Setting up your Business in Thailand
Issues to consider

Thailand is one of the founding members of ASEAN and has been instrumental in the formation and development of the ASEAN Free Trade Area (AFTA).Thailand is ideally located at the crossroads of Asia with easy access to the region's dynamic markets.

Thailand has long been a proponent of free and fair trade and its attractiveness as a production base for leading international companies. Thailand is certain to be a beneficiary of the ASEAN Economic Community (AEC), which enters into force at the start of 2016.

However there are a number of issues which you must consider when you are looking to set up your business in Thailand.

This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them. There is no one correct answer, it's all dependent on your specific business circumstances and needs.

A brief overview of the main structures is below:

Establishment (a branch of your overseas business)

- Not a separate legal entity but an extension of the overseas parent company
- If a permanent establishment (PE) in Thailand then profits from this PE are liable to Thai Corporation tax
- Branch Office is required to maintain only those accounts relating to the activities of the branch in Thailand. Working capital amounting to not less than Baht 3 million must be brought into Thailand.

Limited Company:

- Provides limited liability and ring-fencing to Thai operations
- Gives a perception of a local business, with longevity
- Corporation tax to be paid on company's taxable profits
- May be wholly owned by aliens. However, in those business activities reserved for Thai nationals, an alien's participation is generally allowed up to 49%. No established minimum level of capitalization.
- Accounts require auditing without exemption. Annual audited accounts must be filed with the Ministry of Commerce, and filed, along with the annual income tax returns, with the Revenue Department.
- The accounting records and books of account must be kept the registered office of the company for a period of 5 years to meet the requirement of accounting law and for tax inspection purposes.

Limited Liability Partnership:

- Members (partners) have limited liability
- Profits are allocated to members who then pay Personal Income Tax on these profits personally
- The tax residence of the member, and where the profits in the LLP originated will determine in what jurisdiction and how these profits are taxed

How much Corporation Tax will the business pay?

Current Corporation Tax rates in Thailand are:

General Companies or Limited Liability (Registered) Partnerships

tax rate at 20% of net taxable profit.

Small and Medium Entities (SMEs)
(the Company with Paid-up Capital Less than Baht 5million
and income for the year less than Baht 30 million)

are entitled to tax rate reduction as follows:

For the year 2016

0% of net taxable profit up to	Baht 0.3 million
10% of net taxable profit more than	Baht 0.3 million

For the year 2017

0% of net taxable profit up to	Baht 0.3 million
15% of net taxable profit of	Baht 0.3 million – 3.0 milion
20% of net taxable profit more than	Baht 3.0 million

A separate profit remittance tax of 10% of the net amount remitted is imposed on foreign companies that remit their Thailand based profits offshore.

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 Tax 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.

A foreign company engaged in international transportation is also only subject to tax on its gross receipts.

For income derived from countries that do 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.

Each company is taxed as a separate legal entity. Taxable losses incurred by one affiliate may not be offset against taxable profits made by another affiliate. Taxable losses incurred can only be carried forward for a maximum of 5 years.

What if we use Thailand to set up our holding company?

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

If Thai company holds share in other company listed on the Stock Exchange of Thailand (SET), dividends received are exempt from tax.

Exemptions also applied if holding shares of other Thai company at least 25%, without any cross shareholding, either directly or indirectly, providing that the related investments have been held for a period of at least 3 months before and 3 months after the receipt of the dividends

Dividends paid to its shareholder based in non-resident country are subject to withholding tax at the rate of 10%.

A separate profit remittance tax of 10% of the net amount remitted is imposed on foreign companies that remit their Thailand based profits offshore.

What if we make cross-border transactions between group companies?

Thailand follows internationally recognized **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

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 to true market value.

These guidelines are intended to prevent the manipulation of profits and losses within a group of related companies and require all companies with inter-company transactions to prepare and maintain current transfer pricing documentation at their office. The Revenue Department also has the power to assess income resulting from transfers which it deems is below market value.

However, in May 7, 2015, the Thai Cabinet approved a draft Act on Revenue Code Amendment that will introduce specific transfer pricing provisions into the Revenue Code.

One of the provisions requires transfer pricing disclosures to be made within 150 days from the year-end closing date (same deadline as corporate income tax returns). Failure to comply would result in a penalty of not exceeding Baht 400,000.

The draft regulation is now under review by the State of Council and therefore may be subject to change. Once approved, the draft law will be sent to National Legislative Assembly for consideration before being passed into law.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Provision of management services
- Property rental charges
- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a “market” interest on loans

A business will need to prepare a Transfer Pricing Report proving the arm’s length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm’s length basis.

Further to Thai transfer pricing regime it may fall under the scrutiny of the other international tax jurisdictions where it transacts. There may also be other tax regulations which ensure transactions are undertaken at a commercial value.

What Employment Taxes and Social Security will need to be paid?

If an individual is resident in Thailand then they are subject to Thai personal income tax laws.

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 personal income tax on income from sources in

Thailand.

We would advise any new entrant to Thailand or person who spends time working in Thailand to take professional advice to determine whether they are Thai tax resident.

Current Personal Income Tax rates in Thailand **are as follows:**

Taxable Year Income (Baht)	Tax Rate (%)	Tax Amount (Baht)	Accumulated Tax (Baht)
0 - 150,000	Exempt	-	-
150,001 - 300000	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		

Employers and employees also have to pay Thai social security contributions as follows:

	Gross Monthly earning -Baht	**Rate (%)**
Employer	Up to 1,650	0
	1,650 - 15,000	5
	Over 15,000	0
Employee	Up to 1,650	0
	1,650 - 15,000	5
	Over 15,000	0

It is the employers' legal responsibility to pay over employee's tax and social security deductions to the Thai authorities.

The employers who pay income has to withhold tax at source, file the monthly withholding personal income tax return and submit the amount of tax withheld to the District Revenue Office.

The employees are liable to file the annually personal income tax return and makes a payment to the Area Revenue Branch Office by the last day of Mach following the taxable year. The tax withheld is then credited against the tax liability of the employees when the annually personal income tax return is filed.

For the Social Security Act, it requires all employers to withhold social security contributions of 5% from the monthly salary of all employees, up to a maximum of Baht 750 per person per month.

In addition to this, those who are employed will have their contributions topped up by the employer by the same amount of employee's contribution.

What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made, the standard rate of which is currently at 7% and 0%.

If a business makes taxable supplies in excess of Baht 1.8 million in any 12 months then it MUST be registered for VAT.

There are three types of supply

- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT
- Outside the scope – not in the Thailand VAT system

The supply of most types of goods and services in Thailand would be classified as Taxable supplies. However when these supplies are made to companies which are outside of the Thailand advice needs to be sought as to what rate of VAT, if any, to use.

Business Transactions with Zero-Rate (0%) VAT included Export of goods, a service performed in Thailand and used in a foreign country, an international transport service by aircraft or sea-going vessels, Sale of goods or services to the United Nations (UN), Sales of goods and Provision of services to the Thai authorities or state enterprise under a foreign loan or assistance Project, and Sales of goods and services between bonded warehouse or between enterprises located in a duty free zone.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

Thailand has a number of "approved" share option plans which give tax benefits to employees and employers alike and it is often possible to adapt an overseas stock option plan to fit into one of these "approved" plans.

However this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Thailand.

How else can we compensate our employees?

Thailand has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many businesses in Thailand to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to "spend" their benefits allowance; which can range from "purchasing" additional holiday entitlement to obtaining full family medical cover.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or email us directly.

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