

# Call in for a Coffee – Tax Update

## Taxation on transfer of shares in Thailand has hit the headlines again!

Taxation on transfer of shares in Thailand has hit the headlines again, and this article attempts to explain the law behind what you have been reading in the press.

Thailand personal income tax is levied on persons who in the course of a year derive assessable income under Section 40 of the Revenue Code from a post or office held or a business carried on in Thailand or from the business of an employer in Thailand or from a property situated in Thailand.

With respect to shares, Section 40(4)(g) prescribes “that part of the proceeds derived from a transfer of shares issued by a juristic company or partnership or by any other juristic person which exceeds the cost of the investment” shall be assessable income.

For a transfer of shares by an individual to be taxable in Thailand therefore requires the transfer to take place on a sales basis, whereby “proceeds are derived” and whereby the proceeds “exceed the cost of the investment”.

So what does the Revenue Code say about sale prices of shares? Does the law for personal income tax contain provisions as to sales prices at “market price” as it does for corporate income taxpayers?

Well, many of you may find it very interesting to learn that the Thai personal income tax law does not define anything about sales or sales prices of shares for the purposes of personal income tax.

Section 39 of the Revenue Code prescribes that the “sale price” includes the price determined by the assessment officer under Section 49 bis”. But Section 49 bis is only concerned with the sales prices of immovable property, i.e. real estate and the like.

The law does not define anything about the sales prices of movable property (which is what shares are) or indeed any other property for the purposes of personal income tax in Thailand.

There is one more provision, which should also be noted:

Section 42, also a personal income tax provision, contains a listing of items, which are not assessable income for the purposes of income tax in Thailand. Paragraph (9) of that Section prescribes that “proceeds of sale of movable property acquired by bequest or acquired not with a view to trading or profits” shall not be assessable income.

We are led to believe that the share transactions reported in the press were transferred at a value, which was lower than market value at the time of the transfer. We are also led to believe that the difference between the transfer value and the market value should be assessable income on which personal income tax should be levied and paid.

On the basis of what has been presented to us and with the benefit of the above pieces of information contained in the Thai law, one should now see that there is no law that would specifically tax the transaction. However, it is very dangerous to form an opinion when all the facts are not known. Only the taxpayers and the Revenue officers concerned with the matter should know the true facts, particularly whether or not it was a sale transaction and whether or not it was done with a view to trading or profit.

**I wish you all happiness and prosperity in 2006. To those of you for whom I consult on a regular basis, I thank you sincerely for your support and goodwill over 2005.**

**Steven Herring CA**  
**Corporate Tax Consultant**

## RSM Thailand

RSM Thailand is a member office of RSM International, a leading worldwide professional services firm. The RSM Thailand service line leaders are:

[gareth.hughes@rsmnw.com](mailto:gareth.hughes@rsmnw.com) Corporate Advisory Services  
[mark.butters@rsmnw.com](mailto:mark.butters@rsmnw.com) Accounting and Tax  
[mike.holloway@rsmnw.com](mailto:mike.holloway@rsmnw.com) Recruitment Services  
[pardorn.suchiva@rsmnw.com](mailto:pardorn.suchiva@rsmnw.com) Business Service & Legal  
[prawit.wipusirikup@rsmnw.com](mailto:prawit.wipusirikup@rsmnw.com) Audit & Assurance  
[steven.herring@rsmnw.com](mailto:steven.herring@rsmnw.com) Tax Consulting Services  
[surachai.damnoenwong@rsmnw.com](mailto:surachai.damnoenwong@rsmnw.com) Audit & Assurance

## Contact Details

**RSM Nelson Wheeler (Thailand) Limited**

26th Floor, Sathorn City Tower,

175 South Sathorn Road,

Bangkok 10120, Thailand

Telephone: 66 (0) 2670-9002-6

Facsimile: 66 (0) 2670-9027-8

Website: [www.rsmnelsonwheeler.co.th](http://www.rsmnelsonwheeler.co.th)

Email Address: [askus.bangkok@rsmnw.com](mailto:askus.bangkok@rsmnw.com)