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# Thailand

## International Estate Planning Guide

Individual Tax and Private Client Committee

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## **I. Will and disability planning documents**

### *A. Applicable law*

In Thailand, the main governing law for will issues is Book 6 (Succession) in the Civil and Commercial Code of Thailand (the 'CCC').

### *B. Legal capacity*

#### 1. BEING A TESTATOR

Based on section 1654 of the CCC, the capacity of the testator must be considered only at the time when a will is made. If the will is made by a person with no civil capacity, such as an incompetent person, or with a limited civil capacity, the will is void. However, by virtue of the Supreme Court Judgment No 177/2528 (AD 1985), a quasi-incompetent person can make a will.

According to the CCC, the legal requirements for full civil capacity are as follows:

- any person who has attained 15 years of age can make a will; and
- the mental status of this person is healthy.

#### 2. SERVING AS A WITNESS

Many types of wills require witnesses. In accordance with sections 1670 and 1653 of the CCC, the following persons cannot act as witnesses to attest a will:

- minors;
- persons of unsound mind or persons adjudged quasi-incompetent;
- persons who are deaf, dumb or blind; and
- a beneficiary in the will and his or her spouse.

### *C. The formality of a will*

Based on Book 6 on Succession in the CCC, there are five types of will as follows:

#### 1. IN WRITING

A will must be made in writing, stating the date at the time of making of the will, and including the signature of a testator before two witnesses who are present at the same time and their names certifying the signature of the testator.

No erasure, addition or other alteration in such a will is valid, unless made in the same way as stated above.

#### 2. HANDWRITTEN WILL

A handwritten will is a will that is written entirely by the testator, and stating the date and his or her signature. No erasure, addition or other alteration in such a will is valid, unless made by the testator's own hand and signed by him or her.

#### 3. WILL BY PUBLIC DOCUMENT

A will by public document is a will that the testator must declare testamentary intention before a district office chief before at least two witnesses. In this approach, the following steps must be complied with:

- step 1: the testator must declare to the district office chief before at least two other persons as witnesses present at the same time what dispositions he or she wishes to be included in this will;
- step 2: the district office chief must note down such a declaration of the testator and read it to the testator and witnesses;

- step 3: the testator and witnesses must sign their names after having ascertained that the statement noted down by the district office chief corresponds with the declaration made by the testator; and
- step 4: the statement noted down by the district office chief shall be dated and signed by such an official who shall certify under his or her hand and seal that the will has been made in compliance with the foregoing steps 1–3.

No erasure, addition or other alteration in such will is valid, unless signed by the testator, witnesses and district office chief.

#### 4. WILL BY SECRET DOCUMENT

A testator can also make a will by secret document. The requirements for a will by secret document are as follows:

- the testator must sign his or her name on the document;
- the testator must close up the documents and sign his or her name on the document;
- the testator must produce the closed document before the district officer chief and at least two other persons as witnesses, and declare to all of them that it contains the testamentary dispositions of the testator, and if the testator has not written with his or her own hand the whole text of the document, the testator must state the name and domicile of the writer;
- after the district office chief has noted down on the cover of the document the declaration of the testator and the date of the production, and has affixed his or her seal thereupon, the district office chief, testator and witnesses must sign their names thereon; and
- no erasure, addition or other alteration in such a will is valid, unless signed by the testator.

#### 5. ORAL WILL

An oral will is a will made under an exceptional situation, such as imminent danger of death, or during an epidemic or war.

For this purpose, the testator must declare his or her intention regarding the dispositions of the will before at least two witnesses present at the same time. After that, such witnesses must appear without delay before the district office chief and state before him or her the dispositions that the testator has declared to them orally, as well as the date, place and exceptional circumstances under which the will was made. Then, the district office chief shall note down the statement of the witnesses and the two witnesses shall sign the statement or, failing that, may make an equivalent mark to a signature only by affixing a fingerprint certified by the signatures of two witnesses.

## II. Estate administration

### A. Overview of administration procedures

After a decedent's death, someone must initiate administration of the estate. Where a decedent has left a valid will naming an executor or a person nominated for the purpose in the will, such a person will be in charge of the administration of the estate. Under the CCC, a testator may appoint one or more persons to be administrators of the estate.

If the decedent has not named an executor or person nominated for the purpose in the will, the heirs, stakeholders or public prosecutor may apply to the court to appoint an administrator of the estate.

### *B. Intestate succession and forced heirship*

Under section 1629 of the CCC, there are only six classes of statutory heir, as follows:

1. descendants;
2. parents;
3. brothers and sisters of full blood;
4. brothers and sisters of half blood;
5. grandparents; and
6. uncles and aunts.

The surviving spouse of a decedent is always an heir and entitled to the same share as an heir in the degree of descendants.

