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COMPANY FORMATION IN THAILAND

MAIN FORMS OF COMPANY/BUSINESS IN THAILAND

Businesses in Thailand typically take one of the following forms:

1. Sole proprietorship - single owner
2. Partnership - at least two owners
3. Private limited company - at least three shareholders
4. Public limited company - at lease fifteen shareholders
5. Regional operating headquarters (ROH) - wholly owned by foreigners
6. Joint venture - at least two investors
7. Branch of a foreign corporation - wholly owned by foreigners
8. Representative office of a foreign corporation - wholly owned by foreigners
9. Regional office of a foreign corporation - wholly owned by foreigners

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

After formation of the company, the investor has to involve themselves with the following tax concerns for running a business in Thailand:

1. Corporate Income Tax:
   - Calculated from net earnings (normal 20%, SME 15% to 20%)
   - Filing tax returns 2 times a year
   - Tax being deducted at sources - upon receipts of income from services and being used as tax credit on annual filing

2. Remittance Tax - 10% on profit remittance of branches and payment of dividend and 15% on other income such as interests, royalties, capital gains, rents and professional fees

3. Value Added Taxes - 7% on price of goods for selling of goods and services in Thailand

4. Specific Business Tax - 2.5% to 3% of income derived for some specific business (interest, insurance premium, selling of properties)

5. Personal Income Tax - 5% to 35% of net assessable income of individual

6. Treaties to Avoid Double Taxation - about 60 countries with Thailand

7. Other taxes - Petroleum Income Tax, Custom duty, Stamp Tax, Excise Tax, Property Tax

8. Tax Incentive in Thailand:

   8.1) Promotional privileges under Investment Promotion Acts: Corporate income tax
   - Corporate Income tax holiday from 3 to 8 years
   - Reduction or exemption of import duties on raw material and imported machinery
   - Double deduction for the cost of transportation, electricity and water supply for industrial purposes

   8.2) Privileges under Free Trade Zone or Export Processing Zone: Exemption of import duties and value

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added tax on raw material imported to and imported machinery setting up in Export Processing Zone and Free Trade Zone

8.3) Privileges under Revenue Code:
- 200% deduction for the cost of hiring qualified researchers doing research and development project
- 150% deduction for the cost of employee's training in order to improve human capital
- Small and medium sized companies can choose to deduct special initial allowance on the date of acquisition for computer (40%), plant (25%) and machinery (40%)
- Corporate income tax reduction for SME company having registered capital less than Baht 5 million from 20% tax rate to be 15% tax rate for first 3 million earnings
- Tax losses within 5 years can be carried forward to deduct against future earnings not more than 5 accounting years.
- Tax exemption for Representative Office and Regional Office in Thailand
- Tax rate reduction on profit from operation from 30% to 10% for ROH earnings from service rendered

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

There are both restrictions and promotions in some business fields related to establishing a company. Restrictions include owning of properties, especially land blank under Land Code, and some business fields which are prohibited under the Foreign Business Act. Promotions include holding of properties in some specific areas such as Industrial Estate, and various incentives under Investment Promotion Acts.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

Many foreigners will establish a Thai limited company to carry on business in Thailand. The company will be considered a foreigner under the Foreign Business Act (FBA) if half or more of the company's capital is held by foreigners.

If the company's business activities fall within the scope of the Act, the company may be established with a majority of Thai shareholders so that the Act does not apply to its business.

Historically, such companies have often been established with different classes of shares issued to the foreign and Thai shareholders. The shares issued to the foreigners would carry rights that allow them to effectively control the day-to-day operations of the company. The shares could also carry superior rights to dividends and liquidation distributions. The interest of the majority Thai shareholder(s) is therefore akin to that of a passive investor.

In 2007, there were amendments to the Act, including a change to the definition of "foreigner".
Under the proposed new definition of "foreigner", a Thai company with foreign individuals or companies that have the power by law, the articles of association or by way of agreement to cast half or more of the votes of the company, will be deemed a foreigner under the Act.

Presently, a Thai juristic person that is not a foreigner as defined under the previous FBA but is a foreigner as redefined under the new Act and operates a business of the type as prescribed in the Lists attached to the new Act on the date it comes into force, shall notify the Director-General of Department of Business Development in accordance with the criteria and procedures set forth by the Director-General in order to obtain a certificate if such juristic person intends to continue operating such a business.