

2019 EDITION

A nighttime photograph of Bangkok, Thailand, featuring a mix of modern high-rise buildings and traditional Thai architecture with ornate spires. The image is partially covered by a large teal geometric shape on the right side.

DFDL TAX GUIDE THAILAND

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DFDL TAX GUIDE

THAILAND

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This guide is based on our understanding of publicly known Thailand laws, regulations and official practices as of 1 May 2019 and may be affected by laws that are subsequently passed by Parliament or notifications that are adopted by various ministries. There may also be instances where the unofficial practices applied by Government authorities (including the tax authorities) are not in accordance with or even contradictory to Thailand law. More importantly, as the decisions of the courts and tax authorities are not made publicly available, it is possible that the courts or tax authorities will adopt an interpretation of Thailand laws which is not in accordance with our interpretation. Furthermore, not all laws and regulations are published.

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1. OVERVIEW

The current major sources of tax legislation include:

The Thai Revenue Code (the “**TRC**”) and supplemental royal decrees, ministerial regulations, and notifications issued by the Thai government from time to time. The TRC governs the following:

- Personal income tax (“**PIT**”);
 - Corporate income tax (“**CIT**”);
 - Withholding tax (“**WHT**”);
 - Value-added tax (“**VAT**”);
 - Specific business tax (“**SBT**”); and
 - Stamp duty tax (“**SDT**”).
-
- Gift Tax Act;
 - Inheritance Tax Act;
 - The Customs Act;
 - The Excise Tax Act; and
 - The Petroleum Income Tax Act.

The Thai Revenue Department (the “**TRD**”) under the Ministry of Finance and Revenue (the “**MOF**”) is the primary administrative body of taxation in Thailand.

Customs taxation is administrated by the Customs Department and excise taxation is administered by the Excise Tax Department.

2. CORPORATE INCOME TAX (“CIT”)

a. Tax Residence

The taxation of a company is determined by its tax residency. A company incorporated under the laws of Thailand is a resident for tax purposes.

The following are subject to Thai corporate income tax:

- a company incorporated under the Thai Civil and Commercial Code (the Thai “CCC”) in Thailand;
- a branch of a foreign company that is registered to conduct business in Thailand; or
- a company registered under foreign laws and is deemed to be “*carrying on business*” in Thailand through an agent, employee, or go-between to generate income or profits in Thailand.

The standard rate of CIT is 20% and is levied on both Thai and foreign juristic persons. A Thai resident company is taxed on its worldwide income.

A branch of a foreign company is subject to CIT at 20% on its Thai-sourced profits. A branch is also required to withhold 10% of the profits remitted to the foreign head office and remit it to the TRD. If the profits cannot be determined, an official assessment may be made based on 5% of the gross receipts at the discretion of the Thai tax authorities.

A foreign company deemed to be conducting business in Thailand is taxed only on its Thai-sourced income.

A foreign company not carrying on business in Thailand, but deriving specific types of income from Thailand, such as dividends, interest, royalties, rent, commission fees, services or professional fees, etc. is subject to withholding tax on the gross amount of the income received.

b. Corporate Income Tax Rates

The effective CIT rates under the TRC and Royal Decrees, are as follows:

Type of Entity/Company	Rate
Company incorporated under Thai laws	20%
Branch of foreign company	20%
Non-resident foreign company deemed to be carrying on business and deriving income in Thailand	20%
Small and medium-sized enterprise (“SME”)* (profit up to THB 300,000)	Exempt
(profit THB 300,001 to THB 3,000,000)	15%
(profit THB 300,000,001 and above)	20%

**An SME is defined as a company incorporated under Thai law with paid-up registered capital not exceeding THB 5 million as of the end of the accounting period and with total revenue both from sales and services in the previous accounting period not exceeding THB 30 million.*

Apart from SMEs, the following are also subject to reduced CIT rates:

- International Business Centers (“IBCs”) that are providing qualifying services or activities to affiliated entities pay tax at 8%, 5% or 3% of net profits, depending on the source of the profits;
- A bank deriving profits from an international banking facility pays a 10% rate for “out-out” deposits. The remittance tax on “out-out” loans (which are essentially funds borrowed abroad to be lent abroad by an internationally licensed bank) is taxed at a rate of 0% on profits derived from the lending business;
- A foreign juristic person engaged in the business of international transportation pays tax at a rate of 3% on gross receipts.

c. Taxable Income

Taxable income includes profits arising from business operations and other income including: dividends, interest, royalties, capital gains and service fees that are derived from both domestic and foreign sources.

CIT is computed by taking into account all revenue earned in one accounting period and deducting all allowable expenses.

For Thai subsidiaries, subsidies made by a foreign parent company must be included in the CIT calculation as revenue gained from doing business in Thailand. For assessment purposes, there is no distinction between a subsidiary and a branch.

Tax rates on payments made to a foreign company not carrying on business in Thailand vary depending on the type of payment. The tax must be withheld at source by the Thai taxpayer and remitted to the TRD by the seventh day of the month following month in which the payment is made.

The following are exempt from CIT:

- Dividends paid by a Thai company to another Thai company with no cross-shareholding, where the recipient holds at least 25% of the voting right shares for three months before and after the dividends are received. In all other cases, a Thai company only has to include 50% of dividends received from another Thai company as taxable income;
- Dividends received by a Thai company from foreign-related parties where the foreign profits were subject to a headline income tax of at least 15% and the Thai parent company holds at least 25% of the shares in the foreign company paying the dividends for at least six months before receiving dividends pursuant to Royal Decree 442; and
- Other income benefitting from tax incentives.

d. Deductible Expenses

Normal business expenses that are incurred in connection with the earning of income are deductible. These include:

- Management fees that are charged at market value (arm's length principle) that are in line with the services being provided;
- Depreciation;
- Interest, except interest paid on capital reserves or funds of the company;
- Taxes, except for CIT and VAT paid to the TRD;
- Bad debts, provided that there is evidence of a reasonable effort to collect the debt in accordance with Thai tax law;
- Donations up to specified limits;
- Employer contributions to provident funds; and
- Entertainment expenses up to 0.3% of gross revenue or paid-up capital, whichever is higher, but the deduction cannot exceed THB 10 million.

