

Tax Newsletter, Issue no. 3/2018

Tax developments from April to June 2018

In this issue:

- **Tax developments from April to June 2018**
- **New double tax treaty between Thailand and the Philippines will be in effect from 1 January 2019**
- **Interesting Supreme Court case**

1. Additional expense deductions/other deductions

1.1 Expenses for seminars, training and travelling in certain provinces

There are 55 provinces classed as second-tier provinces, which include Chainat, Tak, Udorn Thani, Chumporn, Phattalung and Chiang Rai, as well as certain districts of other provinces recommended by the Ministry of Tourism and Sports, such as Chonburi and Ayudhaya.

So as to promote these provinces and districts as locations for seminars, training and travel and to boost the economy of the country, the following expenses paid for seminars, training and travel in these provinces and districts will be granted additional deductions as follows:

- **Expenses for domestic seminars and training**

Royal Decree No. 656 has been issued to grant an additional 100% deduction to corporate entities from 1 January to 31 December 2018 for expenses paid for seminar rooms, accommodation, transportation and other expenses related to domestic seminars and training for employees, or expenses paid to

tourism operators under the law governing the travel agency business and guides for such seminars and training in the above provinces.

- **Expenses for domestic travel, hotel and homestays**

Ministerial Regulation No. 335 has been issued to grant a deduction of up to Baht 15,000 to individuals for domestic travel, hotel and homestay expenses in the above provinces, which are paid from 1 January to 31 December 2018.

1.2 Investment in target activities using technology as the basis for the production process and services

This is another tax benefit introduced to promote target activities that use technology as the basis for the production process and services as prescribed and approved by the National Science and Technology Development Agency (NSTD).

Ministerial Regulation No. 337 has been issued to grant an expense deduction to individuals who invest in the shares of qualified corporate

entities, either upon their establishment or pursuant to a capital increase, equal to the amount actually paid between 1 January 2018 and 31 December 2019 up to a maximum of Baht 100,000 in each tax year.

Under this regulation, the term ‘individuals’ does not include unregistered ordinary partnerships, non-juristic bodies of persons or estates of the deceased that remain undistributed. The shares in such corporate entities are required to be held for at least two years from the date of payment for the investment except in the case of incapacity or death.

To be eligible for this benefit, a qualified corporate entity must be a company or juristic partnership established under the Thai law between 1 October 2015 and 31 December 2019 with a registered paid-up capital on the last day of the accounting period of no more than Baht 5 million and income from the sale of goods and the provision of services not exceeding Baht 30 million in an accounting period during which the individual has invested in such corporate entity.

Furthermore, the corporate entity is required to conduct target activities which make up at least 80% of its total income in each accounting period.

If the individual does not comply with the conditions in any tax year, the right to the tax privileges will be suspended for that tax year.

The target activities using technology as the basis for the production process and services prescribed and approved by the NSTD are:

- Food and agriculture
- Energy saving, energy replacement and clean energy
- Bio-technology base
- Medical and public health
- Tourism, services and creative economics

- Advanced materials
- Textiles, clothes and accessories
- Vehicles and parts
- Electronics, computers, software and information technology services
- Research, development and innovation or new industries.

1.3 Expenses paid to support projects under the public-private collaboration

Royal Decree No.657 has been issued to grant a deduction of up to 5% of the net profit of a corporate entity for expenses paid to support projects under the public-private collaboration or expenses to support these projects paid to the Thai Chamber of Commerce Foundation for accounting periods beginning on or after 1 January 2017 but not later than 31 December 2018.

The term ‘net profit’ means the net taxable profit after the deduction of additional expenses (e.g. expenses to support educational programmes under the projects approved by the Ministry of Education and expenses to support recreational activities, with a cap of 10% of net taxable profit), but before donations for charity, public benefit and for education or sport under Section 65 ter (3) of the Revenue Code.

