

Income Tax Liability for a Resident of Thailand receiving Pension Income from Norway

This information is provided for individuals who are residents of Thailand receiving pension income from Norway to improve understanding on their income tax liabilities based on the Convention between the Kingdom of Thailand and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereafter called Thailand-Norway DTC).

Tax Liability under Thailand-Norway DTC

1. Residency of Relevant Individuals

The tax issues are with respect to Norwegians who stay in Thailand over a certain amount of time and receive pension income from Norway.

1.1 The Internal Residency Regulations

In Thailand

In general, there will be the case where the Norwegians have been in Thailand for more than 1 year and have already become resident of Thailand for tax purpose based on **Section 41 paragraph 3** of the Thai Revenue Code which states that

“Any person staying in Thailand for a period or periods aggregating 180 days or more in any tax year shall be deemed a resident of Thailand.”

To decide whether a person is a resident of a country, the normal practice is to look at the country’s domestic law. In Thailand, a tax year for individual taxes refers to the calendar year for which income taxes are paid. Therefore any **Norwegian who stays in Thailand more than 180 days in any tax year shall be deemed a resident of Thailand for tax purposes in that particular tax year.**

In Norway

A person, who is a resident in Norway for tax purposes, remains a tax resident in Norway until he has emigrated for tax purposes.

The tax residency in Norway ceases to exist after the third income year after the income year he takes up permanent residency abroad. He must prove for each of the three consecutive income years after the year he has left Norway that he has not stayed in Norway for one or more periods exceeding 61 days, and that he or anyone closely related to him has not had a place of residence available in Norway at any time during this period.

For further information on the Norwegian rules on emigration for tax purposes, see www.skatteetaten.no

1.2 Possibility of Dual Residency

Based on both countries' resident rules, there are two groups of Norwegian pensioners staying in Thailand.

- (1) Those who have left Norway, emigrated for tax purposes and have become residents of Thailand solely.
- (2) Those who have left Norway, but have not emigrated for tax purposes and have become residents of both Thailand and Norway. This is the case of **dual residency**.

1.3 Solving the Dual Residency based on Thailand-Norway DTC

“Article 4: Resident

1. *For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.*
2. *Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:*
 - (a) *he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests)*

.....”

Interpretation of the Thailand - Norway DTC

For those individuals who have left Norway, emigrated for tax purposes and have become resident of Thailand under the Thai law, such individuals shall be regarded as residents of Thailand under Article 4 paragraph 1 of the Thailand-Norway DTC.

For those individuals who have left Norway and are still regarded as residents of Norway under the Norwegian tax law, the residency status for such individuals shall be decided in accordance with Article 4 paragraph 2 of the Thailand-Norway DTC.

For example, Mr. A is a pensioner receiving pension income from Norway. In August 2004, he sold his home and left Norway to stay with his wife in Thailand. In 2006, he went to Norway for holiday with his wife and stayed there for 3 months. After 2006, he has not returned to Norway until present. In the case of Mr. A, his residency under the countries' domestic laws shall be decided as follows:

In 2004, it is clear that he was only a resident of Norway for tax purposes. He stayed in Thailand less than 180 days and would not be regarded as a resident of Thailand for tax purposes.

In 2005, he stayed in Thailand for the whole year and was therefore a resident of Thailand for tax purposes. However he was still regarded as a resident of Norway for tax purposes since he left Norway less than 3 years.

In 2006, he was also a resident of both countries since he lived in Thailand for more than 180 days and he was also in Norway for more than 61 days in the second year after he left Norway. Thus the three year period condition would have to start again after 2006. And he remained a resident of both countries until 2009.

In 2010, Mr. A fulfilled the conditions under Norwegian tax law and thus was regarded as resident of Thailand for tax purposes only.

Although, Mr. A faced with the problem of dual residency during 2005-2009, such problem shall be resolved by Article 4 of Thailand-Norway DTC. Since Mr. A did not have a permanent home in Norway and he stayed with his wife in Thailand. Mr. A's circumstance would fall under Article 4 paragraph 2 and would be regarded as a resident of Thailand for tax purposes.

In addition, as in accordance with Article 4 paragraph 1 of the Thailand-Norway DTC (as well as under the countries' domestic laws), Mr. A was regarded as a resident of Norway for tax purposes in 2004, and a resident of Thailand for tax purposes in 2010.

To claim residency in Thailand under the Thailand-Norway DTC, a Norwegian pensioner, whether or not he is regarded as a dual resident, must submit to the Norwegian tax authority a Certificate of Residence issued by the Revenue Department of Thailand together with his Norwegian tax return and other necessary documentation (if any).

2. Tax Liability for Pension Income

2.1 Under Internal Regulations

In Thailand

In Thailand pension income is regarded as assessable income under Section 40 (1) of the Revenue Code. A resident of Thailand must declare his worldwide income on the basis that the income received from abroad in a tax year must be brought into Thailand within the same year, based on Section 41 paragraph 2 of the Revenue Code.

