

ANS

HIGHLIGHTS

INSIDE THIS ISSUE

TAX COMPLIANCE REMINDERS

NEW TAX INCENTIVES

A REVISIT ON INCOME TAX LIABILITY ON MERGERS

If you have any inquiries concerning the items in this newsletter, please contact one of our professionals at ANS Business Consultants:

Tax Consulting

Travis White
(662) 645-0109 Ext. 106
travis@ans.co.th

Legal Consulting

Sunita Worawongwasu
081-838-3355
sunita@ans.co.th

TAX COMPLIANCE REMINDERS

DEADLINE: May 29, 2008

For entities that are juristic persons whose accounting period is January 1—December 31, we are approaching 150 days from the last day of the accounting period and tax forms to be filed are:

- P.N.D. 50 *Income Tax Return for Companies or Juristic Partnerships,*
- P.N.D. 52 *Income Tax Return for Companies or Juristic Partnerships undertaking International Transportation Business,*
- P.N.D. 55 *Income Tax Return for Foundations or Associations.*



NEW TAX INCENTIVES

In order to stimulate the Thai economy, on March 4, 2008, the Government announced a number of comprehensive tax incentives targeted at individual taxpayers and companies. They include:

Individuals

These personal income tax measures are to be effective for the 2008 tax calendar year.

- An increase to 150,000 baht from 100,000 baht in tax exempt income each year (Promulgated in R.D. 470);
- A new 30,000 baht per person yearly deduction for a taxpayer caring for handicapped relatives.
- An increase from 50,000 baht to 100,000 baht each year in deduction for life assurance premiums paid;
- Yearly increase in deduction for contributions to long term equity funds from 300,000 baht to 500,000 baht;
- An increase in deduction for contributions to provident funds and/or retirement mutual funds to 500,000 baht from 300,000 baht each year;

Listed Companies

- Newly listed companies on the Stock Exchange of Thailand (SET) who file listing applications by December 31, 2008 and list by December 31, 2009 will receive a corporate income tax (CIT) rate reduction from 30% to 25% on taxable profit for three years starting from the accounting period in which the company became listed;

- Starting from the accounting period beginning on or after January 1, 2008 companies already listed on SET for three years will have a 25% CIT rate on the first 300 million baht of taxable profit and a 30% tax rate on taxable profit over 300 million baht;
- Newly listed Market for Alternative Investments (MAI) companies who file listing applications by December 31, 2008 and list by December 31, 2009 will receive a reduction in CIT to 20% from 30% for the taxable profit for three years starting from the accounting period in which the company has listed;
- Companies already listed on MAI will have a reduction in CIT from 30% to 20% for the first 20 million baht of taxable profit for three years starting from the accounting period beginning on or after January 1, 2008;

Small and Medium Sized Enterprises

- Partnerships and body of persons earning less than 1.2 million baht per year will be tax exempt for three years starting 2008;
- Firms with paid up capital of not more than 5 million baht will have tax exempt income for the initial taxable profits of 150,000 baht per year (Promulgated R.D. 471);

Additional Business Incentives

- Medium sized firms with not more than 200 million baht fixed assets excluding land, and not more than 200 employees, that have buildings and intangible assets, which are ready for use by December 31 2010 can deduct 100% of the cost of fixed assets up to 500,000 baht each year.
- Depreciation of machinery and equipment, which are ready for use by December 31 2010, related to production and services will have an initial tax deduction of 40% of cost.
- The cost for investment in energy saving machinery and equipment, which are ready for use by December 31, 2010 will have greater tax deductions of 1.25 times actual cost;
- The cost for depreciation of computer programs for medium sized firms with not more than 200 million baht fixed assets excluding land, and not more than 200 employees will initially be deducted at 40% and residual at 60% cost for three years;

Related to property

- Mortgage fees and property transfer fees are reduced to 0.01%.
- Property transactions special business tax reduced to 0.1% from 3% for one year (Promulgated R.D. 472).





