



## Tax & Legal Services Newsletter

### Tax Exemption on Gold Futures Trading

Royal Decrees No. 661 and 662, which were issued on 27 July 2018 and have applied since 28 July 2018, provide the following personal income tax (PIT) and VAT exemptions for income from trading gold futures contracts:

- Exemption from PIT on income from sales of gold futures contracts on the Thailand Futures Exchange (TFEX), provided the payer of the income has deducted a 15% withholding tax from the payment and the tax withheld is neither claimed as a refund nor utilized as a tax credit by the income recipient;
- Exemption from PIT on compensation received for delayed delivery in the context of gold futures trading on the TFEX, where the payer of the compensation has deducted a 15% withholding tax from the payment and the tax withheld is neither claimed as a refund nor utilized as a tax credit by the income recipient; and
- Exemption from VAT on the trading of gold futures on the TFEX.

## Deductions for Salaries under Student Loan Fund

On 19 July 2018, the Thai Revenue Department issued a notification, which applies retroactively from 1 July 2018 and sets out that the payer of assessable income under Section 40 (1) (i.e. ministries, bureaus, departments and other government bodies) that have been instructed to make deductions under the Student Loan Fund Act from salaries paid to government officials and employees, must withhold income tax at source from the deducted amount.

## Revenue Department Ruling - Sales of Goods on Consignment Overseas

A Thai company, whose business is the sale of jewelry, exported goods on consignment to a foreign consignee. The Thai company retained ownership of the exported goods until the point of sale, and where an item could not be sold, it re-imported the item into Thailand within one year. At issue was how the Thai company should record income on these transactions for its corporate income tax computation (CIT) purposes.

The tax authorities ruled that the act of exporting goods on consignment is deemed as a sale of the goods in Thailand to the consignee at their market price on the export date for CIT purposes. However, where the goods cannot be sold by the consignee and are re-imported into Thailand, the company is entitled to reduce the amount of income reported on its tax return for the year of export, and re-categorize the re-imported goods as merchandise inventory.

## Supreme Court Decision – Specific Business Tax on Sales of Immovable Property

A Thai company (seller) sold land under an agreement that stipulated that the buyer was responsible for fees for registration rights and juristic acts, as well as taxes payable by the seller incurred on the sale. The seller calculated the liability for specific business tax (SBT) on its gross income from the sale based on the land's appraised value for purposes of collecting the fees under the Land Code. The tax authorities disagreed with the seller's calculation and assessed additional SBT by including the fees and taxes incurred by the buyer related to the sale in the seller's SBT base.

The Supreme Court held that since the parties reached a mutual understanding that only the buyer would bear the fees on the sale (which is permissible even though the Civil and Commercial Codes stipulate that the seller and buyer should be equally responsible for the fees), such fees are not required to be treated as income to the seller that is subject to SBT. However, because the seller was legally obligated to pay the taxes on the sale (i.e. withholding tax, SBT, local maintenance tax and stamp duty), the taxes absorbed by the buyer under the agreement should be treated by the seller as "cash, property, or benefits of value received or receivable from carrying on business" and included in the seller's income for SBT purposes.

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