

Call in for a Coffee - Tax Update

Welcome to the second of our **Call in for a Coffee** tax updates. This edition focuses on tax free fringe benefits, and a significant tax development with the signing of a double tax agreement (DTA) between Thailand and Hong Kong. This is only the second such development between Hong Kong and another country.

1. Hong Kong – Thailand Double Tax Agreement

The DTA was signed on 7 September 2005, and enters into force as from 1 April 2006 in Hong Kong and as from 1 January 2006 in Thailand.

1.1 Summary of the main features

The Hong Kong – Thailand DTA is a full scope taxation convention, and a summary of the day-to-day working features of the DTA would be as follows. The underlined features should produce significant taxation savings.

Interest

- 10% on interest payments to any financial institution or insurance company;
- 10% on any interest payments arising from sales or services of any equipment, merchandise or services where such sales or services are at arm's length; and
- 15% for other cases.

Royalties

- 5% on copyright, artistic and scientific work royalties;
- 10% on patent, trademarks, designs, models, plans, secret formula and processes royalties; and
- 15% on industrial, commercial, scientific equipment royalties, and royalties for information concerning industrial, commercial or scientific experience (know how).

Capital Gains

- Exemption from tax in the case of sale of shares in a company in the case where the company holds less than 50% of its assets value in immovable property.

Elimination of double taxation

- Application of tax credits for taxes paid in the other country.

The Hong Kong – Thailand DTA is likely to be of special interest to many of our readers, and we note some other important features of the DTA, which should benefit you:

1.2 Permanent establishments

As many of you may have suffered, Thailand's local law is very broad in terms of what it can deem as conducting of business in Thailand. The new DTA is a lot clearer. Apart from the usual "fixed place of business" rules, the DTA prescribes 6 months for building sites, construction and assembly sites, and 6 months or more within any 12 months period for the furnishing of services. These new rules should assist you in defending the many assertions of the Revenue officers under the local Thai tax law.

1.3 Business profits

When a permanent establishment exists in Thailand, the DTA prescribes that in determining the profits of the PE there shall be allowed expenses, which are incurred for the purposes of the PE, including executive and administration expenses, whether incurred in Thailand or elsewhere. The writer believes that this provision should be noted, specifically in respect of the Revenue officers continual refusal to allow cost allocations into Thailand.

2. Tax Free Fringe Benefits

In broad terms, a fringe benefit refers to a payment by a company to an employee, but in a different form to salary and wages. Companies can provide fringe benefits to employees (including employed directors) and to their spouse, children and parents who are under the employee's care. In Thailand, such fringe benefits can be either taxable to the employee or tax free to the employee. We therefore examine some of the more common types of fringe benefits that are tax deductible to a Thailand company, but which are not taxable to an employee receiver, which we refer to as "tax free fringe benefits".

It should be noted that most (if not all) the tax free fringe benefits mentioned herein should be provided in employees' employment agreements with the company. This is because the Thai Revenue Code prescribes that for companies claiming expenses for taxation purposes, the expenses must not be "private expenses", and that the expenses must be expended "exclusively for the purposes of the business".

2.1 Car Fringe Benefits

A car fringe benefit is a car provided by a company to an employee, allowing the employee use of the car for both work purposes and for private purposes. In Thailand, the company is permitted to claim the allowable deductions in respect of the car, but the employees receiving the use of the car are not required to compute a 'private use' portion for the purposes of income tax.

2.2 Clothing Fringe Benefits

Uniforms, which a company provides to its employees is a tax free fringe benefit. Companies can claim the costs of providing employees with two sets of uniforms and one outer-coat per year, and provided the above is not exceeded, the employee is exempt from income tax on the 'private use' of the uniforms provided.

2.3 Education Award Fringe Benefits

Education award fringe benefits are where a company pays an "award for the purposes of education" to an employee on the basis that the employee makes a commitment to return to work for the company after the education. Such education fringe benefits are tax deductible to the company, but are not taxable income to the employee.

2.4 Entertainment Fringe Benefits

Entertainment fringe benefits are paid to employees to attend company sports games, Christmas, New Year's Parties, etc, and are tax free fringe benefits in Thailand.

2.5 Housing Fringe Benefits

If a company provides an employee a living away from home residence for the purposes of performing employee duties, or if a company provides a "place" for employees who work late to wait in until morning to return home, such housing fringe benefits are tax free fringe benefits.

2.6 Medical Expenses Fringe Benefits

Medical expense fringe benefits are benefits provided to an employee, by the company reimbursing the employee in respect of medical expenses (as well as the medical costs of the employee's spouse, children and parents under the care of the employee). Such medical expense fringe benefits are tax free fringe benefits in Thailand. Companies should note that the employee's medical costs have to be incurred in Thailand, or where necessarily occurred in a foreign country in which the employee performs duties.

2.7 Transport Fringe Benefits

Transport fringe benefits arise when a company provides employees with air travel for the purposes of business. Such transport fringe benefits are tax free fringe benefits in Thailand.

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Consultation

If your company has any issues requiring clarification with respect to legal, financial, taxation, accounting or auditing, please contact the **RSM Team** and "**Call In For A Coffee**" for a consultation:

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