



## Tax & Legal Newsletter

### April 2024

#### Tax incentives for donations to Equitable Education Fund

A Thai royal decree (No. 782) dated 19 March 2024 provides exemption from income tax, VAT, specific business tax, and stamp duty for individuals, companies, and juristic partnerships for donations to the Equitable Education Fund (EEF) from 1 January 2024 to 31 December 2028. The Director-General of the Thai Revenue Department will issue a notification specifying the detailed rules and conditions to claim the incentive.

The key features of the decree are as follows:

##### Donations through e-Donation system

Individual taxpayers are entitled to a personal income tax deduction equal to 200% of the amount of cash actually contributed to the EEF (i.e., a “double deduction”). However, when combined with any other double personal income tax deductions granted under royal decrees issued under the Thai Revenue Code (TRC), the total deductible donations may not exceed 10% of the individual’s assessable income after the other deductions and allowances permitted under section 47(1) through 47(6) of the TRC.

Companies and juristic partnerships may deduct 200% of the amount actually contributed (either in cash or in assets) to the EEF. However, when combined with any other double corporate income tax deductions granted under royal decrees issued under the TRC, the total deductible donations may not exceed 10% of the entity’s net profit before the deduction of donations made to support public charity or donations to support the public interest, education, and sports under section 65 ter (3)(b) of the TRC.

##### Donations through other (non-e-Donation) channels

Exemptions from personal and corporate income tax, VAT, specific business tax, and stamp duty are available for individuals, companies, and juristic partnerships with respect to income derived from transfers of assets, sales of goods, or executions of instruments in relation to contributions made to the

EEF. The cost of the assets or goods that are eligible for the tax exemption may not be claimed as a tax deduction in the personal income tax or corporate income tax computation, as applicable.

### **Extension of deadlines for filings of online special account reports**

On 1 March 2024, the Thai Ministry of Finance issued a notification (No. 8) that extends the due date for submission via the Thai Revenue Department's internet submission platform of special account reports by electronic platform service providers (that disclose information with respect to revenue received from sellers and service providers on their platform), for an additional eight days from the original due date. The extended due date will be 158 days from the end of the relevant accounting period, whereas the original due date is 150 days from the end of the relevant accounting period. The new extension applies to the submission of special account reports with an original due date from 1 February 2024 to 31 January 2027.

### **Private letter of ruling issued on a merger of limited companies under the amended Civil and Commercial Code with a surviving company**

The Thai Revenue Department issued a private letter of ruling (PLR) on 21 February 2024 confirming that a merger of limited companies pursuant to section 1238(2) of the Thai Civil and Commercial Code whereby the surviving company retained its juristic person status, while the merging company's juristic person status ceased to exist by the force of law (i.e., there was no longer a registration for incorporation of a juristic person), did not fall under the provisions for the amalgamation of limited companies in section 73 of the TRC. The transaction was, however, regarded as entire business transfer (EBT) under section 74(1)(c) of the TRC, whereby the extinguished company was deemed the transferor and the surviving company was deemed the transferee. The PLR also ruled on the tax implications of an EBT, as summarized below.

#### Corporate income tax

When computing the net profit or loss for corporate income tax purposes in the case of a business transfer between companies under section 74(1)(c) of the TRC, the valuation of assets is taken as the market price prevailing on the date of registering the dissolution and the provisions of 74(1)(b) also apply (with any necessary amendments). Under section 74(1)(b), the market value of the assets on the date of dissolution does not represent taxable income or an expense of the transferor for corporate income tax purposes. The transferee must record the assets at the same value as in the transferor's books on the date of transfer of the business and this value is used to calculate the gain or loss arising on the ultimate disposal of the assets.

Companies or juristic partnerships that are shareholders of the transferor are eligible for a tax exemption in accordance with section 5 septemdecim of royal decree No. 10 for the benefits received from the EBT by exchanging shares for shares in the transferee companies on the amount exceeding the capital (excluding profits and money set aside out of profits in the form of retained earnings and legal reserves before the transfer) where the transfer is made within the same accounting period with the EBT. The tax exemption may be claimed provided that the EBT is made in accordance with the notification of the Director-General of Revenue, regarding rules, procedures, and conditions for tax exemptions for the amalgamation or the transfer of the whole business between public companies or juristic companies.

#### VAT

Stock-in-trade and any other assets utilized in the business operation of the transferor that are outstanding on the date of the dissolution are not treated

as “sales” under section 77/1(8)(f) of the TRC, provided that the transferee is registered for VAT under section 82/3 of the TRC.

### Specific business tax

Income from the sale of immovable assets utilized in the business operation of the transferor is exempt from specific business tax where the EBT takes place between limited companies and is undertaken under section 5 sedecim of royal decree No. 10.

### Stamp duty

No stamp duty is payable on an EBT where the transferor is registered for dissolution and the liquidation occurs in the accounting period in which the EBT takes place, under section 6(31) of royal decree No. 10.

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