



## Tax & Legal Services Newsletter

### New Investment Promotion Law Enacted

The salient features of Thailand's Investment Promotion (BOI) Act 2017, which was issued on 24 January 2017, are as follows:

- The BOI business on manufacturing for export is repealed.
- An import duty exemption is provided for goods that are imported for R&D and related testing purposes.
- Businesses that use advanced technology and innovation or R&D in their business may be exempt from corporate income tax for up to 13 years.
- An additional deduction up to 70% of the BOI business investment amount is granted if a corporate income tax exemption benefit is unavailable.
- Net profit/net loss of a BOI business must be calculated in compliance with the Thailand Revenue Code.
- An exemption from income tax on dividends is granted for dividends paid within six months of the expiration of the tax holiday period.
- The ability to deduct 5% of export income increased from the previous year is repealed.

## Act to Enhance Competitiveness for Targeted Industries Issued

The Thai government issued the Act to Enhance Competitiveness of Target Industries 2017 on 13 February 2017, which sets out the procedures for determining the conditions for granting tax privileges to a BOI business. Benefits include a five-year corporate income tax exemption, the ability to use losses incurred during the tax holiday period for five years following the tax holiday period and a tax exemption on dividends paid out of tax-exempt profits.

Financial support will be provided to promoted companies through the government fund on capital expenditure, R&D, innovation promotion, HR development that focuses on specialized professionals.

## Tax Measures on Special Economic Development Zones Released

The Thai government has issued several tax measures for business operators located in special economic development zones (SEZs) in Narathivas, Pattani and Yala provinces, as follows:

- Royal Decree No. 627 grants a corporate income tax exemption to companies that have their place of business in an SEZ in one of the above provinces. The exemption is available for five accounting periods, provided the following conditions are fulfilled:
  - The company is established between 1 October 2015 and 31 December 2020;
  - The company has paid-up capital not exceeding THB 5 million on the last date of the accounting period and income from sales and services in the accounting period do not exceed THB 30 million; and
  - The company earns at least 80% of its total income from one of the targeted businesses (e.g. food and agriculture; energy saving and renewable energy; biotechnology; medical and public health; tourism and services; advance materials, textiles, fabric and accessories; vehicles and auto parts; electronics; and software, research and innovation).
- A notification from the Director-General (Notification on Income Tax No. 284) provides that a qualified tax-exempt business must be certified by the National Science and Technology Development Agency and the business must submit the relevant application by 31 December 2021.
- Royal Decree No. 628 grants a reduction in the personal income withholding tax to 3% on income from employment for employees of companies located in the SEZs in Narathivas, Pattani and Yala provinces for income earned between 27 September 2016 and 31 December 2020. Individuals qualifying for the reduced rate must have certain skills or “expert” qualifications as set out by the Director-General, and he/she must be domiciled outside the SEZ before the employment commences.

Additionally, companies located outside of SEZs are entitled to a double deduction on investments to establish a company that will be located in an SEZ or when making capital increases to a company that already is located in an SEZ, provided the investment is made between 27 September 2016 and 31 December 2020 and the shares in the company are not sold/transferred unless there is a justifiable reason for such sales/transfer.

## Tax Measures Issued to Promote Business in Form of “Company”

Royal Decree No. 630 provides for the following tax incentives to encourage individuals to operate a business in the form of a juristic person:

- An exemption from income tax, VAT, specific business tax and stamp duty on the transfer of ownership in immovable property and assets, the sale of goods, the execution of instruments to the newly established company in exchange for ordinary shares, where these actions are taken during the period 10 August 2016 to 31 December 2017; and
- A double deduction for expenses incurred in setting up the company, as well as a double deduction for bookkeeping fees and auditor fees for five accounting periods for the new company provided the entity does not have more than THB 5 million in paid-up capital at the last date of the accounting period and earns no more than THB 30 million from sales or services.

### Notification of the Ministry of Interior

- A reduction in the fees (for registering rights and juristic acts) on the transfer of immovable property and condominiums by shareholders in order to pay for the shares of entity established between 10 August 2016 and 31 December 2017, from 2% to 0.01% of the appraisal value.

### Tax Measures Issued to Support SMEs

The government issued Royal Decree No. 636 to provide a tax exemption for small and medium-sized enterprises (SMEs), as follows:

- A corporate income tax exemption for ten accounting periods to companies operating a venture capital business on dividends received from SMEs that operate in targeted industries, as well as an exemption for gains derived from the transfer of shares in targeted SMEs, provided the company has paid-up capital of at least THB 20 million and is registered with the Securities and Exchange Commission of Thailand.
- Personal income tax and corporate income tax exemption on dividends received from companies operating a venture capital business or private equity trust, both of which have invested in the targeted SMEs, and an exemption for gains derived from the transfer of the shares and trust units in such companies operating a venture capital business and private equity trust, respectively.

Royal Decree No. 637 was issued to support targeted SMEs by granting a corporate income tax exemption for five accounting periods from the date in which approval is granted if the following requirements are met:

- The SME is established during calendar year 2017, has paid-up capital not exceeding THB 5 million at the last date of the accounting period and income from sales and services in the accounting period not exceeding THB 30 million.
- The SME earns income from the sale of goods or the provision of services in the targeted industries, as per criteria set by the National Science and Technology Development Agency (targeted industries include: food and agriculture; energy saving and renewable energy; biotechnology; medical and public health; tourism and services; advanced materials, textiles, fabrics and accessories; vehicles and auto parts; electronics; and software, research and innovation).

