Asia Pacific Tax Newsalert

A Washington National Tax Services (WNTS) Publication

Thailand

March 29, 2012

Thailand corporate tax rate reduction and flood relief

Thailand corporate tax rate reduction

Thailand has reduced the 30% corporate income tax rate to 23% for tax years beginning on or after January 1, 2012 and to 20% for the subsequent two tax years.

The rate was reduced to increase the competitiveness of Thailand against its major rivals in Southeast Asia which have lower corporate tax rates. While the reduced rate is only for these three years, the government intends to make the 20% rate permanent.[1] The reduced rate could entice US parent companies to view Thailand differently going forward.

Thailand imposes a 10% dividend withholding tax (not reduced under any Thai tax treaties). As a consequence, the effective tax rate on a Thai subsidiary's distributed profits was 37%, making Thailand a "high tax" country for many US multinational

[1] In order to quickly enact the cut at the end of 2011, it was enacted as a Royal Decree which can only be a temporary measure. A permanent extension requires an Act of Parliament which the government intends to pursue. As there is no current political opposition, the cut should be made permanent. Note, however, that for purposes of deferred tax accounting under ASC 740 only a three-year cut is considered enacted.

pwc

corporations. Groups able to utilize all of their foreign tax credits ("FTCs") had little or no US tax cost on repatriation. Nevertheless, many Thai subsidiaries had significant undistributed profits.

The reduced 20% corporate tax rate will result in a 28% effective tax rate on remitted earnings. While not necessarily low, this reduced rate may result in a future US tax cost on repatriation. This will gradually affect a company's tax pools over time and will reduce the underlying value of the FTC pool. In addition today's tax pools in a Thai subsidiary may be considerably higher than the 30% rate due to 1) the Thai Baht's significant appreciation against the US dollar over the past several years[2] and 2) the rule that taxes are translated at the historical rate in the years paid.

Thus US parent companies looking for high tax credits may want to consider a special repatriation of Thai earnings and profits while the tax pool is at a higher tax rate.

Thailand does limit dividend distributions to the amount of statutory retained earnings. Thailand also requires that companies set aside 5% of any dividend in an appropriated reserve fund until the reserve fund equals 5% of the company's capital.

Finally, Thailand has no thin capitalization or debt-to-equity rules so cash poor subsidiaries could borrow in order to pay dividends. However, Thailand's 15% withholding tax on interest paid to foreign lenders may discourage companies from using this option for inter-group borrowing.

While each corporate group's situation differs, given these parameters, companies may wish to revisit the repatriation policy for their Thai subsidiaries.

Flood Relief

Thailand's unprecedented "100 year flood" in 2011 caused major damage to hundreds of factories, resulting in significant costs. Many companies will need to consider the Thai tax rules on insurance recoveries.

Uninsured losses may be deducted in the year the loss occurs. However, insured losses may not be deducted until the settlement is finalized with the insurance company. In many cases this may not occur until 2013. In addition, insurance proceeds for the loss of machinery, equipment, buildings and fixtures that exceed the net book value of these assets are non-taxable. Replacement property purchased with the insurance proceeds can be depreciated based on the actual cost of the new property, with no reduction to account for the tax-free excess insurance. However, insurance proceeds for lost inventory are only tax free to the extent of the tax cost of the inventory and any excess is taxable (in the year received). Business interruption and similar insurance proceeds are taxable.

Appropriate documentation and allocation of insurance proceeds will be important.

In addition, the Board of Investment ("BOI") (the Thai government agency responsible for business promotion), announced that it will grant income tax concessions to companies who rebuild factories and facilities damaged by the floods. These concessions can be up to 150% of the investment for eight years. Unfortunately only companies with an existing, unexpired BOI promotion will be entitled to these concessions. Such companies may wish to fully understand the requirements.

[2] The exchange rate at December 31, 2005 was 41 Baht to the dollar compared to today's 30.5 rate.

For more information, please contact:

Your tax contact in the United States:

Ninee Supornpaibul +1 646-471-5187 ninee.s.supornpaibul@us.pwc.com

Your tax contact in the Thailand:

Greg Lamont + 66 2 344 1280 greg.lamont@th.pwc.com