

Call in for a Coffee

RSM Nelson Wheeler, Thailand

Edition No 18

July 2004

Introduction

Welcome to RSM's eighteenth edition of "Call in for a Coffee". This edition focuses on two topical issues with the first relating to the requirement for companies doing business in Thailand to lodge their half yearly tax returns and the second to recent investigations conducted by the Thai Immigration Department with respect to work permits and places of business.

Half Year Corporate Income Tax

The date 30th June marks the half way post for many of Thailand's companies that have adopted a 31st December accounting year-end. Unfortunately however, the date of 30th June also triggers liability to the Thai Revenue Department for half-year corporate income tax.

According to Section 67 bis of the Revenue Code, within two months of the last day of the first six months of an accounting period, a half-year corporate income tax return (PND 51) must be filed. For companies balancing on 31st December 2004, a half-year corporate income tax return must be filed and the half-year tax must be remitted on or before 31 August 2004.

Certain types of companies, such as listed companies and commercial banks, must pay their half-year tax based on actual audited net profit.

However, most Thai private limited companies must file their tax returns and remit their taxes calculated on the basis of **estimated net profit** arising from the business carried on or to be carried on during the 12 months accounting period.

It is important to also note that Section 67 ter of the Revenue Code levies a surcharge of 20% tax for companies paying tax on the basis of estimated net profit, where, without **reasonable justification**, the estimated net profit is lower than the annual net profit by more than 25%.

So, what are the guidelines for calculating estimated net profit whilst also ensuring that the company has reasonable justification in case the estimate turns out to be lower than the annual net profit by more than 25%?

The Revenue Department has considered this question in a couple of different rulings and a summary of the cases, which were held to be reasonable justifications, are as

follows:

- Where a company calculates its estimated net profit at an amount not less than one half of the previous year's net profit;
- Where a company sells assets in the last 6 months of the accounting period and its estimated net profit is not less than the result of the annual net profit less the profit on sale of assets by more than 25%;
- Where a juristic company earns revenue in the last 6 months of the accounting period from revenue that is derived in the last 6 months of the accounting period, but not including revenue from money deposited with banks, financial or securities companies or from purchasing bonds or securities;
- Where a company has decreasing loan interest expense caused by decreasing loan interest rates;
- Where a company has uncertainty from the exporting of goods, both quantity and price of goods, and from cancelling a controllable price or quantity of exported goods;
- Where a company has uncertainty from remuneration for hire of work where the remuneration depends on the hirer and the degree of difficulty of the work; and,
- Where a company has unusual and significant fluctuations in foreign currency exchange rates.

Finally, we bring to your attention that if a company fails to file and pay its half-year tax, even though it may file and pay its annual corporate income taxes on time, the company is still liable to the imposition of the 20% tax surcharge according to Section 67 ter.

Author : Steven Herring CA, International Tax Consultant

Immigration Department Inspections - Warning to Expatriates

RSM has been advised by its sources in the Thai Immigration Department that it is now a policy of theirs to conduct surprise visits to newly registered companies that employ expatriates who require work permits.

RSM Nelson Wheeler (Thailand) Limited

No responsibility can be taken by the publisher or the contributors for action taken as a result of information provided or opinions expressed in this publication. Readers are strongly recommended to take expert advice on particular situations.

It would appear that the aim of the inspections by the Thai Immigration Department is to determine whether the information supplied by companies employing expatriates is correct insofar as:-

1. Capitalisation;
2. Business activity & nature;
3. Location of business;
4. Number of Thais employed as a ratio to expatriates; and,
5. Existence of Thai employees.

RSM has been informed that all new companies registered that employ expatriates may be subject to a visit by the Immigration Department.

RSM advises that to avoid breaching the legislation with respect to work permits and visas, companies should adhere as a minimum to the following:-

- a) Fully paid up registered share capital. THB 2 million per work permit for non BOI companies;
- b) Employ 4 Thais to every expatriate and those Thais must be current employees of the company, be paid a salary and have written contracts to support their employment for non BOI companies;
- c) Business operated by the company should comply to the objects in the articles of association; and,
- d) The place of business should have the appearance of a proper place of business even if it is operated from an expatriate's place of residence.

RSM will keep its readers informed of any further developments in this area.

RSM News

Former Legal Counsel For General Motors Teams Up With RSM

RSM is pleased to announce that **Mr. Vincent Siaw**, previously the Legal Counsel for General Motors Thailand, has recently teamed up with RSM to provide "international best practice" legal services to RSM clients.

Mr. Vincent Siaw is an Australian qualified lawyer with a Bachelor of Commerce (Accounting) and a Bachelor of Laws (Honours) from the Australian National University and a Master of Business Administration from Southern Cross

University, Australia. He speaks fluent English and Thai and is a Barrister and Solicitor of the Supreme Court of the Australian Capital Territory and High Court of Australia, a member of the International Bar Association and an honorary member of the Thai Lawyers' Association.

He has extensive experience in commercial contract drafting, due diligence reviews, providing practical legal advice and litigation management. He will be working together with RSM's existing team of Thai qualified lawyers to supplement the already extensive range of commercial and business services it offers, and to bring RSM one step closer to becoming the "**One Stop Shop**" for all your business needs.

Furthermore, RSM sponsored the Australian Chamber Sundowner Event at the BEC-Tero Hall, Suan Lum Night Bazaar on Wednesday 9th June which is featured in the "New Look" AustCham publication which was released by the Australian-Thai Chamber of Commerce this month.

Free Consultation

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

Translation of business ideas into realistic projects requires expert advice. RSM can assist you in formulating practical solutions to obstacles which may be encountered while undertaking business in Thailand.

Contact Details

We are located at:
26th Floor, Sathorn City Tower,
175 South Sathorn Road,
Bangkok 10120
Thailand

Telephone: 66 (0) 2670-9002

Facsimile: 66 (0) 2670-9027-28

Website: www.rsmnw.com

Email Addresses: askus.bangkok@rsmnw.com

RSM! Nelson Wheeler (Thailand) Limited

No responsibility can be taken by the publisher or the contributors for action taken as a result of information provided or opinions expressed in this publication. Readers are strongly recommended to take expert advice on particular situations.