



Expat Counsel

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TAXES IN THAILAND Part XII: Who has to pay? — part 1



We've received many questions from foreigners in Thailand, asking whether they need to pay taxes for work done in Thailand but for which the payment comes from abroad.

Here's a fictional example of what I mean. Jurgen is Danish and is 52 years of age. He lives full time in Chiang Mai on a retirement visa and is a software engineer. Most of his days are spent in his study, at a house on a quiet street. There he writes software for a company in Denmark and supervises other engineers who work for him. All of this is done on the internet. Other than the fact that he lives in this country, Jurgen's work has nothing to do with Thailand. His salary is paid by the company into his account in Denmark.

Jurgen loves Thailand and its culture. He never leaves Thailand, except to visit his grown children in Europe for two weeks a year.

Obviously, Jurgen could be doing this anywhere in the world. And he will swear to you that he doesn't need to pay taxes on his income because he knows five others who are doing something similar.

Does Jurgen owe Thai income tax on his income? Yes. According to Section 41 of Thailand's Revenue Code, taxes are due in Thailand on income from "work or any activity" done in Thailand. Because Jurgen does the work in Thailand he owes Thai taxes on it.

But there's something else to keep in mind. In Jurgen's case, because he is Danish, we have to take into consideration the treaty for the avoidance of double taxation between Thailand and Denmark. This particular treaty says that only one of the two countries can tax Jurgen for work he does. Which one? The treaty provides that it's the state in which the taxpayer is resident that gets the taxes. Since Jurgen's residence, defined as presence for 180 or more days a year, is Thailand, he would have to pay his taxes in Thailand.

There's yet another issue. Jurgen is in Thailand on a retirement visa. The terms of a retirement visa provide that one may not work, even part time. If he violates this he's exposed to the penalties from Section 75 of the Thai Immigration Act, BE 2522 (1979). In Jurgen's case this could mean penalties of up to a year in jail and a fine of up to 10,000 baht. Likewise, under Section 36 of the Immigration Act, Jurgen's retirement visa could be revoked.

Of course, it is practically impossible for anyone, including the Thai tax authorities, to know whether Jurgen is working in Thailand — he doesn't have a formal place of work in Thailand and isn't paid in the Kingdom. So lots of people do what Jurgen is doing and nobody complains much. But you should be aware that what he's doing does trigger tax obligations.

How would Jurgen make his work tax-compliant in Thailand?

Well, he couldn't do it on a retirement visa. He could do it by forming a company. The Thai company would then hire Jurgen as an employee and he would get a work permit in Thailand. The company would owe Thai corporate tax on what it was paid by the company in Denmark. The local company would pay Jurgen a salary, and Jurgen would be responsible to pay Thai income taxes on this.

There is a harsh reality to forming the company. First, for a Thai company such as Jurgen would have to form, its paid-in capital must be two million baht to be eligible to get a work permit for him. Jurgen would, therefore, have to invest this amount to get the company going. Also, in many parts of Thailand, for Jurgen to get a work permit from the company, it would have to employ at least four Thais. For an operation like Jurgen's where he does not need employees, this may add an unneeded expense. ■

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