

## Tax & Legal Newsletter

### October 2022

#### Rules, criteria, and conditions provided for income tax exemption for gains from investments in target industry companies

A notification from the Director-General of the Thai Revenue Department on income tax (No. 428) was issued on 6 September 2022 to provide rules, criteria, and conditions regarding the corporate and personal income tax exemptions for Thai and foreign investors with respect to capital gains derived from transfers of certain direct and indirect investments in companies operating in targeted industries (“target industry companies”), in accordance with the provisions of a royal decree (No. 750) dated 13 June 2022 that is effective as from 15 June 2022 until 30 June 2032.

The exemptions granted under Royal Decree No. 750 are available for capital gains derived from direct transfers of shares in target industry companies and from indirect transfers of shares in such companies via the transfer of shares or trust units of a corporate venture capital (CVC) fund or private equity (PE) trust investing in target industry companies, as well as for gains derived from the dissolution of such a CVC fund or PE trust. The tax exemptions are subject to certain conditions, including that the capital gains must be derived from an investment in a “qualifying target industry company.” In the case of capital gains derived from a direct or indirect transfer, the exemptions apply only to the portion of the capital gains corresponding to the percentage of revenue derived from targeted activities (in the case of a direct transfer) or the amount invested by the CVC fund or PE trust in the qualifying target industry company (in the case of an indirect transfer). In the case of capital gains derived from the dissolution of a CVC fund or PE trust that holds shares in a target industry company, the capital gains tax exemption applies only to the portion of capital gains (i.e., the amount of distributions received exceeding the investment cost) that are attributable to the retained earnings derived by the CVC fund or PE trust from its holding of shares in a qualifying target industry company.

The key rules, criteria, and conditions set forth in the notification are summarized below.

A “qualifying target industry company” is a business that operates in a targeted industry, as prescribed by the Committee on Policy for National Competitiveness

Enhancement for Targeted Industries, and must be certified by one of the following agencies: the National Science and Technology Development Agency; the National Innovation Agency; or the Digital Economy Promotion Agency.

For purposes of calculating the portion of capital gains that is eligible for a tax exemption in the case of an indirect transfer, the net profits of a qualifying CVC fund must be calculated in accordance with section 65 of the Thai Revenue Code, by taking the income from the business or the activities carried out during the accounting period and deducting qualifying expenses under the conditions specified under section 65 Bis and section 65 Ter of the Thai Revenue Code. In a case where the CVC fund carries out both activities that generate income that is tax exempt under section 4 of Royal Decree No. 750 (i.e., capital gains from disposals of shares in qualifying target industry companies) and other activities that generate income that is taxable, the CVC fund must calculate the net profit or net loss from each activity separately. However, the CVC fund is required to combine the profits or losses from its tax exempt activities with those of non-tax-exempt activities to arrive at a total combined profit or loss for the entity for corporate income tax purposes.

An annual reporting requirement applies to target industry companies and to CVC funds and trustees of PE trusts investing in such companies. They must submit the details of relevant investments (e.g., general information, and the portion of investments in target industry companies in each accounting period for CVC funds and PE trusts) in a form (a copy of which is attached to the notification) that must be submitted via the internet through the Thai Revenue Department's website within 150 days of the last day of the accounting period. The details of the investments also must be provided to investors or shareholders, which must retain the details and have them readily available for inspection by a tax officer upon request. For the details of investments that would be required to be submitted on or before 31 December 2022 under the general 150-day rule, the deadline will be extended to 30 June 2023.

#### **Rules and procedures provided regarding VAT registration for Thai individuals who use residential condominiums to operate online businesses**

Two notifications from the Director-General of the Thai Revenue Department on VAT (No. 245 and No. 246) were issued on 14 September 2022 and entered into force on the following date to amend previous notifications from the Director-General of the Thai Revenue Department on VAT (No. 57 dated 25 October 1994 and No. 159 dated 30 July 2004) by providing rules and procedures regarding VAT registration for Thai individuals operating an online business from a residential condominium. More specifically, the notifications provide rules and procedures relating to the application for VAT registration and the issuance of VAT registration certificates via the internet for Thai individual operators who use a residential condominium (according to the Condominium Act) as the sole establishment from which they operate a business selling goods or providing services through the internet. The key rules and procedures set forth in the notifications are summarized below.

A Thai individual operator that is required to register for VAT (i.e., that has annual turnover exceeding THB 1.8 million from supplying goods or providing services in Thailand) or that wishes to register for VAT voluntarily must submit the VAT registration form to the Thai Revenue Department and include a complete and correct set of supporting documents (such as a commercial registration certificate for carrying out sales of goods or the provision of services via the internet, the "house registration book" information and a map that illustrates the location of the establishment, a photo of the establishment, etc.). The registration application (Por.Phor. 01) must be submitted through the e-VAT registration portal via the Thai Revenue Department's website.

In addition, a Thai individual operator that makes sales or provides services through an online platform also must provide consent for the online platform operator that possesses information regarding the individual's online sales or service business to disclose such information to the Thai Revenue Department,

to confirm that the operator is operating the business for which approval of VAT registration is requested.

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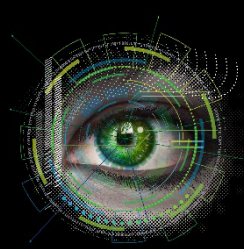
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