

Taxation of personal rental income in Thailand

Many purchasers of real estate in Thailand are not using their newly purchased home as a permanent personal residence. Such assets are often meant to be used as a holiday home only and are unoccupied for the remainder of the year. One of the ongoing financial burdens of owning a holiday home is the common area fee and is normally incurred even if the purchaser does not use his asset. In order to cover such expenses, or simply to receive a return of investment, some purchasers rent out their holiday home and thereby earn rental income. These owners should also then be aware of the tax liabilities that they also incur when earning rental income in Thailand.

It is important to note that the duty to pay tax on rental income in Thailand does *not* depend on being a “tax resident” of Thailand or whether you receive the income in Thailand. This is often misunderstood. A tax resident of Thailand is “*any person staying in Thailand for a period or periods aggregating 180 days or more (...)*” (RC Section 41).

However, rental income is considered taxable income regardless of Thai tax residency under Section 40(5) of the Thai Revenue Code (“RC”). Section 41 states that “[a] taxpayer [i.e. “anyone”] who in the previous tax year derived assessable income under Section 40 (...) from a property situated in Thailand shall pay tax (...), whether such income is paid within or outside Thailand.” Therefore, anyone, tax resident not, who earns rental income from a property in Thailand, must pay tax on that income and whether or not the rental income is paid on-shore or off-shore.

The good news that the taxable income is not simply the rental amount the owner receives. The RC allows certain deductions on the rental income. According to Section 43 of the RC in conjunction with Section 5(1)(a) of the RC and Royal Decree No. 11 (“RD”), expenses may be deducted “[i]n the case of houses, buildings, other constructions (...): [and] if let by the owner, a standard deduction of 30 percent shall be allowed as expenses

(...)"

However, the emphasis on the “owner” here should be carefully noted. In cases where a development investor is actually a lessee (that is they have purchased a long term lease from the developer) and not an actual owner, the investor rents out their property to generate rental income, they are only “sub-renting” or “sub-leasing”. In such cases the 30% standard deduction is *not* applicable. But a portion of the rent paid by the investor to their developer could be credited as an expense against such sub-lease income.

Rental income tax recipients have the option to define the taxable income by sufficiently documenting their actual rental income related expenses. If these expenses are higher than the standard 30% deduction, are reasonable, and sufficiently documented, then it may well be worth the additional time and expense needed to claim these expenses. But it should be noted that the same restrictions on and regulatory evaluation of such claimed deductible expenses applicable to corporate entities income in Thailand apply to such rental income earned by individuals.

The amount of tax payable is calculated on a progressive tax scale for personal income tax purposes as follows:

Taxable Income (Thai Baht)	Tax Rate
0-150,000	Exempt
more than 150,000 but less than 300,000	5%
more than 300,000 but less than 500,000	10%
more than 500,000 but less than 750,000	15%
more than 750,000 but less than 1,000,000	20%
more than 1,000,000 but less than 2,000,000	25%
more than 2,000,000 but less than 4,000,000	30%
Over 4,000,000	35%

The individual tax payer is required to report and remit his income tax using the personal income tax return form PND 91 by the end of March after the year in which the income was paid. Failure to report income can result in an assessment by the Revenue Department. The penalty is equal to the amount of additional tax payable. Further a surcharge of 1.5% per month on the tax payable is applicable.

It should also be noted that an “additional” category of tax is also payable each time the rent is paid. It is the duty of the payer of the rent who is renting the villa to deduct a “withholding tax” from the rental payment and submit it to the local Revenue Department. *However*, both the person renting the property and the owner of property who is renting it out the property and receiving the rental payment are *jointly liable* for the payment of this withholding tax.

The amount of withholding tax depends on whether the owner is a tax resident of Thailand and also whether the payer of the rental is a juristic person or an individual. If the owner is not a tax resident of Thailand the withholding tax rate is 15%. The legal status of the payer does not matter if the owner is not a tax resident of Thailand. If the owner is a tax resident of Thailand and the payer is a juristic person, the withholding tax rate is 5%.

Finally, please note that the withholding tax is *not* an additional tax on the rental income; rather it is a pre-payment of the owner’s personal income tax. The withholding tax will be credited against the owners final annual income tax liability. However, if the withholding tax is not paid when the rent is paid significant tax and penalty liabilities are applicable.

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