



## Tax & Legal Newsletter

### November 2022

#### Imposition of additional requirements for granting of waiver or reduction of VAT penalty in cases of importations

An order from the Thai Revenue Department (No. Tor.Paw. 348/2565) that was issued on 19 October 2022 and is effective as from the same date amends clause 1 of a previous order from the Thai Revenue Department (No. Tor.Paw. 120/2545) to impose additional requirements for a tax assessment officer's exercise of the authority to grant a waiver or reduction of a VAT penalty in cases involving an importation of goods. Based on the amendments, the tax assessment officer may exercise such authority only where the importer has no intention to evade taxes and provides a high level of cooperation during the investigation process. Pursuant to the amended order, the tax assessment officer is entitled to exercise the power to grant a waiver or reduction of a VAT penalty without receiving a request from the importer in the following cases:

- Cases where the importer has been granted a waiver of customs fines or where the relevant authority was unable to impose customs fines (in lieu of prosecution) against the importer within five years of the importation date; in such cases, the VAT penalty will be waived;
- Cases where customs fines have been imposed in an amount less than the amount of the duty underpayment; in such cases, the VAT penalty will be reduced to the amount of the customs fines imposed;
- Cases where there is no offense under the customs law, but the tax assessment officer discovers that the importer has filed VAT returns incorrectly or there is an error on the VAT returns that has resulted in an incorrect amount of tax payable; in such cases, the VAT penalty will be reduced to 50% of the total penalty that otherwise would apply; and
- Cases where the importer is liable to a VAT penalty, but the amount of the penalty does not exceed THB 1,000; in such cases, the VAT penalty will be waived.

#### Clarifications provided regarding VAT treatment of charter services relating to ships

The Thai Revenue Department issued VAT guidance on 21 October 2022 to clarify the VAT treatment of charter services relating to ships. The key clarifications are summarized below:

- **Voyage charter:** This is an agreement between the ship owner and the charterer, under which the charterer will deliver goods to a specified shipping port before the ship owner will transport the goods to the agreed-upon location designated by the charterer. Under a voyage charter arrangement, the ship crew is employed by the ship owner and the owner retains possession of the ship. The owner also must be responsible for all of the costs incurred during the shipping operation. Accordingly, under a voyage charter arrangement, the ship owner is regarded as carrying out the service of transportation of goods by sea, which will be subject to the following VAT treatment:
  - In cases involving the domestic transportation of goods, the service will be considered as being provided in Thailand, under section 77/2 of the Thai Revenue Code (“Revenue Code”). However, the service of domestic transportation of goods by sea is exempt from VAT, under section 81(1)(p) of the Revenue Code.
  - In cases involving the transportation of goods between Thailand and a foreign country, the service will be considered as being provided in Thailand, under section 77/2 of the Revenue Code. However, where the transportation of goods is made from Thailand to a foreign country by a ship owner that is a juristic person, the taxpayer will be eligible for a 0% VAT rate, in accordance with section 80/1(3) of the Revenue Code.
- **Time charter:** This is an agreement between the ship owner and the charterer, under which the charterer is entitled to provide instructions and directions regarding the vessel, but the ship owner still retains complete control and possession of the ship. Under a time charter arrangement, the ship crew is employed by the ship owner. The charterer will be responsible for the cost of fuel for the operation of the vessel. Given that a time charter arrangement does not involve the transfer of possession of the vessel from the ship owner to the charterer, the ship owner is regarded as carrying out the service of transportation of goods by sea, which will be subject to the following VAT treatment:
  - In cases involving the domestic transportation of goods, the service will be considered as being provided in Thailand, under section 77/2 of the Revenue Code. However, the service of domestic transportation of goods by sea is exempt from VAT, under section 81(1)(p) of the Revenue Code.
  - In cases involving the transportation of goods between Thailand and a foreign country, the service will be considered as being provided in Thailand, under section 77/2 of the Revenue Code. However, where the transportation of goods is made from Thailand to a foreign country by a ship owner that is a juristic person, the taxpayer will be eligible for a 0% VAT rate, in accordance with section 80/1(3) of the Revenue Code.
- **Bareboat charter:** This is an agreement between the ship owner and the charterer, under which the owner will transfer the possession of the ship to the charterer. The charterer is entitled to complete control of the vessel and will be responsible for all costs incurred for the vessel’s operation. Under a bareboat charter arrangement, the ship crew is employed by the charterer. Accordingly, the ship owner under a bareboat charter arrangement is regarded as carrying out a leasing service, which will be subject to a 7% VAT rate if provided domestically in Thailand.

**Extension of personal income tax exemption for community-based enterprises approved**

On 25 October 2022, the Thai Cabinet approved an extension of the personal income tax exemption that is available for a community-based enterprise qualifying under the Community Enterprise Promotion Act, if the enterprise is an ordinary partnership or a non-juristic body of persons that has annual income that does not exceed THB 1.8 million. The exemption originally was available from 1 January 2020 up to 31 December 2022 and will be extended to 31 December 2025. For the extension to be officially granted, a ministerial regulation providing for the extension must be published in the government gazette.

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