

For translation purpose only
Official language is Thai language

REVENUE DEPARTMENT'S INSTRUCTION

No. Por. 149/2558

Re: Imposition of Income Tax on Ordinary Partnerships or Non-Juristic Bodies of Persons

As the Revenue Code Amendment Act (No. 39), B.E. 2557 (2014) has revised the imposition of income tax on ordinary partnerships or non-juristic bodies of persons essentially by repealing the exemption from income tax on the share of profits or the share of income from ordinary partnerships or non-juristic bodies of persons under section 42 (14) of the Revenue Code, with effect on the assessable income received from the 1st January B.E. 2558 (2015), and as the Notification of the Director-General of Revenue Department Regarding Income Tax (No. 249) Re: Requirement for Ordinary Partnerships or Non-Juristic Bodies of Persons to Prepare Accounts or Reports on Income and Expenses, dated 17th December B.E. 2557 (2014) has required ordinary partnerships or non-juristic bodies of persons to prepare a report on income and expenses and file the same together with a tax return, with effect on the filing of a personal income tax return from the 2014 tax year onwards,

Therefore, to set guidelines to be adhered to by revenue officers for examining and recommending taxpayers which are ordinary partnerships and non-juristic bodies of persons, the Revenue Department hereby instructs as follows:

Clause 1 The term “ordinary partnership” means two or more persons who agree to unite for a common undertaking, with a view of sharing the profits which may be derived therefrom according to section 1012 of the Civil and Commercial Code. For example:

(1) the uniting to open a deposit bank account, e.g. Account of Mrs. A and Ms. B;

(2) the uniting to purchase shares, e.g. Mr. A and Mr. B unite as an ordinary partnership to purchase shares;

(3) the joint holding of ownership in land, e.g. Mr. A, Mrs. B and Mr. C jointly purchase land;

(4) the uniting of doctors to engage in the business of treating patients, e.g. Doctor A cooperates with Doctor B or Doctor A cooperates with Nurse C;

(5) the uniting of actors or masters of ceremonies to accept acting jobs or hosting jobs, e.g. Actor A cooperates with Actor B.

The term “non-juristic body of persons” means two or more persons who agree to act together, but not in the form of an ordinary partnership, according to section 39 of the Revenue Code as amended by the Revenue Code Amendment Act (No. 39), B.E. 2557 (2014). For example:

- (1) the student committee raises funds for the activities within the group;
- (2) the committee raises funds for the construction and renovation of archaeological sites;
- (3) the housewife club organises fundraising activities for constructing hospitals, etc.

If the uniting of persons to undertake activities which is classified as an ordinary partnership or non-juristic body of persons has been formed prior to the date of this Instruction, a revenue officer shall notify such ordinary partnership or non-juristic body of persons to change its tax entity name to be correctly in accordance with the legal provisions.

Clause 2 An ordinary partnership or non-juristic body of persons shall have a duty to pay income tax in accordance with section 56, paragraph two of the Revenue Code. The calculation of tax shall be in accordance with section 48 of the Revenue Code, and if the ordinary partnership or non-juristic body of persons gives a share of profit or a share of income to partners in the ordinary partnership or members in the body of persons in any tax year, such partners or members shall, with effect on the share of profit or the share of income received from the 1st January B.E. 2558 (2015) onwards, include the share of profit or the share of income which is deemed as assessable income under section 40 (8) of the Revenue Code in computation of income tax together with assessable income of other categories received, and shall no longer be exempted from income tax under section 42 (14) of the Revenue Code.

In the case where an ordinary partnership or non-juristic body of persons has received assessable income under section 40 (4) (a) (b) or (g) of the Revenue Code and section 40 (8) of the Revenue Code from the sale of immovable property that is inherited or acquired for non-commercial or non-profit purposes, on which income tax has already been withheld at the rate specified by law, and is entitled to choose to pay tax under section 48

(3) and (4) of the Revenue Code, such ordinary partnership or non-juristic body of persons shall still be entitled to choose to pay tax without including such assessable income in computation of tax under section 48 (1) and (2) of the Revenue Code, in accordance with section 48 (3) and (4) of the Revenue Code. In addition, if the ordinary partnership or non-juristic body of persons gives a share of profit or a share of income to partners in the ordinary partnership or members in the body of persons in any tax year, such partners or members shall, with effect on the share of profit or the share of income received from the 1st January B.E. 2558 (2015) onwards, include the share of profit or the share of income which is deemed as assessable income under section 40 (8) of the Revenue Code in computation of income tax together with assessable income of other categories received in such tax year.