The TRD has the authority to disallow an expense if it considers the expense not to be directly related to the earning of taxable income and not made at market value. Head office charges or allocation of costs may be deducted, provided that the taxpayer can demonstrate that the services are actually provided and related to the business of the taxpayer in Thailand. Strong supporting documentation and evidence should be prepared.

A juristic person may claim an additional 200% deduction for research and development expenses through to 31 December 2019 (subject to a cap), and 100% for job training expenses for employees and salary expenditures made to disabled employees.

e. Non-Deductible Expenses

There are certain limitations on the deductibility of expenses. These limitations include:

- Private expenses;
- Expenses that are not at market value;
- Excessive salaries that are paid to shareholders of the company;

- Fictitious or artificial expenses;
- Expenses that are unrelated to the purpose of carrying on business in Thailand;
- Excessive fees paid for the acquisition of assets; and
- Penalties and surcharges, including tax penalties and criminal fines.

Note: In a 2016 landmark case, the Supreme Court issued a ruling that penalties and surcharges imposed by tax laws and regulations will not be deductible for corporate income tax purposes. This decision was not in line with the long-standing ruling of the Board of Taxation, which provided that only penalties and surcharges imposed under the TRC are not deductible. Thus, penalties and surcharges that are imposed under other tax laws can be deductible. Subsequently, the Board of Taxation has issued a new ruling revoking the previous ruling, and provides that all penalties and surcharges imposed under any tax laws or regulations in Thailand will be now be non-deductible.

f. Losses

Losses can be carried forward for up to five accounting periods. If the losses are relating to a Board of Investment (“BOI”) promoted business activity, and are incurred during the tax holiday period, the tax losses may be carried over for five years after the tax holiday expires. Losses cannot be carried back in Thailand.

g. Depreciation

Depreciation of assets is based on the original cost of the asset, but any system of proportional calculation is acceptable if it does not result in a quicker rate of deduction than the straight-line method. The TRC specifies the maximum percentages for depreciation of certain assets, including:

- Permanent buildings (5%)
- Temporary buildings (100%)
- Acquisition costs of natural resources (5%)
- Acquisition costs for leases:
 - Unwritten or writing with unlimited renewal (10%)
 - Written with no renewal or limited renewals (100%/total years)

- Acquisition costs for certain intangibles:
 - Unlimited use period (10%)
 - Limited use period (100%/total years)
- Other assets (exclusive of land and inventory) (20%)

For hire-purchase contracts, depreciation in a certain period must not exceed installments paid during that period. Once a depreciation system has been chosen, it may be changed only with permission from the TRD.

3. PERSONAL INCOME TAX (“PIT”)

a. Tax Residence

An individual that is present in Thailand for a total of at least 180 days in a calendar year is treated as a resident of Thailand for PIT purposes, although tax “residency” can be established by other factors (e.g. holding a position of employment, deriving income from rendering services within Thailand, etc.).

PIT in Thailand is levied on every individual, resident, or non-resident, who derives assessable income from employment or is carrying on a business in Thailand, or has assets located in Thailand, regardless of whether the income is paid in or outside of Thailand. The tax year for PIT is the calendar year ending 31 December, and tax filing and payment must be completed by 31 March of the following year.

b. Taxable Income

Thailand imposes PIT on the Thai-sourced income of resident and non-resident individuals. Residents are also subject to income tax on foreign-sourced income, but only if such income is remitted into Thailand in the same calendar year that it is received or derived or earned. Assessable income includes most monetary and non-monetary benefits derived from employment in Thailand, property held or business carried on in Thailand. This is regardless of the residence status of the recipient, where the payments are made (i.e. in or outside of Thailand) or whether the employment is permanent or temporary in nature.

Taxable income under the TRC is categorized as income from (i) employment; (ii) services rendered, (iii) goodwill, copyright, or other rights of a similar nature (iv) dividends, interest, bonuses paid to shareholders or partners, benefits received from capital reduction, or capital increase, benefits derived from mergers, acquisitions, dissolution, and benefits derived from the transfer of shares, bonds or instruments issued by juristic persons; (v) leasing of property under hire or hire-purchase contracts; (vi) liberal professions; (vii) construction and other work contracts; and (viii) business, commerce, agriculture, transportation or

other activities not specified in other clauses.

For 2019, the progressive income tax rates (after deduction of taxable expenses and allowances under the TRC) are as follows:

Annual net income (THB)		Tax Rate
From	To	
1	150,000	Exempt
150,001	300,000	5%
300,001	500,000	10%
500,001	750,000	15%
750,001	1,000,000	20%
1,000,001	2,000,000	25%
2,000,001	5,000,000	30%
5,000,001 upwards		35%

The taxable expenses depend on the type of income, for example, PIT expenses and allowances include:

- Standard allowance = THB 60,000.
- Spousal allowance = THB 60,000; provided that the spouse has no assessable income and resides in Thailand or the spouse does not separately file tax returns.
- Child allowance = THB 30,000 per child.
- Educational allowance = THB 2,000 per student.
- Parental allowance (for those over 60 earning less than THB 30,000) = THB 30,000.
- Disabled persons under a taxpayer's care = THB 60,000 per person.
- Life insurance premiums up to THB100,000.
- Home mortgage interest up to THB 100,000.
- Charitable contributions up to 10% of taxable income after other deductions.
- Contributions to a Provident Fund, Retirement Mutual Funds (RMFs), Government Pension Funds (GPFs), Long-term Equity Funds (LTFs) up to 15% of salary but capped at THB 500,000.

Any individuals subject to PIT are required to file personal income tax returns in

Thailand through the website of the TRD or at the local offices of the TRD by the end of March of the following year using either the PND.90 Form (for taxpayers deriving income other than salary) or the PND.91 Form (for taxpayers deriving income only from salary).

Salary income also includes in-kind payments and any benefits. If an employer pays an employee's tax, assessment-based tax is adopted. Income tax is withheld monthly by the employer and remitted to the tax office within seven days from the end of the month.

c. Income from Employment

An employer is responsible for withholding and remitting personal income tax from employment income to the TRD at the time the payment is made to employees at the progressive rates outlined under Section 50 (1) of the TRC. A statement of monthly deductions must be provided to the Revenue Office within seven days from the end of the month in which the payment is made. The employer must also provide an annual finalization statement of salaries paid to employees.

4. CAPITAL GAINS TAX (“CGT”)

Under Thai tax law, capital gains are treated as ordinary income. There is no separate capital gains tax in Thailand, therefore tax on capital gains is calculated according to general income tax provisions under the TRC.

