

# What has happened in Thailand during the past 12 months?

*by*

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In this article we discuss changes in the law and taxation in Thailand during the last 12 months.

## Investment Incentives

Under the Economic Corridor Act passed in April 2018, a special economic zone has been established for the three eastern seaboard provinces of Chonburi, Chachoengsao and Rayong in relation to industries deemed as priorities for Thailand's next phase of economic development. The prioritised businesses are: next-generation automotive, smart electronics, affluent and wellness tourism, agriculture and biotechnology, food for the future, robotics, aviation and logistics, biofuels and bio-chemicals, digital and medical hub. The special benefits available include the following:

1. Enhanced property ownership rights for foreigners both for residential and commercial use.
2. Leases of 50 years (the current limit is 30 years) plus an option to extend the lease for 49 years (present limit is 30 years for a lease or an option)
3. Foreigners can be exempted from the obligation to obtain a work permit if they work for an eligible business within the three provinces.
4. Reduced corporate tax rate
5. Exemption from certain obligations under the Customs Act
6. Liberalisation of the rules regarding usage of foreign currency within the three provinces.
7. Liberalisation of the work permit rules for foreigners

At the date of drafting this article, we are still waiting for the issue of subsidiary regulations to implement the changes described above.

## SMART visas

In February 2018, the government issued a new regulation creating four new categories of so-called SMART visas. The requirements are as follows:

*Location of employer:* The business that employs a SMART visa applicant may be located anywhere in Thailand.

*Categories of business activity in which such visas may be applied for:* The categories of business activity in which such visas may be applied for are the so-called *S-curve industries*: next generation automotive, smart electronics, medical and wellness tourism, agriculture and biotechnology, food for the future, automation and robotics, aviation and logistics, bio-fuels and bio-chemicals, digital technology and medical hub.

The requirements for the four categories of SMART visa are complex. They may involve minimum share capital requirements and minimum income to be paid to the foreigner. The benefits are also different, but may include a four-year visa, no separate work permit need be obtained, and exemption from the 90 day address-reporting rule.

### Crypto-currencies

In order to regulate the issue and trading of crypto-currencies, a Digital Assets Act promoted by the Thailand SEC has been passed, and also a Revenue Department regulation imposing a withholding tax on the trading of crypto-currencies. As this is a very specialized subject, further details do not appear in this article.

### Foreign Business ownership

Under legislation specific to the insurance industry, 49% foreign ownership of an insurance company may be permitted, subject to conditions. Majority foreign ownership may also be applied for, subject to conditions.

Under the Foreign Business Act, a FBA licence will no longer be required for the following business activities: a representative office, a regional office, or a business that solely offers services to government agencies or state enterprises.

The exclusion of other service businesses from the obligation to obtain a licence under the FBA is also currently under consideration, as follows:

- Accounting services
- Legal services
- Leasing with inclusion of utility usage
- Lending money
- Advisory services

But in each of the five cases above, the services exempted are only where they are supplied to affiliates or subsidiaries.

### Land

*Foreign ownership of land:* There have been no changes to the rules regarding foreign ownership of land, or the exemptions to these rules, or to the maximum term of leases (currently 30 years –

there is a 50 year lease available but it is subject to onerous conditions that means that it has hardly been used in practice).

*New rules for contents of residential leases* The Consumer Protection Board has issued a regulation regarding the contents of residential leases. The regulation will apply to all landlords who own five or more units in the same building which are leased to tenants who are natural persons only. The rules are as follows:

1. A copy of the lease must be available in Thai language. The lease must contain certain minimum information
2. The condition and contents of the property must be recorded in the lease
3. Any deposit must be returned immediately at the end of the lease unless the landlord has to investigate any damage caused by the tenant
4. The tenant may terminate the lease at any time provided he gives at least 30 days notice.
5. Any grounds for terminating the lease must be emphasized in red, bold or italic
6. The landlord can only terminate for breach provided he has given at least 30 days notice to the tenant and the breach has not been corrected within 30 days.

