

Legal and Tax Update

October 2015

CORPORATE

Electronic Meetings

Electronic meetings are now allowed under the Announcement of the National Council for Peace and Order No. 74/2557 dated 27 June 2014, which provides the following criteria:

- at least one third of the quorum of the meeting must physically attend the meeting at the same venue;
- all participants in the meeting must physically be in Thailand at the time of the meeting;
- an electronic meeting can be conducted through a voice or video conference; and
- an invitation to an electronic meeting can be sent via e-mail.

The Ministry of Information and Communication Technology has issued the following regulations regarding the security and standards of meetings held via electronic media:

- the entire meeting must be voice recorded or videotaped;
- measures to prevent tampering with the recording of such meeting must be adopted; and
- computer data transmissions from the meeting must be recorded.

Registration of Capital

Registration of either the initial capital or an increase of the registered capital of a partnership or company over THB 5 million requires the submission of the following supporting documents.

Newly established entities:

- a document from a bank certifying or evidencing receipt of the cash contribution
 - to be submitted within 15 days from the date of registration; and
- for in-kind contribution, a letter issued by the owner of the asset(s) stating that the asset(s) will be transferred to the partnership or the company or the partnership will be entitled to use such asset(s)
 - to be submitted within 90 days from the date of registration of:
 - immovable asset(s), transfer of ownership
 - movable asset(s), list of assets and the value of the assets; and/or
 - right to use such asset(s), an agreement giving permission to the partnership or company to use such asset(s).

Existing entities:

- the same supporting documents as noted above together with the registration documents on the date of registration

The registrar may refuse a registration on the grounds of non-compliance.

FOREIGN DIRECT INVESTMENT

Direct Investment by ASEAN Member State Nationals

Under the ASEAN Framework Agreement on Services and the ASEAN Comprehensive Investment Agreement investors from ASEAN countries are allowed to invest in some businesses restricted under the Foreign Business Act in Thailand if they own the majority of the shares in a Thai company:

- up to 70% for some service businesses restricted under list 3
 - accounting services for companies within the group not exceeding 51%
 - software consulting services not exceeding 70%
 - research and development services not exceeding 70%
- 100% of the shares in a restricted manufacturing business
 - rice milling and flour production from rice and farm produce up to 100%.

Qualifications

An investor must be:

- an entity incorporated in Thailand;
- an individual shareholder having ASEAN nationality;
- a corporate shareholder:
 - an individual having ASEAN nationality holding more than 50% of the total shares issued;
 - the majority of directors must have ASEAN nationality
 - authorized directors must have ASEAN nationality.

BOI

Additional Tax Exemptions to Promote Investment

The Board of Investment (“BOI”) has approved a new policy to promote investment in projects:

- actual investment and business operations will start by or before 2017
- investment project applications may be submitted to the BOI from 1 January 2015 to the end of 2016

- projects located in special economic zones:
 - additional 2-year corporate income tax exemption (with 8 year cap); or
 - 5-year extension of 50% corporate income tax allowance (in 9th to 13th years) for those who have already obtained 8-year income tax exemption
- projects located outside special economic zones:
 - additional 1-year corporate income tax exemption (with 8 year cap).

International Headquarters Scheme

An IHQ is a company incorporated under the laws of Thailand which provides:

- management services
- technical or support services or financial management services to its associated enterprises or branches
 - can be situated in Thailand or overseas.

The IHQ Scheme includes:

- general administration, business planning and co-ordination
- procurement of raw materials and provision of parts
- research and development
- technical assistance and support
- marketing and sales promotion
- human resource management and training
- financial advisory services
- economic and investment research and analysis
- credit management and control which includes financial management (treasury center and lending)
- any other supporting activities prescribed by the Director-General of the Revenue Department.

Conditions for the establishment of an IHQ:

- (i) The paid-up capital on the last day of its accounting period must be at least THB 10 million.
- (ii) Qualified services must be provided to associated enterprises in Thailand and/or abroad.
- (iii) The amount of operating expenses (e.g., employee costs, utilities, office costs, audit fees) of the IHQ paid to recipients in Thailand must not be less than THB 15 million in each accounting period.

IHQ Tax Incentives

Thai sourced income

For associated enterprises incorporated under Thai law, Thai sourced income will receive a 10% corporate income tax reduction for net profits for income derived from:

- (i) qualified management services, technical or support services and financial management; and
- (ii) royalties.

Foreign sourced income

With regard to associated enterprises incorporated under foreign law, foreign sourced income is exempt from corporate income tax in the following cases:

- (i) qualified managerial services, technical or support services and financial management;
- (ii) royalties;
- (iii) dividends;
- (iv) capital gains from the sale of shares in the associated enterprise;
- (v) income generated from trading activities abroad without importing such goods into Thailand (out-out transactions) and income derived from international trade services provided to an entity incorporated under foreign law and received either in or from a foreign country.

The Thai sourced income must not exceed the foreign sourced income.

Personal income tax rate privileges for expatriates

Expatriates employed by an IHQ may choose to pay personal income tax at the rate of 15% of their salaries.

Withholding tax exemption

- (i) Dividends paid by the IHQ to corporate shareholders incorporated under foreign law and not conducting business in Thailand which are paid from foreign sourced income are exempt from corporate income tax; and
- (ii) Interest paid by the IHQ to foreign entities not conducting business in Thailand for loans borrowed by the IHQ for re-lending to its associated enterprises.

Exemption from special business tax on interest

- The IHQ is exempt from the special business tax on interest income derived from loans provided to its associated enterprises.

Tax benefit period

- 15 accounting periods from the day following the day on which the Director-General of the Revenue Department grants approval for the setting up of the IHQ.
- If an IHQ lacks any of the qualifications referred to above in any accounting period, the right to tax privileges will be suspended only for that accounting period.

TAXATION

Inheritance Tax and Gift Tax

The Inheritance Tax Act and an act amending the Revenue Code (No.40) on gift tax were published in the Government Gazette on 5 August 2016 and will come into force 180 days from the Government Gazette publication date (i.e., **2 February 2016**).

Inheritance tax

- The spouse of the deceased is not required to pay inheritance tax.
- A person who is the ascendant of the deceased is required to pay **5% tax on an inheritance amount exceeding THB 100 million**.
- A person who is not the ascendant of the deceased is required to pay **10% tax on an inheritance amount exceeding THB 100 million**.

Gift tax

- For a gift by way of transfer of ownership or possession over immovable property without compensation from a parent to child (not including adopted persons) with a total amount exceeding THB 20 million during a tax year, **the amount exceeding THB 20 million is subject to a tax of 5% of the income amount**.
- For a gift, which is a supporting or gratuitous transfer, between (a) an ascendant and a descendant, or (b) between the spouses; with the total amount exceeding THB 20 million during a tax year, **the amount exceeding THB 20 million is subject to a tax of 5% of the income amount**.
- For other gifts, which are support due to moral duties or gratuitous transfers for ceremonies or traditions, with the total amount exceeding THB 10 million during a tax year, **the amount exceeding THB 10 million is subject to a tax of 5% of the income amount**.

WEERAWONG, CHINNAVAT & PEANGPANOR LTD.

540 MERCURY TOWER, 22ND FLOOR, PLOENCHIT ROAD, LUMPINI, PATHUMWAN, BANGKOK 10330 THAILAND
TEL : +662 264 8000 FAX : +662 657 2222 WWW.WEERAWONGCP.COM