

## Tax & Legal Services Newsletter

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### 7% VAT Rate Extended for Another Year

The National Council for Peace and Order has announced the Notification No. 92/2557 that the 7% VAT rate will remain in effect for another year (i.e. until 30 September 2015). The standard VAT rate of 10% provided for under the Revenue Code was reduced to 7%, with the rate reduction scheduled to apply until 30 September 2014. It should be noted that the announcement of the National Council for Peace and Order has the same effect as a Royal Decree.

### Requirements for Tax Incentives to Address Natural Disasters

A notification No. 248 issued by the Director-General of Revenue on corporate income tax sets out the conditions to qualify for the income tax exemption on government subsidies received for activities relating to the permanent prevention of damage resulting from natural disasters that have been received from 1 January 2011 onwards:

- The subsidy must be paid in accordance with a Thai Cabinet Resolution to an individual, a company or a registered ordinary partnership to address natural disasters, such as floods, storms, fires, etc. that may be occurring in Thailand.
- The recipient of the subsidy must use the funds for the permanent prevention of damage relating to natural disasters, and the useful life of the relevant assets must exceed one year or one accounting period.

### Revenue Department Rulings Educational Support Expenses

Company A owned 99.99% of the shares in Company B, which was granted a license for the establishment of a school that subsequently was converted into a college under the Private School Act. An issue is whether or not an education subsidy granted by Company A for a college and a private university is entitled to benefits under Royal Decrees No. 420 and 515.

The Thai Revenue Department ruled that, under the Private School Act, the college is considered a separate legal entity from Company B. Therefore, Company A's ownership of 99.99% of the shares in Company B would not result in Company A being affiliated with a company or registered ordinary partnership engaged in private school management under the Private School Act. Consequently, if Company A incurred educational support expenses in accordance with Royal Decree No. 420 and expenses for the promotion of reading under Royal Decree No. 515 and the conditions prescribed by the Director General are satisfied, Company A will be eligible for a double deduction for expenses incurred for supporting education and the promotion of reading. However, the amount may not exceed 10% of the net profits before the deduction for charitable or public benefit donations and

donations for the purpose of education or athletics under section 65 Ter (3) of the Thai Revenue Code.

### Issuance of Certificate of Withholding Tax at Source on Behalf of Payer of Income

Company C operates a department store and leases store space to third parties. The company entered into numerous leases and requested approval from the tax authorities to withhold tax at source, issue the withholding tax certificate and remit the tax withheld on behalf of the lessee or customer to ensure that the proper rate of withholding tax is applied on rental and services fees and that all relevant taxes are collected.

The Thai Revenue Department ruled that Company C must consume time in collecting the withholding tax certificates due to a significant number of the payers, then it is approved for the payers to appoint Company C as the representative of the payers of income, and Company C shall comply with the followings:

- The Company C shall issue a notification letter to the payers that the Company shall withhold the tax on the rental and service payments, issue a withholding tax at source certificate, and remit the tax withheld on behalf of the lessee or customer within the relevant/specific time. The acknowledgement by return of confirmation would constitute a legitimate power of attorney.
- Although the payer of income will not need to issue a withholding tax certificate on taxes applied to rental and services fees withheld on its behalf by Company C, Company C will be required to record details of the taxes withheld and be responsible for withhold tax on all assessable income payments.
- To certify that Company C actually withholds tax on behalf of the payer of income, Company C must include the following notation in the receipt or tax invoice: "The company withheld tax at a rate of 5% or 3% in the amount of THB..... on behalf of the payer and shall remit such tax to the Revenue Department by the 7<sup>th</sup> day of the following month."
- If Company C files form PND.53 for withholding tax returns, specifying in the box relating to the person who is required to deduct tax at source that it is the "service provider acting on behalf of the payer listed in the attachment to PND.53" and submits the record of tax deduction at source that sets out the names of the payer and its tax ID number, the record will be treated as an attachment to form PND.53.
- Company C is allowed to use the copy of form PND.53 and receipts issued by the Revenue Department for the payment of tax deducted at source when applying for a tax credit under section 60 of the Thai Revenue Code.

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