In Thailand, foreign investors who derive gains from the alienation of property in Thailand or from shares and other instruments issued by a Thai-Resident company are subject to Thai income tax (PIT or CIT).

For capital gains, withholding tax will apply to the following:

- 15% on capital gains from the transfer of bonds, debentures, financial negotiable notes, or debt instruments issued by juristic persons – derived by either resident or non-resident persons;
- 15% on capital gains from the transfer of shares, through partnership in a company or a juristic partnership – derived by a non-resident person;
- 15% on capital gains from the transfer of bonds, debentures, financial negotiable notes, debt instruments issued by juristic persons, shares, partnership in a company or a juristic partnership – derived by a non-resident company not carrying on business in Thailand; and
- 1% on capital gains from the transfer of immovable property (based on the selling price) – derived either by a resident or non-resident company.

However, there are tax exemptions in the following cases:

- Gains from the sale of shares in a company listed on the Stock Exchange of Thailand (“SET”) – by a resident or non-resident person;
- Gains from the sale of investment units in mutual funds under the Securities and Exchange Act (excluding the sale of an investment unit back to a Provident Fund or Long-term Mutual Fund) –by a resident or non-resident person; and
- Depending on the Double Taxation Agreement (“DTA”), capital gains on the sale of shares may be exempt for the taxpayer in the source country.

5. WITHHOLDING TAX (“WHT”)

WHT applies to the following:

Assessable income	WHT on payments to resident persons	WHT on payments to non-resident persons	WHT on payments to resident companies (including non-resident companies carrying on business in Thailand)	WHT on payments to non-resident companies not carrying on business in Thailand
Interest	15% (if a payer is a juristic person)	15%	1%	15%*
Royalties paid for the use of licenses, trademarks, etc.	Progressive rate	15%*	3%	15%*

Assessable income	WHT on payments to resident persons	WHT on payments to non-resident persons	WHT on payments to resident companies (including non-resident companies carrying on business in Thailand)	WHT on payments to non- resident companies not carrying on business in Thailand
Service fees, management fees, brokerage fees	Progressive rate	15%*	3%	15%*
Liberal Professions: laws, arts of healing, engineering, architecture, accounting, fine arts	Progressive rate	15%*	3%	15%*

Assessable income	WHT on payments to resident persons	WHT on payments to non-resident persons	WHT on payments to resident companies (including non-resident companies carrying on business in Thailand)	WHT on payments to non-resident companies not carrying on business in Thailand
Advertising fees	Progressive rate	15%*	2%	0%
Transportation fees	Progressive rate	15%*	1%	0%
Prizes won in contests, competition, lucky draws or other like activities	Progressive rate	15%*	5%	0%

Assessable income	WHT on payments to resident persons	WHT on payments to non-resident persons	WHT on payments to resident companies (including non-resident companies carrying on business in Thailand)	WHT on payments to non- resident companies not carrying on business in Thailand
Dividends	10%	10%	10%; or exempt in the case where a company that holds not less than 25% of the total shares with voting rights in a company paying the dividends, and the company paying the dividends does not hold shares in the company that is receiving the dividends either directly or indirectly (i.e. no cross shareholding) .	10%*

Assessable income	WHT on payments to resident persons	WHT on payments to non-resident persons	WHT on payments to resident companies (including non-resident companies carrying on business in Thailand)	WHT on payments to non- resident companies not carrying on business in Thailand
Rental fee from letting out of immovable property situated in Thailand	5%	15%*	5%	15%*

*The above types of WHT are final taxes on the non-resident person or company.

6. VALUE ADDED TAX (“VAT”)

The VAT system in Thailand follows the conventional VAT system where input VAT can be deducted from output VAT. In general, VAT is imposed on sale or service transactions that are executed or performed in Thailand by an operator or person selling goods or rendering services in the course of business or professional activities. VAT is also imposed on the importation and exportation of goods at the rates of 7% or 0%, respectively.

Foreign operators planning to operate businesses in Thailand are required to register as VAT registrants with the TRC. The duties of the VAT registrant include issuing tax invoices and delivering them to customers when the tax point is incurred, collecting VAT from customers, and remitting the VAT amount collected from customers to the TRD within a specified time.

However, in the case of an operator conducting business in Thailand with a turnover of less than THB 1.8 million (USD 54,000) per year, the operator is not required to be a VAT registrant. The fact that a foreign operator performs business in Thailand temporarily or only provides services from abroad while the services are used in Thailand means they do not have to register for VAT.

The effective VAT rates for 2019 are as follows:

- Goods sold in Thailand - 7%;
- Goods imported into Thailand - 7%;
- Goods exported from Thailand - 0%;
- Services rendered in Thailand - 7%;
- Services rendered abroad but where the outcome is “used” in Thailand - 7%; and
- Services rendered in Thailand but “consumed” outside Thailand - 0%.

Note: The VAT rate is statutorily set at 10%, however, the actual current rate is 7% pursuant to a Royal Decree, subject to periodic renewal. This rate is often renewed in order to stimulate economic consumption.

VAT is payable by a VAT registrant on a monthly basis before the 15th of the month following its collection.

VAT levied on importation of goods into Thailand is imposed based on CIF prices (including import duties and excise taxes) and is collected upon import at the customs clearance point along with related customs duties. The Customs Department is in charge of collecting and remitting import VAT to the TRD.

The VAT system in Thailand follows a typical offsetting formula whereby an operator computes VAT on a monthly basis by netting the value of its Output Tax (VAT amount collected from the customers when selling goods or providing service) against its Input VAT (VAT paid to the seller of goods or service provider) and allows requests for a VAT refund or VAT credit that can be carried-forward to the following month (up to a maximum of six months) in situations where the level of Input Tax is higher than Output Tax.

7. SPECIFIC BUSINESS TAX (“SBT”)

SBT is a tax imposed on certain types of business performed in Thailand including:

- Banking;
- Capital, securities, or a credit financier business;
- Life insurance;
- Pawn broking;
- A business with regular transactions similar to commercial banking (e.g. providing loans, providing guarantees, money exchange, the issuing or selling of commercial bonds);
- Commercial real estate;
- Sale of stock on the SET; and
- Other businesses as specified in Royal Decrees (e.g. factoring, the buying and selling back of securities).

