

Tax & Legal Services Newsletter

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Triple Deduction for Research and Development Expenses

The Thai Cabinet has approved a draft royal decree that grants a triple deduction for qualifying research and development (R&D) and innovation expenses as proposed by the Ministry of Finance. However, the deduction is subject to the following caps:

- Income or sales revenue up to THB 50 million is eligible for a deduction of up to 60% of such income/sales revenue;
- The portion of income/sales revenue that exceeds THB 50 million but is no more than THB 200 million is eligible for a deduction of up to 9% of such income; and
- The portion of income/sales revenue that exceeds THB 200 million is eligible for a deduction of up to 6% of such income.

The triple deduction for expenses relating to R&D and innovation is available for expenses incurred during the period 1 January 2015 to 31 December 2019.

Double Deduction for Sport Promotion Expenses

The Thai Cabinet has approved the Ministry of Finance's proposed tax measures for the promotion/support of sports. Entities or individuals that contribute money or assets to the Sports Authority of Thailand, the Provincial Sports Committee, provincial sports associations, the Department of Physical Education, the National Sport Development Fund or the National Sports Association of Thailand for sports equipment, sports events, sports practices or the construction/development of sports facilities or national sports stadiums may be allowed a double deduction for the relevant costs, as follows:

- A personal income tax allowance of 200% of the amount actually paid; however, when combined with the taxpayer's expenses paid to support educational projects approved by the Ministry of Education, the total expense claimed may not exceed 10% of the taxpayer's assessable income after other deductions and allowances.
- A corporate income tax deduction of 200% of the amount contributed or assets donated; however, when combined with the taxpayer's expenses incurred for educational support and playgrounds/parks/official facilities or private sports facilities construction, the total expenses claimed may not exceed 10% of the net profits before expenses for public charity, public benefits, education and sports under section 65ter (3) of the Thai Revenue Code.

Additionally, exemptions from income tax, value added tax, specific business tax and stamp duty may be granted to individuals and companies/juristic partnerships on income from the transfer of the assets, the sale of goods or the execution of instruments in relation to such donations made to the organizations or official organizations listed above. However, the transferor may not include the cost of assets or goods that are tax-exempt as expenses when calculating personal or corporate or income tax.

The double deduction applies for donations made during the period 1 January 2016 to 31 December 2018.

Abolition of Paper-Based PND.2 Filing

The Director-General's notification on income tax No. 255 revises the rules for submitting withholding tax returns on dividends and interest (PND2) by abolishing paper-based tax returns and introducing the following requirements:

- Using computer record in a designated format, file the PND.2 form that include the amount of tax remitted, the number of transactions, income paid and tax deducted. A person that filed a hard copy of the PND.2 now must remit the form along with the computer record.
- File a PND.2 form using specific software developed by the Revenue Department without the computer record attached.
- File a PND.2 form electronically, i.e. via the Revenue Department website.

The filing of PND.2 and its attachment may be submitted in hard copy for July and August 2015, but the new rules apply as from September.

Revenue Department Ruling

Foreign Companies Engaged in the Sale of Goods in Thailand

The Thai Revenue Department has ruled that a Swiss company's income from the sale of goods in Thailand and the carrying out of related training services is considered business profits under the Thailand-Switzerland tax treaty.

Company B (a Swiss company) and Company C and Company D (two Japanese companies) established a consortium for entering into an agreement with the Electricity Generating Authority of Thailand (EGAT). This was Company B's first transaction in Thailand since 2004.

Company B appointed an employee of Company C (Mr. A) as its authorized person capable of negotiating and affixing the signature that binds Company B on bidding documents and employment agreements on its behalf. Company B also executed a power of attorney with the chairman of the consortium body, authorizing him to enter into an agreement with EGAT, under which Company B would carry out the following duties:

- Supplying overseas equipment to EGAT; a transfer of ownership of the equipment would be made at the airport or sea port, and Company C would undertake the customs clearance process for EGAT; and
- Conducting training for EGAT's employees for a period not exceeding 75 days, including providing them with the knowledge to assemble and operate the equipment.

Each party to the consortium would receive consideration under the agreement and would individually invoice EGAT, which then would make a separate direct payment to each party. Company B's consideration would comprise two portions: compensation for the sales of equipment and compensation for its training sessions.

The issue was whether Company B was subject to withholding tax on both the consideration received for the sales of equipment and the consideration received for conducting training sessions under the agreement.

The Revenue Department ruled that both types of income were considered business profits under article 7 of the Thailand-Switzerland tax treaty. Accordingly, Company B would be considered to have a PE in Thailand if Mr. A habitually exercised the authority to conclude contracts in Company B's name, and would be required to include the income received from its services under the consortium arrangement for purposes of its Thai corporate income tax calculation. On that basis, EGAT would be required to withhold tax at a rate of 1% on the payment of both portions of such consideration to Company B.

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