



Tax & Legal Services Newsletter

[Tax Reduction for Investment in Special Economic Zone](#)

On 14 May 2019, the Thai Cabinet approved a tax measure that aims to extend the period for companies and juristic partnerships located in a special economic zone (SEZ) to register for the SEZ reduced corporate income tax rate. Under the SEZ regime, the income tax rate for qualified businesses is reduced from 20% to 10% on the net profit derived from the manufacturing of products or the provision of services in the SEZ for the 10 consecutive accounting periods beginning on or after the registration date between 1 January 2018 and 30 December 2020.

[Tax Measure to Promote Reduced Greenhouse Gas Emissions](#)

On 14 May 2019, the Thai Cabinet approved a draft Royal Decree that includes a tax measure to promote the Thailand Voluntary Emission Reduction Program. The draft decree would provide a corporate income tax exemption for three consecutive accounting periods for sales of carbon credits on voluntary emission reductions made in Thailand or overseas that are registered under the Thailand Greenhouse Gas Management Organization from the enforcement date of the law until 31 December 2020.

Tax Reduction for Investment in ASEAN

Royal Decree No. 680, issued on 31 May 2019 and that applies as from 1 June 2019, provides a reduced personal income tax rate on dividends or profits paid from the ASEAN Collective Investment Scheme. Under the decree, the payer of the income is required to withhold a final 10% tax on the payments, and the taxpayer receiving the income is not required to include the income in his/her personal income tax computation provided he/she does not request a refund of the tax withheld.

Double Deduction for E-Donation

Royal Decree No.681, issued on 31 May 2019, provides a double deduction for corporate and personal income tax purposes for amounts donated to educational institutions via the e-donation system. The decree applies to donations made between 1 January 2019 and 31 December 2019.

Tax Incentive for Development of Electronic Tax Payment and Submission System

Royal Decree No. 683, issued on 12 June 2019 and that applies as from 13 June 2019, provides a double deduction for amounts paid for the development of an electronic tax payment and electronic tax return submission system under the following rules:

- Companies can claim a double deduction for amounts paid for (i) investments in an e-documents system including payment for software and computers to be used, for preparing, sending, or storing electronic tax invoices or electronic receipts and for electronic storage for tax certificates; (ii) service charges for electronic storage space and e-tax certificates; and (iii) investments in a tax remittance system. The system must be for the benefit of the company, and not for sale or the provision of services to third parties.
- The payment must be made between 30 April 2019 and 31 December 2019.
- The acquired assets must never have been used, must have a useful life of at least three accounting periods and must not benefit from other tax incentives in Thailand.

Petroleum Income Tax Ministerial Regulations

The following petroleum income tax ministerial regulations were issued on 28 May 2019 and apply as from 29 May 2019:

- Ministerial Regulation No. 7 prescribes the procedures and conditions for deducting head office expenses by branches in Thailand, such as expenses for assistance or the provision of services by the head office related to the petroleum business of the branch.
- Ministerial Regulation No. 8 provides that where a petroleum business is transferred, the transferee will succeed to the unused loss balance of the transferor company as from the accounting period of the transfer.
- Ministerial Regulation No. 9 provides that companies are required to calculate revenue, expense and net profit separately for exploration blocks following to the Act Amending Petroleum Income Tax that was enacted in 1998. If the income and expenses cannot be separated, the income and expenses must be averaged according to procedures and conditions prescribed in the Ministerial Regulation.

World Trade Organization (WTO) Panel confirms that Thailand violated international customs valuation rules for cigarette imports

On 12 July 2019, a WTO Compliance Panel circulated a report in which it confirmed earlier rulings that Thai Customs has acted inconsistently with international customs valuation rules and not taken the necessary measures to comply with those earlier rulings.

In 2008, the Philippines requested a panel before the WTO Dispute Settlement Body (DSB) concerning a number of Thai customs and fiscal measures imposed on cigarettes exported from the Philippines to Thailand. The Philippines claimed that these measures were in violation of several of Thailand's obligations under the WTO General Agreement on Tariffs and Trade (GATT), including the Customs Valuation Agreement.

Thai Customs had investigated the import prices declared by the cigarette importer in related-party transactions and determined that the declared transaction value was not acceptable (i.e. too low) from a customs point of view. As a result, the import price was rejected. Both under the first panel in 2010 and after an appeal by Thailand before the WTO Appellate Body in 2011, Thai Customs was found not having acted in accordance with the WTO Customs Valuation Agreement.