1.4 Expenses for the establishment of child nursery centres

Royal Decree No. 659 has been issued to grant an additional 100% expense deduction to a corporate entity for expenses paid between 1 January 2018 and 31 December 2020 up to the amount of Baht 1 million to establish a child nursery centre in its place of business for the welfare of its employees.

1.5 Amendment of expenses to support educational programmes under projects approved by the Ministry of Education

Since 25 August 2004, a deduction of 200% has been granted under Royal Decree No. 420 to individuals and corporate entities for expenses paid to support educational programmes under projects approved by the Ministry of Education for both government and private education institutions.

In addition, exemptions from corporate and personal income tax, VAT, specific business tax and stamp duty have been granted to corporate entities and individuals on the proceeds from a transfer of assets or execution of instruments in respect of donations to the above educational institutions. However, donors cannot deduct the cost of the assets as an expense for income tax purposes.

Royal Decree No. 655, which became effective on 1 January 2018, has been issued to include in the above regulations educational institutions from overseas with high potential which are approved by the Ministry of Education according to the Announcement of the National Council for Peace and Order No. 29/2560 dated 26 May 2017.

1.6 Expenses for antenatal care and child delivery

Ministerial Regulation No. 338 has been issued to grant a deduction of up to Baht 60,000 for each pregnancy for expenses paid by the taxpayer or spouse for antenatal care and child delivery. If the expenses for each pregnancy are not paid in the same tax year, the amount actually paid in each tax year is allowed, but in total no more than Baht 60,000.

This is effective from 1 January 2018 onwards.

2. Other developments

2.1 Amendment of delivery of e-tax invoices and e-receipts

According to the regulation on e-tax invoices and e-receipts, B.E. 2560 (2017), VAT registrants have been able to prepare tax invoices and receipts in electronic format with a digital signature which should be delivered to customers in accordance with Sections 15 to 24 of the Electronic Transaction Act (B.E. 2544 (2001)).

On 30 April 2018, an amendment to the 2017 regulation was issued to permit an alternative means of delivery of e-tax invoices and e-receipts in the case where the customers of the VAT registrant do not wish to receive them in electronic format. Under the amended regulation, from 1 January

2018 onwards, VAT registrants can print out e-tax invoices and e-receipts with the following statement written thereon:

“This document has been prepared and delivered to the Revenue Department in electronic format”

The statement may be written on the document by electronic means, rubber stamp, ink, typewriter or other method, and sent to the customers.

As a result, the e-tax invoices and e-receipts would be considered as having been delivered to the customers under this regulation.

2.2 Extension of tax support for target activities using technology as the basis for the production process and services

According to our Tax Newsletter, issue no. 1/2017 and Tax Newsletter, issue no. 2/2016, as attached, a tax exemption on qualified income was granted to SME operators that were established as a company or juristic partnership between 1 October 2015 and 31 December 2017.

Royal Decree No. 658 has been issued to provide an extension of the period for establishment of the SME operators as a company or juristic partnership to 31 December 2018.

2.3 Tax exemption on income of disabled foreign residents

Ministerial Regulation No. 336 has been issued to grant a personal income tax exemption to disabled foreign residents who hold a Certification of Disability from the Department of Empowerment of

Persons with Disabilities and are not over 65 years of age in the tax year in which income was obtained. The maximum amount of income eligible for the exemption is Baht 190,000 in each tax year.

This benefit is effective for assessable income obtained from 1 January 2017 onwards.

The following regulations have already been included in our earlier Tax Insights

- Cabinet approval for measures to promote the combination of commercial banks (Tax Insight No. 05/2018)
- Audited financial statements are not required to be filed when the corporate income tax return is filed online provided that certain conditions are met (Tax Insight No. 07/2018)
- Benefits or gains from digital tokens or cryptocurrencies are subject to tax (Tax Insight No. 08/2018)

New double tax treaty between Thailand and the Philippines will be in effect from 1 January 2019

According to the website of the Revenue Department, the new double tax treaty between Thailand and the Philippines entered into force on 5 March 2018 and therefore will be effective in place of the

current treaty from the tax year commencing on 1 January 2019.

