

TAX NEWS - QUARTER 4 OF 2009 IN THAILAND

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In this edition, we will recap on the major developments, which occurred during October, November and December of 2009 in Thailand.

TAX

(i) Revenue Code Amendment Act

- **No. 37, B.E. 2552 (2009) - Personal Income Tax - THB 60,000 allowance for supporting qualifying disabled persons.**

- (a) This amendment act adds an additional item to the list of items under (1) of Section 47 of the Revenue Code. Section 47 sets out the tax deductible allowance items which may be taken (after other expenses have been taken as allowed under other sections) for personal income tax calculation purposes.
- (b) The new additional item (k) will allow taxpayer who actually support qualifying disabled persons to take an allowance of THB 60,000 per disabled person when calculating his/her net taxable personal income.

(ii) Notice of the Director-General of the Revenue Department

- **Notified 2009/07/03: "Re; Bases, Procedures and Conditions Respecting Transfer of Certain Parts of Businesses of Public Limited Companies or Limited Companies for Exemption of Taxes and Duties."**

- (a) This notice sets out the conditions which must be satisfied for a partial business transfer to be a qualified one under Royal Decree No. 484. Royal Decree No. 484 provides for exemptions on VAT, Specific Business Tax and Stamp Duty on qualifying partial business transfers for both private limited companies and public limited companies which are made during January 1, 2009 until December 31, 2009. This Royal Decree came into effect on May 19th, 2009. This notice clarifies the conditions which must be satisfied to enjoy the tax exemptions on partial business transfers.

- (b) Some of the important conditions are as follows:

- The transferor and transferee of the transferring business segment must be affiliated, and such relationship must continue for not less than six months after December 31, 2009.
- The transferee company must have registered and paid-up capital of not less than the price of the properties being transferred.
- Before executing the partial business transfer, specified forms and a letter must be submitted to the Revenue Department, which includes an organisation restructuring plan for the purpose of increasing business efficiency together with details of the properties being transferred. The forms which must be submitted are:

- (1) Form Or. Bor. 1
- (2) Form Or. Bor. 2
- (3) Form Or. Bor. 3
- (4) Form Or. Bor. 4

- (c) It should be noted that Royal Decree No. 484 does not exempt income tax on capital gains incurred by the transferor company, if any.
 - (d) It should also be noted that under the rules relating to transfer pricing, the transaction price should be at arm's length, in order to avoid assessments.
 - (e) The partial business transfer must be completed within December 31, 2009 in order to utilize the tax exemption.
- (iii) Notified 2009/09/01: "Re; Bases procedures and conditions respecting debts subjected to debt restructuring according to bases on debt restructuring of financial institution prescribed by the Bank of Thailand (No. 2) B.E. 2552 (2009)".**
- Earlier this year (2009/05/29), there was a notice by the Director-General of the Revenue Department, which set-out the bases, procedures and conditions to utilize the tax exemption under Royal Decree No. 483.
 - That notice defined what a qualifying Debt Restructuring was.
 - This notice expands on that definition to include the words "...irrespective of whether or not the debtor's account having been so classified prior to 2009 or by 31 December 2009." to clause No. 1 of the Notice which was notified on May 29, 2009 and published in the Government Gazette in Volume 126.
- (iv) Notice of the Director-General of the Revenue Department - Relating to Income Tax (No. 181) "Re; Bases, procedures and conditions in respect of Exemption of Income Tax on Interest on Deposits at Bank in the Kingdom Payable on Demand of Saving Category."**
- This notification amends Clause 5 of "Notification of the Director General of Revenue on Income Tax (No. 55)" and now places a burden on the taxpayer to inform banks, if he/she receives interest in excess of THB 20,000 (per tax year), from banks on his/her savings account, which is repayable on-demand.
 - Under Ministerial Regulation No. 126, Clause 2, (38), interest income received on a savings deposit with a bank in Thailand that is repayable on demand of up to THB 20,000 is exempt from personal income tax.
 - Currently, banks withhold tax on their customer's interest income even if that customer's interest income does not exceed THB 20,000 because banks have no means to know how much a specific customer earns at other banks.
 - Until the announcement of this notification, banks did not have a reasonable means to know whether a customer had interest income elsewhere or not.
 - The purpose of this amendment is to enable banks to appropriately withhold tax and remit it to the Revenue Department, by requiring the customer/taxpayer to inform the bank, if he has interest income (from on-demand savings accounts) in excess of THB 20,000.

Appendix

The relatively important amendments, rules and notices affecting taxation¹ which have been announced during the fourth quarter (October, November and December) of 2009 are listed in the following table.

Important Tax Rules and Regulations during Q4 of 2009 (October 1 through December 31, 2009)		
Revenue Code Amendment Act		
No. 37	2009/10/29 (Given) 2009/11/06 (Gov. Gaz.)	Allowance of THB 60,000 Personal Income Tax calculation per disabled person supported by the taxpayer.
Notice of the Director-General of the RD		
(n/a)	2009/07/03 (Notified) 2009/09/21 (Gov. Gaz.)	Re; Bases, procedures and conditions in respect of transfer of certain parts of businesses of public limited companies or limited companies for exemption of taxes and duties.
(n/a)	2009/09/01 (Notified) 2009/11/11 (Gov. Gaz.)	Re; Bases, procedures and conditions respecting depts. subjected to debt restructuring according to bases on debt restructuring of financial institutions prescribed by the Bank of Thailand (No. 2) B.E. 2552 (2009).
Notice of the Director-General of the RD - Relating to Income Tax		
No. 181	2009/10/22 (Notified) 2009/10/19 (Gov. Gaz.)	Re; Bases, procedures and conditions respecting exemption of income tax on interest on deposits at bank in the Kingdom payable on demand of savings category.
<p>"Gov.Gaz." indicates the date in which the relevant rule was published in the Government Gazette. "Given", "Notified", "Ordered" indicates the date in which the relevant rule was given, notified or ordered, respectively.</p>		

¹ This table does not cover Excise Tax, Customs Duties and Board of Investment (BOI) related announcements etc.

FURTHER INFORMATION

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