

Tax & Legal Services Newsletter

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Income Tax Exemption for Community Enterprise

Ministerial Regulation No. 303 grants a personal income tax exemption for community enterprises that are ordinary partnerships or non-corporate bodies of persons and that derive assessable income of no more than THB 1.8 million in a fiscal year. The exemption is available from 1 January 2009 to 31 December 2016, provided the criteria and conditions set out in the regulation are satisfied.

Loss from Investment in Related Company

Departmental Instruction No. Paw. 146/2557 repeals a previous instruction (Departmental Instruction No. Paw. 135/2551) that permitted a company to deduct loss from investment upon the dissolution of a related company. The repealed departmental instruction addressed situations in which a related corporate debtor increases a creditor's share of capital in the debtor for repaying a debt and the debtor subsequently dissolves without any return of the creditor's investment, and it provided that the creditor was entitled to a deduction for the increase in share capital if certain conditions were satisfied. The new instruction applies as from 18 March 2014.

Value Added Tax Registration for Spouses

The VAT registration threshold in Thailand is THB 1.8 million of income for the tax period. Because the Revenue Code permits spouses to file separate personal income tax returns, a question arose whether spouses who jointly operate a business that derives total income of more than THB 1.8 million are required to register for VAT purposes as the amount of income that each spouse reports on his or her separate personal income tax return is less than the THB 1.8 million VAT registration threshold. The Revenue Department opined that if spouses derive joint income from a business they jointly conduct that is subject to the VAT regime, income of more than THB 1.8 million requires VAT registration in the name of both. The rationale is that the VAT regime is different from the personal income tax regime that allows spouses to make separate tax filings. The determination of whether a business is treated as jointly conducted by spouses who have joint income must be made on a case-by-case basis.

Supreme Court Decision

Expenses of Non-BOI Promoted Business

A company operating in the investment of the financial instrument with a main place of business in Bangkok had a branch in the Lamphoon industrial area that manufactured electronic products in a promoted business that qualified for a corporate income tax exemption from the Board of Investment (BOI). The head office obtained a loan of THB 1,335 million from abroad to purchase a promissory note of THB 803 million, lend THB 303 million to the branch and repay the existing debt, tax debt, interest and other expenses. For corporate income tax purposes, the company treated the interest paid and foreign exchange loss due to the loan as expenses allocated entirely to the non-BOI/taxable business. The revenue officer took the position that such expenses must be apportioned between the BOI and non-BOI businesses, based on their relative income.

The Supreme Court held that the company appeared to have used the loan for the BOI /tax-exempt business, as well as for the non-BOI business, although it failed to segregate the portion of expense attributable to each type of business. The court upheld the revenue officer's apportionment of expenses to the BOI/tax-exempt business.

Revenue Department Rulings

Issuance of Credit Note without Service

An aviation institution conducted a training and intended to provide meals and lodging to the attendees in the training location. However, the institution was unable to provide meals and lodging as intended, and it sent the attendees to stay outside of the training location. The institution returned the meals and lodging fees, since the attendees were required to obtain their own meals and lodging. The issue was whether the institution could issue a VAT credit note under section 86/10 of the Revenue Code to reflect the decrease in value of the services provided.

The Revenue Department determined that the training agreement did not state that the institution was required to provide meals and lodging for the attendees, or to return the related fees upon failure to do so. Accordingly, the return of such fees was a debt reduction under a new agreement, rather than a cancellation of the existing agreement due to defective services, incorrect contractual services or lack of services. Consequently, the issuance of a credit note was not qualified under section 86/10; however, the issuance of a commercial invoice still was allowed.

Change in Spousal Tax Filing Basis

In March 2013, a husband and wife, each having income, filed separate tax returns for fiscal year 2012. After this fiscal year, the spouses intended to jointly file tax returns, including the wife's income as the husband's. The Revenue Department ruled that the spouses could change from filing tax returns on a separate basis to filing them on a joint basis, without prior approval.

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