

## Tax & Legal Services Newsletter

Vol. April 2015

### Tax treatment of Tutorial Schools

The Cabinet has approved the Ministry of Finance's proposal to collect taxes from tutorial schools that operate for commercial purposes and revise the tax incentives granted to private schools. Details of the proposal can be summarized as follows:

- The income tax exemption available to private schools will be maintained, but the exemption for tutorial schools will be abolished.
- Exemptions from income tax, value added tax (VAT), specific business tax (SBT) and stamp duty will be granted for the transfer of ownership of immovable property and any assets to and back from private schools if the assets are no longer used or the school ceases to operate.
- Exemptions from income tax, SBT and stamp duty for donors of land and immovable property to and back from private schools will be granted if the property ceases to be used or the school ceases to operate.
- Exemption on income tax for amounts paid from aid funds under the law on private schools upon the retirement, disability or decease of private school directors, school executives, teacher or educational personnel.

### IHQ/ITC Tax Measure Approved

The Cabinet has approved the Ministry of Finance's proposal to amend the following tax measures designed to promote international headquarters (IHQ) and international trading centers (ITC):

- A reduction in withholding tax for foreign individuals employed by an IHQ in Thailand, the exclusion of the income of foreign individuals employed by an IHQ from the income tax calculation, a tax exemption on certain income of foreign individuals seconded to work abroad and a tax exemption for certain IHQ income.
- An income tax exemption for an ITC in certain cases, and a withholding tax reduction on certain income paid to foreign individuals working in an ITC.

## Criminal Offense Provisions of Revenue Code Amended

The Cabinet has approved the Ministry of Finance's proposal to make the following changes to the criminal offense provisions:

- Criminal fines will be imposed for failure to file required documents in conjunction with tax returns under Section 69.
- Filing a false tax refund request will fall within the scope of the tax avoidance/evasion rules in section 37 of the code.
- Tax avoidance activities under Section 37 bis is subject to the same punishment as Section 37 i.e. is imprisoned for a period of three months to seven years and be subject to a criminal fine of THB 200,000. Section 37 bis may also be repealed.
- The penalties for making a false VAT refund request are revised.

## Supreme Court Decisions

### Ruling on Zero-Rated VAT treatment International Transportation Services

Company A engages in the business of transporting crude oil under the law on merchant marine promotion from an offshore oil rig to a sea port in Rayong province in Thailand and Sriracha district. The Company viewed that its business has the characteristic of an international transportation which is qualified for zero-rated VAT.

The Supreme Court held that the term "international transportation" is based on the definition in the Thai Revenue Code. The fact appears that the oil rig is situated on the continental shelf of Thailand. As such, Company A's sea transportation business is considered services provided in Thailand. Company A is not entitled to zero-rated VAT treatment.

### Income from Warrant to Purchase Ordinary Shares

In April 2004, Mr. B received from Company C, an issuer of warrants, warrants to purchase ordinary shares of its company. The Company appraised the warrant prices and calculated withholding tax by comparing the price of its ordinary shares traded on the Thai stock exchange deducted with value payable for the exercise of each warrant right for one share purchase. The remainder is value of warrant. In February 2007, Mr. B sold his warrants at a price that was lower than exercise price. Mr. B argued that he had no income at the time he received the warrants, and therefore he did not have any assessable income.

The Supreme Court held that Company C had issued warrants without consideration and must have had internal information to determine the value of the warrants on the allocating date for purposes of the withholding tax computation. This issue is factual and Mr. B did not prove the proper warrant price but simply alleged he had no assessable income on the date of receipt of the warrant. Thus, the value of the warrant is equal to what Company C had calculated for the purposes of the withholding tax computation.

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