A REVISIT ON INCOME TAX LIABILITY ON MERGERS

According to the Thai Revenue Code, the provision regarding mergers and acquisitions under Section 74 provides that "In the case where a company or juristic partnership dissolves or merges with another company or juristic partnership, the calculation of net profits for tax purposes shall be in accordance with procedures under Sections 65, 65 Bis and 66 except:

(1) Valuation of assets:

1. In the case of dissolution of a company or juristic partnership, the valuation shall be made by applying the market price on the date of dissolution.

2. In the case where companies or juristic partnerships merge together, the valuation shall be made by applying the market price on the date of the merger but such price shall not be deemed income or expense in the calculation of net profit or net loss of the former company or juristic partnership and the newly merged company or juristic partnership shall value the value of assets on the basis of the price which appears in the account of the former company or juristic partnership on the date of the merger for the purpose of calculation of net profit or net loss until such assets are alienated. Any assets entitled to depreciation and depletion shall be depreciated for the purpose of calculating net profit or net loss under the rules, procedures, conditions, and rates which the former company or juristic partnership applied only during the remaining life and value of that asset. The net loss of the former company or juristic partnership shall not be claimed as expense in the calculation of net profit or net loss.

3. In the case where there is a transfer of business between companies or juristic partnerships and the transferor Registered

the dissolution and an account liquidation is made in the accounting period in which the business transfer occurred, the valuation shall be made by applying the market price on the date of registration for dissolution and the provisions of (b) shall apply also (i.e., the market price will not be treated as income or expense for the purpose of calculating the net profits or loss.).

(2) Reserve or profits carried forward from the previous accounting periods, but only the portion that tax has not been paid on, has to be included as income in the final accounting period...."

The Thai tax implication of each method described above can be outlined below.

1. SECTION 74(1) APPLIES TO AMALGAMATION ACCORDING TO THE THAI CIVIL AND COMMERCIAL CODE

Under Section 1238 an amalgamation is a merger of at least 2 companies to be a new established company and all former companies must register the dissolution and account liquidation. The new company has to be registered and shall carry out the rights and liabilities of the amalgamated companies (Section 1243).

Procedures of amalgamation are set out in the Thai Civil and Commercial Code under Section 1238 – 1243 which can be summarized as follows:

A limited company may amalgamate with another limited company by special resolution of a shareholders meeting of the company and must register with the Ministry of Commerce within fourteen days from the resolution date. The company must publish seven times at least in a local newspaper and send notice by registered mail to all known creditors of the

particulars of the proposed amalgamation for any objection from creditor(s) within six months after the date of notice. In case an objection is raised, the company cannot proceed with the amalgamation until it has satisfied the claim or given security for it. Once the amalgamation is made, registration shall be made within fourteen days by each amalgamated company and the limited company formed by the amalgamation must be registered as a new company. The share capital of the new company must be equivalent to the total share capital of the amalgamated companies.

Dissolution and Liquidation

All former companies must register the dissolution and account liquidation and the Revenue Department will request all accounting documents and records of tax payments retrospectively to be audited for the past two years. If there is no tax due, the Revenue Department will delete the name and corporate tax ID number of the company from the database of the Revenue Department and will approve the dissolution of the company. Due to the time used in the amalgamation process, the application of section 74(1) of the Revenue Code is relatively rare as many companies choose not to amalgamate.

2. TRANSFER OF ALL OF A BUSINESS

Transfer of all of a business under Section 74 (1) (b) of the Revenue Code is when a transferor transfers an entire business to the transferee with no requirement of establishing a new company. However the transferor of a business must register the dissolution and account liquidation within the accounting period in which the business transfer occurs.

Corporate tax liability on the amalgamation and transfer of entire business

The Calculation of net profits for tax purposes regarding amalgamation or the transfer of all of a business which falls under section 74 (1) (b) of the Thai Revenue Code shall be in accordance with procedures under Sections 65, 65 Bis and 66 except: (how to treat certain items as income or expenses)

1. Valuation of assets of the former company must be based on the market price on the date of dissolution and the newly merged or transferee company shall be made by applying the book value of the former company until such assets are disposed of.

Nevertheless, for accounting purposes, valuation of an asset of the former company and the newly merged or transferee company has to be under the same method. If valuation of

an asset of the former company is the market price then, valuation of the newly merged or transferee company has to be the market price. If valuation of an asset is based upon the book value then, the valuation of an asset of the newly merged or transferee company shall also apply the book value.

