

Call in for a Coffee

RSM Nelson Wheeler, Thailand

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Introduction

Welcome to RSM's twenty first edition of "Call in for a Coffee." The resurgence of the property market in Thailand over the past 18 months or so has seen us providing various advice to clients concerning taxation of property developers. This edition focuses on one very important aspect of Thai taxation, in respect of **property developers** in Thailand. It is written by **Mr. Steven Herring**, RSM's International Taxation Consultant who has over twenty years audit and taxation experience in Australia and Thailand. RSM is delighted to announce that **Sir James Hodge**, Former British Ambassador to Thailand (see RSM News) has accepted a position as a Special Advisor to the RSM Group.

Taxation Warning to Property Developers

Thailand's Revenue law requires all companies to adopt the accruals basis of revenue recognition. The Revenue Code prescribes that ***"the computation of revenue shall follow the accruals basis, whereby all revenue arising in an accounting period, even if not received in that accounting period, shall be included as the revenue of that period."***

Thailand's Director-General of Revenue has prescribed the accruals basis for certain types of businesses and these are found in the Regulations and Instructions to the Revenue Code.

Departmental Regulation No. 1 prescribes the accruals basis for sales of immovable property made by payment of installments over a period of time exceeding one year. For such installment sales, it says that a Thai company may include the installments falling due in an accounting period as the revenue of that accounting period.

This Regulation is further discussed in Departmental Instruction No. 61, which says that there shall be recognized as revenue in each accounting period the portion of money that is due for payment according to the agreement. It further says that this is regardless of whether the money is actually received and regardless of the percentage of the monies falling due to the total value of the agreement.

The following Supreme Court case emphasizes the Thai Revenue Department's resolve on this issue:-

Supreme Court Case No 1463/2542 (1999) involved a condominium vendor, a juristic company carrying on the business of developing and selling immovable property in Thailand.

The condominium vendor entered into agreements to sell condominiums on the basis that the buyers would pay a deposit on the date of execution of the agreement, installment payments during the course of the agreement, and then a final payment on the date of transfer of ownership of the condominium.

The condominium vendor included the total sum of the deposit, the installment payments and the final payment as assessable income in the accounting period in which transfer of ownership of the condominium was made.

The Revenue Department challenged the company's recognition of revenue, claiming that the deposits and the installment payments should be assessable income in the accounting period in which the payments were received.

The Supreme Court noted that the second paragraph of **Section 65 of the Revenue Code** requires net profits of a juristic company to be computed on the accruals basis.

The Court said:

"The sales agreement provides for the price of the condominium to be sold and how the payments are to be made. The monies paid to the vendor on the date of execution of the agreement, the installment payments and the payment on the date of transfer of ownership, are all parts of the agreed price of the condominium. Specifically, the payment made on the date of execution of the agreement is not merely a deposit, but part of the condominium price."

For the purposes of corporate income tax, the vendor is required to recognize the deposit monies as assessable income on the date of execution of the agreements and the installment payments as assessable income when received, irrespective of accounting principles, which may dictate a later date when conditions are satisfied."

Property developers should note that the accruals basis for revenue recognition for taxation purposes is, as the Court said, "irrespective of accounting principles".

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Accounting principles in relation to revenue recognition are prescribed in Thai Accounting Standard No 37, which says, in relation to sales of goods, that revenue is required to be recognized in the accounting period when all of the following conditions have been satisfied:

- a. The enterprise has transferred to the buyer the significant risks and rewards of ownership of the goods;
- b. The enterprise retains neither continual managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
- c. The amount of revenue can be measured reliably;
- d. It is probable that the economic benefits associated with the transaction will flow to the enterprise; and,
- e. The costs incurred or to be incurred in respect of the transaction can be measured reliably.

Usually, the above conditions coincide with the transfer of legal title or the passing of possession to the buyer, and it is at this point when income generally accrues for accounting purposes.

However, a property vendor that sells property on the basis of a deposit and installments has a right to receive payments before transfer of ownership, and the dates on which the payments fall due are the relevant dates for the recognition of income for the purposes of Thai taxation.

Managing taxation risk requires you to be aware of the Revenue laws and practices. We would advise property developers in Thailand to take particular note of the above law, regulations and Supreme Court Case in respect of revenue recognition. Should your company not follow the accruals basis of revenue recognition as discussed herein, your company runs the risk of a challenge by the Revenue officers, and a claim against the company for extra taxes, penalties and surcharges that generally follows such a challenge.

Steven Herring CA, Corporate Tax Consultant

RSM News

Sir James Hodge Former British Ambassador to Thailand and British Consul-General to Hong Kong has accepted a role of Special Advisor to the **RSM** Group to promote the **RSMLI** wealth management business in Thailand and South East Asia. **Sir James** will return to Bangkok in early November.

A number of our readers, clients and contacts have recently raised the issue as to whether **RSM** is now a legal firm following reports back in January 2004 that **RSM** and a Bangkok based small German law firm had concluded a merger. The proposed business relationship with the German Law firm has been annulled and **RSM** emphasises that it never became a legal firm and as such only offers limited legal services to complement its audit, accounting, taxation, wealth management and corporate services divisions.

Upcoming RSM Sponsored Events

Date	Event	Contact Details
27.10.04	Raja's Fashion Golf Day The Legacy Golf Club (Natural Park Ramindra)	rajas@ksc15.th.com
27.10.04	South African Chamber Networking Evening (Sukhothai Hotel, 6.30 pm – 8.30 pm)	satcc@satcc.com
28.10.04	New Zealand-Thai Chamber, AGM Bangkok Club followed by Drinks & snacks at the RSM Boardroom	nztcc@loxinfo.co.th
10.11.04	Lighthouse Club Bull's Head, Sukhumvit 33/1	sunisa.makotpate@rsmnw.com
08.12.04	Lighthouse Club Gathering Bull's Head, Sukhumvit 33/1	sunisa.makotpate@rsmnw.com

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

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