



Tax & Legal Newsletter

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Rules and conditions provided for tax incentives for donations to Equitable Education Fund through e-Donation system

A notification from the Director-General of the Thai Revenue Department (No. 53), which is dated 30 April 2024 and is effective retroactively as from 1 January 2024, sets forth rules and conditions for claiming tax incentives in respect of donations to the Equitable Education Fund (EEF) through the electronic donation (“e-Donation”) system from 1 January 2024 to 31 December 2028, in accordance with Thai Royal Decree No. 782 (dated 19 March 2024).

Royal Decree No. 782 allows individuals, companies, and juristic partnerships an additional income tax deduction of 100% (i.e., a total deduction of 200%) for qualifying donations through the e-Donation system, subject to certain limitations. The royal decree also provides for certain exemptions from VAT, specific business tax, and stamp duty in connection with qualifying donations.

The salient features of the notification are as follows:

- For individual taxpayers, the donation must be made only in the form of cash.
- For companies or juristic partnerships, the donation may be made in the form of cash, assets, or goods. Donations of assets or goods must be in accordance with the following rules and conditions:
 - For assets purchased for donation, evidence of the purchase that supports the quantity and value of the assets must be made available, and the deduction will be allowed based on the value specified in such evidence;
 - For donations made of assets recorded in the fixed assets register of the company or juristic partnership, the deduction will be allowed based on the net asset value (after depreciation and amortization);

- For donations made in goods (whether self-produced or bought for trade) of the company or juristic partnership, the deduction will be allowed based on the value of such goods that can be substantiated; however, the value may not exceed the value of the relevant inventory carried forward from the previous accounting year, pursuant to section 65 bis (6) of the Thai Revenue Code (TRC); and
 - The value of assets or goods purchased for donation may not exceed the normal purchase price of such assets or goods, pursuant to section 65 ter (15) of the TRC.
- To claim incentives under the notification, the information available in the e-Donation system may be relied on as supporting evidence, without the need to present other evidence to the tax assessment officer.

Updated guidance provided on application of penalties and surcharges for income tax, VAT, and specific business tax purposes under Departmental Instruction No. Paw. 163/2567

On 1 May 2024, the Thai Revenue Department (TRD) issued Departmental Instruction No. Paw. 163/2567 (“Paw. 163”), which is effective as from the same date, to supersede Departmental Instruction No. Paw. 117/2545 (“Paw. 117”), dated 28 October 2002, on the time period for the calculation of certain penalties and surcharges for income tax, VAT, and specific business tax (SBT) purposes (under section 27, section 67 ter, section 89, section 89/1, and section 91/21 (6) of the Thai Revenue Code (TRC)). Paw. 117 addressed situations where a deadline to file tax returns, withholding tax returns, tax payments, or tax remittance returns falls on a governmental holiday. Paw. 163 also addresses the time period for the calculation of penalties and surcharges in certain other situations, including internet filing. The salient features of Paw. 163 are described below.

Situations where a deadline extension is granted to the taxpayer

- In a case where there is approval by the Minister of Finance to extend the deadline to file a tax return and remit tax:
 - If the taxpayer fails to file the return and remit the tax, or inaccurately remits the tax amount, by the approved extended deadline, a penalty and surcharge will be imposed, which will accrue from the expiration of the extended deadline until the date of payment.
 - If the taxpayer files the tax return and remits the tax by the approved extended deadline, there will be no penalty, surcharge, or criminal fine imposed.
- Where there is an extension of the deadline to file a tax return and remit tax in a case where online filing is required (including ordinary filings and supplementary filings), and the taxpayer fails to comply by the extended deadline, a penalty and surcharge will be imposed, which will accrue from the expiration of the deadline prescribed in the TRC until the date of payment. Exceptions to this approach for penalties and surcharges will be made in two scenarios approved in accordance with a notification from the Ministry of Finance dated 24 July 2001, as follows:

- If the tax return filing and tax payment are made via online filing by the deadline and subsequently a supplementary tax filing is made via paper filing, the supplementary tax filing will not be granted the extended deadline; and
- If the tax return filing and tax payment are made via paper filing by the deadline and subsequently a supplementary tax filing is made via online filing, the supplementary tax filing will not be granted the extended deadline.

Situations where a specially approved deadline extension is granted to the taxpayer

- In a case where the taxpayer is granted a special extension of a deadline (due to, for example, a natural disaster) and the Minister of Finance has approved the extension of the deadline for tax filing and remittance of tax:
 - If the taxpayer fails to file the tax return and remit the tax, or inaccurately remits the tax amount, by the specially approved extended deadline, a penalty and surcharge will be imposed, which will accrue from the expiration of the deadline for filing the tax return and remitting tax under the TRC, unless an extension is approved in accordance with the notification from the Ministry of Finance dated 24 July 2001. In such a case, the penalty and surcharge will accrue from the expiration of the deadline prescribed in the notification. The penalty and surcharge will accrue until the date of payment.
 - If the taxpayer files the tax return and remits the tax by the specially approved extended deadline, there will be no penalty or surcharge imposed.

Situations where a deadline to file a tax return and remit tax falls on a governmental holiday

- In a case where a tax return and tax payment deadline under the TRC falls on a governmental holiday, the next business day following the governmental holiday will be treated as the deadline and there will be no penalty or surcharge imposed for filings and payments on that date.
- In a case where an extension of a deadline to file a tax return and pay tax is approved by the Director-General of the TRD and the extended deadline falls on a governmental holiday, the next business day following the governmental holiday will be treated as the deadline and there will be no penalty imposed for filings and payments on that date; however, a surcharge will be payable at a rate of 0.75% per month (or fraction thereof) on the amount of tax payable.
- In a case where an extension of a deadline is approved by the Minister of Finance and the extended deadline falls on a governmental holiday, the next business day following the holiday will be treated as the deadline and there will be no penalty or surcharge imposed for filings and payments on that date.
- In a case where tax is paid in installments under the circumstances set out below, the next business day following a governmental holiday will be treated as the installment deadline and the taxpayer will still be eligible to make the installment payment and there will be no surcharge imposed under section 27 of the TRC:
 - Where tax is paid in installments under section 64(1) and (2) of the TRC and the deadline for payment of the second or third installment falls on a governmental holiday; or

- Where approval is granted for installment payments pursuant to the TRD's regulation governing the installment payment of taxes B.E. 2560 (2017) and the deadline for payment of any installment falls on a governmental holiday.

Situations where a taxpayer requests a penalty and surcharge reduction for VAT and SBT purposes and the relevant deadline falls on a governmental holiday

In determining the time period for the calculation of the penalty and surcharge in a case where a taxpayer that is liable for a penalty for VAT and SBT purposes and is subject to a surcharge at a rate of 1.5% per month (or fraction thereof) of the shortfall taxes requests a penalty reduction, the penalty and surcharge generally will accrue from the expiration of the deadline to file the relevant tax return and remit the tax (as specified under the law) until the date of payment. If the deadline falls on a governmental holiday, the next business day following the governmental holiday will be treated as the deadline.

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