



Tax & Legal Services Newsletter

[Draft Act on Personal Asset Management Trusts Approved](#)

On 10 July 2018, the Thai Cabinet approved a draft act proposed by the Ministry of Finance on personal asset management trusts. The act defines a “trust” as a legal relationship created by the execution of a trust agreement and defines “personal asset management” as the management of a settlor’s personal assets for the benefit of a beneficiary. According to the act, personal asset management excludes (i) the pursuit of objectives that are explicitly prohibited by law or contrary to the public order or good morals; ii) raising capital from the public; iii) trusts under the laws governing transactions in the capital market; and iv) trusts that engage in regulated businesses.

The act is being reviewed by the Council of State and then will be forwarded to the National Legislative Assembly for further consideration.

E-Business Taxation Regime Approved

On 17 July 2018, the Thai cabinet approved a draft act that amends the rules for the collection of VAT from nonresidents that supply e-services to Thai residents. The draft act addresses the following:

- Procedures for issuing an electronic tax summons to a nonresident e-business operator;
- The applicable VAT rate where e-services are provided to a recipient that is not registered for VAT;
- The criteria for nonresident e-service providers and the owners of platforms (computer program platforms or website platforms) to be subject to VAT in cases where the services are utilized in Thailand by a recipient that is not registered for VAT. Procedures that prohibit the nonresident e-service provider and the platform owner to collect VAT from the end user of the goods/services;
- The due date for filing the VAT return and the method for remitting the tax, (i.e. electronic filing of the VAT return via the website of the Thai Revenue Department); and
- Registration requirements for nonresident e-service providers and platform owners that are subject to VAT and whose VAT-able income reaches a certain threshold (to be stipulated under the Royal Decree) to register for VAT purposes in compliance with the rules, procedures and conditions of the Director-General of the Revenue Department.

Infrastructure Land Windfall Tax

On 10 July 2018, the Thai Cabinet approved a draft Land Windfall Act (proposed by the Ministry of Finance) that would provide tax benefits derived from the increased value of immovable property and/or condominium units as a result of the government's investment in transport infrastructure. The draft act would impose tax on individuals and legal entities owning immovable property or condominium units worth more than THB 50 million or in possession of land belonging to the government, where such property is used for commercial purposes. Property developers with condominium projects located within a five-kilometer radius of the government's transport infrastructure also would be subject to the tax.

Tax Measures to Relieve Effects from Adjustment of Minimum Wage

On 10 July 2018, the Thai cabinet approved a draft Royal Decree that contains tax measures to relieve the effects of an increase in the minimum wage by granting an additional 15% tax deduction for daily wages paid to employees by the following employers:

- Individuals who hire no more than 200 workers and derive assessable income under section 40(5) (6) (7) or (8) of the Thai Revenue Code of no more than THB 100 million per year; and
- Companies that hire no more than 200 workers and whose income from the sale of goods and provision of services do not exceed THB 100 million during each accounting period where such deduction is available.

Eligible employers must make daily wage payments to the employee at a rate no less than the announced minimum wage applicable as from 1 April 2018 (according to the wage committee announcement) and may not utilize (in part or full) other income tax benefits relating to employee expenses pursuant to a different Royal Decree(s) issued under the Thai Revenue Code.

Supreme Court Decision – Allocation of Expense from Foreign Countries

Bank A, a Thai branch of a foreign bank, deducted the expenses allocated from its overseas headquarters and regional offices when computing its Thai corporate income tax liability. The tax treaty between Thailand and the country where the bank's head office is located does not prohibit the deduction in Thailand of allocated management and administrative expenses, regardless of whether the expenses are incurred in Thailand or overseas. In the case, the expenses allocated were for the benefit of all of the bank's branches globally rather than incurred solely for the Thailand branch. These expenses included, but were not limited to the following: direct expenses for staff at the bank's overseas headquarters that assisted the group's other banks under their respective responsibilities, allocated based on the work performed (i.e. the percentage of the staff's work for Thailand branch compared with their total work); indirect expenses relating to staff, allocated based on a certain percentage of the direct staff expenses; and management and services expenses, allocated based on time spent. The tax authorities disallowed the deduction of the allocated costs for tax purposes.

The Supreme Court held that Bank A was not entitled to deduct the allocated costs because it was unable to substantiate the benefits it received from the expenses and confirm that the expenses were allocated at an appropriate rate (i.e. that the expenses were not over-allocated to Bank A). Bank A also was unable to demonstrate whether and to the extent the expenses were necessary for the business operations of the branch in Thailand. The court noted that the allocated expenses in the particular year were significantly higher than those in previous years, and the bank did not clarify how many branches it has globally or if the expenses were allocated appropriately based on the overall income/profit of the Thai branch to that of the bank as a whole.

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