

Advantage

Tax and business law intelligence for international companies

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VALUE ADDED TAX Compliance for Export Services

Export Services are services that are performed in Thailand and used by a recipient outside of Thailand, and as the services are exported from Thailand, they enjoy (or should enjoy) the export rate of 0% VAT.

But unlike export goods, which also enjoy the 0% export rate, VAT compliance for Export Services is one of the horror stories of Thailand tax compliance.

The intention of the law is for Export Services to be subject to 0% VAT, but the Thailand Revenue officers will investigate virtually all Export Services that your company zero-rates, and their challenges for 7% VAT plus the additional penalties and surcharges can be horrendous.

Section 77/2 of the Revenue Code prescribes that a service performed by a supplier in Thailand, whether or not the use of the service is made in Thailand or in a foreign country, shall be subject to VAT.

But whilst the law clearly states that Export Services shall be subject to VAT, getting the Revenue officers to accept the 0% export rate can be difficult.

A little bit further on in the Revenue Code, at Section 80/1(2), the law prescribes that the 0% VAT rate (not the 7% VAT rate) shall apply to services performed in Thailand and used in a foreign country.

But Section 80/1(2) also prescribes that this is subject to the rules, procedures and conditions prescribed by the Director-General, and this is where the problems start.

The rules, procedures and conditions prescribed by the Director-General are contained in the Director-General's Notification on VAT (No 105) and guidance on the application of the laws by the Revenue officers is contained in the Director-General's Departmental Instruction No Paw 104.

The Director-General's Notification on VAT (No 105) prescribes that "services performed in Thailand for a recipient in a foreign country resulting in the entire services being used in a foreign country" shall be entitled to the 0% VAT rate.

The first compliance matter to note is therefore that the Export Services must be entirely used in a foreign country.

The second compliance matter to note is that all of the output must be sent outside Thailand.

This second compliance matter emanates from the guidance to the Revenue officers that is contained in Departmental Instruction No Paw 104, wherein it states "if all the output arising from the performance of a service is sent to a foreign country, the registrant is permitted to apply value added tax by using the 0% rate under Section 80/1(2)."

The words "entirely" and "all" mean the whole (100%), and so, in the case where only a very small part of a service is not used outside Thailand, or in the case where only a very small part of the output is not sent outside Thailand, then the whole 100% of the service is subject to VAT at the 7% rate. For example, if a recipient in a foreign country has just one meeting with you in Thailand, then the service is not entirely used outside Thailand. If you prepare any document or other form of output for any person or government authority in Thailand, then all of the output is not sent outside of Thailand.

If you can't prove "entirely" and "all" to the Revenue officers, tax compliance in Thailand requires you to apply the 7% VAT rate to Export Services.

The information herein was contributed by Steven Herring, an experienced and senior RSM International Tax Consultant, for RSM Advisory (Thailand) Limited.

TAX MANAGEMENT

Managing Your Tax Refund Claim

Unlike more advanced nations, tax refund claims are not handled by any computer system and refund cheques are not automatically generated. Instead, a claim for a refund of tax (including both claims for a refund of value added tax and claims for a refund of withholding tax) involves a detailed tax investigation by the Thailand Revenue Department officers. The reason is simply that the Revenue Department will not refund any tax to any company, which may in fact owe tax to the Revenue Department.

If a claim for a refund of tax is not managed well, the amount of the "tax receivable" in your balance sheet will just sit there forever and you may even end up paying more tax to the Revenue Department.

If doesn't matter whether you're a giant multinational petroleum exploration company, a global contractor of specialist equipment, an international law firm or a local Thailand small business, the Revenue officers protect their tax base rigorously and treat all claims against that tax base with skepticism.

Whilst it won't give you any joy, it helps you to know why the Revenue officers are skeptic. Not too long ago, the Revenue Department discovered that it was being swindled by companies engineering tax refund claims by exporting container loads full of rubbish to claim 0% VAT and other companies purchasing fake input tax invoices to claim against their PP30 VAT liabilities.

For tax refund claims in Thailand, you should proceed beyond the 'stop/go' decision only after an honest assessment has been made of the possibility of the Revenue officers uncovering non-compliance matters and making a counter-claim for unpaid tax. Revenue officers know where the risks are, and it is surprising what tax matters they uncover. And for any possible non-compliance matters, you should be fully aware of the penalties and surcharges, which can double or triple the amount of tax payable.

