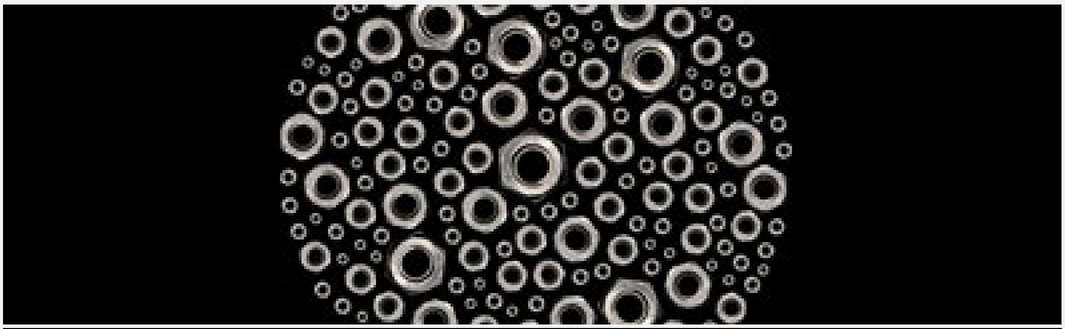

Tax & Legal Newsletter
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Criteria set forth for determining eligibility of long-term resident foreign nationals for tax incentives

A notification from the Director-General of the Thai Revenue Department on income tax (No. 427) that was issued on 26 August 2022 and entered into force on 1 September 2022 provides rules, procedures, and conditions for determining the eligibility of foreign nationals for certain tax incentives set forth under a royal decree (No. 743) dated 21 May 2022. The incentives (which include a reduction in the personal income tax rate or a personal income tax exemption for certain income, depending on the circumstances) are available as from the date of entry into force of the notification (1 September 2022) for qualifying foreign nationals falling within the specific groups of persons listed in Royal Decree No. 743, i.e., highly skilled foreign professionals, foreign nationals from jurisdictions designated as "wealthy countries," retired foreign nationals, and foreign nationals who want to work remotely from Thailand. The requirements set forth in Notification No. 427 are as follows:

- The foreign national must have obtained a long-term resident visa, according to the law on immigration; and
- The foreign national must meet the required criteria and comply with the conditions for a special temporary visa, as set forth by the Office of the Board of Investment.

In addition, foreign nationals falling within the category of highly skilled professionals must comply with the following additional rules, procedures, and conditions to be eligible for a tax reduction incentive:

- The foreign national must be an employee under an employment agreement with a company or juristic partnership operating in targeted industries, determined in accordance with the Competitive Enhancement Act, the Investment Promotion Act, or the Eastern Economic Corridor regulations. The entity employing the foreign employee that wishes to obtain the tax reduction incentive is required to prepare a report to provide the name of the employee to the revenue office for the area where its business operations are located. The report must contain, at a minimum, the particulars and statements specified in the template attached to Notification No. 427;

- The foreign national must derive assessable income under section 40(1) of the Thai Revenue Code in connection with such employment;
- The foreign national must submit a personal income tax return for foreign nationals with income from employment (i.e., PND.95) to the Thai Revenue Department within the legally required time period, in respect of the tax year in which the foreign national wishes to claim the tax reduction incentive; and
- Where a foreign national fails to comply with the requirements specified above in any tax year, the person will be denied tax reduction incentives with respect to that particular year.

Rules, criteria, and conditions provided for tax incentive in relation to donations made to medical foundations via e-Donation system

A notification from the Director-General of the Thai Revenue Department (No. 42) was issued on 2 August 2022 to provide rules, criteria, and conditions for claiming tax incentives in respect of donations made to a "listed medical foundation" via the electronic donation ("e-Donation") system from 26 April 2022 to 31 December 2022, in accordance with Thai Royal Decree No. 754 (dated 18 July 2022). Royal Decree No. 754 provides individuals, companies, and juristic partnerships with an additional income tax deduction of 100% (i.e., a total deduction of 200%) for qualifying donations, as well as certain exemptions from VAT, specific business tax, and stamp duty in connection with donations. The requirements set forth in Notification No. 42 are as follows:

