

ANS HIGHLIGHTS

A Professional Newsletter



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LTF and RMF Allowances

The end of the year is coming and it is a good time to take advantage of the tax allowances for individuals in the form of Retirement Mutual Funds (RMF) and Long Term Equity Funds (LTF). You have time until December 2006 to invest in the funds to lower your personal income tax payment. These funds were created to encourage investors to make long term investments in listed companies.

RMF

RMFs allow tax benefits for investors by exempting from personal income tax the actual amount being invested up to 15% of the individual's yearly income in a given year and when combined with the amount being invested in a provident fund or Government Pension Fund, it does not exceed Baht 300,000 in such a year. Fund managers are allowed to invest your money into debt instruments,

equity funds, mixed funds, flexible-portfolio mixed funds and others, depending on each fund's policy. The conditions for the tax benefits are that the units be redeemed when the five-year period is over and unit-holders reach age 55.

LTF

An investment in an LTF is an additional tax exemption apart from an RMF and a provident fund. Individuals investing in LTFs will receive an income tax allowance on the amount contributed to the fund. The contribution may not exceed 15% of the individual's total yearly income, with a maximum of Baht 300,000 contribution each year. Capital gains from the redemption of the units will also be exempt from tax. Simply just hold the investment units for at least five consecutive years and receive the tax benefits. Investors need not contribute additional money in every year to keep their tax exemption rights.

Targeting Land Acquisitions by Nominees

Last May, the Interior Ministry issued a policy for all provincial governors relating to the circumvention of law in the acquisition of land by companies with foreign shareholders. The policy seeks merely to bring in line current practices with existing laws related to preventing the purchase of land for the benefit of a foreigner in accordance with Section 74 of the Land Code.

Up to now, foreigners wanting to purchase land in Thailand have attempted to bypass Thai laws by establishing a legal arrangement, most commonly a Thai entity, where the foreigners own part of the shares and Thai nationals act as nominees with 51% or more of the company's shares without effective control.

The policy directs officials to be more vigilant in analyzing entities with a foreign shareholder or director or where reasonable evidence exists to believe that a Thai national is a nominee shareholder for a foreigner when that entity purchases land. The policy compels the officials to scrutinize the supporting evidence provided for consideration, while paying special attention to the Thai shareholder's occupation, monthly income and duration of work.

After the investigation, if the official believes that the

registration of transfer is a circumvention of the law or that a Thai national is trying to buy land for a foreigner, then the official should investigate further and forward the case to the Land Department for advice.

Furthermore, the Ministry stated that it is concerned that some companies were circumventing the Land Code by accepting land transfers when foreign shareholders hold 49% or less of a company's shares, but after the transfer, the foreign shareholders then acquire more shares or increase their capital in the company to hold more than 49% of the company's shares, thus making the company a foreign entity as stipulated in the Land Code.

Land offices investigate these kinds of transactions by cross-checking companies holding land in their jurisdiction with the shareholding structure of each company given by the relevant authorities of the Commerce Ministry.

If an investigation shows that foreign shareholding amounts to more than 49%, the proper authority will require that company to sell the purchased land within one year or a period specified by the Director-General. Other governmental disciplinary actions and penalties could apply.



Amendment of Net Capital Requirements

Recently, the SEC amended rules on the minimum net capital requirement and early warning to ensure that securities companies and derivative agents have enough capital to absorb all risks occurring from their businesses as follows:

1. Securities companies and derivative agents are mandated to maintain a minimum net liquid capital of Baht 15 million

at all times in addition to the 7% net capital ratio.

2. In addition to the 7% net capital ratio, securities companies holding derivative agent licenses are obliged to keep a minimum net liquid capital of Baht 25 million at all times

3. The early warning rule for securities companies has been amended from 8% of the

net capital ratio to 1.5 times the minimum requirements which is equal to 10.5% of the net capital ratio and with a minimum net liquid capital of Baht 22.5 million. This rule also applies to derivative agents. Additionally, the early warning for securities companies holding derivative agent licenses is 10.5% of the net capital ratio together with a minimum net liquid capital of Baht 37.5 million.



