

Tax & Legal Services Newsletter

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New Rules for Calculation of Net Profits for Real Estate Business

The Thai Revenue Department has issued a new rule for the calculation of net profits by companies operating in the real estate business (Departmental Regulation No. Paw. 228/2557). Departmental Regulation No. Paw. 148/2557 amends the rules previously prescribed under Departmental Instruction No. Paw 61/2539.

For publicly accountable entities, the regulation provides that a company or registered ordinary partnership carrying on a real estate business must use the accrual basis method according to the generally accepted accounting procedure in calculating its income and expenses. Non-publicly accountable entities, however, can opt to use one of the following standard methods:

- The sales basis method where a transfer of ownership of immovable property is registered (provided the sale / registration took place in the same accounting period);
- The percentage of completion method; or
- The installment method.

An example of one of the changes made by the new regulation is that costs of advertising and promotional services for a project now may be recognized as selling expenses, whereas under the previous instruction, such costs were treated as costs of a sale of immovable property.

Government Considering Inheritance Tax

The Minister of Finance has announced that the government is considering the introduction of an Inheritance and Gift Tax Act, with tax imposed at a flat rate of 10%. An exemption will be available for inheritances with respect to assets valued at no more than THB 50 million (calculated after deducting any debt(s)). The draft act specifies that all transfers of (registered) inheritance, including deposits, shares, bonds and property taking place within the two years before the death of the testator must be included for the purpose of inheritance tax computation to prevent transfers before death. Failure to comply would be considered a criminal offence punishable by six months' imprisonment. An inheritance between spouses would not be subject to inheritance tax since spouses are treated as the same person.

Although inheritance tax does not raise much revenue for the government, it is considered a way to ensure that wealthier Thais pay taxes. The draft inheritance tax law currently is being considered by the Council of State.

Revenue Department Rulings

Services Not Considered a Royalty

A Thai company entered into a service agreement with a Japanese company for the provision of services to a company in China. The Japanese company will coordinate the purchase, design inspection and quality control of chemical storage tanks.

The Revenue Department concluded that the services performed under the agreement do not include any transfer of charts, secret formula or process, or information concerning industrial, commercial or scientific experience. Therefore, any income should be regarded as a payment in consideration for the hire of work and thus would fall within the scope of business profits under article 7 of the relevant tax treaty and section 3 of Royal Decree Issued under the Revenue Code Governing the Exemption from Revenue Taxes (No. 18) B.E. 2505. Consequently, provided the Japanese company does not have a permanent establishment in Thailand, it would not be subject to Thai corporate income tax, and the Thai company, as the payer of the service fees, would not be required to withhold tax at source under section 70 of the Thai Revenue Code.

The services are being carried out in a foreign country and the result of the services is not used in Thailand. The services should be considered services provided by a business person residing abroad and not used in Thailand. Therefore, upon payment of the service fee, the Thai company is not required to remit VAT under section 83/6(2) of the Thai Revenue Code.

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