It should be noted that if any heir of the higher class survives or represents in a class as specified above, the heir of the lower class has no right at all to the estate of the deceased.

### *C. Marital property*

According to section 1474 of the CCC, marital property consists of: (1) property acquired during marriage; (2) property acquired by either spouse during marriage by a will or a gift made in writing if it is declared by such a will or document of gift to be marital property; and (3) interest of separate property.

However, under section 1471 of the CCC, property owned by a husband or wife before marriage, property for personal use, property acquired by either spouse during marriage through a will or gift, and traditional Thai engagement gifts are not marital property.

## **III. Trust and other planning structures**

### *A. Domestic trusts*

According to section 1686 of the CCC, trusts cannot be created by will or by any juristic act, unless by virtue of provisions of law of a trust creation; however, a trust can be created under the Trust for Transaction in Capital Market Act BE 2550 (AD 2007).

The following provisions of the Trust for Transaction in Capital Market Act BE 2550 (AD 2007) state clearly that the only trusts created under Thai law are trusts set up for the benefit of some capital market transactions, and they must be set up by a juristic person.

Trusts created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have no effect whatsoever, and are not effective, unless by virtue of the provisions of the law of trust creation.

- Section 4 provides that a trust may be created for the benefit of transactions in the capital market as specified in the notification of the Securities and Exchange Act (the 'SEC') in relation to any of the following transactions:
  - the issuance of securities under the SEC;
  - securitisation under the Emergency Decree on Special Purpose Juristic Persons for Securitization; and
  - other transactions that are supportive or beneficial to capital market development.
- Section 12 provides that a settlor shall be any of the following juristic persons:
  - a company issuing securities under the SEC;
  - an originator under the Royal Enactment on Special Purpose Juristic Persons for Securitization; and
  - a juristic person having the qualifications specified in the notification of the SEC.

### *B. Foreign trusts*

According to the Act on Conflict of Laws, BE 2481 (AD 1938), a testator may make a will according to the form prescribed by the law of nationality or the law of the country where the

will is made. The effects and interpretations of a will are governed by the law of domicile of the testator at the time of the testator's death.

Therefore, if the law of domicile of the testator at the time of the testator's death allows an individual to create a trust, the will that creates the trust can be recognised and effected in Thailand (Supreme Court Judgment No 6524/2561).

## IV. Taxation

### A. Inheritance tax

The Inheritance Tax Act BE 2558 (AD 2015) was enacted to govern inheritance tax in Thailand. According to section 11 of the Inheritance Tax Act, the following persons who have received an inheritance shall be liable to pay inheritance tax:

- a person of Thai nationality;
- a natural person of non-Thai nationality but having a domicile in Thailand according to the law on immigration; and
- a person of non-Thai nationality but receiving an inheritance that is situated in Thailand.

In the case of a juristic person, the juristic person that is registered in Thailand, or established under Thai laws, or more than 50 per cent of its registered capital is held by a person(s) of Thai nationality, or more than half of its person(s) with managerial power are Thais, shall be considered as a person of Thai nationality under this act.

#### 1. TAX BASE

Section 12 of the Inheritance Tax Act provides that if the aggregate value of inheritance that is deducted by the amount of liabilities assumed from such an inheritance received by a receiver from each deceased receiver is *more than 100m Thai baht*, such receiver shall pay tax on the inheritance in the excess of *100m baht*.

In addition, according to section 15 of the Inheritance Tax Act, the calculation of the value of the assets shall be based on the price or the value receivable on the date of receipt of such assets through inheritance.

#### 2. TAX RATES

According to section 16 of the Inheritance Tax Act, the inheritance tax rate is ten per cent on the excess of the aggregate value of inheritance. However, if a person receiving an inheritance is an ascendant or descendant, inheritance tax rate is five per cent.

### B. Gift tax

In 2015, the Revenue Code was amended with the provisions of gift tax. Gifts that are subject to tax under the Revenue Code can be divided into two main types: a gift of movable properties and a gift of immovable properties.

#### 1. GIFT OF MOVABLE PROPERTIES

Gifts of movable properties are divided into two main types: persons receiving a gift of movable properties from their parent, descendant or spouse; and persons receiving a gift of movable properties from other people who are not their parent, descendant or spouse.

- i. The tax rate for a gift of movable properties from a parent, descendant or spouse shall be five per cent on the portion of the aggregate gift's value that exceeds 20m baht of each tax year.
- ii. The tax rate for a gift of movable properties from other people who are not the taxpayer's parent, descendant or spouse shall be five per cent on the portion of the aggregate gift's value that exceeds 10m baht of each tax year.

## 2. GIFT OF IMMOVABLE PROPERTIES

The only taxpayer under this type of gift tax is the parent who transfers the ownership or the possessory right of the immovable properties to his or her child, excluding an adopted child.

