

Tax & Legal Services Newsletter

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New Requirements to Obtain Double Deduction for Overseas Exhibition Expenses

Following the issuance of Royal Decree No. 569, which provides a 200% deduction for expenses incurred on overseas exhibitions held during calendar years 2013 and 2014, the Director-General of Revenue has released additional guidance that sets out conditions that must be satisfied to benefit from the deduction (Notification No. 246):

- A company or juristic partnership must obtain a certificate issued by the government agency as proof that the taxpayer actually participated in an exhibition (or booth or festival) abroad.
- If a company or juristic partnership receives support of a government agency for the exhibition, the agency must issue a certificate to the taxpayer indicating its support to the overseas exhibition (or booth or festival).
- A company or juristic partnership must provide evidence of actual expenses incurred for rentals of space, construction of booth, insurance, freight and handling fees for goods or equipment used for the exhibition (or booth or festival) abroad.

Tax Return Deadline Extended

The Minister of Finance has approved an eight-day extension of the deadline to electronically file a tax return for tax returns due between 1 February 2014 and 31 January 2015.

Revenue Department Ruling

Withholding Tax on Transfer of Shares

Company A is incorporated under the laws of Thailand and provides service for three Thai affiliates. Company B is incorporated under the laws of Japan and is the majority shareholder of the shares in all four Thai companies (owning 99.99%). Company B decides to carry out a shareholder restructuring by transferring all of the shares in the four Thai companies to Company C, a company incorporated under the laws of Singapore, in exchange for the shares issued by Company C. Subsequently, Company C transferred the shares of the three Thai companies to Company A in exchange for Company A's shares. After the restructuring, Company B becomes the major shareholder of Company C, Company C becomes the direct shareholder in Company A and Company A is the direct shareholder in the three affiliated Thai companies. At issue is whether the transactions were subject to Thai withholding tax.

The Thai Revenue Department ruled that, since both Company B and Company C are foreign companies incorporated outside Thailand and the remuneration paid for the share transfers between Company B and Company C were made abroad, the income is foreign-source income and Company B and C are not liable to withholding tax in Thailand.

If Company C transferred the shares of the three Thai affiliated companies to Company A for an amount exceeding the acquisition cost, Company A, as the payer of the assessable income, would be required to deduct and remit a 15% tax under section 70 of the Thai Revenue Code. However, since the transferor is a Singapore company that does not carry on business in Thailand, any gains arising would fall within the scope of article 13 of the Thailand-Singapore tax treaty, which allocates taxing rights to the state of

residence. As such, Company A is not required to deduct and remit withholding tax from such assessable income.

Expense for Building Purchased along with Land

Company D purchased land with a building at auction for THB 135 million and THB 60 million, respectively. However, the building was constructed for over 20 years and abandoned for over 10 years, and hence, was not suitable for utilization. Company D decided to demolish the building and construct a new one. The question arose whether Company D could deduct the cost of building and demolition costs as an expense for corporate income tax purposes.

The Thai Revenue Department ruled that Company D's real intention was only to acquire the land, not the building and the building was not used for Company D's business. As such, the price paid to acquire the building and the demolition costs should be considered part of the cost of the land, so the demolition costs are expenses incurred to improve the land for use and therefore, are nondeductible for corporate income tax purposes. However, the Company would be entitled to deduct the land costs at the time it sold the land.

Calculation of Cost upon Sale of Security

A Company, a sugar producer, invests in stock exchanges, purchasing shares from various companies listed on the Stock Exchange of Thailand. For accounting purposes, such investments are classified as available for sale. Some share certificates show the Company's name, but some shares were traded via the Thailand Securities Depository without any certificate. The Thailand Securities Depository only reported the number and the price of shares for each trading day and on a monthly basis, it summarized the remaining shares and average cost under a scripless system. The Company sold part of the shares it acquired and wanted to calculate the cost of shares sold.

The Revenue Department ruled that if the Company can identify the shares sold, the cost must be on an actual cost basis. The average cost method cannot be applied. If such shares cannot be identified, the average cost method can apply. Any method used, however, must be used consistently regardless of the type of securities.

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