

Tax Developments 2008

During 2008, the government continued to promote its policy of stimulating and reviving the economy of the country. This has resulted in a number of tax developments taking place in order to alleviate the tax burden of people and business operators as well as to support the expansion of economy. These developments are summarized as follows:

Personal income tax

Personal income tax exemption (*Royal Decree No 470 issued on 28 March 2008*)

The exemption from personal income tax on net assessable income was increased from Baht 100,000 to Baht 150,000 with effect from 2008.

Amendments to the criteria and conditions for investment in Retirement Mutual Funds (RMF) (*Ministerial Regulation No 265 issued on 29 January 2008*)

RMF units must now be held until the taxpayer reaches the age of 55 and the units have been held for at least five calendar years before being redeemed. If these conditions are met, the allowance given at the time of acquisition of the investment in RMF units would be eligible for deduction and the gain from the redemption of the units would be exempt from tax.

However, in the case where the taxpayer redeems the units after the five-year holding period, but he/she has not yet reached the age of 55, the allowance given at the time of the investment in the units would not be eligible. Accordingly, the taxpayer will have to adjust the personal income tax return(s) previously filed. Nevertheless, the gain from the redemption of the units would continue to be exempt from tax.

This amendment is effective for investments in RMF units on or after 1 March 2008.

Increase in deductible allowances (*Ministerial Regulation No. 266 issued on 16 May 2008, Ministerial Regulation No 267 issued on 21 November 2008 and Notification of Director-General of the Revenue Department on income tax No 172 issued on 30 December 2008*)

1. Provident Fund

The maximum allowance for contributions to a registered provident fund by employees has been increased from a rate not exceeding 15% of the employee's wage up to a maximum amount of Baht 300,000 per tax year to a rate not exceeding 15% of the employee's wage up to a maximum amount of Baht 500,000.

2. Government Pension Fund

The allowance for contributions to the Government Pension Fund by its members has been increased from Baht 300,000 to Baht 500,000 per tax year.

3. Welfare Fund under the law governing Private Schools

The maximum allowance for contributions to the Welfare Fund under the law governing Private Schools by a principal, a manager, a teacher or educational personnel of a private school has been increased from Baht 300,000 to Baht 500,000 per tax year.

4. Retirement Mutual Fund

The maximum allowance for investment in a Retirement Mutual Fund (RMF) has been increased from a rate not exceeding 15% of the assessable income up to a maximum amount of Baht 300,000 per tax year to a rate not exceeding 15% of the assessable income up to a maximum amount of Baht 500,000. However, in order to apply this allowance, no less than five years must have passed between the date on which the individual (or investor) bought the investment unit for the first time and the date on which the investment unit was redeemed at the age of fifty-five or over.

Furthermore, the allowance for investment in an RMF together with the allowance for contributions to a provident fund, the Government Pension Fund or the Welfare Fund under the law governing Private Schools must not exceed Baht 500,000 in total.

5. Long-Term Equity Fund

The maximum allowance for investment in a Long-Term Equity Fund (LTF) which was registered as a LTF on or before 30 June 2007 has been increased from a rate not exceeding 15% of the assessable income up to a maximum amount of Baht 300,000 per tax year to a rate not exceeding 15% of the assessable income up to a maximum amount of Baht 500,000.

This allowance applies only to natural persons, and excludes ordinary partnerships, non-juristic bodies of persons and undistributed estates.

Note

On 16 December 2008, the Revenue Department announced additional allowances for tax deduction in respect of contributions to LTF and RMF for another Baht 200,000. This additional allowance was applicable only for the 2008 taxable year and the Funds must be purchased from 1 October to 31 December 2008.

6. Life Insurance Premiums

The allowance for life insurance premiums has been increased from Baht 50,000 to Baht 100,000.

For a life insurance policy executed from 1 January 2009 onwards, any embedded health or accident premium will not be deductible. Moreover, if the policy includes a savings plan which provides an annual return to the policy holder exceeding 20% of the annual premium, the entire premium will be non-deductible.

The above allowances apply to assessable income received from 1 January 2008 onwards.