Companies that haven't swindled the Revenue Dept have a legal right to a refund of any tax that has been over-paid, but such legal rights fall to the wayside in a skeptical world. Knowing that the Revenue officers are skeptic, you should therefore put your effort into dealing with their questions, no matter how trivial they may seem, ensuring that each time a Revenue officer leaves your premises to head back to the Revenue office, he or she fully understands and accepts that your company has complied.

You should not assume that the Revenue officers are knowledgeable about the Revenue Department "Paw" guidelines. If you are confronted with a challenge in relation to a particular transaction, you should know the relevant "Paw", provide it to the Revenue officers and explain how your company has complied with it.

You should file a claim for a tax refund immediately as it arises. Delaying it will only exacerbate the problems. For example, if you have a credit balance in a PP30 VAT return for any particular month and you believe that the credit balance will not be cleared during the immediate following months, you should file a refund claim straight away.

You should follow up your refund claim and the tax investigation weekly. Leaving it all to your staff will invariably fail, and a foreign CEO/CFO being present before the Revenue officers can speed it up greatly. If you can, you can also assist your claim by bringing an authoritative Thai national onto your tax refund claim team.

Finally, you should not listen to or act on any threats. Very few (if any) are actually carried out and they can indicate that you are close to securing your refund.

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CORPORATE INCOME TAX Year-End Tax Planning

Finally, as the month of December is the last month of the 2008 financial year for most Thai companies, we remind you of some of the standard year-end tax planning matters that may need your attention before the 2008 year closes, in order for you to claim certain tax deductions for the financial year.

Stock on hand that can't be sold because it's spoiled or has been destroyed (as well as all scrap and waste stocks, etc) should be physically removed and written out of your books before 31 December 2008 in order to obtain a tax deduction for the 2008 financial year. The following procedures may need to be followed:

- Companies in an export processing zone need to follow the rules prescribed by the IEAT and have an auditor witness the destruction;
- Companies receiving promotion on imported raw materials need to comply with the BOI and have an auditor witness the destruction; and,
- For other companies, there must be an inspection and approval of the destruction by the company's personnel including persons from the warehouse, accounting, sales and internal audit (if applicable) departments, who must sign a record of the stock destruction.

Bad debts that you will be unable to collect should be written out of your accounting records before the end of 31 December 2008 in order to obtain a tax deduction in the 2008 financial year, and for such bad debts, the following procedures need to be followed:

- For bad debts less than Bt100,000 demand for payment must have been made and the matter must have been pursued to a suitable extent;
- For bad debts between Bt100,000 and Bt500,000 court action must have been made and the court must have accepted the complaint; and,
- For bad debts over Bt 500,000, a court injunction or order must have been issued.

Depreciation deductions in 2008 have increased by the government introducing new accelerated rates of depreciation for computer software, machinery and equipment, and low-cost short-life assets. If your company is in a tax payable position in 2008, you should ensure that your accountant claims the higher accelerated rates of depreciation in your company's accounting records. If not, you will be unable to claim the accelerated rates in your corporate income tax return.

If your company is facing a tax loss position in 2008, it may be better to forgo the new accelerated rates of depreciation and claim the normal depreciation rates in order to defer the income tax deductions to future (more profitable) years.

Staff bonuses are not permitted as tax deductions in Thailand until actually paid, or if not paid at the year-end date, there must exist a legal obligation for the company to pay the bonuses in 2008. That is, with no legal obligation to pay, staff bonuses that are not actually paid as at the year-end are not permitted as an accrual for tax purposes in Thailand. Accordingly therefore, you should ensure that either staff bonuses are paid to staff before year-end, or if they are going to be paid in the 2009 financial year, you must ensure that a properly constituted directors' meeting is held before the end of the year to resolve the payment of staff bonuses in order to create the legal obligation of the company to pay.

Losses on investments cannot be claimed as a tax deduction until such time as the investments are sold (i.e. disposed). In the case where an investment loss has arisen due to the economic crisis, you may be able to crystallize that loss for tax purposes by selling the investment to another company before year-end.

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