

Tax & Legal Services Newsletter

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Restructure of Excise Tax Code

The Thai Cabinet has approved a draft act proposed by the Ministry of Finance that consolidates the excise tax laws in a single excise tax code and makes the following changes/clarifications:

- The terms “retail prices”, “recommended retail selling price” and “tobacco products” are defined and more precise definitions of the terms “manufacture,” “liquor” and “playing cards” are provided for tax enforcement purposes.
- The provision on the establishment of Board of the Excise Tax Ruling.
- The basis for the imposition of excise tax from an ad valorem or specific rate basis (whichever generates the higher tax value) is changed to a combined ad valorem and specific rate basis.
- The base for the ad valorem tax on domestic products, imported products and liquor from ex-factory price, CIF price and last wholesale price, respectively, is changed to the recommended retail sales price to address transfer pricing issues and create more equity among taxpayers.
- A provision addresses the sales price and imported price where the recommended retail sales price is not available, or where there are multiple recommended retail sales prices, or where the price is not determined in accordance with the market mechanism or where the price does not reflect economic reality.
- Industrial operators and importers of record are required to declare their cost structures more transparent to facilitate tax audits.
- Joint liability for taxes is introduced for Original Equipment Manufacturers (OEMs) and the employer.
- Importers of record must apply for excise tax registration and comply with the accounting requirements in a manner similar to industrial operators.
- There is an establishment of the excise tax payment method other than excise tax stamp, and excise tax symbol in response to liquor and playing cards.
- The statute of limitations for a tax audit is extended from two years to three years.
- Changes are made to the tax assessment system, including the abolition of an assessment objection procedure and the introduction of a specific period of time for the authorities to consider an appeal in order to expedite the settlement of tax disputes.
- Goods and services subject to excise tax are classified and categorized to improve tax collection.

- Adjustments are made to duties and taxes, the methods of payment and the tax base used for the calculation of excise taxes.
- The penalty provisions are amended to make them more consistent with the draft excise tax code especially the penalty amendment to be consistent with the current monetary value.
- The Ministry of Finance has authority to link the goods under the excise tax code with a custom tariff to accommodate the establishment of ASEAN Economic Community.

New Regulations on Foreign Business License

The Thai Cabinet has approved draft regulations proposed by the Ministry of Commerce, under which certain service businesses are not required to obtain a foreign business license (e.g. commercial banks, representative offices of banks, and life insurance and non-life insurance companies). Such businesses also are removed from the list of businesses in the Foreign Business Act of 1999 that Thai nationals are not yet ready to compete. The regulations are designed to facilitate investment and reduce redundancy in supervision because existing rules already govern such businesses.

Remuneration Excluded from VAT Computation

The Director-General's Notification on Value Added Tax No. 207 provides for exclusions from the VAT base for certain amounts relating to re-insurance in the context of non-life business, such as, for the value of discounts deducted from re-insurance premiums by the re-insurer.

BOI Issues New Guidance on Merit-Based Incentives

The Board of Investment (BOI) has issued new guidance on the investment promotion policies and criteria for merit-based incentives (Explanatory Note on Request for Additional Rights and Privileges Based on the Merit of Activities ("Explanatory Note"). The Explanatory Note provides details on the procedures for obtaining additional rights and privileges based on the merit of projects for activities falling under Group A and Group B categories. Companies carrying out activities under Group A can apply for such rights and privileges based on the enhancement of competitiveness either at the time an investment promotion application is submitted or at a later time. Companies engaged in activities under Group B must submit the application for merit-based incentives with the investment promotion application.

The Explanatory Note also provides details on investment and expenditure eligible for additional corporate income tax incentives. There are six main groups: (1) research and technology development and innovation; (2) donations to technology and human resources development funds at educational institutions, specialized training centers, research institutions or government agencies in the field of science and technology in Thailand; (3) expenditure incurred on the acquisition of intellectual property and/or licensing fees paid for commercializing technology developed in Thailand; (4) advanced

technology training; (5) the development of local suppliers with at least a 51% Thai shareholding of registered capital; and (6) product and packaging design.

Additionally, according to BOI Announcement No. Por. 3/2558 dated 13 March 2015, companies promoted for investment by the BOI under the previous scheme also may request additional incentives under the new guidance. However, for “service business activities” that depend on a knowledge base to operate, a company may amend the conditions of project investment (by taking into account the annual wages and salaries of such personnel), provided the project has not yet generated income from such promoted activities.

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