of Research and Development expenditure,
 - 200% deduction of job training expenditure,
 - 200% deduction of expenditure on the provision of equipment for the disabled
2. Interest, except interest on capital reserves or funds of the company;
3. Taxes, except for corporate income tax and VAT paid to the Thai government
4. Net losses carried forward from the last five accounting periods;
5. Bad debts;
6. Wear and tear;
7. Donations of up to 2% of net profits;
8. Provident fund contributions;
9. Entertainment expenditure up to 0.3% of gross receipt but not exceeding 10 million Baht
10. Depreciation is permitted up to certain maximum percentage of costs. If a company adopts an accounting method under which the depreciation rates vary from year to year, the company may apply this provided that the number of years over which an asset depreciated shall not be less than 100 divided by a specified percentage.

Corporate income tax rates With effect from the tax year commencing in 2003, the basic corporate income tax rate is 30% of net profits.

Lower tax rates apply as follows:

1. *Private companies or juristic partnerships (Effective 1 January 2008)* For private companies or juristic partnerships with paid up capital not exceeding Baht 5 million, and which fulfil certain other requirements, there are enhanced depreciation rates for certain items of expenditure and reduced tax rates as follows:

Taxable income (Baht)	Tax rate	Notes
Up to 150,000	Tax free	
150,000 - 1,000,000	15%	15% rate applies to accounting periods commencing from 1 January 2006
1,000,001 – 3,000,000	25%	
3,000,001 or more	30%	

2. *Public companies:* The tax rates for companies listed on the Securities Exchange of Thailand or on the Market for Alternative Investments (the secondary board) now in force, subject to further conditions in the relevant regulation, are as follows:

Company listed on:	Tax rate
SET, before 31 December 2005	25%
MAI, before 31 December 2005	20%
SET, before 31 December 2008	25%
MAI, before 31 December 2008	20%

The Cabinet also announced further tax reductions as below:

New companies listing on SET or MAI The following tax rates will apply from 1 January 2008, provided companies are registered by 31 December 2009, and for three accounting periods only:

Companies	New tax rate
Listing on SET:	25%
Listing on MAI:	20%

Companies already listed on SET or MAI The new tax rates below will apply to three consecutive accounting periods only, commencing on or after 1 January 2008:

Companies already listed on:	Slice of income	New tax rate	Old tax rate
MAI	1 – 20 million Baht	20%	30%
	Exceeding 20 million Baht	30%	30%
SET	1 – 300 million Baht	25%	30%
	Exceeding 300 million Baht	30%	30%

International transportation of passengers and goods Companies engaged in the international transportation of passengers, pay income tax at the rate of 3% of gross income collected in Thailand. Those engaged in the international transportation of goods pay income tax at the rate of 3% of gross income collected anywhere with respect to the transportation of goods from Thailand.

Inter-company dividends Dividends paid from one Thai company to another are subject to special rules. If the recipient owns 25% or more of the shares in the payor and has so held the shares for not less than three months before the dividend is paid and for not less than three months after the dividend is paid (the "*Holding Period*"), and the payor does not hold shares in the recipient, then the dividend is completely tax free.

Thai listed companies are exempt from taxation on all dividends received, provided that they comply with the Holding Period rules.

All other Thai limited companies may take a deduction of 50% on all dividends received provided that they comply with the Holding Period rules.

Dividends paid to a foreign company are subject to withholding tax of 10%.

Petroleum companies Companies engaged in petroleum business that hold concessions from the Department of Mineral Resources, are subject to the Petroleum Income Tax Act, as amended, rather than to the provisions of the Revenue Code. Currently the rate of taxation under the Petroleum Income Tax Act is 50% of net income, but the Act permits a rate of up to 60% to be imposed.

A concessionaire's contractors and subcontractors, including those receiving benefits under the Petroleum Act, pay their taxes under the ordinary provisions of the Revenue Code and not under the Petroleum Income Tax Act.

Tax year Though many juristic persons choose the calendar year as their fiscal period, they are in fact free to choose any 365-day consecutive (366 days for a leap year) period.

Estimated and final returns Two corporate income tax returns must be filed each year, the first return is due two months after the end of the first six months of the company's tax year. One half of the estimated tax due for the whole year must be paid with this return.

The final return must be filed within 150 days of the end of the company's tax year at which time the total tax remaining must be paid.

Penalties are imposed for companies that underestimate the tax due on their half-year tax return by more than 25%, and which do not have a valid excuse for such underestimation.

Companies' obligation to withhold tax Companies in Thailand that pay taxable income to others in Thailand may be required to withhold income tax and pay the same to the Revenue Department. Companies are required to keep on hand a current register of all taxes they withhold and this register is subject to audit without notice. Credits are granted for taxes withheld. The most common domestic withholding taxes for payments made by companies to companies are:

1. 1% of the gross amount paid by the government or state enterprises.
2. 1% of interest paid by a bank, finance or credit foncier company to a company. (The rate is 15% if paid to a natural person.)
3. 2% of the gross amount paid for advertising.
4. 3% of the gross amount paid to contractors and others such as lawyers, accountants, medical practitioners and engineers who perform services.
5. 5% of all rental payments.
6. 5% of all payments made to foreign companies who perform work in Thailand but which do not have a permanent establishment in Thailand (as defined in the Revenue Code).

