

LEADING THE WAY

PwC THAILAND

There have long been arguments between taxpayers and the Thai Revenue Department over credit notes issued for the purpose of price adjustments. Recently, the Central Tax Court has issued two interesting rulings.

In March 2012, the Central Tax Court issued a ruling (No. 57/2555), which confirmed the deductibility of credit notes issued for the purpose of price adjustments according to the actual cost-plus method. The ruling was interesting for two reasons:

- ◆ It was issued just three months after a similar ruling (No. 200/2554), which read in favour of the Revenue Department; and
- ◆ It overruled the long-standing view of the department regarding the conditions for issuing credit notes under Section 82/10 (1) of the Revenue Code.

In both cases, the taxpayers are manufacturers of automotive parts. The selling prices of the goods were agreed using the cost plus method. Under this method, it was not possible for the taxpayers and their customers to calculate the actual costs at the time of purchase. Therefore, the taxpayers needed to estimate the price by referring to the historical or standard prices available at the time. On the agreed time line, the actual costs would be determined and debit notes or credit notes with value-added tax (VAT) issued to reflect the correct price.

Under the Central Tax Court's ruling No. 200/2554 read on Dec 29, 2011, the court stated that price adjustments that depended on a contemplated future situation did not fall within the provision of tax law. A similar decision was made by the Central Courts in two cases in 2010 (No. 36/2553 and No. 81/2553).

However, in the Central Tax Court's ruling No. 57/2555, the court pointed out that price adjustments to true up to actual cost plus was a normal business practice. If the actual price to be charged differed from the price previously invoiced, it meant the price of the goods had been overstated or understated. Thus credit notes or debit notes could be issued accordingly.

REDUCTION OF OUTPUT VAT THROUGH ISSUING CREDIT NOTES

The court also pointed out the Revenue Department was inconsistent in its treatment of debit notes versus credit notes, as the provisions for their issuance under Section 82/9 (1) were similar to the provisions of Section 82/10 (1) and the department did not dispute the right of the taxpayer to issue debit notes with VAT.

Business generally welcomed the latest ruling of the Central Tax Court.

The main argument at issue is whether the price adjustment according to the actual cost plus method is the result of an "error, higher than the actual price" at the time when the tax invoice was first issued. As Thai legislation has to be interpreted based on the terminology in Thai, we need to look at the Thai words used for "error, higher than actual", which is usually interpreted as an error resulting in a price higher than the actual price.

These two terms are not defined in the Revenue Code or in any other relevant legislation. Thus we need to look at the Thai dictionary's definition of "error" and "actual".

Next, we need to consider whether the said error is meant to cover only clerical errors or price adjustments anticipated due to the inability to determine the actual price at the time when a tax invoice must be issued. Prior court rulings seem to equate anticipated price adjustments with volume discounts or after-sales discounts, which are specifically disallowed in the VAT legislation.

The latest court ruling appears to differentiate between adjustments to price to reflect the actual price (i.e. cost plus method), which cannot be determined at the point of issuance of the tax invoice; and discounts due to the volume purchased or any other similar activity subsequent to the point of sale or issuance of the tax invoice.

In addition, there is also the issue of what is the "actual" price.

However, before going any deeper into this analysis one needs to question what is to be gained in going to such lengths when both the vendor and purchaser are entitled to recover VAT. Is there any loss to the department in the issuance of credit notes with VAT for the price

adjustments? Were the penalties and surcharge provisions meant to punish VAT registrants who are not short-changing the government of any tax revenue?

We are of the view that the ruling No. 57/2555 demonstrates the correct interpretation of the law. However, as it is the department's practice to appeal central court decisions that go against it, there may continue to be a tax exposure in issuing credit notes with VAT for price adjustments until the Supreme Court rules on this issue.

Meanwhile, business needs to continue and, while waiting for the Supreme Court ruling, which will likely take several years, taxpayers may consider (i) issuing commercial credit/debit notes instead of VAT credit/debit notes; or (ii) adjusting the price in future orders to avoid a tax exposure.

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