



Tax & Legal Newsletter

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Additional deduction of expenses for investment in automation systems

Royal Decree No. 710, issued on 23 September 2020, provides that a company or juristic partnership is eligible for an additional deduction of 100% (i.e., a total of 200%) of the actual expenses paid for machinery (and computer programs connected with the machinery) for projects investing in automation systems, excluding amounts for maintenance/repairs. The royal decree prescribes the following rules and criteria:

- The machinery and computer program must be for an automation system investment project duly certified by an agency recognized by the Director-General of the Revenue Department;
- The machinery and computer program must never have been used;
- The expense for projects investing in automation systems must be paid between 1 January 2019 and 31 December 2020;
- The machinery and computer program must be eligible to be depreciated under the Thai Revenue Code and must be in ready-to-use condition by no later than 31 December 2020;
- The machinery and computer program must be located in Thailand;
- The machinery and computer program must not be eligible, in whole or in part, for any tax privileges under another royal decree of Thai Revenue Code;

- The machinery and computer program must not be used in a business that has been granted corporate income tax exemption, in whole or in part, under the law governing investment promotion, the law governing enhancement of competitiveness of the country for target industries, or the law governing eastern special development zones; and
- The company or juristic partnership must prepare an investment project plan, as well as a payment plan, and notify such to the Director-General according to the prescribed bases, procedures, conditions, and time period.

If the company or juristic partnership does not comply with the rules, bases, and criteria provided by the royal decree, the right to the additional deduction will be terminated, and the company or juristic partnership must include the amount of additional deduction taken as income for purposes of calculating its income tax in the accounting period of the deduction. However, if the machinery or computer program is sold, destroyed, lost, or dilapidated, the right to the additional deduction will be terminated as from the accounting period of such event, and the additional deduction taken is not required to be included as income for income tax purposes.

Additional deduction for expenses paid to employees of target industrial businesses

Royal Decree No. 711, issued on 23 September 2020, provides that a company or juristic partnership operating a target industrial business under the law governing enhancement of competitiveness of the country for target industries is eligible for an additional deduction of 50% (i.e., a total of 150%) of the amount actually paid as salaries under contracts of employment with highly-skilled employees in the fields of science, technology, engineering, or mathematics. The 50% additional deduction applies to the portion of the employee's salary actually paid out from 1 January 2019 until 31 December 2020. The total additional deduction shall not exceed THB 100,000 per month. Such employees must be certified by an agency recognized by the Director-General and must commence their work under contracts of employment between 1 January 2019 and 31 December 2020. In addition, the employees must not have been employees of a company or a juristic partnership operating a target industrial business under the law governing enhancement of competitiveness of the country for target industries within a period of one year prior to their commencement of work.

Additional deduction for expenses paid for training employees

Royal Decree No. 712, issued on 23 September 2020, provides that a company or juristic partnership is eligible for an additional deduction of 150% (i.e., a total of 250%) of expenses paid from 1 January 2019 to 31 December 2020 for sending its employees to attend a course of study or training, or for arranging a training course for its employees provided that the curriculum is recognized by a state agency as prescribed by the Director-General. The decree provides that to exercise the right to use the additional deduction, the company or juristic

partnership must not have incurred the above-mentioned expenses, in whole or in part, in a business granted corporate income tax exemption under the law governing investment promotion, the law governing enhancement of competitiveness of the country for target industries, or the law governing eastern special development zones.

Deduction for donation to educational institution

Royal Decree No. 713, issued on 23 September 2020, provides a double deduction for donations made to certain educational institutions by individuals, companies, and juristic partnerships between 1 January 2020 and 31 December 2021 via the electronic donation system. For individuals, a deduction is allowed only for donations made in cash. For companies and juristic partnerships, a deduction is allowed for donations made in cash or in property. The deduction must be made to a state's educational institution, a private school under the law governing private schools (excluding non-formal schools), a private university under the law governing private universities, or an educational institution established in Thailand under a convention or an agreement between the government of Thailand and a specialized agency of the United Nations. However, the amount of deduction shall not exceed the amount prescribed under this royal decree. In addition, the royal decree provides an exemption from income tax, value added tax, specific business tax, and stamp duty for the donation made according to prescribed rules and criteria.

Exchange rate for tax computation

A notification of the Ministry of Finance issued on 25 September 2020 provides the rules and criteria for the conversion of a foreign currency to THB for tax remittance purposes under section 3 Quindecim of the Thai Revenue Code. The daily reference rate notified by the Bank of Thailand two days prior the date of the tax remittance under section 3 Quindecim of the Thai Revenue Code shall be used for conversion purposes. The notification applies as from 17 July 2020 onward.

Criteria for payment of duty in cash for electronic instruments

Notification of the Director-General of the Revenue Department No. 60, issued on 15 September 2020, provides that the stamp duty for the following instruments can be paid in cash via the application form for payment of stamp duty in cash for electronic instruments (Form Or.Sor.9):

- Hire of work contracts;
- Borrowing of money or bank overdraft agreements;
- Powers of attorney;
- Letters of proxy for voting at a company's meeting; and
- Guarantees.

The notification applies to instruments executed from 29 September 2020 to 31 December 2020. A person liable to duty should submit Form Or.Sor.9 online

through the Revenue Department's website and must follow the rules and criteria prescribed under this notification.

