

Tax & Legal Services Newsletter

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Proposal for 10-Year Corporate Income Tax Exemption for Special Economic Zones

The Ministry of Finance is considering the granting of incentives in the form of a tax exemption to five special economic zones established by the National Council for Peace and Order. The affected zones are the Mae Sot district in Tak province, the Aranyaprathet district in Sa Kaeo province, the Khlong Yai district in Trat province, Mukdahan province and the Sadao district in Songkhla province. The incentives would be granted more favorable treatment than incentives in Zone 3 currently granted by the Thailand Board of Investment (e.g. a 8-year exemption from corporate income tax with 50% reduction for another 3- 5 years) in order to promote investment in the above zones.

Studies of Negative Income Tax

The Fiscal Policy Office of the Ministry of Finance has released a study of negative income tax. According to a proposal in the study, the government would provide assistance to low income individuals, i.e. individuals who earn income below THB 30,000 would receive a payment from the government in an amount equal to 20% of their annual income. The payment would decrease as income rises and cease once income exceeds THB 80,000. If the initiative is approved, the government would use information provided in the personal income tax return to determine whether an individual qualifies for the payment.

Revenue Department Rulings

Specific Business Tax Treatment of Intercompany Guarantee

Company A, a major shareholder of Company B, shares a board of directors with Company B. Company B requested a loan from a financial institution, the terms of the loan required Company A to act as a guarantor of the full amount of the loan. Company A does not act as a guarantor in the normal course of its business. The issue before the Thai Revenue Department was whether Company A is subject to the Specific Business Tax (SBT).

The Revenue Department concluded that Company A would not be subject to SBT if it was only acting as a guarantor for one time for its affiliate (and not for other parties), this was not part of the normal course of its business and was done because of the conditions imposed by the financial institution for granting the loan. In this case, the guarantee would not be treated as a business with regular transactions similar to commercial banking and, hence, would not be subject to the SBT.

This would not be the case, however, if the repayment terms of the loan were extended and Company A agreed to the extension of the guarantee; in this case, Company A would be treated as

carrying on a business with regular transactions similar to commercial banking and, therefore, would be subject to SBT.

Further, if Company A charged Company B for its services as a guarantor, even though Company A never acted as a guarantor to another person, and this was the only time it so acted, the guarantor activities would be considered to be the carrying on of a business with regular transactions similar to commercial banking and subject to SBT.

Fund to Protect Futures Investors

With the consent of the Securities and Exchange Commission of Thailand, Company C set up a fund to protect investors in futures. Fees charged to investors ("members") for participation in the fund and any subsequent contributions are to be collected from the members in accordance with criteria and procedures specified in the fund regulations. Asset management and the proportional distribution of assets to the members upon dissolution of the fund will be carried out in accordance with fund's regulations.

The Revenue Department ruled that the participation fees and contributions, which (in accordance with the fund regulations) Company C reserves the right not to return to a member who ceases to be a member and which the fund is able to use for purposes of making investments, must be included as profits in Company C's corporate income tax calculation. However, for VAT purposes, these amounts are not considered to be Company C's income from the sale of goods or the provision of services, so do not have to be included in the tax base on which VAT is charged.

Interest derived from managing the member contributions will be deemed to be income of Company C and must be included as profits in its corporate income tax calculation. In addition, revenue amounts derived from Company C's asset management activities and paid to the fund members can be deducted by Company C for corporate income tax without any tax on such amounts having to be withheld under the Thai Revenue Code.

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