Therefore for a Norwegian individual who has stayed in Thailand for more than 180 days in a tax year shall declare his worldwide income including pension income received in Norway and file tax return using the tax return form P.N.D. 90 or P.N.D. 91 (if the individual only receives pension income, P.N.D. 91 will be used). Tax calculation is on the net income where the Norwegian pensioners are entitled to certain deductions applied also to the Thai resident pensioners. The filing period lasts from 1 January to 31 March the year after the income is received.

In Norway

With respect to the Norwegian taxation of pension income received from Norway, the Norwegian tax authorities explained as follows:

For the pensioners who have emigrated from Norway for tax purposes and as such are regarded as non-residents for tax purposes in Norway, they are taxed in Norway under the withholding tax regime. According to the Norwegian internal regulations, this regime only applies to non-resident pensioners. The withholding tax is applicable to all kinds of pension payments. Pensioners residing outside of the EU/EEA are taxed on their gross pension income and no deductions are allowed. The tax rate is 15 per cent.

For the pensioners who are still residents of Norway under the Norwegian internal legislation, they shall be taxed on a net income basis, after certain obtainable deductions, and the tax rates are the same as for any other Norwegian resident pensioners.

Both non-resident and resident pensioners of Norway are obliged to file a Norwegian tax return:

- The non-residents are only obliged to declare income from Norwegian sources.
- Those who are still residents of Norway under the Norwegian internal regulations must declare their worldwide income.

The Norwegian tax returns for individuals are pre-filled and sent to the taxpayers in advance of the final tax return delivery date, which is 30 April the year after the income year. A Norwegian non-resident pensioner, whose only Norwegian sourced income is pension income, will therefore receive a pre-filled tax return that contains the Norwegian pension income.

2.2 Under the Thailand-Norway DTC

Taxation Right

It is agreed that the taxation right to pension income is regulated by Article 18 of the Thailand-Norway DTC.

“Article 18: Pensions, Annuities, Payments under a Social Security System and Alimony

1. *Pensions (including Government pensions and payments under a social security system) and annuities paid to a resident of a Contracting State shall be taxable only in that State.”*

The article gives the state of residence the sole taxing right to the pension income. Therefore a Norwegian who received pension income from Norway and is a resident of Thailand, either under the Article 4 paragraph 1 or paragraph 2 of the Thailand-Norway DTC, shall be taxable only in Thailand.

Anti-abuse Provision

“Article 23: Elimination of Double Taxation

... 3. *In Norway, double taxation shall be eliminated as follows: ...*

(e) Where, under any provision of this Convention, income is relieved from Norwegian tax and, under the law in force in Thailand, an individual in respect of the said income is subject to tax by reference to the full amount thereof, then the relief to be allowed under this Convention in Norway shall apply only to so much of the income as is taxed in Thailand.”

The nature of the above provision is an anti-abuse provision, designed to avoid the situation where taxpayers use the convention to obtain unintentional double non-taxation.

The provision may be read in connection with the pension income as follows:

Where, under Article 18, pension income is relieved from Norwegian tax and, under the law in force in Thailand, a Norwegian pensioner is subject to tax by reference to the amount thereof which is remitted to or received in Thailand and not by reference to the full amount thereof, then the relief to be allowed under this Convention in Norway shall apply only to so much of the income as is taxed in Thailand.

3. Procedures for the Norwegian Pensioners

If a pensioner believes that his pension is tax exempt in Norway under the Thailand-Norway DTC, he must follow the following procedures in order to apply for an exemption of the advanced withholding tax.

In Thailand:

1. The pensioner must contact an Area Revenue Office in the province he is residing in order to settle his tax payment under the Revenue Code. The filing period for any tax year will last from 1 January to 31 March of the following year.
2. After paying tax, the pensioner must contact the respective Regional Revenue Office with jurisdiction over his residence in order to request 2 documents which are
 - the Income Tax Payment Certificate; and
 - the Certificate of Residence.

In Norway:

3. To apply for an exemption of the advanced withholding tax for the first time, the pensioner must contact the Norwegian tax office and submit the following documents.
 - The information on who is paying out the pension.
 - A self-declaration stating that he will be staying in Thailand for more than 180 days in the year to come, and which amount he intends to submit for taxation in Thailand in the year to come.
 - The Certificate of Residence issued by the tax authorities of Thailand. This must be an original document and not be more than three months old.
 - The Income Tax Payment Certificate issued by the tax authorities of Thailand.

It is necessary to apply for an exemption of the advanced withholding tax deduction every year by submitting the Certificate of Residence and the Income Tax Payment Certificate to the Norwegian tax authorities. If a pensioner fails to do so, Norway would have the right under the Thailand-Norway DTC to tax the pension income paid from Norway. If the Income Tax Payment Certificate shows that only a part of the pension income from Norway is submitted for tax in Thailand, Norway would have the right under the Thailand-Norway DTC to tax that part of the pension income that had not been submitted to Thai taxation.