On request of the Philippines, a new WTO Compliance Panel was formed in 2016 and again this year, after Thai Customs and the Thai Board of Appeal in 2012 had similarly rejected import prices of the same importer and the Thai Public Prosecutor imposed criminal charges on the importer for allegedly making false declarations. In addition, the Philippines claimed Thailand had not taken any demonstrable actions to change its practices on customs valuation since the 2010 and 2011 panel rulings.

The 2018 ruling and this month's ruling confirmed that Thailand has not taken the necessary measures to improve its non-compliance with international customs valuation rules. The Compliance panels found that:

- Thai Customs and the Thai Customs Board of Appeal had continued to reject the import price of certain imports by the same cigarette importer based on the fact that the importer and exporter were related parties, and determined a higher import price by applying a deductive valuation method.
The fact that importer and exporter are related parties does not in itself disqualify the transaction price applied between the parties, but requires an examination of the circumstances surrounding the sale in accordance with articles 1.1 and 1.2(a) of the Customs Valuation Agreement, which Thai Customs failed to do;
- Thai Customs and the Public Prosecutor applied alternative valuation methods (transaction price of identical or similar goods, deductive valuation, computed valuation, alternative valuation) inconsistently with the requirements under the Customs Valuation Agreement by not correctly assessing certain costs;
- Thai Customs and the Public Prosecutor did not follow the obligation to sequentially apply the obligatory customs valuation methods in article 2 to 7 of the Customs Valuation Agreement;
- Thai Customs and the Public Prosecutor did not provide sufficient reasons and timely explanations for their rejection of the import price as required in article 11.3 and 16 of the Customs Valuation Agreement.

Under the WTO framework, if Thailand does not take the appropriate measures to eliminate non-compliances with WTO rules within a reasonable period of time, the Philippines can request DSB approval to take equivalent retaliatory trade sanctions against Thailand.

Anthony Visate Loh

International Tax & Indirect Tax

Tel: +66 (0) 2034 0000 ext 40112

Email: aloh@deloitte.com

Chairak Trakhulmontri

Transfer Pricing

Tel: +66 (0) 2034 0000 ext 10338

Email: ctrakhulmontri@deloitte.com

Darika Soponawat

Business Tax (Japanese Services Group) & Tax Compliance

Tel: +66 (0) 2034 0000 ext 40115

Email: dsoponawat@deloitte.com

Dr. Kancharat Thaidamri

Transfer Pricing & Business Tax

Tel: +66 (0) 2034 0000 ext 40118

Email: kthaidamri@deloitte.com

Korneeka Koonachoak

Business Tax (Business Model Optimization)

Tel: +66 (0) 2034 0000 ext 40122

Email: kkoonachoak@deloitte.com

Mark Kuratana

Global Employer Services

Tel: +66 (0) 2034 0000 ext 40125

Email: mkuratana@deloitte.com

Mike Fiore

Business Process Solution

Tel: +66 (0) 2034 0000 ext 40126

Email: mfiore@deloitte.com

Stuart Simons

Transfer Pricing & Customs Services

Tel: +66 (0) 2034 0000 ext 40135

Email: ssimons@deloitte.com

Thirapa Glinsukon

Business Tax & Tax Compliance

Tel: +66 (0) 2034 0000 ext 40159

Email: tglinsukon@deloitte.com

Wanna Suteerapornchai

Business Tax (M&A) & FSI

Tel: +66 (0) 2034 0000 ext 40144

Email: wsuteerapornchai@deloitte.com

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities. DTTL (also referred to as "Deloitte Global") and each of its member firms are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 264,000 people make an impact that matters at www.deloitte.com

About Deloitte Southeast Asia

Deloitte Southeast Asia Ltd – a member firm of Deloitte Touche Tohmatsu Limited comprising Deloitte practices operating in Brunei, Cambodia, Guam, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam – was established to deliver measurable value to the particular demands of increasingly intra-regional and fast growing companies and enterprises.

Comprising approximately 340 partners and 8,800 professionals in 25 office locations, the subsidiaries and affiliates of Deloitte Southeast Asia Ltd combine their technical expertise and deep industry knowledge to deliver consistent high quality services to companies in the region.

All services are provided through the individual country practices, their subsidiaries and affiliates which are separate and independent legal entities

About Deloitte Thailand

In Thailand, services are provided by Deloitte Touche Tohmatsu Jaiyos Co., Ltd. and its subsidiaries and affiliates.

© 2019 Deloitte Touche Tohmatsu Jaiyos Advisory Co., Ltd.