

Advantage

Tax and business law intelligence for international companies

RSM Thailand

26th Floor, Sathorn City Tower
175 South Sathorn Road
Bangkok 10120
Thailand

T: +66 (0) 2670 9002-6

F: +66 (0) 2670 9027-8

E: AskUs@rsmthailand.com

W: www.rsmthailand.com

HOMELAND TAX COMPLIANCE FOR UK and Australian Expatriates in Thailand

The 2009/10 financial year for the UK has just ended, and the 2009/10 Australian financial year ends in just two months time.

There are homeland tax compliance issues for both UK and Australian expatriates living and working in Thailand, and this edition of Advantage focuses on the 2009/10 income tax return filing requirements for UK and Australian expatriates remaining residents of their homelands.

UK Expatriates

If a UK expatriate in Thailand is a resident of the UK, the expatriate's Thailand-sourced income and gains are subject to income tax in the UK and the expatriate is required to complete and file a UK self-assessment tax return.

Under the UK's self-assessment system, a Thailand based UK expatriate who is a resident of the UK must decide whether or not he or she is ordinarily resident in the UK and/or domiciled in the UK, because these decisions affect how the Thailand-sourced income or gains are taxed in the UK.

It should also be noted that the HMRC expects a UK expatriate to be able to support the decisions made in relation to residency with details of how the expatriate reached his or her decisions.

Taxation of UK residents

Residents of the UK pay tax in the UK on the "arising basis" of taxation. That is, tax is paid on:

- Income that arises both in the UK and outside the UK; and
- Gains that accrue on the disposal of assets both in the UK and outside of the UK.

However, residents of the UK who are not ordinarily resident in the UK and/or not domiciled in the UK, pay tax in the UK on the "remittance basis" of taxation. That is, tax is paid on:

- Income that arises and gains that accrue on the disposal of assets in the UK; and
- Income that arises and gains that accrue on the disposal of assets outside the UK, but only when those income or gains are remitted into the UK.

For a UK expatriate in Thailand remaining a resident of the UK, the significant difference between the two bases is the way the expatriate's income and gains in Thailand will be taxed in the UK.

It is therefore important for a UK expatriate to clearly know whether he or she is a "resident of the UK", "not ordinarily resident in the UK" and/or "not domiciled in the UK". A UK expatriate can be more than one of these - or none:

Resident of the UK

You are a resident of the UK if you stay in the UK for 183 days or more in a tax year. You could also be a resident of the UK if you have, over a period of 4 tax years, stayed in the UK for an average of 91 days or more in those tax years.

Not ordinarily resident in the UK

If you are a resident of the UK but do not normally live in the UK, then you are not ordinarily resident in the UK.

Not domiciled in the UK

If you are a resident of the UK but your permanent home is not in the UK, then you are not domiciled in the UK.

The following table is a summary of the rules for a UK expatriate remaining a resident of the UK.

UK Resident	Domiciled in the UK	Not domiciled in the UK
Ordinarily resident in the UK	Not eligible for the remittance basis.	Eligible to use the remittance basis.
	All UK and foreign income and gains are taxed in the UK on the arising basis.	If the remittance basis is used, all UK income and gains are taxed in the UK on the arising basis. Foreign income and gains are taxed in the UK on the remittance basis.
Not ordinarily resident in the UK	Eligible to use the remittance basis.	Eligible to use the remittance basis.
	If the remittance basis is used, all UK income and gains are taxed in the UK on the arising basis.	If the remittance basis is used, all UK income and gains are taxed in the UK on the arising basis.
	Foreign income is taxed in the UK on the remittance basis. Foreign gains are taxed in the UK on the arising basis.	Foreign income and gains are taxed in the UK on the remittance basis.

Application of the remittance basis

UK expatriates in Thailand remaining residents of the UK should note that the application of the remittance basis of taxation is a choice. This means that even if a UK expatriate is eligible to use the remittance basis, it does not have to be used. A UK expatriate makes the choice himself.

If you are eligible to use the remittance basis and you choose to use it, you will be taxed in the UK on all of your UK-sourced income and gains on the arising basis, and you will only pay UK tax on your Thailand-sourced income and gains if you remit your Thailand income or gains to the UK.

But if you choose not to use the remittance basis, all of your worldwide income and gains (including your Thailand-sourced income and gains) will be taxed in the UK on the arising basis.

Un-remitted foreign income and gains of less than £2,000

If your un-remitted foreign income or gains arising or accruing in a tax year are less than £2,000 you can use the remittance basis of taxation without having to make a claim to use it.

But you should note that, normally, you would still be required to complete a UK self assessment tax return to report your UK income and gains and report your Thailand income and gains that you have remitted to the UK during the tax year.

Un-remitted foreign income and gains of £2,000 or more

If your un-remitted foreign income or gains arising or accruing in a tax year are £2,000 or more, you will have to make a claim to use the remittance basis of taxation by completing a self assessment tax return and the "SA109 residence and remittance basis etc supplementary pages". Otherwise, you will have to pay tax in the UK on your Thailand-sourced income and gains on the arising basis of taxation.

Australian Expatriates

Similarly to residents of the UK, residents of Australia pay tax on their worldwide income and gains.

And similarly, Australian expatriates in Thailand need to determine their resident status for the purposes of Australian income tax.