For the significant changes in the new treaty, please see our Tax Newsletter, issue no. 8/2015.

Interesting Supreme Court case

Supreme Court case no. 8943/2560 – Goodwill from entire business transfer (EBT) treated as income subject to tax

Facts

The plaintiff, a VAT registrant conducting the business of selling pharmaceuticals and other human medication, entered into an entire business transfer agreement with Company B, for which the effective date was 1 July 2007.

Company A, an independent appraiser, appraised the market price of the plaintiff's business to be Baht 998,000,000. Since the net book value of the plaintiff's assets was Baht 293,300,378.95, goodwill amounting to Baht 704,699,621.05 was specified in the agreement for the sale of the business. Therefore, when Company B paid Baht 998,000,000 to the plaintiff for its business, the amount it received was higher than the net asset value by Baht 704,699,621.05.

The plaintiff filed its corporate income tax return after its dissolution in 2007 declaring goodwill of Baht 704,699,621.05 as income exempt from tax according to Section 74 (1) (b) and (c) of the Revenue Code. In the subsequent tax investigation, the Revenue Department maintained that the difference between the amount received and the net asset value of Baht 704,699,621.05 must be included as income subject to tax under Section 65.

Decision of Supreme Court

The Supreme Court ruled that the plaintiff must include the profit from the sale of its business, amounting to

Baht 704,699,621.05, as taxable income under Section 65 of the Revenue Code for the following reasons:

1. The liquidator of the plaintiff testified that the market value of the assets of the company should be Baht 1,081,368,626.10, which was the gross amount of the company's assets. However, after deducting the liabilities of Baht 788,068,247.15, the resulting net asset value of Baht 293,300,378.95 would also be the market price.

Company B bought the plaintiff's business for Baht 998,000,000, which was a price higher than the market price of its net assets by Baht 704,699,621.05. Generally, this should be a profit arising from the sale of the assets or the business.

2. Company A, the appraiser, used the income approach method to value the price of the assets, whereby the expected future revenue that can be definitely identified to arise from the assets or the group of assets would be included in the fair value of assets of the plaintiff's company. The expected revenue may not be goodwill and it does not appear that there was an appraisal specifically of goodwill. If there were any goodwill, it should have been clearly valued in this appraisal. Moreover, the claim of the plaintiff that the amount of Baht 704,699,621.05 was goodwill was not reasonable when compared with the appraisal of Company A. Moreover, the plaintiff did not demonstrate why the amount paid by Company B for the plaintiff's business was higher than the net asset value

and that it was the market price of the business of the plaintiff. The plaintiff did not explain why the amount of the goodwill was equal to the market price of the company and its business after deducting the net asset value which resulted in the amount of Baht 704,699,621.05.

3. According to Thai Accounting Standard No. 43 (revised 2007) (TAS 43) and TAS 51 (revised 2007), the plaintiff cannot recognise and deem goodwill of Baht 704,699,621.05 as an asset to be included as part of the valuation of the market price of its business. This corresponds with the case where the plaintiff declared the said amount to be a profit on the sale of the assets according to the sale and business transfer agreement, financial statements, profit and loss statement and notes to the financial statements.

Moreover, according to Section 74 (1) (b) of the Revenue Code, the assets to be valued at the market price must appear in the books of account of the original companies. When the original companies are amalgamated, resulting in a new company being formed, the new company is required to carry the book value of the assets of the original company as of the date of amalgamation.

However, in the plaintiff's case, where the business was sold to Company B, goodwill cannot be recognised as an asset of the plaintiff that was acquired from the beginning. Company B also cannot recognise goodwill that appears in the books of accounts of the plaintiff. Therefore, it is not a case of a valuation at the market price which is not required to be included in the net profit according to Section 74 (1) (b) and (c) of the Revenue Code.