For the activities listed above, SBT is charged based on gross revenues (i.e. with no deduction of expenditures). The SBT rates vary depending on the type of business. Companies earning income from the above listed businesses must submit an SBT return and pay SBT monthly on or before the 15th of the month following receipt of the income. A person or entity subject to SBT must register itself within 30 days from the date of commencing business.

SBT also applies to gross proceeds from the transfer of immovable property at a rate of 3.3% (inclusive of a municipal tax of 10%); consisting of WHT at 1% on gross proceeds from the transfer and a 2% transfer fee on the appraisal value of the property being transferred.

An exemption from SBT is available in certain cases (i.e. the transfer of an entire business to another company qualifying as an Entire Business Transfer or ‘**EBT**’, under the TRC or in the case of a partial transfer of a business, which also qualifies under the TRC).

The SBT rate of 2.75% applies on insurers and pawnbrokers, while the applicable rate for financial institutions and businesses of a similar nature is 3%, with a special

rate of 0.1% being applied to gross receipts from certain special transactions (e.g. interest income on debt instruments).

8. TAX INCENTIVES

Under the Investment Promotion Act B.E. 2520 (A.D. 1977) and recent Announcements by the Board of Investment No.2/2557 addressing Policies and Criteria for Investment Promotion, the BOI along with the TRD has authority to grant tax and non-tax privileges, respectively, to local companies and foreign companies to promote foreign direct investment in businesses as listed the Announcement.

Some of the types of businesses promoted by the BOI are:

- Agriculture and agricultural products;
- Minerals, ceramics and base metals;
- Light industry;
- Electronics industry and electrical appliances;
- Chemical products, paper and plastics;
- Services and public utilities; and
- Metal products, machinery, and transport equipment.

Currently, businesses promoted by the BOI as listed on the application for investment promotion submitted to the BOI from 1 January 2015 onward are classified into the following six groups: A1 Group, A2 Group, A3 Group, A4 Group, B1 Group, and B2 Group. The main tax privileges granted by the TRD under these groups are:

Group	Exemption of CIT	Exemption of Import Duty on machinery	Exemption of Import Duty on raw or essential materials used in manufacturing export products
A1	8 years (no cap) + merit*	Yes	Yes (1 year)
A2	8 years (cap for 100% of investment which excludes cost of land and working capital) + merit*	Yes	Yes (1 year)
A3	5 years (cap for 100% of investment which excludes cost of land and working capital) + merit*	Yes	Yes (1 year)
A4	3 years (cap for 100% of investment which excludes cost of land and working capital) + merit*	Yes	Yes (1 year)
B1	Merit**	Yes	Yes (1 year)
B2	No	No	Yes (1 year)

* Merit-based incentives cover (i) merit on competitiveness enhancement, (ii) merit on decentralization, and (iii) merit on industrial area development.

** Merit-based incentives only cover (i) merit on competitiveness enhancement, and (ii) merit on decentralization (excluding merit on industrial area development).

Other additional tax privileges granted by the TRD under the BOI programs include:

- Additional tax incentives for SMEs granted by the BOI (under the Announcement of the BOI No. 5/2557 and No.8.2558);
- Additional tax incentives to encourage investment for the year 2017 (under the Announcement of the BOI No. 11/2558); and
- Additional tax incentives for increasing manufacturing efficiency or the use of renewable energy to reduce adverse impact on the environment (under the Announcement of the BOI No. 1/1557).

Industrial Estates

To alleviate the strain on Bangkok's infrastructure and to spread the benefits of development to the countryside, the Industrial Estate Authority of Thailand Act B.E. 2522 (1979) provides assistance and special incentives for investors operating within industrial estates.

There are two categories of industrial estates:

a. Industrial Estate Authority of Thailand Free Zone (IEAT Free Zone)

An IEAT Free Zone is an area designated for the operation of industrial activities, commercial activities or other business for the purpose of economics, national security, public well-being, environmental management or other necessities as prescribed by the IEAT. Goods brought within the IEAT Free Zone are granted tax exemptions from import duty, excise tax and VAT and allows foreign investors to purchase and own real estate.

b. Special Economic Zone (SEZ)

An SEZ is an area designated for industrial activities. Anyone wishing to operate a business in an industrial estate must obtain a permit from the governor of the IEAT. Industrial operators are granted privileges, including the right to own land in the industrial estate area, to obtain work permits for foreign technicians and experts who work for the industrial operator, and to take or remit foreign currency abroad. Additional tax incentives are granted for an investment that is located in the **SEZ** –

including the Thai provinces of Tak, Sa Kaeo, Mukdahan, Songkhla, Trat, Yala, Pattani, Narathiwat.

Other Tax Incentives:

International Business Centers (“IBCs”)

An IBC is a company incorporated under Thai laws that provides (a) management or technical services, or (b) supporting services or treasury centers (**“permitted services”**) to its associated enterprises. In this regard, “associated enterprise” refers to:

- A juristic company or partnership that holds shares in the IBC representing 25% or more of the total registered capital;
- A juristic company or partnership of which the IBC holds shares representing at least 25% of total registered capital;
- A juristic company or partnership in which the juristic company or partnership under (1), above, holds shares in or is a shareholder of 25% of total registered capital;
- A juristic company or partnership that has the power to control or supervise the operation and management of an IBC;
- A juristic company or partnership over which the IBC has the power to control or supervise its operations and management; and
- A juristic company or partnership in which another juristic company or juristic partnership in point (4), above, has the power to control or supervise the operations and management of.

Associated enterprises receiving services from the IBC in Thailand may be located in Thailand or in a foreign country. The IBC is also able to engage in activities approved for an International Trading Center (**“ITC”**). However, there is no corporate income tax exemption or reduction under the ITC initiative, only a reduced flat rate of personal income tax at 15% for expatriate personnel.

Tax incentives granted to IBCs by the TRD for 15 years include:

- A reduction in CIT on all services income and royalty fees earned by an IBC from any associated enterprise, whether incorporated in Thailand or abroad.

