

## Tax & Legal Services Newsletter

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### Court Cases

#### Specific Business Tax on Debtor Purchase Agreement

Company A purchased two loans at an auction held by the Financial Sector Restructuring Authority. The loans, which were held by the debtors' finance company, are worth THB 340 million (principal and interest), but were acquired by Company A for THB 90 million. Company A subsequently filed a lawsuit against both debtors and reached a compromise settlement agreement, under which the debtors agreed to pay THB 235 million of the original debt and THB 5 million in interest, arising after the compromise settlement agreement was concluded. Company A already had paid Specific Business Tax on the THB 5 million. However, the Revenue Officer recalculated the interest by reference to THB 235 million under the original amount of the debt and arrived at THB 85 million in additional interest. Company A was requested to remit additional Specific Business Tax, as well as penalties and a surcharge. Company A disagreed with the officer's finding, taking the position that the purchase of loans was the sale and purchase transaction under the sales and purchase agreement.

The Supreme Court held that the effect of Company A's purchase of the commercial loans from the finance company is that Company A assumes the rights of the original creditor under the loan agreement to make a claim against the debtors for both principal and interest, even though Company A is not an original party to the loan agreement. Company A's asset management business is considered to be a business similar to that of a commercial bank.

#### Income from Unlawful Activities

The Supreme Court has ruled that, despite the unlawful nature of an underground lottery, income derived from such a lottery should be regarded as assessable income under section 40(8) of the Revenue Code. The court also noted that there is no legislation allowing a standard deduction for payments made in respect of an illegal lottery and further that the plaintiffs had failed to prove they incurred expenses that are necessary and reasonable.

### Revenue Department Rulings

#### Bad Debt Write-Off Where Debtor Seeking to Rehabilitate

Company B lent funds to Company C, after which Company C filed a rehabilitation plan with the Central Bankruptcy Court. Company B later requested that Company C repay the principal and accrued interest. Under the rehabilitation plan approved by the court on 13 March 2012, the debtor was required to pay an amount equal to 4.80% of the principal (without interest) using its own cash flow over a three-year period. The debtor failed to make a payment by the due date of the first instalment (March 2013) and filed an amended rehabilitation plan. Under the new plan, Company C agreed to repay 7.97% of the principal in exchange for an extension of the repayment period from three years to seven years and any possible additional cash receivable. At issue is whether Company B is required to write off the debt as an expense in accounting period 2012 as per the original plan or in accounting period 2013 as per the amended plan.

The Revenue Department ruled that Company B is entitled to write off the bad debt from accounts

receivable in an amount under the original plan approved by the court and to include those expenses in computing taxable profits for accounting period 2012. The amended plan was filed in another year. If Company B receives a payment from the debtor under the original plan and the amended plan is later approved, it will then be required to include that amount in computing corporate income tax for the accounting period in which the payment is received.

## Service Income of Petroleum Business

Company D engages in the exploration of oil and gas, drilling, development and production activities. The Company is in the exploration phase and, therefore, is not earning any income from oil and gas production activities. However, Company D did receive income (in the form of salaries, bonuses and long-term employee benefits) from Company E for the provision of advice on oil and gas exploration, drilling, development and production activities.

The Revenue Department ruled that the service payment received from Company E is not treated as other income received in relation to the petroleum business under the Petroleum Income Tax Act 1971 (B.E. 2514). Therefore, Company D must include the service fee in computing its corporate income tax according to the Revenue Code.

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