



## Tax & Legal Services Newsletter

### Board of Taxation Ruling on Deduction of Tax Penalties and Surcharges

The Board of Taxation has issued a ruling (No. 40/2560), which repealed the Board of Taxation ruling (No. 10/2528) and confirms that tax penalties, surcharges and criminal fines charged under any Thai tax law are nondeductible expenses for corporate income tax purposes.

Section 65 ter (6) of the Thai Revenue Code disallows the deduction of tax penalties, surcharges and criminal fines for corporate income tax calculation purposes. The Board of Taxation, in Ruling No. 10/2528, initially defined nondeductible tax penalties, surcharges and criminal fines as only those charged under the Thai Revenue Code, and not including those charged under other tax laws. However, the Thai Supreme Court (in Decision No. 1109/2559) subsequently held that nondeductible tax penalties, surcharges and criminal fines for corporate income tax calculation purposes also include those charged under other tax laws.

Accordingly, the Board of Taxation now considers that such penalties, surcharges and criminal fines are forms of punishment and should not be allowed as a deductible expense for corporate income tax calculation purposes.

### Board of Taxation Ruling on Extension for Issuance of Tax Summons

The Board of Taxation has issued a ruling (No. 41/2560) relating to an extension of the period of time to issue a tax summons in circumstances where there is reason to believe that a taxpayer has reported false or inadequate information in a tax return, but a tax summons was not issued for a tax audit within two years from the date of tax return filing and the Director-General has not approved an extension of the summons period (i.e. an extension can be granted beyond the period of two years, up to five years from the date of tax return filing pursuant to Section 19 of the Thai Revenue Code). In such cases, the Finance Minister is not able to exercise its power under Section 3 octo, second paragraph of the Thai Revenue Code to extend the period for issuing the tax summons beyond five years from the deadline for filing the return.

### Preparation of VAT E-Tax Invoices

The Revenue Department has issued a regulation on the production, delivery and retention of electronic tax invoices (e-tax invoices) by VAT registrants that are individuals or companies with income not exceeding THB 30 million per year. Such persons can submit an application to the Director-General to request approval to use e-tax invoices, and must comply with the conditions in the regulation.

### Double Deduction for Employment of Elderly Persons

Royal Decree No. 639 grants a 200% deduction for employment expenses relating to elderly persons. The salient features of the new rules are as follows:

- A double deduction is granted for corporate income tax calculation purposes for expenses relating to the employment of individuals over 60, as long as the number of elderly employees does not exceed 10% of the company's total employees.
- The individual must be a Thai national that was previously employed by the company and that was not and is not a director/shareholder of the company or a related company.

Notification of the Director-General No. 290 sets forth the conditions for the deduction under the royal decree, as follows:

- Eligible employment expenses exclude certain amounts payable under the law (e.g. contributions paid to the social security fund).
- The company must prepare a report on the elderly persons for which the double deduction is taken, to be verified by the Revenue Department.
- The company must provide the information on the elderly persons within 150 days of the end of the accounting period.

## Deduction of Expenses for Infrastructure and Development of Tourist Locations

Following the issuance of Royal Decree No. 632, which grants a double deduction of investment expenses for infrastructure and the development of tourist locations, a Director-General notification provides the conditions for obtaining such a deduction:

- Expenses eligible for the tax deduction must be certified by a government agency or local administrative body, e.g. electric power lines, water supply, road network systems, etc.
- The expense must relate to an investment under a plan of the government agency or local administrative body for a project that is yet to receive government funding.
- The company must transfer the ownership in the investment to the government agency or local administrative body without consideration.
- The company must not record such expenses as a public charity expense for the purposes of the deduction under section 65 ter (3) of the Thai Revenue Code

## Deduction of Expenses to Support Other Businesses

Notification of the Director-General No. 285 sets out the conditions for the double deduction of expenses to support businesses of other companies that is granted under Royal Decree No. 631, as follows:

- In the case of a loan guarantee fee, the receipt issued by the Credit Guarantee Corporation must state the name of the company that claims the deduction as the payer.
- In the case of expenses certified by the Federation of Thai Industries or the Thai Chamber of Commerce, a joint plan with the federation/chamber and a certificate issued by the federation/chamber and by the supported company in the form prescribed by the Thai Revenue Department are required.

## Revenue Department Rulings – VAT Calculation for Hire-Purchase of Car

A ruling issued by the Revenue Department involves a situation where Company A sold a car to a customer for THB 1 million. A down payment of THB 150,000 was made by the customer, and a discount of THB 50,000 was granted by Company A. Subsequently, the customer entered into a hire-purchase agreement with Company B, a hire-purchase provider; therefore, Company A sold the car to Company B for THB 800,000 and transferred the ownership of the car to Company B. The Revenue Department ruled that Company A sold the car to Company B in order for Company B to carry out the hire-purchase. Therefore, Company A was required to calculate VAT on the sales amount (before providing the discount) at THB 1 million, and was treated as granting a discount to Company B for resale purpose. Consequently, Company A was required to deduct withholding tax on the discount paid to Company B.

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