Depending on the level of annual expenditure by the IBC in Thailand, the rate of CIT is either 8% for THB 60 million, 5% for THB 300 million, or 3% for THB 600 million. This reduced rate also applies to royalty income defined as income from patents or software copyright together with evidence indicating that the patents or copyright result from research and development undertaken in Thailand by the IBC or by other parties engaged by the IBC (Section 3 and Section 7);

- An exemption for dividends received by the IBC from both domestic Thai and foreign (non-Thai) associated enterprises (Section 14);
- A reduction of the personal income tax rate for expatriates working in the IBC to a flat rate of 15% on gross income and benefits derived from employment (Section 4);
- An exemption from the special business tax (SBT) for gross receipts the IBC receives from lending to associated enterprises (Section 9); and
- Exemption from withholding taxes on:
 - (i) dividend payments from an IBC that are paid from the portion of revenue subject to reduced CIT to an affiliated parent company incorporated under foreign law and having no operations in Thailand. Such a dividend must be received within one year after the IBC has been approved (Section 14); and
 - (ii) interest payments, where the interest is associated with loans taken out by an IBC to on-lend to associated enterprises under the financial management scheme), to a company or juristic partnership incorporated under foreign laws and having no operations in Thailand (Section 14).

To qualify as an IBC and receive tax incentives, the following procedures must be completed:

- i. Apply to and obtain approval from the TRD;
- ii. Provide permitted services to at least one associated enterprise incorporated under foreign law;
- iii. Have paid-up capital of at least THB 10 million (USD 300,000) on the last day of each accounting period;
- iv. Have at least ten knowledgeable and skilled employees (at least five skilled employees in case of a treasury center); and
- v. Incur expenditures paid to recipients in Thailand of at least THB 60 million (USD 1.8 million) each accounting (tax) period.

In addition to the tax incentives granted by the TRD, non-tax incentives granted by the BOI include:

- i. 100% foreign ownership;
- ii. permission to own land,
- iii. work permits for expatriate employees without having to fulfill the regulatory conditions;
- iv. exemption from import duty on machinery used for R&D and training activities; and
- v. exemption from import duty on raw materials and parts used in production for export.

9. STAMP DUTY

Stamp duty applies to any instrument as set out in the TRC. There are currently 28 different types of instruments subject to duty. Any relevant instrument not duly affixed with stamp duty will not be admissible in court. Stamp duty is necessary for the issuing of new instruments or for additions to the value of an instrument, such as an increase in funds under a loan agreement.

As mentioned, stamp duty applies to a range of documents, e.g. 0.1% on leases, hire of work agreements, transfers of shares or debentures, loans (capped at THB 10,000) and the like. Other types of instruments subject to stamp duty include powers of attorney, letters of credit, and bills of lading.

10. PROPERTY / SIGNAGE TAXES

Property Tax

Property taxes are imposed by local tax authorities in Thailand and include a house and land tax and a local development tax. Foreign companies are prohibited from owning land in Thailand unless they obtain permission from the Minister of Interior under the Land Code Act or obtain privileges under the Investment Promotion Act or the Industrial Estate Authority of Thailand Act. Hence, local development tax is not relevant to foreign investors with no land ownership rights.

The owner of a house, building, structure and land used in connection with it are liable to pay an annual house and land tax at the rate of 12.5% of the “annual value” (the yearly estimated rental costs or a similar commercial use of the value of such immovable property). Note that the use of buildings and land for personal purposes exempts the owner from having to pay this tax.

The local development tax is an annual tax imposed on a landowner or a person in possession of land, with the rate depending on the appraised value of the property, as assessed by the local authorities. Certain allowances are granted to the landowner whose land is used for private purposes, e.g. as a dwelling, for raising livestock or for cultivating crops. The rate typically ranges from 0.25% to 0.95%.

Note: The Parliament has approved a new law, Property and Construction Tax, which will repeal the current property tax. Under the new law, the tax will be levied on the assessed value of the property. The new law has not been enacted yet and is expected to enter into force in 2020.

Signage Tax

The signage tax is collected on signage that is set up for commercial purposes. The tax is based on the logo, fonts appearing on the signage as well as the size of such signage. The tax is assessed by a local administrative officer. The return for the signage tax is due by the end of March each year.

11. OTHER INDIRECT TAXES

Customs and Import Duties

Customs duty under the Customs Act B.E. 2469 (A.D. 1926) is regarded as a type of indirect tax where the real burden of paying duty can be passed on to customers in the supply chain. The Customs Department of Thailand is responsible for collecting customs duty from the importation of goods. In certain cases of exportation (as listed in the Customs Tariff) export duty is imposed as well.

Normally, customs duty is calculated by multiplying the value of the goods by the percentage rate of each type of goods as according to value. The value of the goods (or so called “Customs Value”) is (i) CIF price – cost plus insurance and freight fees – in the case of importation or (ii) F.O.B. price – in the case of exportation. For the first stage, the price indicated on the invoice is usually regarded as the value of the goods for customs duty calculation.

It is the responsibility of the importer to arrange for the examination and release of the imported cargo. Additionally, depending on the nature of the imports, and regardless of value, the importers may need to obtain a permit to facilitate clearance of the imports. For certain goods requiring a permit, the relevant permit-issuing agency should be contacted before importation.

Excise Tax

The excise tax is an indirect selective sales tax which is levied on the consumption of certain goods and services such as petroleum products, tobacco, liquor, beer, soft drinks, electrical appliances, vehicles, motorcycles, yachts, cosmetic products, entertainment businesses, etc.

According to the new Excise Tax Act, the excise tax is computed on a retail price or ad valorem basis or both. All goods subject to excise tax remain subject to VAT. The excise tax is collected by the Excise Department and levied at the time of delivery of the goods from factories or at the time that the goods are imported.

12. PETROLEUM TAX

Companies that have been granted licenses as concessionaire companies to explore, produce, and export petroleum (crude oil, natural gas, etc.) under the Petroleum Act (“**PA**”) are subject to tax under the Petroleum Income Tax Act (“**PITA**”) instead of CIT under the TRC.

The petroleum income tax is chargeable on the relevant companies’ net profits from petroleum operations including the transfer of their concession interests and related activities at the rate of 50%. The royalty paid on the revenue from the petroleum sales during a tax year can be offset against the amount of petroleum income tax payable at the year-end. No further tax is levied on the dividends payable to the shareholders or on the profits transferred to the head office by a branch. Net profits for petroleum income tax purposes are computed under the TRC in the same manner as for CIT, with the difference that net losses may be carried forward for ten accounting periods and interest is not a deductible expense.

An annual petroleum income tax return must be filed at the Revenue Department within five months of the closing date of each accounting period. Tax penalties and surcharges on corporate income tax offenses are applicable to cases of late filing or for failure to file.