2. The book value of the assets of the transferee company shall be used as a basis for depreciating and depleting.

3. The newly merged or transferee company shall not claim net profit or loss of the former company as an expense in calculating net profit and loss.

4. Regarding any reserve or profit carried forward from the preceding accounting period which is not subject to tax, the transferor company has to include as income of the last accounting period.

VAT

After the transferor company has been dissolved and liquidated after it transferred all of its business as required by the Thai Revenue Code, if the transferor company is in the VAT system, it is also required to notify and cancel the VAT certificate of the former company within 15 days after registering the new company. Moreover, an amalgamation is deemed a dissolution and liquidation of the former company, therefore, it is required to cancel and register a VAT certificate the same as above.



The amalgamation or transfer of all of a business which is accepted by the Thai Revenue Code will not trigger a VAT taxable transaction since Section 77/1 (8) (f) of Thai Revenue Code provides that such transfer of a business followed by a liquidation is not a sale, therefore, it is regarded as a VAT exempted transaction. This interpretation has been extended to a situation where the transferor had not notified the liquidation to the authorities but already ceased the entire operation. Input VAT derived from the operation of the former company cannot be used as a credit of the existing company (Section 82/5 (2) of the Revenue Code).

Also note that the book value of the transferor company is used to calculate the corporate income tax only but for VAT purposes, the market value of the transferred assets shall be used to calculate the 7% VAT on liquidation under Section 79/3 (5) of the Revenue Code.

Specific Business Tax (SBT)

Regarding the transfer of all of a business which is accepted by the Thai Revenue Code, if the transferor company is in the SBT system, it is also required to notify and cancel the SBT certificate of the former company within 15 days after the dissolution date and register the new one within 15 days after registering the new company. Moreover, an amalgamation is deemed as dissolution and liquidation of the former company, therefore, the requirement of cancellation and registration of SBT certificate is the same as above.

Normally, transferring of immovable property is required to calculate Specific Business Tax, however, the transfer of immovable property for business purposes under the procedure of amalgamation or transfer of all of a business is a special business tax exemption according to the provision of the Royal Decree No. 330 B.E. 2539 (1996).

Duty Stamp

The amalgamation or transfer of all of a

business shall be duty stamp exempted if it meets the requirements, methods, and conditions according to Royal Decree No. 357 B.E. 2541.

In order to be exempted from specific business tax and duty stamp as mentioned above, the requirements of the amalgamation or transfer of all of a business must satisfy the rules, procedures, conditions according to the Notification of the Director-General of Revenue Department an Duty Stamp Dated 27 September 1999 provided that:

1. The condition of the company must be as follows:
 - The amalgamation or transfer of all of a business must be a procedure between companies established under Thai law.
 - Notifying the details to the shareholders, details of shares and price per share of the newly merged or transferee company to the Revenue Department within 30 days after registration of the merger of registration of the new company.
2. The transferor or transferee company is not behind payment of tax with the Revenue Department.
3. In case of transfer of all of a business, the transferor company must register the dissolution and account liquidation within the accounting period in which the business transfer occurs.

Capital Gain from Increase in Share Value

Normally, profit results from an increase in share price from the amalgamation or merged company or capital gain is treated as revenue of the shareholders under Section 40 (4) (f), however, the Ministry Regulation No. 215 B.E. 2541 (1998) and Royal Decree No. 330 B.E. 2539 (1996) provides that the capital gain from amalgamation or merged company is exempted from income tax calculation.

Written By SUNITA WORAWONGWASU



DISCLAIMER

The information contained herein was compiled and paraphrased by ANS Business Consultants from various sources. In the interest of notifying you in a timely manner, we have not attempted to verify such information with all authoritative sources. The information is for general guidance only and is not intended to address the circumstances of any particular individual or entity. Before you take any action, we advise that specific inquiries on subjects covered in this publication be directed to your financial, tax, and legal advisors. ANS accepts no responsibility for any errors this publication may contain or for any losses, however caused or sustained, by any person that relies on it.