



Tax & Legal Newsletter

July 2021

Corporate income tax exemption for the Stock Exchange of Thailand for subsidies received from the Capital Market Development Fund

On 22 June 2021, the Thai cabinet approved a draft royal decree to provide a corporate income tax exemption for the Stock Exchange of Thailand for subsidies received from the Capital Market Development Fund under the Securities and Exchange Act. The corporate income tax exemption would be provided for income received as from 1 January 2021. The decree must be published in the government gazette to become effective.

Tax incentive relating to donations to the Equitable Education Fund

On 29 June 2021, the Thai cabinet approved a draft royal decree to provide an additional personal or corporate income tax deduction for donations (of cash or property) that are made via the electronic donation (e-Donation) system to the Equitable Education Fund (EEF) from 1 January 2021 to 31 December 2023. The major conditions are summarized below:

- For individuals, a deduction of 200% of the amount donated to the EEF (“double deduction”) would be allowed. However, when combined with any donations made to support the Ministry of Education’s approved projects, the total deductible donations may not exceed 10% of the individual’s net income (i.e., assessable income reduced by allowances and deductions).
- For companies and juristic partnerships, a double deduction would be allowed for donations to the EEF. However, when combined with any donations made to support the Ministry of Education’s approved projects, the total deductible donations may not exceed 10% of the entity’s net profits before the deduction of donations made to support public charity or donations to support the public interest, education, and sports under section 65 bis (3)(b) of the Revenue Code.

The decree must be published in the government gazette to become effective.

Tax incentive for COVID-19 donations

On 29 June 2020, the Thai cabinet approved a draft royal decree to provide a personal or corporate income tax deduction for donations that are made via the electronic donation (e-Donation) system to the prime minister's office to support COVID-19 measures. A VAT exemption also would be provided for such donations but it would apply only to VAT operators making donations of goods. The tax incentive would be available for donations made from 6 March 2021 to 5 March 2022. The major conditions for the income tax exemption are summarized below:

- For individuals, a deduction would be allowed of 100% of the amount of cash donated, but the total amount of the deduction may not exceed 10% of the individual's net income (i.e., assessable income reduced by allowances and deductions).
- For companies and juristic partnerships, a deduction would be allowed of 100% of the amount of cash or the value of the goods donated. However, when combined with any donations made to support public charity or donations to support the public interest, the total deductible donations may not exceed 2% of the entity's net taxable profits.

The decree must be published in the government gazette to become effective.

An extension of tax incentives in support of prevention of COVID-19

Thailand government has recently published the Royal Decree No. 720 regarding tax exemption due to Covid-19 pandemic on 13 July extending VAT exemption under Royal Decree No. 700 as earlier published in 2020 for import and donation of medicines and medical goods supporting prevention of COVID-19.

Please find summary of key point from the Royal Decree issued under the Revenue Code governing exemption of taxes (No. 720) B.E. 2564 as below:

- VAT exemption on the importation of goods to be used for the treatment, diagnosis, or prevention of COVID-19. The contribution must be given to certain designated medical facilities, other state agencies, or public charitable organizations and must be made between 1 March 2021 and 31 March 2022.
- In addition, the royal decree also provides a corporate income tax exemption and VAT exemption for companies and juristic partnerships on income generated from transfers of property and sales of goods that are imported into Thailand and are donated between 1 March 2021 and 31 March 2022.

Decision of the Constitutional Court No. 8/2564

Section 37 ter of the Revenue Code conflicts with the constitution

On 2 June 2021, the Thai Constitutional Court, by majority opinion, held that section 37 ter of the Revenue Code conflicts with the constitution.

Section 37 ter provides as follows: "For the offences under Section 37, Section 37 bis, or Section 90/4, where the offender is liable for tax payment or tax remittance ("offender"), and such offences are of the following natures:

1. relating to tax evasion and fraud for THB 10,000,000 or greater per tax year, or a tax refund with false statements, or fraudulent acts or other means of similar nature, for THB 2,000,000 or greater per tax year; or
2. relating to offences conducted in the form of an organized network creating false transactions or concealing assessable income or revenue for tax evasion or tax fraud; or

3. relating to activities conducted to conceal assets relating to offences conducted, preventing the assets from being pursued.

“Such offences shall be deemed as a predicate offence under the Anti-Money Laundering Act, and procedures under the Anti-Money Laundering Act shall apply once the Director-General of the Revenue Department (acting based on the approval from the Tax Predicate Offence Committee) has submitted the case to the Anti-Money Laundering Office.”

The Constitutional Court ruled that section 37 ter unreasonably imposes a burden and unreasonably restricts the rights or liberties of a person, which contradicts the rule of law and therefore conflicts with section 26 and section 37 paragraph 1 and paragraph 2 of the constitution. The Revenue Department, therefore, will have no power to take legal action against taxpayers based on the Anti-Money Laundering Act.

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