The tax rate for the gift of immovable properties shall be five per cent on the portion of the aggregate gift's value that exceeds 20m baht.

### C. Tax and fee for real estate transfer

#### 1. TRANSFER FEE

According to Thailand's Land Code, any transfer of real estate shall be subject to a transfer fee at the rate of two per cent of the appraised price. In the case that there is no agreement on whether each of the seller or buyer shall be responsible for the transfer fee, section 457 of the CCC shall be taken into consideration, which is that the cost of the transfer fee shall be borne equally by the seller and buyer.

#### 2. SPECIFIC BUSINESS TAX

According to sections 91/1 and 91/2(6) of the Revenue Code of Thailand, the sale of real estate shall be subject to a special business tax at the rate of 3.3 per cent of the appraised price or the sale price, whichever is higher.

#### 3. STAMP DUTY

A transfer of real estate shall be subject to stamp duty at the rate of 0.5 per cent of the appraised price or the sale price, whichever is higher, which is borne by the seller. Nevertheless, in the case that the specific business tax is paid, the stamp duty for the sale of such a condominium unit is exempt.

#### 4. WITHHOLDING TAX

Capital gains derived from the sale of real estate are considered to be accessible income under section 40(8) of the Revenue Code of Thailand; therefore, such capital gains shall be withheld by the Land Department at the time of the registration of the sale or the transfer of ownership of real estate.

With regard to personal income tax, withholding tax is calculated and based on the period of the real estate holding and personal income tax rates in accordance with provisions of the Revenue Code of Thailand.

### D. Land and building tax

#### 1. TAX BASE

The calculation of tax shall be based on the total assessed value of the land or building and shall be in accordance with the provisions stipulated in the ministerial regulation.

The assessed value of the land or building shall be based on the assessed value stipulated by the Department of Land.

#### 2. TAX RATE

Tax rates can be classified by the types of uses, that is, agricultural use, residential use, commercial use and no use of property.

##### a. Agricultural use

The land or building is owned by an individual:

<i>Tax year</i>	<i>Value of the land and building (million baht)</i>	<i>Tax rate</i>
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2020–2022	No limitation	Exemption
2023 onwards	0–50 More than 50	Exemption Not exceeding 0.15

The land or building is owned by a juristic person:

<i>Tax year</i>	<i>Value of the land and building (million baht)</i>	<i>Tax rate (%)</i>
2020–2021	Not exceeding 75	0.01
	More than 75 but not exceeding 100	0.03
	More than 100 but not exceeding 500	0.05
	More than 500 but not exceeding 1,000	0.07
	More than 1,000	0.10
2022 onwards	Value after deducting 50 million	Not exceeding 0.15

b. Residential use

Both the land and building are owned by an individual, and such an individual's name appears in the house registration:

<i>Tax year</i>	<i>Value of the land and building (million baht)</i>	<i>Tax rate (%)</i>
2020-2021	Not exceeding 25	0.03
	More than 25 but not exceeding 50	0.05
	More than 50	0.10
2022 onwards	Value after deducting 50	Not exceeding 0.3

The building only is owned by an individual, and such an individual's name appears in the house registration:

<i>Tax year</i>	<i>Value of the land and building (million baht)</i>	<i>Tax rate (%)</i>
2020–2021	Not exceeding 40	0.02
	More than 40 but not exceeding 60	0.03
	More than 60 but not exceeding 90	0.05
	More than 90	0.10
2022 onwards	Value after deducting 10 million	Not exceeding 0.3



The land or building is used for a residence, for example, the second home where the owner's name does not appear in the house registration:

<i>Tax year</i>	<i>Value of the land and building (million baht)</i>	<i>Tax rate (%)</i>
2020–2021	Not exceeding 50	0.02
	More than 50 but not exceeding 75	0.03
	More than 75 but not exceeding 100	0.05
	More than 100	0.10
2022 onwards	No limitation	Not exceeding 0.3

Other kinds of use of the land other than agricultural and residence use:

<i>Tax year</i>	<i>Value of the land and building (million baht)</i>	<i>Tax rate (%)</i>
2020–2021	Not exceeding 50	0.30
	More than 50 but not exceeding 200	0.40
	More than 200 but not exceeding 1,000	0.50
	More than 1,000 but not exceeding 5,000	0.60
	More than 5,000	0.70
2022 onwards	No limitation	Not exceeding 1.2

Unused property:

<i>Tax year</i>	<i>Value of the land and building (million baht)</i>	<i>Tax rate (%)</i>
2020-2021	Not exceed 50	0.30
	More than 50 but not exceed 200	0.40
	More than 200 but not exceed 1,000	0.50
	More than 1,000 but not exceed 5,000	0.60
	More than 5,000	0.70
2022 onwards	No limitation	Not exceed 1.2