

Advantage

Tax and business law intelligence for international companies

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TAX MANAGEMENT

Hire of Work Agreements

An often forgotten about tax in Thailand is stamp duty tax, which is applied to 30 types of instruments and at the rates specified in the Stamp Duty Schedule of the Revenue Code, as follows:

Stamp Duty Schedule	Tax Rate
1. Land / building lease agreement	0.1%
2. Share transfer	0.1%
3. Hire purchase agreement	0.1%
4. Hire of work agreement	0.1%
5. Loan agreement	0.05%
6. Insurance policy	0.05 - 0.4%
7. Power of attorney	10 - 30 Bt
8. Proxy for voting at meeting	20 - 100 Bt
9. Bill of exchange	3 Bt
10. Promissory note	3 Bt
11. Bill of lading	2 Bt
12. Share certificate	5 Bt
13. Government bond	1.0%
14. Cheque	3 Bt
15. Receipt for interest-bearing bank deposit	5 Bt
16. Letter of credit	0.2 - 0.3%
17. Travellers' cheque	3 Bt
18. Carrier's receipt	1 Bt
19. Surety	1 - 10 Bt
20. Pledge	1 Bt
21. Warehouse receipt	1 Bt
22. Delivery order	1 Bt
23. Agency agreement	10 - 30 Bt
24. Award given by an arbitrator	0.1%
25. Duplicate of an instrument	1 - 5 Bt
26. Memorandum of association	200 Bt
27. Articles of association	200 Bt
28. Amendment to memorandum or articles of association	50 Bt
29. Partnership agreement	100 Bt
30. Receipt for government prizes, transfer of immovable property and transfer of motor vehicles	0.5%

The instrument that is probably the biggest tax risk to companies in Thailand is the hire of work agreement (the fourth instrument in the Stamp Duty Schedule listing).

The commercial laws define a hire of work agreement as a contract or agreement under which one person (the contractor) agrees to perform work for another person (the employer) who agrees to, in return for the work performed by the contractor, to pay an amount of remuneration to the contractor.

According to this legal definition, all sorts of contracts or agreements entered into by businesses in Thailand are "hire of work agreements", including for example, consulting services, business management, human resource management, financial management and marketing and promotion assistance, and technical assistance agreements. Virtually any agreement that is entered into by a company in Thailand for the provision or rendering of a "service" to another would be a "hire of work agreement". Even agreements for performing maintenance services of office machines, computer equipment and software would be "hire of work agreements".

2009 PND50 Corporate Income Tax Returns

The Revenue Department has announced that those companies affected by the political protests may file an application for permission to extend the filing of their PND50 corporate income tax returns for the 2009 financial year beyond 31 May 2010 up until 30 September 2010. Another option you have, in the case where you may not be an affected company but your auditor is struggling to finalize your company's financial statements, is to file an "advance payment" tax return (without audited financial statements) on or before 31 May 2010 and file an "additional" tax return (with audited financial statements) when completed.

For “hire of work agreements”, the tax laws prescribe:

1. The contractor (or the services provider) under a hire of work agreement is the person liable to the Revenue Department for the stamp duty, which duty shall be paid within 15 days of execution of the agreement;
2. For an agreement executed outside of Thailand, the contractor (or the services provider) shall pay the stamp duty within 30 days of the agreement being brought into Thailand;
3. An agreement that is required to be executed in the presence of or by a government official shall not be executed until the full amount of the stamp duty has firstly been paid; and
4. An agreement that is not duty stamped shall not be admitted as evidence in a civil law court action until the full amount of the stamp duty (including any applicable surcharge) has firstly been paid.

Whilst the tax payment prescribed in the Stamp Duty Schedule is only 0.1% of the amount of remuneration stipulated in the agreement, if the tax is not paid by the contractor (or the services provider) by the due date for payment of the duty, the amount of the tax is increased by quite large late payment penalties called “surcharges”. These surcharges are prescribed in the Revenue Code, as follows:

Surcharge under the Revenue Code	Rate
In the case of paying the stamp duty after the due date for payment but not later than 90 days after the due date for payment	200%
In the case of paying the stamp duty after the due date for payment and more than 90 days after the due date for payment	500%
In the case of paying the stamp duty as a result of a Revenue officers’ inspection, irrespective of the number of days after the due date for payment	600%

If the payment due dates of 15 days or 30 days (as the case may be) are not met, the aforementioned surcharges are automatically applied by the Revenue officers when you go to pay the stamp duty tax.

However, there are some rules and regulations that you can use to reduce the surcharges.

Firstly, you can make an application to the Revenue Department under Ministerial Regulation No 129 BE 2512 (1969). This Regulation entitles you to file a written application to the Revenue officers, providing your reasons for failing to pay the stamp duty tax due to an honest mistake and without intention to evade the tax, and agreeing to pay the stamp duty within 10 days of receiving the Revenue Department’s notice of acceptance of your application.

In this case, Ministerial Regulation No 129 prescribes that the Revenue officers shall reduce the amount of the surcharges to 25% of the surcharges stated in the law, that is:

Surcharge Reduction under Ministerial Regulation No 129	Reduced Rate
In the case of paying the stamp duty after the due date for payment but not later than 90 days after the due date for payment	50%
In the case of paying the stamp duty after the due date for payment and more than 90 days after the due date for payment	125%
In the case of paying the stamp duty as a result of a Revenue officers’ inspection, irrespective of the number of days after the due date for payment	150%

Secondly, you may file an application to the Revenue Department under Sor Mor 2/2542 dated 3 June 1999 which authorizes the Revenue officers to reduce the surcharge to a rate not lower than 1% per month or fraction thereof for the number of months from the due date of payment of the stamp duty. But in this case, you would have to succeed in appealing to the kind side of the Revenue officers, as a reduction of surcharge under the Sor Mor regulation is completely at the Revenue officer’s discretion.

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