Royal Decree No. 631 provides certain tax exemptions to support SMEs, as follows:

- A double deduction is granted on expenses paid by non-SME companies (assets exceeding THB 200 million and more than 200 employees) to SMEs with assets not exceeding THB 200 million and fewer than 200 employees for projects that enhance the competitiveness of the SMEs for three accounting periods during 2016 – 2018, provided the expenses are:
  - Fees on loan guarantees paid to the Thai Credit Guarantee Corporation which the SMEs would have to pay;
  - Expenses incurred on projects relating to the promotion of the business operations, as certified by the Federation of Thai Industries or Chamber of Commerce. Projects relating to the promotion of business operations include (1) imparting knowledge on management, marketing and accounting; (2) R&D and innovation; 3) the enhancement of productivity; and 4) marketing promotion.

The double deduction, when combined with the other deductible donations, may not exceed 10% of the net profits before the public charitable expense.

## Tax Measures on Local Development

The government has issued Royal Decree No. 632 to encourage local development, as follows:

- A double deduction of expenses is granted for three accounting periods (during the period 2016-2018), but when combined with other deductible donations may not exceed 10% of the net profits before the public charitable expenses, provided the expenses are paid for locally focused projects that contribute to the investment of infrastructure and development/improvement tourist locations in rural areas, such as:
  - Electricity, water supply, roads/express way, and telecommunications;
  - Alternative energy, water management, natural disaster prevention; and
  - Improvement of national parks, archaeological sites and tourist locations.
- Exemptions from corporate income tax, VAT, specific business tax and stamp duty on the transfer of assets, the sale of goods, and the execution of instruments relating to projects that contribute to the development/improvement of infrastructure and tourist locations in rural areas without any consideration paid to government agencies or local administrative bodies. However, the transferor may not treat the cost as its expense in calculating taxable income, and the transfer of ownership must take place between 1 January 2016 and 31 December 2018.

## Tax Measures on Conversion of Real Estate Mutual Funds

Royal Decree No. 635 aims to encourage the conversion of real estate mutual funds into Real Estate Investment Trusts (REIT) during calendar year 2017, as follows:

- A personal income tax and corporate income tax exemption will be granted to unitholders in the real estate mutual fund on the conversion of the units to a REIT; and
- The real estate mutual fund will be exempt from VAT, specific business tax and stamp duty on the conversion to a REIT.

## Extended Tax Measures on Asset Investments

Following the government's policy to encourage asset investment by allowing a double deduction of the normal depreciation, which expired in 2016, the Cabinet has approved another policy that allows an additional 50% deduction of the capital actually paid, in addition to the normal depreciation/amortization, for corporate income tax purposes provided the payment for the assets is made during calendar year 2017 and certain other rules and conditions are fulfilled.

## Donations to Flood Victims

Royal Decree No. 638 provides guidance on the tax treatment of donations made to flood victims in Thailand during calendar year 2017. According to the guidance, the donor is entitled to a 150% deduction of the monetary donations for personal income tax purposes, but when combined with other deductible donations, may not exceed 10% of net income. For corporate income tax purposes, the donor is entitled to a 150% deduction of monetary or asset donations, but when combined with expenses incurred for public charities and for the public interest may not exceed 2% of the net income. In both instances, the donation must be made through governmental agencies, qualified public charity organizations or donation agents as per Royal Decree No. 527 or qualify as an expense for public charity and in the public interest under section 65 ter (3) of the Revenue Code.

## New Tax Treaties that are Effective in 2017

The revised tax treaty between Thailand and Singapore, which applies as from 1 January 2017, makes the following changes to the previous treaty dating from 1976:

- The threshold for a construction site to be considered a permanent establishment (PE) is increased from six to 12 months;
- A service PE will arise if services are provided in a contracting state for 183 days in any 12-month period;
- The maximum withholding tax rate on interest from a sale on credit is reduced from 25% to 10%;
- The maximum withholding tax rate on royalties is changed from a flat 15% rate to rates of 5%, 8% or 10%, depending on the type of royalties.
- Gains from the sale of assets under the capital gains article is expanded to cover the sale of shares of a company operating a real estate business, but not including listed shares;
- The article covering the taxation of public entertainers now covers income derived by other persons that is connected with the entertainers' activities; and
- The definition of international transport is expanded to cover the rental of boats and containers.

The new Thailand – India DTA also becomes effective since 1 January 2017.

## Tax Invoicing Rules Eased for Multiple Supplies on One Business Day

Departmental Instruction No. Paw. 155/2560 eases the tax invoicing requirements by allowing business operators to issue a combined invoice in certain cases. A tax invoice must be issued for every transaction that is subject to VAT. Under the new rule, if a business operator makes multiple supplies (e.g. goods, services) to the same buyer on one business day, the business operator may issue a single combined tax invoice to the buyer/service recipient.

## Exemption from Inheritance Tax

The ministerial regulation under the Inheritance Tax Act grants an inheritance tax exemption to the following persons and organizations:

- Persons who receive royal expenses from the royal annual budget and royalty;
- Various organizations (including government agencies and state enterprises, temples, mosques, the Thai Red Cross, foundation/associations, as announced by the Ministry of Commerce, private higher educational institutions, the United Nations and embassies.

## Tax Exemption Granted for Amateur Athletes

Ministerial Regulation No. 325 grants a personal income tax exemption to athletes and coaches that win any international amateur sport events. The exemption applies to the portion of income that exceeds THB 10 million, as per conditions set by the Revenue Department.

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