Clause 3 The method for calculating income tax of ordinary partnerships and non-juristic bodies of persons is as follows:

Example: In the 2015 tax year, Doctor Sun earned a salary from working as a full-time doctor in a hospital in the amount of 100,000 baht per month. Sun-Non Ordinary Partnership has been established as a clinic invested equally by Doctor Sun and Doctor Non who agree to unite for operating such business. The ordinary partnership had income from the business of treating patients in the clinic at 1,000,000 baht per year and had actual expenses from treating patients in the clinic at 300,000 baht. Sun-Non Ordinary Partnership had money in a deposit account of 10,000,000 baht (capital) and received interest thereon at 100,000 baht, on which income tax was withheld at 15,000 baht (this income was chosen not to be included with other income in the return). Doctor Non did not have any other income besides the income from the business of Sun-Non Ordinary Partnership.

(1) Tax calculation for Sun-Non Ordinary Partnership (clinic business)

Income	from the business of treating patients in the clinic	1,000,000
Less	Standard deduction for expenses is chosen (60 percent)	600,000
Balance	Income after deduction of expenses	400,000
Less	Allowance for ordinary partnerships	60,000
Balance	Net income	340,000
Amount of tax (at the progressive rate)		11,500

Summary Income and actual expenses of the ordinary partnership in the 2015 tax year are as follows:

Income	From the business of treating patients in the clinic	1,000,000	
Less	Expenses from treating patients in the clinic	300,000	
Balance		700,000	____(1)
Income	Interest on cash deposit	100,000	
Less	Withholding income tax	15,000	
Balance		85,000	____(2)
Total income (1) + (2)		785,000	
Less	Amount of income tax in the 2015 tax year (in arrears)	11,500	
Total	Income after deduction of expenses	773,500	

If Sun-Non Ordinary Partnership gives a share of income of 773,500 baht to Doctor Sun and Doctor Non at one-half for each in accordance with the proportion of their investment, i.e. 386,750 baht each ($773,500/2$), such share shall be deemed as assessable income under section 40 (8) of the Revenue Code. Sun-Non Ordinary Partnership as an income payer is not obliged to withhold income tax at source. However, each partner shall include his share of profit or income received in computation of income tax together with assessable income of other categories (if any). Each partner shall be entitled to a deduction for expenses as necessary and reasonable (actual expenses). An example is below:

(2) Tax calculation for Doctor Sun

Income	Salary from working as a full-time doctor in a hospital (100,000X12)	1,200,000	
Less	Standard deduction for expenses	60,000	
Balance	Income after deduction of expenses	1,140,000	
Income	Share of profit received	386,750	
Less	Expenses	0	
Balance	Income after deduction of expenses	386,750	
Total income after deduction of expenses (1,140,000+386,750)		1,526,750	
Less	Allowance	30,000	
Balance	Net income	1,496,750	
Amount of tax (at the progressive rate)		239,187.50	

(3) Tax calculation for Doctor Non

Income	Share of profit received	386,750
Less	Expenses (no proof of expenses)	0
Balance	Income after deduction of expenses	386,750
Less	Allowance	30,000
Balance	Net income	356,750
Amount of tax (at the progressive rate)		13,175

Clause 4 An ordinary partnership or non-juristic body of persons shall have a duty to prepare a report on income and expenses of the ordinary partnership or non-juristic body of persons in accordance with the Notification of the Director-General of Revenue Department Regarding Income Tax (No. 249) Re: Requirement for Ordinary Partnerships or Non-Juristic Bodies of Persons to Prepare Accounts or Reports on Income and Expenses, dated 17th December B.E. 2557 (2014) to show the amount of income or expenses actually received or paid by the ordinary partnership or non-juristic body of persons and the balance of the ordinary partnership or non-juristic body of persons as of the 31st of December of each year.

According to the example in Clause 3, details used in preparation of the report on income and expenses as of the 31st of December 2015 which is a report on income and expenses for the 2015 tax year, are as follows:

Items	(Baht)	Remarks
1. Balance brought forward from the previous tax year	-	
2. Total amount of income during the tax year	1,100,000	
3. Total amount of expenses during the tax year	315,000	
4. Share of profit or income paid to partners or members	773,500	
5. Balance carried forward to the next tax year	11,500	

Remarks:

(1) Balance brought forward from the previous tax year (2014 tax year) represents the balance carried forward to the next tax year of the 2014 tax year. In the

example, there is no balance carried forward to the next tax year, and thus no amount is inserted.

