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Tax & Legal Alert

Thailand

Deloitte Tohmatsu Tax Co.

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LATEST ANNOUCEMENT FROM THE THAI GOVERNMENT TO ABOLISH THE ROH/IHQ/ITC REGIMES

In June 2016, Thailand joined the OECD's Project to Eliminate Base Erosion and Profit Shifting (BEPS), comprises 15 Action Plans, as a member of the Inclusive Framework (IF). As a part of the IF, Thailand is obligated to comply with the following four minimum standards, which includes "Action 5: Counter harmful tax practices".

The Regional Operating Headquarters (ROH), the International Headquarters (IHQ), and the International Trading Center (ITC) regime (henceforth, together referred to as the "pre-existing regimes") were identified as encouraging harmful tax practices. And, as such, Thailand is required to make changes to its domestic laws in order to comply with Action 5 of the BEPS requirements.

Non-compliance with Action 5 could potentially lead to drastic repercussions for Thailand's trade and investment perspectives. Thailand's first attempt in addressing the announcement of the pre-existing regimes as "harmful" was to introduce the new IBC regime (on 28 December 2019) as a replacement for the pre-existing regime and in order to encourage taxpayers to migrate from the pre-existing regimes to the IBC regime.

1. Introduction of the IBC laws (Royal Decree No. 674)

On 28 December 2018, four Royal Decrees were announced in the Royal Gazette to introduce the IBC regime and to close the door to the pre-existing regimes.

These royal decrees also allowed taxpayers with benefits under the pre-existing regimes three options:

① Grandfathering of incentives, whereby taxpayers could continue to enjoy the incentives of the pre-existing regimes until the expiration of their ROH/IHQ/ITC status

or

② Migration to the IBC regime (for ROH and IHQs only), whereby taxpayers could apply for the IBC regime with relaxed conditions

or

③ Conversion into ordinary status, whereby taxpayers could cease their ROH/IHQ/ITC status and become ordinary taxpayers who pay taxes at regular rates

Note that the implementation details for the new IBC regime and for the migration process have not yet been announced.

2. 26 March 2019: The Thai Ministry of Finance (TMoF) announces the intention to abolish the pre-existing regimes

The TMoF submitted drafts law proposals to the Thai Cabinet for approval. These draft laws were aimed at revoking the grandfathering of the ROH/IHQ/ITC incentives.

In other words, if you are a taxpayer with benefits under the pre-existing regimes, you are now required to choose one of the following two options:

① Migration to the IBC regime (for ROH and IHQs and also for ITCs who wish to adopt IBC-compatible functions), whereby taxpayers could apply for the IBC regime with relaxed conditions, within 1 June 2019

or

② Conversion into ordinary status, whereby taxpayers could cease their ROH/IHQ/ITC status and become ordinary taxpayers who pay taxes at regular rates, within 1 June 2019

3. Deloitte observations/comments

The TMoF's announcement is considered to be a sudden move on the part of the Thai tax authorities in forcing all the existing ROH/IHQ/ITC taxpayers to migrate to the IBC regime, despite a previous announcement in January that allowed the pre-existing regimes to be grandfathered.

Given the lack of clarity around the direction of the new IBC regime (including, the lack of implementation guidelines and the uncertainty around when the guidelines will be announced), taxpayers who want to preserve their pre-existing incentives will not know whether they are qualified to migrate to the IBC. Not to mention that the 2-month lead-time (until 1 June 2019) does not leave taxpayers much time to figure out their options and to execute the migration within the time-line. Moreover, taxpayers who qualify for migration will have a number of compliance related questions (especially since the migration takes place in the middle of their fiscal year), including:

- What is the cut-off date for recognizing income/expenses between the pre-existing regime and the IBC regime?
- How to account for the minimum annual spending requirement under the pre-existing regimes and the IBC regime when a company migrates from a pre-existing regime to the IBC regime in the same year?
- What are the personal income tax (PIT) implications of migration for expatriate employees?
- What is the cut-off date for the PIT benefits under the pre-existing regimes if the employer does not qualify for migration?

All in all, the latest announcement by the TMoF has forced taxpayers in an uncertain situation until Thailand announces a clearer direction or the implementation guidelines with which taxpayers may understand their circumstances. In any case, we recommend taxpayers to begin contemplating their options immediately so that decisions can be quickly made and actions can be efficiently executed once the implementation guidelines are released.

Deloitte will keep on top of any developments with regards to the IBC regime and the conditions surrounding the abolishment of the pre-existent regimes. Any such updates will be communicated to you in subsequent newsletters.

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