Certain clauses in leases are now illegal and unenforceable, as follows:

1. Waiver or limitation of the landlord's liability for breach of contractor wrongful acts
2. Requiring a deposit to be paid exceeding one month's rent.
3. Allowing the landlord to change the rent/service charge/utility fees before the end of the agreement.
4. Forfeiture of the deposit unless damage has been caused
5. Electricity or water charges can only be passed onto the tenant at cost.
6. Early termination of the agreement other than for material breach.

Landlords should take advice to ensure that their standard form leases comply with these new rules.

#### Companies and other corporate vehicles

*Companies:* The fees for forming a company have been reduced. Basically, fixed fees now apply to formation instead of fees that were a percentage of the registered capital.

*International Business Centre:* A regulation has now been issued enabling an International Business Centre to be set up in Thailand. It will be limited in its activities but will enjoy certain taxation and other privileges. The IBC will be the successor of the Regional Operating Headquarters (ROH) and the International Headquarters (IHQ). Existing ROHs and IHQs may continue to operate subject to their own terms and conditions, until the expiry of such privileges under regulations that established these vehicles. The reason for the change in the law was that Thailand was accused of breaching OECD regulations in relation to BEPS (Base Erosion and Profit Shifting).

## Employment

*Minimum wages:* Thailand has now moved back to a system whereby every January, minimum daily wages are fixed on a province-by-province basis. In January, the new minimum wages vary between 308-330 Baht per day depending on the province.

*Retirement age in the private sector:* For the first time, Thailand now has a statutory retirement age of 60 in the private sector. This means that provided that the employee has reached 60 years of age and gives one month written notice of retirement to the employer, he may retire and claim a retirement payment from the employer, based upon years of service and calculated at the same rate as if he/she had been dismissed for a non-statutory reason. The maximum retirement payment would therefore be 10 months wages, subject to tax.

## Taxation

There have been no changes in the scope or rates for corporate income tax (basic rate 20%), personal income tax (the rate bands are 10-35%), VAT (basic rate 7%), or stamp duty or withholding taxes, which vary depending on the nature of the income or the transaction involved.

The transfer pricing rules have just been changed. This will affect transactions between companies in Thailand and related companies outside Thailand. In summary, from now on, companies will have greater tax reporting obligations in transaction to which the transfer pricing rules will apply.

The taxation of e-commerce transactions is still under consideration and there is no agreed draft of the new law as yet.

## Intellectual property

*Copyright:* An amendment to the Copyright Act is under consideration, but has not yet approved by the National Assembly. The current draft includes proposals to:

1. Require an internet service provider to have policies to terminate use of its services to online infringers.
2. Allow a copyright owner to send written notice to an ISP requiring it to remove an infringing work or to cease providing access to such work.

3. Change the “Technical Protection Measures” that currently appear in the Copyright Act.

*Trademarks:* An amendment to the Trademark Act has come into force whereby sounds may be registered as trademarks, subject to conditions.

Although Thailand has acceded to the Madrid Treaty, whereby a trademark registration in Thailand will be deemed as registration in any other country that has acceded to the Treaty (and vice versa), we understand that the necessary forms to ensure that this applies have not yet been issued by the Thailand Department of Intellectual Property.

### Work permits

*Exemption from duty to obtain a work permit:* It will no longer necessary to obtain a work permit:

1. To attend meetings, give opinions, training sessions, seminars, art or cultural exhibitions or sporting competitions.
2. For specialists or experts who enter to engage in business or investment, as specified in regulations.
3. For representatives of a foreign company that has been granted a licence under the Foreign Business Act.

*Exemption from duty to obtain a work permit for 15 days for urgent and necessary work:* The categories of work for which a 15 day exemption from the obligation to obtain a work permit (extendable subject to conditions) for urgent and necessary work is subject to revision.

*New definition of work:* The definition of “work” has been revised to “*performing any occupation, with or without an employer, but excluding operations of a foreign company granted a licence under the Foreign Business Act.*” Note there is no longer a reference to the work being “paid or unpaid” as under the previous definition. Does this mean that a person who performs unpaid work no longer needs a work permit? The position is not clear.

*Electronic application for work permit:* A work permit application may be submitted electronically from outside or within Thailand.

*New reporting obligations:* All employers must now report the commencement or ending of the employment of a foreigner within 15 days of each event. All foreign employees must report their commencement of work or transfer to another employer within 15 days of such event.

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