

Inheritance tax issues worth noting

Whenever Thai authorities reconsider the tax system, an inheritance tax is inevitably considered. The introduction of this tax, however, has continually been rejected by wealthy people who have considerable influence at the level of policy control. As a result, Thailand does not have specific laws on inheritance or gift taxes at present.

Surprisingly, this has not always been the case. In fact, Thailand collected inheritance tax beginning in 1933 but it was cancelled in 1944 as the revenues were too low in relation to the cost of collection.

Although Thailand has personal income tax, income and property acquired through inheritance are exempt from this tax. If the legatee subsequently sells the inherited properties, there is also an exemption provided in some cases. We discuss below the tax on income or properties acquired by inheritance.

1. Income or properties acquired by inheritance. Thailand imposes personal income tax on income earned by an individual. Generally, any income or properties received or acquired by an individual are subject to personal income tax.

However, income or properties acquired by inheritance are exempted from personal income tax, as per Section 42 (10) of the Thai Revenue Code.

2. Sale of properties acquired by inheritance. When the legatee sells movable properties acquired by inheritance, income derived from this sale will also be exempted from Thai

income tax. However, this exemption does not include the sale of ships or vessels of six tons or over, steam launches on motorboats of five tons or over, or floating houses, as per Section 42 (9) of the Thai Revenue Code.

Regarding the sale of immovable properties acquired by inheritance, capital gains derived from the sale are subject to Thai income tax at the progressive rate of 5% to 37%. However, an exemption from personal income tax on the sale is granted to income from the sale of immovable properties outside Bangkok Metropolis, municipalities, sanitation districts, Pattaya Township, or any local authority organised by a specific law, provided that the exemption is limited to the amount of sale that does not exceed 200,000 baht for the entire tax year. The relevant legal text is Clause 2 (17) of the Ministerial Regulations No. 126 (B.E. 2509) issued under the Revenue Code governing exemption from revenue taxes.

3. Other forms of giving movable properties to an heir. The Revenue Code also grants an exemption from income tax on income received in the following cases:

- ◆ Maintenance income derived under moral obligations, as per Section 42 (10) of the Revenue Code.
- ◆ Income or property given to children who still study, parents, or a spouse is not subject to Thai income tax.
- ◆ Gifts made in a ceremony or on occasions in accordance with established customs, as per Section 42 (10) of the Revenue Code.

Ceremonial gifts made in accordance with established customs, such as New Year, Christmas, birthday, celebrating a new home, or having a baby, are also exempted from Thai income tax, regardless of whether or not the recipient is a relative.

It is important to note that the gift should be given to the recipient on or near the date of the ceremony or occasion for the recipient to be entitled to the exemption under this provision.

If the gift is given a long time after the occasion, there is a risk that it will be deemed as taxable income of the recipient.

4. Income tax on transfer of an immovable property. A father or mother is exempt from Thai income tax from transfer of ownership or possessory right in an immovable property to his/her lawful child without any consideration. This exemption does not cover the transfer of ownership or possessory right in an immovable property to an adopted child (as per Clause 2 [18] of the Ministerial Regulations No. 126 [B.E. 2509] Issued under the Revenue Code Governing Exemption from Revenue Taxes).

This exemption also does not cover a case where a lawful child transfers an immovable property to his or her father or mother.

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