



Tax & Legal Services Newsletter

Extension of 7% VAT Rate

On 3 July 2018, the Thai Cabinet approved a draft Royal Decree that would extend the 7% VAT rate for another year, i.e. until 30 September 2019.

Tax Incentives for IHQs Revised

On 19 June 2018, the Thai Cabinet approved a draft Royal Decree that would revise the eligibility criteria for corporate income tax incentives on royalty income received by International Headquarters (IHQ) from affiliated companies. The decree would restrict the type of royalty income received by an IHQ from its Thai or foreign affiliated companies to royalties arising from R&D and technological innovation undertaken in Thailand, regardless of whether the R&D and innovations were originally developed by the IHQ or were the result of outsourcing to third parties.

Tax Incentives for BIBF Abolished

The Thai Cabinet approved a draft Royal Decree on 5 June 2018 that would repeal tax incentives granted for the Bangkok International Banking Facilities (BIBF) regime under Royal Decree No. 454. The draft decree provides that current incentives would remain in effect for the acceptance of deposits abroad or borrowing abroad for offshore lending until the end of the term of the relevant agreements, specifically for deposit acceptances or borrowing for offshore lending under an extension of an intercompany loan

agreement or debt restructuring agreement, as the case may be, that took place before the effective date of the Royal Decree, but may not last longer than 31 December 2020.

Eligible Expenses for Seminars in Secondary Tourist Provinces

The Director-General of Revenue issued a notification on 18 June 2018 (Notification No. 323) that sets out the eligibility criteria for the double deduction of expenses incurred by companies arranging staff training seminars in one of the specific secondary tourist provinces, pursuant to Royal Decree No. 656. According to the notification, the expenses must have been incurred for seminar rooms, accommodation, transportation or other expenses associated with a seminar held by the company in one of the specified secondary tourist provinces or other areas specified by the Ministry of Tourism and Sports during calendar year 2018. The seminar program also must be prepared by the company and be pre-approved by the tax assessment officer. The notification applies retroactively as from 1 January 2018.

Supreme Court Decision – VAT in Relation to Bad Debt

Company A was engaged to undertake the construction of a building with a total services value of THB 541 million. Only a portion of the service fees (i.e. approximately THB 454 million) was paid. Subsequently, the debtor reached an understanding with Company A, whereby the debtor agreed to pay THB 20 million of the outstanding amount. Company A wrote off the remaining construction account receivables and did not remit VAT on that amount. However, the Thai assessment officer took the position that the debt settlement memorandum represented an agreement for the reduction of the debt, which meant that Company A received the full amount of the service fees and, therefore, was required to include the total amount as the VAT base in computing the 7% VAT.

The Supreme Court held that the case involved a debt reduction that was not in compliance with the conditions stipulated under the Thai Revenue Code (i.e. a discount was not granted at the time the services were rendered). Therefore, the full amount of consideration that Company A was entitled to receive for the services provided must be treated as part of the VAT base. In this case, liability to VAT was triggered during the accounting period that the bad debt was written off by Company A.

Revenue Department Rulings

Tax Exemption on Dividends Deriving from Amalgamation

Company A and Company B, previously both shareholders of Company D, amalgamated into Company C. Following the amalgamation, Company D declared a dividend to Company C. At issue was whether Company C would be eligible for a tax exemption on dividend income under Section 65 bis (10) of the Thai Revenue Code.

The Thai Revenue Department ruled that Company C would be eligible for a full tax exemption on a dividend repatriation from Company D to the extent Company C held at least 25% of the total shares in Company D for at least three months. In determining the three-month period, the period that Company A and Company B held the shares in Company D before the amalgamation can be taken into account. However, for the 25% shareholding test, since Company A held only 3% of Company D's shares, the dividends derived from the portion of Company A's shares would not be fully exempt from tax, but still are eligible for a 50% corporate income tax exemption.

VAT on Sales of Carbon Credits

The Thai Revenue Department has ruled that “carbon credits” are considered a type of intangible asset that is subject to VAT.

The case involved a public organization that established a Voluntary Emission Reductions (VERs) Program to promote carbon offsetting activities. The program generated a certified emission reduction or carbon credit that is tradable domestically.

In its ruling, the Revenue Department stated that the only exemption granted for VERs operators is an exemption from corporate income tax on the net profits derived from the trading of carbon credits generated under the program.

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