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Tax & Legal Alert

Thailand

Deloitte Tohmatsu Tax Co.

January 2019

The International Business Center ("IBC") regime

On 28 December 2018, there are four Royal Decrees announced in the Royal Gazette:

- Royal Decree No. 671 abolishes the Regional Operating Headquarters (ROH) regime. All privileges will cease for existing ROH companies in the accounting year that starts between 1 January 2020 and 31 December 2020.
- Royal Decree No. 672 abolishes the International Headquarters (IHQ) regime. IHQ companies may maintain the IHQ status for the remainder of their allotted term (i.e., capped at 15 years).
- Royal Decree No. 673 abolishes the International Trading Center (ITC) regime. ITC companies may maintain the ITC status for the remainder of their allotted term (i.e., capped at 15 years).
- Royal Decree No. 674 enacts the IBC regime. Supplementary information on the implementation processes should follow soon.

ROYAL DECREE NO. 674: THE IBC REGIME

(1) **IBC Privileges**

An IBC that engages in qualifying activities and derives qualifying income is granted the following tax benefits for up to 15 accounting periods:

- Reduced corporate income tax (CIT) rates of 8%, 5%, or 3% based on annual expenditures (i.e., payable to recipients in Thailand) of THB 60 million, THB 300 million, or THB 600 million, respectively, applicable to the IBC's qualifying income
- Exemption of CIT for dividend income received by the IBC from its associated enterprises (i.e., local and overseas affiliates)
- Exemption of specific business tax (SBT) for income derived by the IBC in the provision of treasury services to its associated enterprises (i.e., local and overseas affiliates)
- Exemption of CIT for dividend income or interest income paid by the IBC to its overseas associated enterprises that do not carry on any business in Thailand
- Flat personal income tax (PIT) rate of 15% for the IBC's expatriate employees. The Revenue Department should announce further details on the qualifications and criteria of the PIT incentive shortly.

(2) **IBC Qualifying Income**

Qualifying income refers to income derived by the IBC regime from:

- The provision of management services, technical services, support services, and/or treasury services
- The IBC's R&D activities if they are conducted in Thailand by the IBC (or its local subcontractors)

(3) **Qualifying Conditions to apply for the IBC incentives**

A Thai-incorporated company that has the following qualifications is eligible to apply for the IBC status:

- Maintain a minimum of THB 10 million as its paid-up capital
- Employ at least 10 skilled employees for the IBC (or at least five skilled employees for treasury services)
- Incur annual expenses of at least THB 60 million (i.e., payable to recipients in Thailand) from conducting qualifying activities and deriving qualifying income
- Be compliant with the above qualifying conditions during each fiscal year. Otherwise, the IBC shall not receive any benefits in the year during which the IBC does not meet the above conditions.

(4) Disqualification of the IBC status

Royal Decree No. 674 allows the Director-General (DG) of the Revenue Department to disqualify the company from the IBC status if:

- The IBC does not comply with the IBC conditions for two or more consecutive years; or
- If the DG deems that a particular company who receives the IBC status is not truly an IBC by substance

Companies disqualified from the IBC status will no longer receive benefits under the IBC regime.

Moreover, a claw back rule applies such that the Revenue Department has the authority to apply a retroactive adjustment in order to retract a disqualified company's tax benefits since the first accounting period of the IBC status.

(5) Regime migration

While the Thai Government has abolished the ROH, IHQ, and ITC regimes, companies with privileges under the ROH or IHQ regimes may continue to enjoy such privileges for the remainder of their allotted term.

Alternatively, the ROHs/IHQs may choose to convert to the IBC regime. In order to facilitate the regime migration, the Thai Government allows ROHs/IHQs who choose to migrate to the IBC regime to retain their minimum expenditure requirement under the ROH/IHQ regime instead of the THB 60 million minimum expenditure requirement under the IBC regime. In such cases, the converted companies would be entitled to the 8% CIT rate on the IBC qualifying income; however, the standard IBC expenditure requirements (i.e., THB 300 million or THB 600 million) would need to be met in order to lower the CIT rate to 5% or 3%.

Moreover, a company that migrates from the ROH or IHQ regimes to the IBC regime may continue to receive CIT exemption for dividends paid from ROH or IHQ income to the IBC's overseas shareholders but only for such dividends paid within one year from the date on which the company received its IBC status. However, it is unclear if companies who migrated from the ROH/IHQ regime to the IBC regime will also receive the 15% flat PIT rate benefit for expatriate employees.

(6) Deloitte's observations

Because Thailand is an Inclusive Framework member of the OECD's Base Erosion and Profit Shifting (BEPS) Project, the Revenue Department imposed various changes and limitations on the new IBC regime (i.e., as compared to the pre-existing regimes). Some of these key changes/limitations are as follows:

- The IBC regime <u>does not</u> include (1) CIT benefits for ITC income, (2) CIT exemption on capital gains derived from the sale of shares in overseas affiliates; and, (3) different CIT rates (i.e., 0% vs. 10%) for offshore vs. onshore transactions (i.e., no more different treatment between onshore vs. offshore-derived income).
- As compared with the minimum spending requirement of the ROH/IHQ/ITC regime, the minimum spending requirement of the IBC regime has increased to THB 60 million.
- As compared with the requirements of the ROH/IHQ/ITC regime (i.e., which does not have any skilled staffing requirements), the IBC regime conditions require IBCs to maintain a skilled staff of at least ten employees (except for the treasury services, which require a skilled staff of at least five employees).
- IBCs may be disqualified from the IBC regime (i.e., for two or more consecutive years on non-compliance with the IBC conditions, for example) and, as such, may potentially be subject to additional penalties and surcharges on any tax shortfalls resulting from the IBC regime's claw-back rules.

In order to determine the suitability of the IBC regime, companies interested in the IBC regime are recommended to conduct a feasibility study (i.e., with a cost and benefits analysis) prior to applying for or migrating to the IBC regime.

The Deloitte Thailand tax team will provide updates on this matter once the official regulations on the IBC implementation guidelines are available to the public.

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Contacts

Deloitte Thailand Co., Ltd.

Anthony Visate Loh, Tax & Legal Partner	aloh@deloitte.com
Chairak Trakhulmontri, Tax & Legal Partner	ctrakhulmontri@deloitte.com
Darika Soponawat, Tax & Legal Partner	dsoponawat@deloitte.com
Dr. Kancharat Thaidamri, Tax & Legal Partner	kthaidamri@deloitte.com
Korneeka Koonachoak, Tax & Legal Partner	kkoonachoak@deloitte.com
Mark Kuratana, Tax & Legal Partner	mkuratana@deloitte.com
Stuart Simons, Tax & Legal Partner	ssimons@deloitte.com
Wanna Suteerapornchai, Tax & Legal Partner	wsuteerapornchai@deloitte.com

Issued by

Deloitte Tohmatsu Tax Co.
Tokyo Office
Marunouchi Nijubashi Building, 3-2-3 Marunouchi, Chiyoda-ku, Tokyo 100-8362, Japan
Tel: +81 3 6213 3800
email: tax.cs@tohmatsu.co.jp
Corporate Info.: www.deloitte.com/jp/en/tax
Tax Services: www.deloitte.com/jp/tax/s/en