4. The plaintiff sold the assets of its business to Company B for Baht 998,000,000. This is different from the valuation of assets for an amalgamation according to Section 74 (1) (b) of the Revenue Code. Moreover, the plaintiff made a profit on the sale of the business in the specific amount of Baht 704,699,621.05, which was clearly recorded as such in the profit and loss statement. Therefore, it was deemed to be assessable income of the business of the plaintiff according to Section 39 of the Revenue Code.

Contact us

<ul style="list-style-type: none"> • Tax Mergers and Acquisitions/ Tax Structuring 	<ul style="list-style-type: none"> • Paul B.A. Stitt, <i>Partner ext. 1119</i> • Vanida Vasuwanichchanchai, <i>Partner ext. 1303</i> • Prema Ramachandra Rao, <i>Associate Partner ext. 1156</i> • Orawan Phanitpojjamarn, <i>Associate Partner ext. 1017</i>
<ul style="list-style-type: none"> • Tax Reporting & Strategy 	<ul style="list-style-type: none"> • Somsak Anakkasela, <i>Partner ext. 1253</i> • Thirapa Glinsukon, <i>Associate Partner ext. 1318</i> • Sudarat Isarakul, <i>Associate Partner ext. 1024</i>
<ul style="list-style-type: none"> • Indirect Tax Services 	<ul style="list-style-type: none"> • Somsak Anakkasela, <i>Partner ext. 1253</i> • Ornjira Tangwongyodying, <i>Partner ext. 1118</i> • Thirapa Glinsukon, <i>Associate Partner ext. 1318</i>
<ul style="list-style-type: none"> • Business Process Outsourcing Services 	<ul style="list-style-type: none"> • Somsak Anakkasela, <i>Partner ext. 1253</i>
<ul style="list-style-type: none"> • Transfer Pricing 	<ul style="list-style-type: none"> • Peerapat Poshyanonda, <i>Partner ext. 1220</i> • Janaiporn Khantasomboon, <i>Partner ext. 1437</i> • Niphan Srisukhumbowornchai, <i>Partner ext. 1435</i> • Ornjira Tangwongyodying, <i>Partner ext. 1118</i>
<ul style="list-style-type: none"> • Tax Dispute Resolution 	<ul style="list-style-type: none"> • Niphan Srisukhumbowornchai, <i>Partner ext. 1435</i> • Ornjira Tangwongyodying, <i>Partner ext. 1118</i> • Sudarat Isarakul, <i>Associate Partner ext. 1024</i>
<ul style="list-style-type: none"> • Financial Services 	<ul style="list-style-type: none"> • Orawan Fongasira, <i>Partner ext. 1302</i> • Ornjira Tangwongyodying, <i>Partner ext. 1118</i>
<ul style="list-style-type: none"> • Legal Services/ BOI Services 	<ul style="list-style-type: none"> • Somboon Weerawutiwong, <i>Lead Partner ext. 1247</i> • Vunnipa Ruamrangsri, <i>Partner ext. 1284</i>
<ul style="list-style-type: none"> • Japanese Business Desk (JBD) 	<ul style="list-style-type: none"> • Atsushi Uozumi, <i>Partner ext. 1157</i>
<ul style="list-style-type: none"> • U.S. Tax Desk 	<ul style="list-style-type: none"> • Thirapa Glinsukon, <i>Associate Partner ext. 1318</i>
<ul style="list-style-type: none"> • Global Mobility Services 	<ul style="list-style-type: none"> • Jiraporn Chongkamanont, <i>Partner ext. 1189</i>
<ul style="list-style-type: none"> • Customs & Trade 	<ul style="list-style-type: none"> • Paul Sumner, <i>Partner ext. 1305</i> • Nu To Van, <i>Partner ext. 1353</i>

15th Floor Bangkok City Tower, 179/74-80 South Sathorn Road, Bangkok 10120

Tel: +66 (0) 2844 1000 Fax: +66 (0) 2286 6666

Website: <http://www.pwc.com/th>

Editor:

Vanida Vasuwanichchanchai, *Partner ext. 1303*

E-mail: vanida.vasuwanichchanchai@th.pwc.com

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 236,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at <https://www.pwc.com/>

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.