In addition, companies that purchase certain commodities must withhold a specified amount of tax from payments made to sellers.

Accounting basis Except as indicated above for branch offices and foreign transportation companies, corporate income tax is based on net income, that is, gross income less expenditure. However, juristic persons must use the accrual basis of accounting so that income earned during a year is taxed in the year earned, regardless of when it is received. Expenditure is deductible when the obligation to pay the expenditure is incurred, not when the expenditure is actually paid. Except for smaller debts, income earned but not received (bad debts) may be written off, only where there is evidence of substantial collection efforts or the debtor is bankrupt.

Company formation expenditure is deductible when the company commences operations. Capital goods may be depreciated in accordance with rates fixed by the Revenue Department, normally ranging from 5 to 20% per year. Accelerated depreciation may be allowed for equipment used in research and development.

Operating losses incurred in one year may be treated as expenditure for up to five subsequent years. Such losses may not be carried back to previous years.

Foreign companies not carrying on business in Thailand Foreign companies not carrying on a business in Thailand, that is, having no branch office, employee, representative or go-between in Thailand, but deriving income in Thailand, usually in the form of interest, dividends, lease payments on movable property, professional fees (such as legal or architectural services performed outside Thailand for a Thai client), capital gains, service income or brokerage fees, are currently subject to Thai income tax in the form of a flat withholding tax based on gross income.

Payment of the remittance tax is due within seven days of the end of the month in which the remittance is made, except that the payment of tax on remittance of dividends and profits must be made within seven days of remittance.

Withholding tax rates Withholding tax rates are as follows:

1. *Interest*: The current rate is 15%.

2. *Dividends and profits*: The current rate for remittance tax on dividends paid to foreign companies is 10% of the dividend. This rate applies when one legal entity (a Thai limited company) declares a dividend and pays the dividend to a foreign company that is a shareholder. Payments made to non-resident natural persons are currently subject to a flat rate 10% withholding tax.

Remittance of profits from a branch office to the head office of the same corporate entity, or the retention of profits abroad where the head office has received abroad a payment for services rendered in Thailand, is subject to remittance tax of 10% of the amount actually or deemed remitted.

As tax treaties generally provide for withholding tax rates of between 10% - 15%, the tax treaties do not provide any particular benefits as far as the rate of taxation for dividends or shares of profit.

2. *Rent*: Currently, rental payments paid to a company abroad for the use of movable (personal) property is taxed at the rate of 15%. Most tax treaties (but not the Thai-Japanese tax treaty) exempt these rental payments from the withholding tax. Since in the absence of a tax treaty the withholding tax rate is quite high, most leasing is done with or through tax treaty countries.

3. *Professional fees*: Currently, professional fees such as legal, accounting and architectural fees paid to a company abroad are subject to a withholding tax of 15% of the gross payment. Special care must be used in order to determine whether fees paid for architectural work are professional fees or royalty payments in the nature of copyright fees. Royalty payments,

although entitled to reduced rates of taxation under the various Thai tax treaties, are not entirely exempt as are professional fees.

4. *Other service fees (including brokerage commissions)*: Currently, remittances sent abroad to companies to pay for services rendered abroad, or brokerage commissions, are subject to a withholding tax of 15% of the gross payment.

Payments made to tax treaty countries are usually exempt from this withholding tax.

5. *Royalties* Royalty payments made to companies abroad for the use of a trademark, trade name, copyright, goodwill or any other similar right, are subject to a withholding tax of 15% of the gross payment.

As payments made to most tax treaty countries are subject to rates of 15% to 20%, there are no particular tax treaty benefits. However, some countries have a 5% royalty tax rate for royalties for copyright of literary works.

Grossing up It is permissible and in many cases usual to provide that payments will be made net of income tax, or in other words, the payor of the income will pay the income tax for the person receiving the payment. In such cases, the income tax is subject to withholding taxes at the same rate as that applied to the base income. For example, where the withholding tax is 15% of gross, the rate that must be applied where the payor pays the tax is 17.647%. The grossed up rate would not apply to the remittance tax on dividends or profits, since the payor never pays the remittance tax on these types of income.

Foreign companies deemed to be carrying on business in Thailand For taxation purposes, a foreign company may be considered to be doing business in Thailand by formally establishing a branch office or by simply having in Thailand an employee or agent or other person, who acts on its behalf.

Forms of doing business for foreigners Legally, a foreign company that conducts business in Thailand should either:

1. Conduct a business that is not restricted under the Foreign Business Act or other relevant law.
2. Conduct a restricted business with a Foreign Business Act license.
3. Have treaty protection under the Treaty of Amity between the United States and Thailand.
4. Bring itself within special legislation, such as the Investment Promotion Act, the Petroleum Act, etc. which would permit the company to conduct business as a foreign entity.

