

Thailand

General

Ownership of land is generally not open to non-Thai nationals. Non-resident investors may directly invest in certain property in Thailand, or may structure investment in land and/or buildings through a local company.

Rental income

Real estate investing companies are subject to Thai corporate income tax at 30% on net taxable profits.

Rental income, and other income derived from real estate in Thailand, is taxable. Expenses incurred wholly and exclusively for the purpose of the business are deductible, except those specifically listed in the corporate income tax law, e.g., excessive entertainment expenses, income tax, artificial or fictitious expenses, etc.

There is no required debt/equity ratio for tax purposes. Interest on a loan used to finance the acquisition of a real estate property is deductible from the date the acquired asset is ready for use in business.

Interest incurred on the acquisition or construction of real property before the property is ready for use must be capitalized as part of the cost of the asset, and may be depreciated once the asset is ready for use in business. The interest is then depreciated over the life of the asset, and subject to the depreciation rates prescribed below.

A market rate of interest must be charged on inter-company lending between Thailand resident companies.

Depreciation

The rate of depreciation for capital expenditures is 5% for buildings, 20% for machinery and other assets, and 10% for lease rights, or over the leasing period for leases of definite duration. The depreciation rate will be calculated based on the acquisition cost value.

Land cannot be depreciated.

Capital gain on the sale of property

The gain derived from the sale of property is taxed as ordinary income.

Withholding tax on dividends

Dividends distributed by a local company to its foreign shareholders are subject to a dividend withholding tax at 10%. This rate is not reduced under any of the double taxation treaties

concluded by Thailand.

Loss carryforward

Net losses may be carried forward over five consecutive years. No carryback of losses is allowed.

Real estate transfer tax/other taxes

Transfer of real property is subject to property transfer fee at the rate of 2% on the government-assessed value. There will be stamp duty at 0.5% when the real property is transferred, except in cases where the seller is subject to a specific business tax.

There is a specific business tax on the transfer of real property at the rate of 3%, plus a municipal tax of 10%, assessed on the amount of the specific business tax, bringing the total tax to 3.3%. The transfer of real property would not be subject to the specific business tax if the seller is an individual and meets the following conditions.

- The seller has possessed the property more than five years before the transfer.
- The seller transfers the real property to the legal heir or an heir by a will.
- The seller transfers the real property to a legitimate child, but not including an adopted child.
- The seller transfers the real property without consideration to government agencies.
- The seller transfers the real property without consideration to temples, churches or mosques. The exemption is limited to the transferred portion which does not make the total area of the estate acquired by temples, churches or mosques exceed than 80,000 square meters.
- The transferred real property has been used as the principal place of residence, and the seller's name appeared in the house register for not less than one year from the date of acquiring such property.
- The property transferred was acquired through inheritance, etc.

In addition, the transfer of real property would not be subject to the specific business tax if the property is sold to or sold by the Property Loan Management Organization, or limited companies set up by financial institutions under the law in order to manage property loans with the approval of the Bank of Thailand, or the property is sold by the Property Fund (Type I fund), Property Fund for resolving financial institution problem (Type II fund), or Property and Loan Fund (Type IV fund).

The buyer of property who is a corporate entity must deduct, from payment made to a seller who is a corporate entity, 1% on account of corporate income tax. The tax can be credited against the income tax of the seller.

Other relevant taxes

House and land tax is payable by owners of a house, building or structure and land, which is rented or otherwise put to commercial value. The rate is 12.5% of the assessed annual lease value of the property.

Stamp duty is levied at the rate of 0.1% on the rental value over the period specified in a lease contract.

Value added tax (VAT)

Leasing of immovable property is exempt from VAT. Consequently, a real estate lessor may not recover input VAT incurred in business, including VAT incurred in the construction of real property.

If the company also engages in business subject to VAT, such as the provision of services or lease of movable property, it may be able to partially recover VAT arising on the construction of real property.