Tax Perks for New Investments

The Revenue Department recently passed Royal Decree No. 460 which provides tax incentives for new investments in manufacturing and services.

Under the Decree, a public company limited listed on the Securities and Exchange of Thailand (SET) is allowed to deduct 25% of the amount of payment for qualified investments. To be qualified for the tax incentive, the investment must be for improvements or development, e.g., alterations, extensions, or renovations, of existing business projects.

It can be interpreted that investments in immovable property, real estate, or construction are not eligible for such deduction, along with fixing or repairing existing assets.

Moreover, the value of the qualifying project must be more than Baht 5 million and the tax incentive will apply for five accounting periods for projects starting on or after January 1, 2006.

The rationale behind the Decree is to encourage businesses to pursue listing on the SET by rewarding them with extra tax benefits. The Revenue Department believes that only SET listed companies should enjoy such benefits as these companies are strictly audited by many parties, especially, the Securities and Exchange Commission.

The Decree went on to further state that limited companies other than those listed on the SET that have gains on the sale of machinery used in the operation of its business are exempted when there is a like replacement for the machinery that was sold.

This incentive is allowed from January 1, 2006, through December 31, 2010, as long as the Company does not deduct the cost of the machinery sold when calculating taxable profit for corporate income tax purposes.

G7 Update: Thailand

The Group of Seven (G7) industrialized economies, representing the world's most developed economies, has urged Thailand to open the financial sector and strengthen domestic consumption.

At the recent G7 meeting were finance ministers and central bankers from the United States, Japan, Germany, Britain, France, Italy, and Canada.

The G7 also urged Thailand to increase savings through initiatives like the development of pension funds to help retirees and easier bank lending for households, which as a result, should boost domestic consumption.

The IMF's director stated that Asian economies should divert from an exports-driven economy to a more domestic demand-driven economy to cope with volatility in the world economy.

World Bank Report

The World Bank published its yearly World Wide Governance Indicators report which shows that Thailand's governance ratings overall have fallen, especially in political stability, human rights and law.

The World Bank surveys experts, private companies and individuals in 213 countries in 6 key areas: voice and accountability (including political, civil and human rights issues); political stability; government effectiveness; regulatory quality; rule of law; and control of corruption.

The scores in 2005 were worse than those in 1996 in five categories, with only control of corruption getting better.

Better governance is thought to benefit development and improve living standards.

Proof of Financial Sources

Recently, the Commerce Ministry issued Directive No. 102/2549 re: Documentation in support of Application for Partnerships and Limited Companies Registration, which applies to entities with the following structure or description: (1) partnership or company with a foreign partner or foreign shareholder investing or holding at least 40% but not more than 50% of the registered capital or shares, or (2) partnership or company with a foreign partner or foreign shareholder being the authorized person to act on behalf of the partnership or the company and investing or holding less than 40% of the capital or shares.

The directive requires all Thai partners or Thai shareholders wanting to register such partnership or company to provide evidence of financial sources that match their investment in the partnership or the company. The directive further provides that evidence of financial sources can be in the following forms: (1) a copy of a bank statement or passbook within the last 6 months; or (2) a bank issued letter certifying the financial status of the partner or shareholder; or (3) proof of source of funds for investment in the partnership or in the company.

It can be interpreted that, borrowing is a possible source for the Thai partner or shareholder as the ability to make an investment does not necessarily mean that the Thai partner or shareholder needs his/her own funds. A loan document could suffice as evidence in such a case. However, the Thai partner or shareholder should be able to provide evidence that he/she has enough income to pay off the loan.

It is not clear what the authorities will do with existing partnerships or companies that have the structures mentioned in the directive.



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