

ROH's TIPS

Qualifying Criteria

- Would the previous ROH benefits still apply?

Yes, previous benefits still apply, however the new measure would provide more benefits for investors who cannot maintain proportion of income from abroad.

Thus, should business operators wish to receive new benefits will have to register within 5 years from the date the new law becomes effective.

- Is ROH benefits apply to foreign investors?

ROH benefits apply to businesses incorporated in Thailand. Therefore, both foreign investors and Thai investors can enjoy benefits provided that businesses meet the criteria requirements.

- Should businesses operator cannot meet the new ROH criteria can business operators switch to the previous criteria?

Yes, but business operators would have to re-register with Revenue Department. Company that fails to meet new criteria would have to pay back taxes with normal corporate income tax rate and fine and surcharge.

- What is ROH Criteria released by Ministry of Finance in May 2010 for setting up ROH?

Please see details from www.rd.go.th.

- Where should ROH application be lodge, BOI or Ministry of Finance? What are the pros and cons?

Newly incorporated companies should start at BOI as would facilitate preparation of human resources, equipments, workplaces, work permit application and VISA ,land ownership right, exemption of import duties and etc. After the above mentioned have been completed business operators should register with Revenue Department.

- Would foreign branches have to be located to the same continent, for example, Africa Taiwan?

Foreign branches do not have to be in the same continent, and is considered as one associated enterprise as specified by law.

- Would new ROH benefits also cover previous ROH benefits?

Businesses would have to choose one or the other as new ROH benefits has different qualifying criteria and tax benefits from previous ROH.

- Would a sales office qualify as foreign branches as well?

Company has to follow domestic law of that country.

- What are the differences between these 3 offices; Representative office, Regional office, Regional operating Headquarters?

Representative office and Regional office do not receive any tax benefits.

Regional operating headquarter receives tax benefits as specified by Revenue Department, please see definition of Representative office and Regional office on website of Department of Business Development.

- Once Business is registered for new ROH benefits but fails to meet the qualifying criteria for example; business cannot provide services to associated companies in 3 countries abroad within the fifth accounting period, will a company become ineligible for tax benefits starting from first accounting period? Would company and expatriates have to pay finance back taxes of fine and surcharge?

A company will lose the tax benefits from the first accounting period. A company and expatriates would have to pay back taxes of finance surcharge.

- Does the definition of associated enterprise include joint venture or not?

No.

- Does minimum expense include salary?

Include only salary paid in Thailand, excluding expenses paid abroad, depreciation of asset, royalty fee, raw material cost, component expenses, and packaging expenses.

- Why is there minimum expenses requirement in Thailand as oppose to setting up minimum revenue receive from abroad?

To promote investment and investment expenses, and flow of fund into Thailand.

Tax Benefits for ROH

- What benefits will investors receive from BOI and MOF by setting up ROH?

What are the differences benefits between old and new ROH scheme?

Please see Royal decree 405 for previous benefits and please see new ROH benefits from www.rd.go.th.

- What are the details of tax exemption for corporate income tax benefits, methods of tax filling?

Please Royal decree 405 for previous benefits, please see new ROH benefits from www.rd.go.th.

Please see director notification (income tax no.109) for filing methods for corporate income tax.

- Can accumulated losses related to corporate income tax exemption (10 or 15 years)?

Calculation of profit or loss must follow section 65 and section 65 bis of the Revenue Code.

Accumulated of each businesses must be separated from one another, should ROH business suffer losses such loss must be recorded in ROH business.

- If a company failed to meet ROH criteria, will a company fail to receive tax benefits in that particular year and receive ROH benefits when company meets ROH criteria in the next year or would a company be eliminated for ROH benefits forever and has to pay fine and surcharge?

For new ROH if a company failed to meet ROH criteria, a company would not be entitled for tax benefits from first accounting period and has to pay fine and surcharge as specify by law.

- In the 5th year the company register for tax benefits fails to meet the new criteria, will the company become ineligible for tax benefits from year 1-4?

Company will disqualify for tax benefits from year 1 onwards.