Tax credit on dividends paid by a petroleum business (*Ruling of the Board of Taxation No 37/2551 issued on 9 April 2008*)

In order to clarify the position regarding the tax credit on dividends paid by a petroleum business, the Board of Taxation ruled that:

1. Individuals who obtain dividends from a company subject to petroleum income tax which are paid out of the net profit of the petroleum business are not entitled to the benefit of the dividend tax credit under Section 47 bis of the Revenue Code because the dividend tax credit is granted only if the dividends are paid out of the net profit which has been subject to income tax under the Revenue Code.
2. In the case of a company which has received dividends paid out of the net profit of a petroleum business subject to petroleum income tax and then distributes such dividends to its individual shareholders, these individuals are also not entitled to the tax credit for the dividends under Section 47 bis of the Revenue Code. Since the dividends received by the company are exempt from tax under the Revenue Code by virtue of the law governing petroleum income tax, they are not regarded as dividends paid out of the net profit which has been subject to income tax under the Revenue Code.

This ruling of the Board of Taxation became effective on 9 April 2008.

Corporate income tax

Reduction in rate of income tax for companies newly listed on the Securities Exchange of Thailand (SET) and the Market for Alternative Investment (MAI) before 31 December 2009 (*Royal Decree No 467 effective on 18 October 2007, Royal Decree No 474 effective on 7 August 2008*)

The rate of corporate income tax has been reduced from 30% to 25% for a period of three accounting periods commencing from the accounting period starting on or after the date on which the companies were listed on the SET and to 20% for those listed on the MAI. The reduced tax rates will be applicable only for the companies which applied for a listing on the SET or the MAI between 1 January 2007 and 31 December 2008 and must be listed by 31 December 2009.

During the period in which the companies are applying the reduced income tax rate, they will not be permitted to take the benefit of the tax exemption equal to 25% of capital expenditure available under Royal Decree No 460.

Reduction in rate of income tax for company listed on the SET or the MAI (Royal Decree No 475 issued on 29 July 2008)

Royal Decree No. 475 was issued to reduce the corporate income tax rate to 25% for three accounting periods commencing from the accounting period starting on or after 1 January 2008 for the first Baht 300 million of net profit for companies listed on the SET and to 20% for the first Baht 20 million of net profit for those listed on the MAI. The reduced tax rates will be applicable only for companies listed on the SET and the MAI but which are not granted for the tax rate reduction under Royal Decree No. 467 (as amended by Royal Decree No. 474).

Companies listed on the SET or the MAI between 6 September 2001 and 31 December 2005 and which they are still eligible to apply for the reduced tax rates under Royal Decree No 387 will continue to apply for such reduced tax rates. Upon the expiry of these tax rate reduction, the reduced rates under Royal Decree No. 475 will then apply but not beyond the accounting period 2010 which ends on or after 31 December 2010.

However, companies that apply the reduced income tax rates under Royal Decree No. 475 are not also permitted to take the benefit of the tax exemption on income equal to 25% of capital expenditure available under Royal Decree No. 460.

Corporate income tax exemption granted for small and medium enterprises (SME) (Royal Decree No 471 issued on 28 March 2008)

SME is defined as a company with a paid-up capital of no more than Baht 5 million at the end of the accounting period. SME have been granted exemption from corporate income tax for the first Baht 150,000 of net taxable profit and the net taxable profit in excess of Baht 150,000 will be taxed as follows.

- 15% on net profit exceeding Baht 150,000 but not exceeding Baht 1 Million,
- 25% on net profit exceeding Baht 1 Million but not exceeding Baht 3 Million,
- 30% on net profit exceeding Baht 3 Million.

The above will be effective for accounting periods commencing on or after 1 January 2008.

New depreciation rates (Royal Decree No 473 issued on 29 July 2008)

New depreciation rates are available together with an initial deduction for computers, computer software and other assets of SME and computers, computer software and machinery and equipment of all other juristic companies and partnerships. The new rates and initial deduction apply to the following assets acquired on or after 7 August 2008:

Assets of SME

In this case, SME is defined to mean companies and juristic partnerships whose fixed assets, excluding land, have a value of no more than Baht 200 million and the number of employees is no more than 200.

