RSM FOCUS

Welcome to issue 1 of RSM Focus – RSM Thailand's Monthly Newsletter covering taxation and technical issues that face expatriate corporate and personal investors seeking to do business in Thailand

In this issue:
Personal Income Tax Liabilities for Foreign Teachers, Education and Guardian Visas and Thai Inheritance Tax

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Introduction

Welcome to the first edition of RSM Focus. This edition features topical articles relating to personal income tax liabilities for foreign teachers working in Thai international schools, guardian visas of parents whose children attend Thai international schools whereby the parents don't work in Thailand and Thai inheritance tax.

Personal income tax liabilities for foreign teachers and education and guardian visas

Personal income tax liabilities for foreign teachers

Foreign teachers who teach at international schools in Thailand are entitled to personal income tax exemption in accordance with the Double Tax Treaties (the "DTA") between Thailand and the countries of residence of those teachers, subject to certain conditions, including but not limited to:-

- Remuneration paid to teachers for teaching purposes only; and,
- The teacher stays in Thailand for a period of not exceeding two years (under the DTA between Thailand and most countries, including the United States of America, Great Britain, Australia, Singapore, etc.), or not exceeding three years (for China) from the date the teacher first arrives in Thailand for such purpose.

If you are a foreigner teaching at an international school in Thailand and meet the above conditions, you will be entitled to an exemption on personal income tax ("PIT") and your school will not be obliged to deduct withholding tax ("WHT") from your salary. However, in practice schools will deduct withholding tax from the salaries of teachers as it is not always certain whether teachers will continue working after their contracts have expired or alternatively, whether they will remain in Thailand after the two year period expires. If this is the case, then the international school in question will deduct withholding tax and the individual teacher will have to lodge a refund claim with the Thai Revenue Department. This can prove time consuming and cumbersome but RSM Thailand can assist with such claims due to its long standing relationships with various Thai Revenue Department area offices.

This of course leads to further issues such as whether a Head Master, Principal or administrative staff of the school are also entitled to such tax exemptions, and specifically what are the tax implications and treatment should a teacher decide to work in Thailand for periods exceeding two years. Our views on these questions are as follows:-

- A Head Master, Principal or administrative staff member of an international school will not be entitled to a tax exemption under the DTA. Such tax exemption is exclusively provided to teachers, professors and researchers only. However, it may be possible to argue and negotiate if a large portion of time spent relates to teaching and it can be proven with the use of timesheets and contractual documentation that this is the case.

- If a teacher has have been teaching at a school in Thailand for a period not exceeding two years and has never paid PIT or the school has never deducted any WHT from their salary and that teacher later decides to continue working after the end of the second year, the whole income incurred from teaching in the first two years will not be exempted from PIT and the teacher concerned will be required to pay such tax back to the Revenue Department plus the surcharge at the rate of 1.5 percent per month calculated from the deadline for the submission and payment of PIT in the relevant years (i.e. 31 March of each year). This is in accordance with the tax ruling issued by the Revenue Department No. Gor Kor 0702/5498 dated 26 July 2011.

  This also applies to teachers who leave Thailand having worked for less than two years but choose to return to work there having had the benefit of the tax free provision.

Non ED Visa and Guardian Visa

If a parent of a student or students attending an international school in Thailand is in the situation where his or her employment is terminated or he or she wishes to change jobs to work overseas and the family members are on dependent visas and their children are still studying at an international school in Thailand, what will be the options?

In accordance with the Order of the Royal Thai Police No. 327/2557, which has been effective since 29 August 2014, the children will be entitled to apply for a Non Immigrant ED or education visa to study at the international school in Thailand. In this regard, parents have to request the school to issue documents to support the visa extension. Both parents can apply for Non Immigrant O visas to stay as guardians of their children. In this case, each parent will be required to have a minimum bank deposit with a local Thai bank in

the amount of not less than THB 500,000 each for at least three months before the application date (or at least thirty days for the first year of application). However, if there is only one child, then the parents can only apply for one guardian visa.

Thai Inheritance Tax

The Thai Government has recently announced two new taxation laws in respect of inheritance and gift tax. In this edition, we will walk you through the new inheritance tax intricacies, whilst the gift tax rules will be discussed in a future edition.

Inheritance Tax

The Inheritance Tax Act B.E. 2558 (the "ITA") was enacted in the Royal Thai Gazette on 5 August 2015 and will become effective on 1 February 2016.

Who is subject to inheritance tax?

In accordance with the ITA, the following persons will be subject to inheritance tax:-

1. Thai individuals or foreign individuals, who are residents of Thailand under the Immigration law, that inherit property located in either Thailand or overseas with a value exceeding THB 100 million; or
2. Foreign individuals who are not residents of Thailand but inherit property located in Thailand with a value exceeding THB 100 million; or
3. Juristic persons established under the laws of Thailand or a foreign country, with more than 50% of their paid up capital held by Thai nationals or more than half of their management team being Thai nationals, that inherited property located either inside or outside Thailand with a value exceeding THB 100 million.

What are taxable inheritances?

The following properties will be subject to inheritance tax:-

1. Immovable property;
2. Securities under the securities and exchange laws;
3. Bank deposits or equivalents;
4. Vehicles with registrations; and,
5. Financial assets which will be announced in the Royal Decree.

What are the inheritance tax rates?

- 5% of the inheritance value, which exceeds THB 100 million for ascendants and descendants; and,
- 10% of the inheritance value, which exceeds THB 100 million for persons other than ascendants and descendants.

It is noted that the inheritance tax will not apply to spouses of the deceased or to persons or juristic persons who inherited property from a deceased who died before 1 February 2016.

When is the deadline for filing an inheritance tax return and the penalty for non-compliance?

The deadline for filing an inheritance tax return is 150 days from the date of receipt of the inherited property. Tax may be paid by installments over a period of 5 years, provided that the installments exceeding 2 years are subject to a surcharge.

Failure to file an inheritance tax return or pay inheritance tax may be subject to a penalty (up to 100%), surcharge (up to 1.5% per month), as well as a fine of up to THB 500,000 or imprisonment for a period not exceeding 2 years, or both.

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