Tax & Legal Services Newsletter

Petroleum Income Tax Act Introduces PSAs/Service Contracts

- The Petroleum Act and Petroleum Income Tax Act (No. 7), enacted on 22 June 2017 and that became effective on 23 June 2017, introduced production sharing agreements (PSAs) and service contracts as instruments that can be used by petroleum exploration and production companies to invest in Thailand. The objective is to provide production sharing agreements (PSAs) or service contracts as an alternative to the granting of concessions for the exploration and production of petroleum, which traditionally has been the method used by the government for petroleum resource management. The new Act stipulated the conditions, and revised the benefit or right of concessionaire and remittance of royalty to be more appropriately applied.

- The Petroleum Income Tax Act that applies as from 23 June 2017 provides for the following measures:

  - PSAs will be subject to a 20% tax rate;

  - Amendment to rules in relation to taxable profit/loss calculation, e.g. expenses related to the Petroleum business and charged by associated companies are deductible in accordance with the rules and procedures as prescribed under the subsequent Ministerial Regulation; and

  - Concessionaires, PSA contractors including PSA contractors of the Malaysia – Thailand Joint Development area will be required to submit additional documentations to the Revenue Department, including petroleum production plans, performance reports for petroleum operations, framework and annual budgets, statements of expenditure and annual financial statements etc.

- A draft amendment to Petroleum Income Tax Act that would address the deduction for decommissioning cost is being reviewed by the Council of State and soon will be sent to the National Legislative Assembly for further consideration.

New Tax Incentive for Individuals Working in Eastern Economic Corridor

Royal Decree No. 641, issued on 10 July 2017 and that applies as from 11 July 2017, is designed to promote businesses located in the Eastern Economic Corridor (EEC) of Thailand. The decree provides a reduced personal income tax rate of 17% on income derived by individuals working for companies that carry on target industries in the provinces of Chachoengsao, Chonburi and Rayong. To qualify for the beneficial rate, the individual must be a qualified executive, a specialist or a researcher hereby not have been lived in Thailand for less than 180 days before benefiting from the preferential tax rate and must reside in Thailand no less than 180 days in the year benefiting from the preferential tax rate. The employer must notify the Revenue Department of the employment before the first salary is paid. Target industries include next generation automobiles, smart electronics, robotics for industry, and agricultural and biological technologies.

Tax Measures on Asset Investments

Royal Decree No. 642, which was issued on 10 July 2017 and that applies from 11 July 2017, aims to encourage domestic investment by granting an additional 50% deduction of capital expenditure and costs incurred during the period between 1 January 2017 and 31 December 2017, subject to the following conditions:

- The investment must be in machinery, tools, equipment, computer programs, vehicles (excluding passenger cars with not more than 10 seats) and permanent buildings;
- The assets must never have been used and may not be subject to tax benefits under other tax rules; and
- An investment project and payment plan must be submitted to the Director-General of the Revenue Department.

A Notification of Director-General of Revenue on Income Tax (No. 304), issued on 19 July 2017, clarifies the rules and conditions to qualify for the double deduction under Royal Decree No. 642:

- The assets must have been acquired under a contract or purchase order in the period from 1 January 2017 to 31 December 2017 or must be assets for which a tax benefit under Royal Decree No. 604 were used but the actual payment was not completely made during the prescribed period.
- Permanent buildings do not include the purchase or hire – purchase of such buildings.
- The additional deduction for expenditure incurred will be averaged equally over three, five or twenty consecutive accounting periods according to the class of asset.
- Benefits can be utilized as from the accounting period where such relevant assets begin depreciated, except for qualified assets under Royal Decree No.604 which shall comply with the condition under such regulations.
- The notification of the investment project and payment plan must be made via the Revenue Department's website.
- The investor must prepare a report that contains details on the relevant assets in accordance with guidelines prescribed by the Revenue Department.

Incentive to Encourage Use of Computer Programs

The Thai Cabinet approved a draft Royal Decree on 27 June 2017 that aims to encourage the use of computer programs by allowing a double deduction for expenses incurred by certain entities on the acquisition, made to order of computer programs or service fees paid for the use of computer programs. The double deduction will be available to companies and juristic partnerships that meet the following requirements:

- Have paid-up capital not exceeding THB 5 million; and
- Derived income from the sale of goods and the provision of services during the relevant period not exceeding THB 30 million.

The double deduction on expenses incurred for the acquisition, made to order of computer programs or service fees paid for the use of computer programs from sellers or service providers registered with the Digital Economy Promotion Agency will be granted up to an amount of THB 100,000 for the accounting period beginning on or after 1 January 2017, but not later than 31 December 2019.

Tax Measure to Promotion of E-Payment Project

On 4 July 2017, the Thai Cabinet has approved a draft Royal Decree that provides for a personal income tax exemption on prizes derived from the Instruction and Promotion of Electronics Transactions Project under the National Electronics Payment Infrastructure Development Strategy. The exemption will be granted on prize amounts paid by the government on the basis that the recipient of the income agrees to voluntary withholding tax at source at a rate of 5% of the gross amount of prizes derived as from 1 June 2017.

Revenue Department Rulings:

Determination of Residence of Individual with Permanent Home in Two States

The Thai Revenue Department recently issued a ruling concluding that an individual who had a residence in both Thailand and another country in which he worked was resident in Thailand.

The individual in the case was sent by his Thai employer to work overseas as a product manufacturing quality controller. During the fiscal year, the individual resides in the foreign country for 218 days and in Thailand for 219 days, and works in the foreign country for 218 days and in Thailand for 111 days. The employer pays the individual's entire salary through a bank account in Thailand and deducts the relevant withholding tax. However, because the individual resides in the foreign country, he is required to file a personal income tax return and pay tax in that country. The individual requested a refund of the Thai withholding tax.

The Revenue Department determined that, since the individual resides in both Thailand and the foreign country, it was necessary to look at the tiebreaker provisions in the tax treaty between Thailand and the country in which the individual was posted to ascertain where he was resident for tax purposes. The Revenue Department decided that since most of the individual's personal, economic and financial interests were in Thailand, tax residence has to be allocated to Thailand under the relevant tax treaty. However, Thailand will grant a tax credit for the foreign tax paid in the country of secondment up to the amount of Personal Income Tax payable before utilizing foreign tax credit.

Tax Consequences of Inventory Weight Reduction

A Thai company that is engaged in the business of exporting wood chips stored the chips in an open area causing an uncontrollable weight alteration. The company obtained a certificate from an expert certifying that the moisture level affects the inventory weight reduction at a rate of about 2%-3%.

The Revenue Department ruled that a reduction in the weight of the inventory that occurred at a reasonable rate and that would be acceptable by a business person in the same industry would not be deemed a sale that is subject to VAT and corporate income tax.

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