(a) Computers acquired for the entity's own business use are entitled to an initial depreciation of 40% of the total cost on the acquisition date. The remaining cost can be depreciated within 3 accounting periods starting from the acquisition date. For accounting periods shorter than 12 months, a proportionate adjustment must be made for the period and any generally accepted accounting method may be adopted.

The term "computers" refers to automatic electronic appliances used as artificial intelligence to mathematically solve easy and complicated problems, including computer accessories related to appliances or components of computers, including computer software, which enable them to function properly.

(b) Other assets which are by nature liable to wear and tear or depreciation excluding land and stock-in-trade and which are acquired for the entity's own business are entitled to depreciation of 100% of the total cost on the acquisition date. This applies to assets acquired during an accounting period, the total value of which does not exceed Baht 500,000. For any accounting period which is less than 12 months, a proportionate adjustment must be made for the period and any generally accepted accounting method may be adopted.

Depreciation under (b) is applicable to assets acquired only until 31 December 2010.

Assets of companies and juristic partnerships that do not qualify as SME

(a) Computers acquired for the entity's own business use can be depreciated within 3 accounting periods starting from the acquisition date. For accounting periods shorter than 12 months, a proportionate adjustment must be made for the period and any generally accepted accounting method may be adopted.

Note: The definition of "computers" is the same as under SME above, which includes computer software.

(b) Machinery and equipment acquired for the entity's own business use are entitled to an initial depreciation of 40% of the total cost on the acquisition date. The remaining cost can be depreciated according to the normal depreciation method, which is a maximum of 20% per annum.

Depreciation under (b) is applicable to machinery and equipment acquired only until 31 December 2010.

It should be noted that companies that benefit from the new depreciation methods described above will not be permitted to take the benefit of the tax exemption on income equal to 25% of capital expenditure that is otherwise available under Royal Decree No. 460.

Value added tax (VAT)

The 7% rate of VAT to continue for two more years (Royal Decree No 479 effective on 1 October 2008)

The temporary reduction in the rate of VAT from 10% to 7% on the sale of goods, provision of services and import of goods has been extended for two more years from 1 October 2008 to 30 September 2010.

Specific business tax (SBT)

Reduction of SBT rate for certain banking business (Royal Decree No. 469 issued on 23 January 2008, effective from 1 January 2008, the Notification of the Director-General of the Revenue Department on SBT No 12)

The rate of SBT has been reduced from 3% to 0.01% (3.3% to 0.011% inclusive of the 10% municipality tax) for revenue derived by commercial banks and finance, securities and credit foncier businesses under the law governing finance, securities and credit foncier businesses as well as businesses with regular transactions similar to commercial banking in the following circumstances:

- (1) Interest on loans between financial institutions or other juristic persons prescribed by the Director-General of the Revenue Department whereby the period of loan does not exceed one year;
- (2) Gross profit from the resale of securities under repurchase agreements executed between financial institutions or other juristic persons prescribed by Director-General and the period of the agreement does not exceed one year;

Other juristic persons prescribed by Director-General under the above paragraph include all funds supervised by the Office of the Securities and Exchange Commission, Government Pension Fund, Social Security Fund, Governmental Divisions and State Enterprises, Stocks Exchange of Thailand and companies or juristic partnerships.

- (3) Interest on cash collateral from the repurchase agreements of securities as per (2) above;

- (4) Interest or discounts on debt instruments or gross profit from the purchase or sale of debt instruments;
- (5) Interest from securities lending;
- (6) Gross profit from exchange or purchase or sale of currencies;
- (7) Interest, fees or gross profit from the purchase or sale of forward contracts only in the case where the goods or variables of such contracts are in any currencies, debt instruments, exchange rates, interest rates, or other goods or other variables as prescribed by the Director-General and such contract is made outside the forward contract sale centre under the law governing forward contracts but excluding repurchase agreements of securities.

Reduction in the rate of SBT on the sale of immovable properties (*Royal Decree No 472 issued on 28 March 2008*)

The rate of SBT on the sale of immovable properties in a commercial manner or for profit was reduced from 3.0% to 0.1% (3.3% to 0.11% inclusive of the 10% municipality tax) in respect of the registration of rights and juristic acts relating to the sale of immovable properties executed within one year from 29 March 2008.

