

## Tax & Legal Services Newsletter

Vol. March 2015

### Cash payment to be required for certain instruments subject to stamp duty

The Notification of the Director-General of Revenue on Stamp Duty No. 54 provides that, as from 5 April 2015, certain lease agreements and hire for work agreements will have to be paid in cash at the revenue office rather than by affixing stamps to these documents. The lessee or contractor of real property lease agreements or hire for work agreements with a contract value of at least THB 1 million, respectively, will have to pay the stamp duty in cash before producing the instrument or within 15 days of endorsing the instrument.

### Tax exemption for debt restructuring

Royal Decree No. 581 grants a tax exemption for the debt restructuring of financial institutions between 1 January 2013 and 31 December 2014 as set out by the Bank of Thailand. Specifically, the following exemptions apply:

- Personal and corporate income tax (PIT/CIT) exemptions on income derived from debt waivers granted to debtors of financial institutions or of other creditors under such debt restructuring scheme.
- PIT, CIT, value added tax (VAT), specific business tax (SBT) and stamp duty exemptions for debtors of financial institutions or of other creditors, for financial institution and other creditors on income arising from the transfer of property, the sale of goods, the provision of services where the income is used to pay off debt and the execution of instruments relating to the debt restructuring scheme
- PIT, CIT, SBT and stamp duty exemptions for debtors of the financial institutions on income arising from the transfer of mortgaged immovable property where the income is used to pay off debt to the financial institution, but only to the extent the income does not exceed the debt owed to the financial institution or not exceed the obligation of the suretyship, under the debt restructuring scheme and as set out by the Director-General's rules and conditions.

### Supreme Court Decisions

#### Capital increase deemed income to Thai subsidiary

Company A's foreign parent company negotiated a conditional partial waiver with its financial institution creditor and, in exchange, Company A agreed to increase its capital stock and allow the parent company to purchase an additional 1,000 shares for THB 906.3 million. Each share of stock issued had a par value of THB 100, which represented a share premium used by

Company A to repay its debt before it liquidated. The above arrangement was undertaken to allow the percentage of foreign ownership in Company A to remain at 48.9%, so that Company A could avoid being classified as a “foreigner” under the Foreign Business Act and the Land Code. Subsequently, the tax officer assessed additional corporate income tax on the share premium.

The Supreme Court held that the waiver agreement was made to avoid corporate tax. The capital increase was orchestrated so that the share premium would not be accounted as income arising from the business with the result that there would be no corporate income tax liability for Company A. However, if the foreign parent intended to repay the debt to the financial institution, it could have paid the creditor directly, so the waiver agreement could be viewed as having been made for tax avoidance purposes. There was no justification for a capital increase with share premium, and the fact that Company A increased its capital stock and used the share premium to repay the debt before it liquidated is unusual and contrary to common practice (i.e. companies normally increase their capital for business continuity purposes).

### Value Added Tax on Export of Services

Company B entered into two separate agreements with foreign Company C. Under the first agreement, Company B agreed to provide Company C call center system computer programming services. Under a second agreement, Company B agreed to provide maintenance services for Company C’s call center system in Thailand. Company B treated the services under the first agreement as zero-rated for VAT purposes because the services were performed in Thailand and used in a foreign country. However, Company B treated the services under the second agreement as subject to VAT at the standard rate of 7%. In this regard, the tax officer imposed 7% VAT on services under the first agreement.

The Supreme Court ruled that the computer programming services under the first agreement were performed in Thailand because they were connected with the maintenance services in Thailand. Additionally, the hirer intended to hire Company B to develop the program and install the internet connection with various networks including in Thailand. Therefore, the computer programming services also were subject to the 7% VAT.

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