(2) Total amount of income during the 2015 tax year of 1,100,000 baht represents the total amount of income received by the ordinary partnership or non-juristic body of persons in the 2015 tax year. This amount is taxable amount, comprising of both the income required to be included in computation of tax in a return and the income not required to be included in computation of tax in a return, as well as the income exempted from income tax, as follows:

- | | |
|---|----------------|
| - Income subject to tax and required to be included in computation of tax in a return (business of treating patients in the clinic) | 1,000,000 baht |
| - Income subject to tax but not required to be included in computation of tax in a return (interest on cash deposit) | 100,000 baht |
| - Income exempted from income tax | 0 baht |

(3) Total amount of expenses during the tax year of 315,000 baht represents the total amount of expenses actually paid out by the ordinary partnership or non-juristic body of persons during the 2015 tax year; withholding income tax on the income opted not to be included in computation of tax in a return, which was actually remitted during the 2015 tax year; and income tax of the ordinary partnership or non-juristic body of persons for the 2014 tax year, which was actually paid during the 2015 tax year. An ordinary partnership or non-juristic body of persons may prepare an account in a simple way or may use the report form under the Notification of the Director-General of Revenue Department Regarding Income Tax (No. 161) Re: Requirement for Persons Paying Personal Income Tax and Not being Value-Added Tax Registered Entrepreneurs to Prepare Accounts or Reports on Income and Expenses, dated 21st December B.E. 2549 (2006) for preparation of the report on income and expenses. The total amount of expenses during the 2015 tax year in the example can be illustrated as follows:

- | | |
|---|--------------|
| - Expenses from treating patients in the clinic actually paid out by the ordinary partnership | 300,000 baht |
| - Withholding income tax on the interest opted | 15,000 baht |

not to be included in computation of tax in a return

- Income tax of the ordinary partnership for the 2014 tax year which was actually paid during the 2015 tax year 0 baht

(4) Share of profit or income paid to partners of 773,500 baht, which was allocated to the partners in the ordinary partnership in the 2015 tax year under Clause 3 at one-half for each in accordance with the proportion of their investment, i.e. 386,750 baht each, is derived from the balance brought forward from the previous tax year (2014 tax year) (if any) plus the total amount of income during the 2015 tax year, deducted by the total amount of expenses during the 2015 tax year and the amount of income tax of the ordinary partnership calculated on the income for the 2015 tax year, as follows:

- Balance brought forward from the previous tax year (2014 tax year) 0 baht
- Total amount of income during the 2015 tax year 1,100,000 baht
- Total amount of expenses during the 2015 tax year 315,000 baht
- Income tax of the ordinary partnership calculated on the income for the 2015 tax year 11,500 baht

(5) Balance carried forward to the next tax year of 11,500 baht is derived from the balance brought forward from the previous tax year (2014) (if any) plus the total amount of income during the 2015 tax year, deducted by the total amount of expenses during the 2015 tax year and the share of profit or the share of income paid to the partners in 2015:

- Balance brought forward from the previous tax year (2014 tax year) 0 baht
- Total amount of income during the 2015 tax year 1,100,000 baht
- Total amount of expenses during the 2015 tax year 315,000 baht

year

- Share of profit or income paid to partners or members in 2015 773,500 baht

The total amount of 11,500 baht represents the total amount of income tax of the ordinary partnership calculated on the income for the 2015 tax year, which is to be paid by the ordinary partnership when filing the Phor.Ngor.Dor. 90 Form within March 2016. The ordinary partnership will include this amount with the total amount of expenses during the 2016 tax year.

Clause 5 In respect of preparation of a report on income and expenses of an ordinary partnership or non-juristic body of persons under Clause 4 for the income of the 2014 tax year which is required to be filed in a return within 31st March B.E. 2558 (2015), only balance carried forward to the next tax year is required to be inserted in the report.

Clause 6 In the case where an ordinary partnership or non-juristic body of persons fails to enclose and file a report on income and expenses together with filing of a personal income tax return at the end of a tax year, such ordinary partnership or non-juristic body of persons shall be liable to a fine not exceeding two thousand baht according to section 35 of the Revenue Code.

Clause 7 All rules, regulations, instructions, rulings or practices which are in conflict or inconsistent with this Instruction shall be repealed.

Given on the 20th Day of January B.E. 2558 (2015)

Prasong Poontaneat

(Mr. Prasong Poontaneat)

Director-General of Revenue Department