13. INHERITANCE AND GIFT TAX

The inheritance tax applies to a recipient of assets from an estate of a deceased individual, on that portion of the assets that is in excess of THB 100 million (approximately USD 3 million).

Taxable persons

- Thai nationals;
- Individuals who do not have Thai nationality but reside in Thailand in line with immigration laws;
- An individual who does not have Thai nationality receiving assets considered to be situated in Thailand;
- A juristic person registered or incorporated under Thai laws;
- A juristic person having Thai national(s) who hold shares equivalent to more than 50% of the paid-up share capital at the time the right to receive assets from the estate has been stipulated; and
- A juristic person whereby more than 50% of the control is held by Thai national(s).

Taxable Assets

There are five types of assets subject to inheritance tax, including:

- Immovable property;
- Securities as defined under Thai law governing securities and the securities markets;
- Money that has been deposited, or other forms of money, where the owner of the inheritance has the right to withdraw it or claim it from the financial institution or person who accepted the deposit;
- A registered vehicle; and
- Other assets as specified by a Royal Decree.

Tax Rates

In general, the rate of tax applicable to those assets received by a non-lineal heir

in excess of THB 100 million is 10%. However, if the recipient is a descendant or parent of the deceased, the tax rate is reduced to 5%.

Gift Tax

The gift tax took effect on 1 February 2016 and applies to any individuals receiving any assets or amount from their parents, descendants, or spouses, or any other persons who are not their parents, descendants, or spouses. The tax will be collected based on the value of the assets or amount exceeding the thresholds set out below.

Tax Exemption

- Any amount or assets received from parents, descendants, or spouses in the amount or value not exceeding THB 20 million (USD 606,000) within any tax year*.
- Any amount received from other persons who are not parents, descendants, or spouses in the amount not exceeding THB 10 million (USD 303,000) within any tax year.
- Any amount that any person intends to give towards charitable purposes for the benefit of religious and/or educational institutions, or in the public interest.

Note: *Only the transfer of ownership or possessory right of a real property to a legitimate child is qualified for such exemption. In this case, the parents who transfer the ownership or possessory right of the real property will be liable for the tax.

Tax Rates

- 5% of the value of the asset exceeding THB 20 million (USD 600,000) for the assets or money received from parents, descendants, or spouses.
- 5% of the value of the asset exceeding THB 10 million (USD 300,000) for the assets or money received from any person other than parents, descendants, or spouse.

14. TAX ADMINISTRATION

Tax Year

A company can choose any accounting period that does not exceed 12 months. Once chosen, the accounting period cannot be changed without written approval from the TRD.

Tax Payment – Currency

In order to comply with the TRC, transactions using foreign currency must be converted into Thai Baht for tax payment purposes.

Taxes payable to the TRC (e.g. income tax, VAT, SBT, and stamp duty) must be paid in Thai Baht. In principal, for every transaction made in a foreign currency, the foreign currency must be converted into Thai Baht at the time that the transaction occurs by using the average selling rate as announced daily by a licensed commercial bank in Thailand or the daily reference rate prescribed by the Bank of Thailand.

Tax Filing and Payments Dates

Thailand applies a self-assessment system under which the taxpayer must declare income to a revenue office. The tax authorities can challenge the amount of tax remitted and may conduct a tax audit.

A company must make two payments of CIT: (i) at mid-year and (ii) at year-end. The mid-year or half-year tax is calculated on an estimated 50% of the full-year tax basis and the half-year CIT form must be filed and the estimated taxes remitted within two months of the end of the first six months of the accounting period. If the estimated profit forecast is lower by 25% of the actual year-end profit, the company will be subject to a monthly surcharge of 1.5% plus the outstanding tax amount.

The company must also file annual income tax returns and remit taxes within 150 days from the closing date of the company's accounting period. Late filing will result in a fine of THB 2,000 (USD 60) and a monthly surcharge of 1.5% on the outstanding amount, not exceeding the total tax payable.

Consolidated Returns

Thai law does not contain any provision for the filing of a consolidated corporate income return, nor is provision made for the transfer of losses between related parties. Each company is required to file a separate tax return.

Rulings

A taxpayer may request a private letter ruling on a tax issue from the Legal Division of the TRD. Tax officials generally follow such rulings, but they are not binding for the purposes of legal proceedings and are only used as guidelines.

Thin Capitalization

There are no thin capitalization rules in Thailand. However, for a taxpayer to obtain a BOI certificate on a promoted business or to obtain a foreign business license from the MOC, the taxpayer must maintain a debt-to-equity ratio of 3:1 (for BOI projects) or 7:1 (under the Foreign Business Act), including the minimum registered capital required by the authorities.

Transfer Pricing

Under Thailand's developing transfer pricing regime, transactions between related parties must be based on market value. The TRC has specified that if the taxable company in Thailand has transferred assets, provided services, or provided loans to others without receiving any remuneration in return or with remuneration lower than market value without justifiable grounds, the TRD has the power to adjust the value of the transaction to be at market value.

However, there is no clear definition of "market value" under the TRC; the definition of market value can be referred to in the Instruction of the TRD No. Paw

113/2545 (“**Paw 113**”) issued in 2002, the guidelines for the TRD in calculating the market value of transactions of the taxable company based on OECD rules.

Under Paw 113, market value (or so called “arm’s length pricing”) is the price that would be charged between non-related parties for the sales of assets, provision of services, or lending of money.

Pricing methods acceptable to TRD officers, and consistent with the transfer pricing guidelines as provided by the OECD, are as follows:

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method; and
- Other methods; in the case that the above methods cannot be applied, including the profit-split method and the transactional net margin method.

Apart from the power of a TRD officer to adjust the transaction price to be at market value, they also have the power to re-assess tax and disallow expenses that are extravagant, not paid for business purposes in Thailand, or are not in line with the benefits that should be received from payment.

Advanced pricing agreements (“**APAs**”) are available. However, based on current practice, the TRD is not willing to accept applications for unilateral APAs. Bilateral agreements may be applied for under the mutual agreement procedure of the relevant tax treaty. The TRD has issued a booklet providing guidelines for bilateral APAs.