Australian residents

As an Australian expatriate in Thailand, you would be considered to have remained a resident of Australia for the purposes of Australian tax if in a tax year:

- You stay in Australia continuously for 6 months or more and for that time you were:
 - In the one job; and
 - Living in the same place; or if
- You stay in Australia for periods of time totaling 6 months or more, unless:
 - Your usual home is overseas; and
 - You do not intend to live in Australia.

Examples of some of the more common situations for Australian expatriates in Thailand are as follows:

If you ...	You would be ...
Are in Thailand temporary and you have no permanent home in Thailand	An Australian resident for Australian tax purposes
Have left Australia permanently and are living in Thailand	Not an Australian resident for Australian tax purposes
Go to Australia for more than 6 months and for that time, you live in the same place and you have ties to Australia	An Australian resident for Australian tax purposes
Holiday in Australia or visit Australia for less than 6 months	Not an Australian resident for Australian tax purposes

Taxation of Australian residents

An Australian expatriate in Thailand who remains a resident of Australia is required to report his or her Thailand-sourced income or gains in their Australian income tax return, as either:

- Assessable foreign income; or
- Exempt foreign income.

Assessable foreign income

Assessable foreign income is income that is derived by an Australian resident whilst working overseas as an employee for either an Australian or an overseas employer and receiving salary, wages, commissions, bonuses or allowances etc, unless the income earned constitutes exempt foreign income (see below).

Thus, unless Thailand employment income earned by an expatriate who remains a resident of Australia is exempt foreign income, employment income earned in Thailand by an Australian expatriate who remains a resident of Australia would normally be assessable income in Australia.

That is, such income is required to be included in an Australian income tax return as assessable (taxable) income, and the tax paid on the income in Thailand claimed in the Australian tax return as a foreign tax credit.

Exempt foreign income

Exempt foreign income is income that is exempt from income tax in Australia under specific circumstances. But whilst exempt foreign income is not included in a resident's Australian income tax return as assessable (taxable) income, it is nevertheless reported in the tax return and taken into account by the Australian Tax Office for the purposes of calculating the amount of tax payable in Australia.

From 1 July 2009 (i.e. from and including the 2009/10 Australian tax year), the specific circumstances when income is exempt foreign income have changed, as follows:

- The income is earned from foreign service as an employee continuously for 91 days or more; and
- The foreign service is for work as:
 - An aid or charity worker employed by a non-government organization; or
 - A government aid worker; or
 - A government defense or police force worker deployed overseas; and
- The foreign income is not otherwise exempt from tax in Australia because of:
 - A tax treaty agreement with Australia or a law similar to a tax treaty agreement; or
 - A law or an international agreement to which Australia is a party for diplomatic or consular workers or workers connected to international organizations (such as the United Nations); or
 - Australia recognizing that the foreign country exempts tax on employment services income (for example, Saudi Arabia).

According to these rules, unless employment income earned in Thailand is earned as an aid or a charity worker, or an army or a police officer, or an Australian embassy worker, then employment income earned in Thailand would not qualify as exempt foreign income for Australian resident income tax purposes.

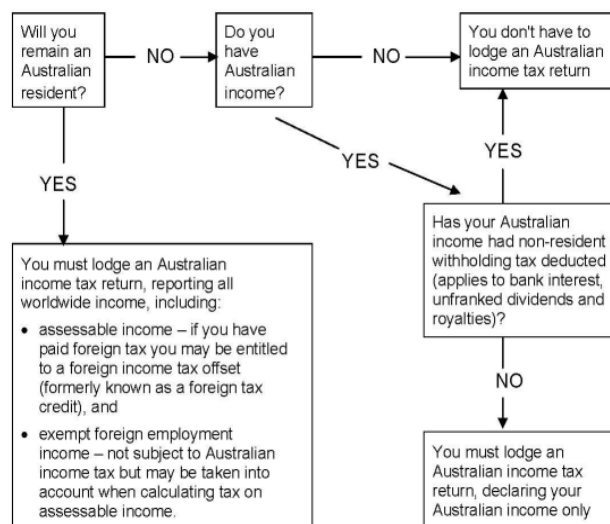
The income earned by an Australian expatriate from a private or a public company in Thailand would not normally qualify as exempt income, and therefore, it would normally be assessable foreign income, which an Australian expatriate who remains a resident of Australia would usually be required to include in his or her Australian income tax return as taxable income in Australia.

You should note that if your Thai-sourced income is required to be included in an Australian tax return, you must add the amount of the Thailand tax paid on the income to the net income amount (called grossing up the income), and then claim the Thailand tax paid as a foreign tax credit.

Australian tax return filing flowchart

These rules could, at first instance, seem to be a bit complicated, and the following flowchart depicts the

Australian tax return filing requirements for Australian expatriates in an easier way:



Ceasing Australian resident status

If an Australian expatriate wishes to change his or her status from a resident to a non-resident, the ATO in Australia should be advised by answering 'Yes' to the question, 'Are you an Australian resident?' on the front page of the tax return, and specifying the date of ceasing to be an Australian resident at section A2 of the tax return under the 'Other items' heading.

From the date of ceasing to be an Australian resident, foreign sourced income (including Thailand-sourced income) is not reported in Australian tax returns and is not assessable income in Australia.

Also, any Australian-sourced income that is derived after the date of ceasing to be an Australian resident, such as interest, dividend and royalty income, should have the 10% non-resident withholding tax deducted from the income in Australia.

So, in addition to advising the ATO in Australia, the payers of Australian-sourced interest, dividend and royalty income should also be advised of the date of ceasing to be an Australian resident in order for them to deduct the required 10% withholding tax.

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