- To qualify for the personal income tax deduction, the donations must be made in cash.
- In the case of corporate income tax, in addition to cash donations, companies or juristic partnerships also may claim deductions for donations of assets and inventory. However, for non-cash donations, the following rules must be complied with for the company or juristic partnership to be eligible to claim a deduction:
  - In the case of a donation of a newly purchased asset, the donor must maintain evidence of the purchase providing a description of the item and the purchase price. The deduction will be allowed based on the value of the purchase price.
  - For donations of used assets that are recorded in the donor's fixed assets register, the deduction will be allowed based on the net asset value after deducting depreciation.
  - In the case of donations of inventory (either newly purchased inventory or inventory already owned by the donor), the deduction will be allowed based on the cost incurred for such inventory that is specified in supporting evidence; however, the value may not exceed the value of the inventory carried forward from the previous accounting year.
  - Where an asset or inventory is purchased to be donated, the value on which the deduction is based may not exceed the market value of the item donated.

Donors may rely on the information recorded in the e-Donation system as evidence to support claims for the income tax deductions and the exemptions from VAT, specific business tax, and stamp duty provided under Royal Decree No. 754, without the need to present a donation receipt to the tax assessment officer.

Rules, criteria, and conditions provided for tax incentive in relation to donations made to prime minister's office via e-Donation system

A notification from the Director-General of the Thai Revenue Department (No. 43) was issued on 10 August 2022 to provide rules, criteria, and conditions for individuals, companies, and juristic partnerships to claim income tax deductions and VAT exemptions in respect of donations made from 6 March 2022 to 31 December 2023 via the e-Donation system to the prime minister's office to support COVID-19 measures, in accordance with the provisions of Thai Royal Decree No. 751 (dated 18 July 2022). The requirements are as follows:

- To qualify for the personal income tax deduction, the donations must be made in cash.
- In the case of corporate income tax, in addition to cash donations, companies or juristic partnerships also may claim deductions for donations of assets and inventory. However, for non-cash donations, the following rules must be complied with for the company or juristic partnership to be eligible to claim a deduction:
    - Donations of assets or inventory must be made only in assets or inventory of the types and kinds specified by the prime minister's office.
    - In the case of donations of a newly purchased asset, the donor must maintain evidence of purchase providing a description of the item and the purchase price. The deduction will be allowed based on the value of the purchase price.
    - For donations of used assets that are recorded in the donor's fixed assets register, the deduction will be allowed based on the net asset value after deducting depreciation.
    - In the case of donations of inventory (either newly purchased inventory or inventory already owned by the donor), the deduction will be allowed based on the cost incurred for such inventory that is specified in supporting evidence; however, the value may not exceed the value of the inventory carried forward from the previous accounting year.
    - Where an asset or inventory is purchased to be donated, the value on which the deduction is based may not exceed the market value of the item donated.

Donors may rely on the information recorded in the e-Donation system as evidence to support claims for the income tax deductions and VAT exemptions provided under Royal Decree No. 751, without the need to present a donation receipt to the tax assessment officer.

Rules, criteria, and conditions provided for tax incentive in relation to donations of imported medicine and medical supplies to resolve COVID-19 situation

A notification from the Director-General of the Thai Revenue Department (No. 44) was issued on 11 August 2022 to provide rules, criteria, and conditions for the exemptions from income tax and VAT for companies or juristic partnerships with respect to qualifying donations of imported medicine and medical supplies made from 1 April 2022 to 31 December 2023 to resolve the COVID-19 situation, in accordance with the provisions of Thai Royal Decree No. 755 (dated 18 July 2022). For a donation to be a qualifying donation, it must be a donation of specific imported goods falling on a list prescribed by the Ministry of Public Health that are made to an approved public charitable organization or medical facility, such as the Thai Red Cross Society. In addition, the importing donor is required to include the text "Donation for COVID-19" on the import declaration to qualify for the exemption.

Companies or juristic partnerships that wish to claim income tax and VAT exemptions under Royal Decree No. 755 may not deduct the cost of donated goods as an expense in the corporate income tax calculation and also must maintain supporting evidence such as the import entry document, the donation receipt issued by the donee, etc., to have available for inspection by the tax assessment officer.

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Should you have any comments or questions arising from this newsletter, please contact either the listed contacts below, or any member of the Thailand Tax & Legal team.

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