The TRD issued draft TP regulations in January 2019 and it is expected that new regulations will be issued and passed in this year. Seven key elements of new the transfer pricing regulations are as follows:

i. Definition of Related Companies

Related companies qualify as a group if they are linked directly or indirectly by capital, management or control and shareholding. The definition of “related companies” in the TRC47, it states that:

“The companies are related if one company participates directly or indirectly in management, control, or at least 50% in the capital/ shareholding of the other company”.

Under the TRC47 “relationship/transaction” is defined as a commercial relationship or financial relationship between two or more parties. The related company’s relationship marks certain transactions between such related entities as controlled transactions. Controlled transactions are compared with uncontrolled transactions. If a related company performs a comparable transaction with a related company as well as an unrelated company, an internal uncontrolled transaction will be used for comparison purposes, i.e. a transaction between a related and unrelated company.

ii. TP Adjustments

The TRD is empowered to make adjustments to income and expenses for payments between related companies. This is in cases where related companies engage in transactions below market rates considered typical of those between independently operating companies. If artificial transferring of profits is suspected then TP audit officers, as empowered by the Ministerial Regulation, can adjust the value of such transactions so as to be at market rates and assess additional income taxes on any additional taxable profit resulting from such adjustment. Note that pursuant to some double taxation treaties and/or domestic rules in the other country, an offset or other deduction for the income shifted may be permitted. This type of corresponding adjustment should be carefully researched, and appropriate actions taken as needed to utilize such offsets, where appropriate.

iii. TP Disclosure Forms and Submission Deadlines

The new law establishes reporting requirements for companies with income exceeding THB 200 million (USD 6 million) for each accounting period. These companies must submit a Transfer Pricing Disclosure Form (“**TPD**”) detailing the name and information of the related companies and the total amounts of the related company’s transactions. This form is attached to the company’s annual tax return, which is normally due within 150 days of the company’s fiscal year-end, normally the end of May for calendar-year based taxpayers.

iv. TP Reporting Requirements and the Burden of Proof

To monitor TP policies of multinational companies, the TRD can demand that full documentation for any TP transaction be provided to it at any time within five years from the submission date of the TPD form. The TP audit officer may issue a notice to the related company to provide a Transfer Pricing Report (“TPR”) including supporting documents in preparation for the audit. In this regard, the TRD puts the onus of proof on the TRD officers. This, however, may switch to the taxpayer who must then provide evidence that their TP positions are correct (using arm’s length conditions). TP is driven by specific facts and circumstances and involves comparisons with similar arm’s length transactions. The taxpayer is therefore more likely to hold the relevant information to support its pricing than the TRD.

v. Statute of Limitations and TP Audits

The statute of limitations provides five years from the submission deadline of the TPD form in which TP audit officers can undertake tax reassessments. Thus, documentation must be kept for five years and the taxpayer can make changes to related company transaction values within this time as well. Once a company receives a notice from a TP audit office about an upcoming audit, it has 60 days to comply with such a notice. A grace period extension of up to 120 days can be granted by the TRD for a total compliance time of up to 180 days from the first notice to provide the TRD with a formal TP report.

vi. Right to Reclaim Excess Taxes Paid

If a TP audit officer amends the income or expenses of a related company resulting in the over-payment of taxes, the related company has the right to claim the excess amount within three years from the last tax return submission deadline. Alternatively, this can occur within 60 days from the receipt of a notice of the amendment by TP audit officers according to the regulations prescribed by the TRD Director-General.

viii. Penalties and Surcharges

The TP law prescribes penalties for non-compliance. The TRD may impose penalties of up to THB 200,000 (approximately USD 6,000) for failing to comply with its documentation requirements. The new TP law does not require contemporaneous documentation be in place prior to the taxpayer filling the tax return. Nonetheless, subsequently prepared documentation may not provide adequate protection against penalties in the event that the TRD disagrees with the TP methodology used. Penalties for TP adjustments will be a percentage of unpaid tax. The surcharges will be 100% to 200% of the tax shortfall, and interest on late payment of taxes of 1.5% per month may be imposed. This is capped at 100% of the tax shortfall.

Statutory Limitations

Taxpayers are required to maintain records for a five-year period. Tax authorities may conduct a tax audit on the books and records of a company within two years of the date the annual CIT return is submitted. The period may be extended to five years if tax avoidance or evasion is suspected. If a tax return has not been submitted, the statutory period for the assessment of tax liabilities is ten years. A statute of limitations for the collection of tax is not necessary because the tax authorities have the power to seize a taxpayer's assets if the taxpayer fails to pay tax within 30 days after receiving an assessment notice, regardless of whether the taxpayer disagrees and intends to appeal.

Double Taxation Relief

Thailand has an extensive tax treaty network. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other, and protect companies resident in one country from discriminatory taxation in the other jurisdiction. Thailand's treaties generally contain OECD-compliant exchange of information provisions.

Thailand has concluded tax treaties with 61 countries as follows:

- | | | | |
|--------------------|--|-----------------|------------------------------|
| 1. Armenia | 17. Finland | 31. Lao PDR | 46. Seychelles |
| 2. Australia | 18. France | 32. Luxembourg | 47. Singapore |
| 3. Austria | 19. Germany | 33. Malaysia | 48. Slovenia |
| 4. Bahrain | 20. Great Britain and Northern Ireland | 34. Mauritius | 49. South Africa |
| 5. Bangladesh | 21. Hong Kong | 35. Myanmar | 50. Spain |
| 6. Belarus | 22. Hungary | 36. Nepal | 51. Sri Lanka |
| 7. Belgium | 23. India | 37. Netherlands | 52. Sweden |
| 8. Bulgaria | 24. Indonesia | 38. New Zealand | 53. Switzerland |
| 9. Cambodia | 25. Ireland | 39. Norway | 54. Taipei |
| 10. Canada | 26. Israel | 40. Oman | 55. Tajikistan |
| 11. Chile | 27. Italy | 41. Pakistan | 56. Turkey |
| 12. China, P.R | 28. Japan | 42. Philippines | 57. Ukraine |
| 13. Cyprus | 29. Korea | 43. Poland | 58. United Arab Emirates |
| 14. Czech Republic | 30. Kuwait | 44. Romania | 59. United States of America |
| 15. Denmark | | 45. Russia | 60. Uzbekistan |
| 16. Estonia | | | 61. Vietnam |

Foreign Tax Credits

Thailand grants a foreign tax credit for tax paid on foreign income, which may be set off against Thai income tax, up to the amount of Thai tax payable.