- Minimum requirement of at least 50% of income must arise from abroad applies to expatriate or company?

Applies to both.

- What type of investment expense of 30 million baht is required in order for a company to qualify for ROH benefits?

Expense under Section 65 tri (5) excluding extension or modification of plant/offices.

- Fifty percent of total income from abroad, is the 50% is out of total income of the company or from ROH activities.

50% to total income of a company.

Tax benefits for expatriates/foreign staffs

- Is there restriction of number of Thai and foreign employee working for ROH?
For tax benefits purposes there is no restriction on the proportion of Thais and Foreign workers, however, there are restrictions on qualification and knowledge of employee working for ROH. See Notification of the Director General of Revenue Department.
- What are the requirements for foreign staff working in the new ROH Scheme?
Tax benefits apply for expatriates at executive level and high degree of specialist.
- Is the requirement of income arise from services provided by aliens must exceed 50 % of total revenue of the company the same as total revenue from abroad must exceed 50% of total revenue of the company.
Yes it is the same requirement.
- What are the details of tax filing methods for personal income tax for employee working in ROH?
Once the company qualifies for ROH benefits, aliens will receive personal income tax benefits and must file PND.95 for annual tax filing.
- Our company has an expatriate who join the office during the year (who previously had to pay taxes in a progressive rate).
 - 1) Will the expatriate has to pay 1) progressive rate until the end of the year or will he be eligible for tax benefits at 15% starting from the date he starts working for the ROH?

Provided that the ROH meets all the criteria expatriate will receive tax benefits starting from the day he notifies the Revenue Department that he wishes to receive tax benefits as aliens working for ROH. The benefits will last for 8 years.

- 2) If the person is eligible for PIT at 15% which form will he has to file PND 90 or 91 or others?

Prior to joining ROH use PND 90,91 after joining the ROH file form PND.95.

- For expatriates who had worked in ROH for 4 years and already received tax benefits over those years in the previous ROH scheme. If the company now registers for new ROH scheme will the expatriates receive tax benefits for another 4 years?

Expatriates that work for qualified company will receive tax benefits for another 8 years from working in new ROH scheme.

- How does the Revenue Department counts number of days an expatriate has worked for ROH or does the Revenue Department use the calendar year?

Revenue Department starts from the day the parson starts working for ROH and notifies to Revenue Department.

- What do skilled workers mean? Does this apply to foreign and Thai workers?

Yes applies to both, at least a company must have 75% of skilled labour force in the ROH. Skilled aliens that qualify under BOI criteria would be classified as skilled work force under Revenue Department criteria. However, for Thai skilled work force please see Notification of the Director General of Revenue Department.

ROH services that qualify for tax benefits

- Would a company carrying out R&D in Thailand for branches abroad receive tax benefits?

Yes.

- Does the type of services provided in new ROH differs to Old ROH?

No.

General Practice

- If a company wishes to terminate the ROH benefits which department would taxpayer has to notify? Which form needs to be filled? When would the termination becomes effective? On the date the notification has been filed or the previous year and up to the year of notification?

1) A company that wishes to terminate should file to form specify by the Revenue Department

2) Corporate that qualifies from the starting date, should a company fails to meets the relaxed criteria of new ROH scheme, the company has to pay fine and surcharge (starting from the date ROH has been approved by the Revenue Department).

- How does the Revenue Department count the qualifying year of benefits for company that already qualified for ROH that wishes to apply for new ROH scheme?

From the date for the new application.

- Will the new ROH be taken care by LTO?

Yes.

- What would a company has to do if it qualified for previous ROH scheme and wishes to change to new ROH scheme

The company must notify the Revenue Department for the termination of previous ROH scheme and apply for new ROH scheme at the Revenue Department.

- For tax filing purposes, ROH will still be subjected to 0%, 10% and for non ROH businesses at 30%.Two forms has to be filed correct?

1) Yes, separate tax filing form, the company has to provide separate profit and loss accounts and journal accounts. However, the same tax identity number should be used.

2) Tax calculation will depend on benefits received.

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