For tax purposes, these requirements are often overlooked, so long as the company involved pays the applicable taxes.

Subsidiaries not doing business in Thailand A foreign company may have a subsidiary in Thailand. This in itself does not mean that the foreign company is doing business in Thailand unless that subsidiary is acting as an agent for the parent company.

Where foreign companies are deemed to be doing business in Thailand Section 76 bis of the Revenue Code subjects foreign companies who do business in Thailand to corporate income tax. Foreign companies are deemed to be doing business in Thailand if they have in Thailand an employee, agent, representative; or go-between and thereby gain income.

In such cases, the employee, agent, representative or go-between may be held personally liable for the foreign company's corporate income tax.

Assessment of Section 76 bis Most businesses consider it bad or even disastrous to be assessed with Section 76 bis tax. Many have been put out of business when so assessed. But occasionally one can use Section 76 bis to good advantage. This is so in cases where businesses not doing business in Thailand would be subject to a withholding tax that is higher than they would be subject to under Section 76 bis and related provisions.

Business activities affected Section 76 bis applies to many types of business situations. It would apply, for example, to:

1. Agents in Thailand who take orders for foreign companies.
2. Branch offices of foreign companies, because they are operated by an appointed attorney in fact, who is either an employee or agent of the foreign company.
3. Representatives of foreign companies who come to Thailand for short visits and sign contracts whilst in Thailand.
4. Where a company sends an employee to Thailand to perform work, such as to install a machine.

Definition of an agent An agent is a person or company that takes orders on behalf of another and usually receives income in the form of commission. The Revenue Department may discover such relationships by noticing that the agent records 'commission' income. Sometime the status of a person is not clear, and it may be difficult to determine whether a foreign company has an agent (including a representative or go-between) in Thailand.

If a person or company takes orders for a foreign company, the person or company may be considered to be an agent. But under Revenue Department notifications, a person or company of truly independent status who merely points out the opportunity to enter into a contract, is not considered an agent so as to subject the foreign company to corporate income tax in Thailand.

Comparison with distributors Normally an agent does not make purchases. If the relationship is that of buyer and seller, there should not be any problem. If, however, the company takes orders for the principal and does not act as buyer itself, then the issue of agency arises.

Distributors Where the situation so permits, a business in Thailand may be designated as a distributorship where a Thai business buys goods from the foreign company for its own account, and then resells them in the local market. In such a case, the distributor would not be classified as an agent.

The use of distributorships instead of agencies is a prime method of avoiding Section 76 bis tax.

Exemptions to Section 76 bis There are, however, exceptions to this rule. Under various tax treaties, including the Singapore-Thai tax treaty which provides (indirectly) that the mere fact that one company has an agent in Thailand does not mean that the company has a permanent establishment in Thailand, unless the agent acts *wholly or almost wholly (exclusively or almost exclusively)* for the principal. In such cases, but not otherwise, the principal is deemed to have a permanent establishment in Thailand and thus subject to taxation.

If the agent acts for several principals, the '*wholly or almost wholly*' provisions would not apply. This may be a question of fact, but the Revenue Department may also look at the names of companies represented. If the agent in Thailand works for several subsidiaries of the same parent company, the Revenue Department may deem them to be one entity.

Other provisions of tax treaties normally exempt foreign companies from taxation if they do not have a permanent establishment, including an agent, as defined above, in Thailand. There are several exceptions: interest, dividends, royalties, etc.

Present situation The issue of Section 76 bis has become of less concern because there are far more double tax treaties, and as a reaction to the Revenue Department enforcing this section more rigorously, businesses tend to structure their transactions differently.

Calculation of Section 76 bis tax While any company subject to taxation under Section 76 bis may file a balance sheet and pay normal corporate income tax on net profits, often it is not possible to accurately calculate net profits and therefore there are alternative ways of calculating the tax, based on gross income.

The 5% method Some branch offices of foreign companies and others that are subject to taxation under Section 76 bis, but are unable to determine their net income in Thailand (because of the difficulty in allocating overseas overhead expenditure, etc.) may, with Revenue Department approval, be permitted to pay corporate income tax equal to 5% of gross income.

Other methods If approval is not granted to use the 5% rate, the Revenue Department may assess corporate income tax using other rates prescribed by the Revenue Department.

Force of attraction tax

General rule The general rule is that all income earned by a company anywhere in the world is taxable in Thailand, if the company has a branch or permanent establishment in Thailand, and the income is derived from Thailand. This is the case whether or not there has been any involvement of the local branch.

Tax treaties The position may be varied under a double tax treaty. For example, in a loan transaction it will be necessary to consider where the loan is booked, and the double tax treaty (if any) between Thailand and the country where the relevant branch is situated.

Revised 23 July 2008

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