Anti-avoidance Rules

There are no anti-avoidance provisions in the TRC. There are also no General AntiAvoidance Rules (“**GAAR**”) in Thailand.

15. ACCOUNTING AND FINANCIAL REPORTING

Financial Statements

Financial statements must be prepared in accordance with Thailand Accounting Standards. The Thai Accounting Standards are based on the International Financial Reporting Standards and is used as the basis for preparing audited financial statements. For areas unaddressed by Thai Accounting Standards, IAS, IFRS and US GAAP may be consulted.

Audit Requirements

The board of directors of both private and public limited companies must prepare a balance sheet at least every 12 months containing a summary of the assets and liabilities of the company and a profit and loss statement for the fiscal year. The board must have the balance sheet and profit and loss statement examined by an auditor appointed by the general shareholders' meeting of the company, and the statement must be submitted to the general meeting for approval within four months of the end of the fiscal year. The financial statement must be submitted to the Ministry of Commerce within one month from the day the general meeting approves the audited financial statements.

Public limited companies must disclose the following information in their annual report: company name, location of head office, type of business, details of shares issued and shares held in subsidiaries (if any), details of directors regarding any conflict of interest in service contracts entered into by the company during each fiscal year and their shareholding in the company or in subsidiaries and any changes during the year.

A branch, regional office or representative office must have its books and records maintained by a Thai accountant and audited by a registered Thai auditor once a year. It must submit an annual financial statement to the MOC within five months from the day the accounts are closed.

Financial Year-end

The accounting period is 12 months except in the case of a newly established company that is newly, when it can be less than 12 months. Normally, the accounting period in Thailand ends on 31 December of every fiscal year. However, it is not obligatory for the company's tax accounting period to end on 31 December of each fiscal year.

Reporting Currency

The statutory reporting currency is Thai Baht.

16. DFDL TAX SERVICES

Tax Advisory

- International tax planning and structuring services
- Tax treaty planning and tax treaty relief assistance
- Tax due diligence, M&A, and restructuring services
- Tax review of contracts and transactions
- Assistance in obtaining tax rulings

Transfer Pricing

- Preparation of transfer pricing documentation
- Transfer pricing advisory
- Tax Efficient Supply Chain Management (“TESCM”)
- Transfer Pricing audit support and defense strategies
- Transfer Pricing policy implementation, review and remediation
- Advanced Pricing Agreement (“APA”) and MAP applications

Tax Compliance

- Corporate tax compliance review
- Preparation and review of tax returns
- Personal income tax compliance, review and related expatriate tax services

Tax Controversy

- Assistance in tax audits
- Litigation on tax and customs

Public Sector Advocacy

- Government consultancy
- Tax policy advocacy

17. OUR PEOPLE

At DFDL, our most valuable assets are our people. We are dedicated to hiring, developing and retaining experienced and efficient advisers. Key people who comprise our Thailand Team are:



JACK SHEEHAN

Partner and Head of Regional Tax Practice

Jack is a Partner and heads the Regional Tax Practice at DFDL. He has extensive experience in advising clients on local and international tax matters in Asia. Jack specializes in providing advice on international tax planning, corporate tax structuring, tax controversy, inbound and outbound tax planning, M&A, transfer pricing and tax efficient supply chain structuring.

Jack was shortlisted as Asia Tax Leader for 2019 and 2018 and has been listed as a leader for tax controversy by International Tax Review. He is also listed as a leading individual for tax in the 2019 rankings of the Legal 500.

Jack is regularly featured as a speaker and writer on tax in Asia and has given lectures on Asian and international tax at a number of leading bodies, including the International Fiscal Association (“IFA”), the International Bureau of Fiscal Documentation (“IBFD”), the World Bank, and leading universities across Europe and Asia.

Jack holds a Master’s Degree in Tax Law from the University of Oxford and is a Fellow of the Association of Chartered Certified Accountants.

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Jonathan has over 20 years of experience in the Asia-Pacific, specializing in cross-border corporate and personal investment and tax planning with a particular focus on US, Thailand and Japanese investments. He typically advises international businesses, high net worth individuals, trustees, insurers and financial institutions. Jonathan has supported numerous individual clients with US tax amnesty and Streamline filings and is a recognized expert in Foreign Account Tax Compliance Act (FATCA), while also providing several well-known multination corporate clients with international investment planning and structuring. He is a licensed California attorney and has been a licensed USCPA (Hawaii) for more than 20 years. He is a frequent lecturer at several universities and speaker at seminars globally.

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Patipan is a Senior Tax Manager at our office in Bangkok. He specializes in providing advice on Thai tax matters, international tax planning and cross-border tax issues, transfer pricing, and international business centers (IBCs) in Thailand.

He has experience in advising multinational clients on Thai tax matters including on tax planning and structuring across a variety of industries and has supported numerous high net worth individual clients on private client tax matters.

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Pawarun is a Tax Adviser based in our Bangkok office. She graduated with a Degree in Law, Major in Business Law. In 2018, she acquired her Lawyer's License from the Lawyers Council of Thailand. She has experience advising international and Thai clients on corporate matters, due diligence reviews, tax advisory and planning.

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DFDL TAX GUIDE THAILAND

Written by experts from DFDL with information on:

Thailand Regulatory System • Setting up Business in Thailand • Accounting / Financial Reporting • Foreign Investment Law • Special Economic Zones • Compliance Requirements • Taxation • and more.

About Us

DFDL is the first leading international law firm specialized in emerging markets with pan regional legal and tax expertise developed throughout the Mekong region (Cambodia, Lao PDR, Thailand, Myanmar, Vietnam), Singapore, Bangladesh, Indonesia and other developing markets, with a dedicated focus on other Southeast Asian jurisdictions, South Asia and the Middle East.

With a team of over 150 foreign and local advisers working closely together within a fast-growing network of 13 offices, including affiliated firms, in Asia, we provide personalized and cost-effective legal, tax and consulting services and solutions with particular expertise in:

- Banking and Finance
- Corporate and Mergers & Acquisitions
- Employment
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Taxation

Founded in 1994, DFDL has acquired an outstanding reputation for providing seamlessly integrated and solution-oriented legal and tax services to establish, structure and protect our clients' business interests. DFDL is also actively involved, in tandem with local jurisdiction stakeholders, in developing the legal and regulatory environment of the emerging markets in which we operate.

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