Other issues

Loss on investment from liquidation (*Departmental Instruction No Paw 135/2551 dated 8 August 2008*)

Where a Thai debtor company has incurred a significant loss and increases its share capital for settlement of the liability owed to its parent company for liquidation purposes, the Revenue Department has laid down criteria that allow the Thai creditor company to recognise the loss on the investment in such increased share capital as a deductible expense. The loss will be allowed to be deductible only upon the completion of the liquidation of the debtor and to an extent not exceeding the amount receivable from the debtor as of the date of the capital increase. However, the following conditions must be met:

1. The creditor is organised under Thai law and holds at least 25% of the voting shares in the debtor from the time of the incorporation of the debtor until the increase in capital.
2. The receivable due from the debtor qualifies for writing-off under Ministerial Regulation No 186.
3. The dissolution and liquidation of the debtor must commence within a period not exceeding one accounting period from the accounting period in which the debtor has increased its capital.

This guideline will be enforced for fiscal years ending on or after 31 December 2007.

New guidelines for withholding tax on payments under interest rate swap contracts and cross currency swap contracts (*Departmental Instruction No Paw 136/2551 dated 29 September 2008*)

The Revenue Department issued new guidelines that changed the withholding tax implications for payments under interest rate swap contracts and cross currency swap contracts of which the swapper is also a lender.

Previously, the payment for the difference under interest rate swap, cross currency swap or cross currency interest rate swap contracts of which the swapper is also a lender was considered to be an item of income under Section 40(4) (a) of the Revenue Code.

The new guideline is a result of the Supreme Court Judgement No. 736/2550 (for further details on this Supreme Court Ruling please refer to PwC Tax Newsletter no. 4/2007 issued on 5 October 2007).

The guideline states that, with effect from 29 September 2008, in the case where a company has entered into an interest rate swap, cross currency swap or cross currency interest rate swap contracts of which the swapper is also a lender, the payment for the differences derived from the currency and interest rate swap will be regarded as income under Section 40(4)(a) of the Revenue Code only if there are circumstances showing that the counterparties have an intention to enter into a loan

agreement and intentionally execute an additional swap contract to change the remuneration stipulated under the loan agreement to be an item of remuneration under the swap contracts, i.e. the swap contract is created without an intention to hedge against the fluctuation in the interest rate and foreign currency.

Accordingly, if the swap transaction is truly for hedging purposes, the payment for the differences under the swap transaction will be regarded as income under Section 40(8) of the Revenue Code and the payer will not be required to withhold tax when making payment. Nevertheless, a withholding tax liability may arise if the payment for the difference under the swap contract is regarded as income under Section 40(4) (a) of the Revenue Code.

In conclusion, the guideline will give rise to a burden of proof that the swap transaction is purely for a hedging purpose. Hence, it will be necessary to maintain evidence to prove such intention.

Reduction in registration fees for a transfer and mortgage of immovable properties

(Notifications of the Ministry of Interior dated 24 March 2008 and 30 April 2008)

The registration fee for the transfer of immovable property has been reduced from 2% to 0.01% for the purchase and sale of the following immovable properties:

- Land, building, building with land under the law governing Land Apportionment, or land apportioned by a government body, whereby building includes single house, duplex house, row house and commercial building.
- Purchase and sale of immovable properties which take place without any land apportionment for the following properties:
 - Single house, duplex house, row house or commercial unit,
 - Single house, duplex house, row house or commercial unit together with land not exceeding one rai.
- Condominium units
- Office building whether a building or a building with land granted a construction permit or construction notice under the law governing Building Control.

The fee for the registration of a mortgage for the above immovable properties is also reduced to 0.01%.

The above fees are applicable for one year from 29 March 2008 except for the fee for the transfer or mortgage of immovable properties without land apportionment which is applicable from 3 May 2008 until 28 March 2009.

Tax exemption on profit remittance under the Double Tax Agreement (“DTA”) between Thailand and Hong Kong

The Thailand Ministry of Foreign Affairs advised to the Director-General of the Revenue Department on 4 March 2008 that tax exemption on profit remittance under the DTA between Thailand and Hong Kong has been confirmed by the Thai and Hong Kong authorities and is retroactively effective from 7 December 2005, which is the effective date of the DTA.

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