Rules and criteria for deduction on purchase biodegradable plastic products

Royal Decree No. 702, issued on 22 June 2020, provides that a company or juristic partnership is eligible for an additional deduction of 25% (i.e., a total of 125%) of expenses paid for purchases of biodegradable plastic products from VAT business operators. To qualify for the additional deduction, the production of biodegradable plastic products must have been certified by the Office of Industrial Economics. The additional deduction applies to expenses paid from 1 January 2019 until 31 December 2021. On 9 September 2020, the Director-General of the Revenue Department issued a notification (No. 388) to prescribe the rules and criteria for the additional deduction under Royal Decree No. 702. These include, among others:

- The types of biodegradable plastic products that are eligible for the additional deduction include garbage bags, plastic glasses, single-used plates and plastic trays, etc.
- Companies and juristic partnerships claiming the additional deduction must prepare the report prescribed under the decree.

Update on New Procedures under ATIGA

Recently, Member states to the ASEAN Trade in Goods Agreement (ATIGA) adopted several changes to the Operational Certification Procedures (OCP), which are the rules regarding the issuance of the preferential Certificate of Origin (Form D). The Form D secures duty privileges for imports of goods from Thailand into the other ATIGA markets. Changes include the official implementation of the self-certification scheme under ATIGA, also known as the ASEAN Wide Self-Certification (AWSC), and adjustments to the Form D requirements. The changes are aimed to simplify customs formalities for trade between the ASEAN member states.

In Thailand, the Department of Foreign Trade (DFT) and Customs Department, implemented the new OCP and AWSC through several regulations which became effective from 20 September 2020 onwards.

ASEAN Wide Self-Certification (AWSC)

Under the new AWSC scheme in Thailand, "certified exporters" registered with DFT can now self-certify on the export documents (e.g. commercial invoice, billing statement, delivery order, packing list) that they are eligible to use the ATIGA privileges with an "Origin Declaration", instead of requesting the traditional Certificate of Origin (FORM D or e-FORM D) from DFT, which is a lengthier and more burdensome process.

To become a "certified exporter" and self-certify ATIGA exports, companies must submit an application with DFT and demonstrate compliance with a set of conditions. If approved, the certified exporter status will be valid for 2 years (after which the status can be renewed). The exporter is also required to register the products which they intend to self-certify under this scheme with DFT. Failing to meet the requirements, such products would not be eligible for self-certification and thus the Form D is still required to utilize the duty privilege upon importation into destination country.

The "Origin Declaration" itself is also subject to formality obligations. The "certified exporter" also has an obligation to keep the documents related to self-certification for 3 years from the self-certification date and must submit a monthly report on exportation of self-certified goods within each 15th day of the following month. Failing to submit the report 3 months in a row may result in suspension of the self-certification.

New Operational Certificate Procedure under ATIGA

Apart from AWSC, new Operational Certification Procedures (OCP) have been introduced in Thailand since 20 September 2020. The changed procedures are as follows:-

- Use of Back-to-Back Certificate of Origin (CO)

Reference no. and issuance date of the original Proof of Origin (FORM D, e-FORM D, or Origin Declaration) must be indicated in box 7 of the Back-to-Back CO.

Thai authorities now also accept Back-to-Back Proof of Origin (whether Form D, e-FORM D, or Origin Declaration) to be used for a third country invoicing transaction. In that case, "Third country invoicing" in box 13 must be ticked, name and country of the company located in third country must be indicated in box 7 of Back-to-Back and the invoice issued from the company located in the country which issues the Back-to-Back Proof of Origin must be submitted together with the Proof of Origin upon importation.

This provision had already been included in the recently issued regulation in relation to conditions and procedures on duty exemption and reduction for goods originated in ASEAN.

- FOB Value

Previously, the FOB value should be declared in box 9 of the Form D. However, under the new OCP, there is no longer a requirement to declare the FOB value. This rule change can be especially of interest in case of third country invoicing where suppliers prefer to not disclose the initial export price to the ultimate recipients of the goods. An exception to this rule stays in place for exports to some Lao PDR, Cambodia and Indonesia.

- Electronic Signature and Seal (ESS)

Instead of Digital Signature (DS) system, DFT has started implementing the Electronic Signature and Seal (ESS) system from 20 September onwards for the issuance of the Form D. The DS system (for FORM D) has been closed since 19 September 2020.

What can you do?

Exporting companies may need to review and align their internal procedures on obtaining the Form D for exports to ASEAN countries with the new ATIGA OCP to comply with the implemented regulations.

In order to simplify the customs formalities, companies may also consider to start using the AWSC. In that case it is recommended to first assess whether the company can meet the conditions and requirements to be a certified exporter under the Thai law.

For further information or support, do not hesitate to reach out to our Deloitte Customs & Trade professionals.

Contacts

Anthony Visate Loh

International Tax & Legal

Tel: +66 (0) 2034 0000 ext 40112

Email: aloh@deloitte.com

Mark Kuratana

Global Employer Services

Tel: +66 (0) 2034 0000 ext 40125

Email: mkuratana@deloitte.com

Chairak Trakhulmontri

Transfer Pricing

Tel: +66 (0) 2034 0000 ext 40157

Email: ctrakhulmontri@deloitte.com

Stuart Simons

Transfer Pricing

Tel: +66 (0) 2034 0000 ext 40135

Email: ssimons@deloitte.com

Darika Soponawat

Business Tax (Tax Compliance)

Tel: +66 (0) 2034 0000 ext 40115

Email: dsoponawat@deloitte.com

Thirapa Glinsukon

Business Tax (Tax Compliance)

Tel: +66 (0) 2034 0000 ext 40159

Email: tglinsukon@deloitte.com

Dr. Kancharat Thaidamri

Transfer Pricing

Tel: +66 (0) 2034 0000 ext 40118

Email: kthaidamri@deloitte.com

Nu To Van

Indirect Tax (Customs & VAT)

Tel: +66 (0) 2034 0000 ext 40163

Email: ntovan@deloitte.com

Korneeka Koonachoak

Business Tax (Value Chain Alignment)

Wanna Suteerapornchai

Business Tax (M&A)



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