

BusinessINSIGHT

DOES YOUR COMPANY ADOPT THE RIGHT TAX PRACTICE WHEN HANDING OUT GIFTS?

Although Chinese New Year has just passed, many more celebratory occasions will soon be coming – including Songkran in April. Every company sees times like these as the perfect time to present gifts to their employees, customers and sponsors.

While the purpose of offering gifts is undoubtedly to enhance and strengthen relationships with these people, why does the Revenue Department usually take issue with some companies and disallow both the cost of a gift as a deductible expense and the recovery of the VAT tax credit?

As for gifts to customers, they are generally regarded as being in the category of entertainment expenses under the tax law. In determining whether to allow a company to treat the cost of gifts as an expense for tax deduction, the Revenue Department will consider the following five issues:

- that the cost of the gift is necessary as an ordinary business practice;
- that the recipient of the gift is a person who is entertained in general business practice;
- that the cost of the gift does not exceed Bt2,000 per person on each occasion;
- that the total cost of all gifts that can be deducted for tax purposes does not exceed 0.3 per cent of the gross revenue or paid-up capital of the company, whichever is greater, and does

not exceed Bt10 million in total; and

- that an authorised person of the company has actually approved the payment for the gifts, which is also supported by sufficient documentation.

Here, you may wonder whether presenting gifts to persons other than customers – for example, sponsors and government officers – would be tax deductible. In most cases, gifts to these persons would not directly generate any benefit to the business and therefore would not qualify for tax deduction.

Furthermore, offering gifts to government officers could also render the company liable for the offence of bribery if it were to violate the counter-corruption law.

VAT also creates a burden on the company in times of present-giving. Based on the premise that the cost of gifts is an entertainment expense, the Revenue Department does not allow a company to claim input tax on the cost of gifts as a deduction against output tax. So, the company has to bear the output tax of 7 per cent incurred at the time of giving gifts, regardless of whether there is any consideration in return.

This output tax may not be imposed, however, if the company can demonstrate to the Revenue Department that the gifts were given at a traditional

ceremony or occasion in accordance with established customs, that the name, trade name or trademark of the company appears on the gifts, and that they were of a reasonable price or value.

The terms "traditional ceremony" and "reasonable price or value", however, have always resulted in problems with their interpretation in practice. While a Revenue officer might attempt to narrow the usage of these terms as much as possible, the company's practice may suggest otherwise.

On the company's side, traditional ceremony would encompass most business events – for example, a celebration of a customer's newborn baby or wedding. Also, reasonable price or value might be applied differently for each recipient.

The scope of these terms, therefore, should be reasonably determined on a case-by-case basis.

As opposed to gifts to customers, gifts to employees have different tax implications. Insofar as employee welfare has been set out in the company's HR policies, expenses incurred in giving gifts would be regarded as being directly connected with the company's business.

In this sense, if a company organises a New Year party and offers gifts under a lucky draw, it should be entitled to take a corporate income tax deduction and claim the input VAT on the expenses incurred. Nevertheless, the obligation to pay output tax remains.

Besides corporate income tax and VAT, offering gifts to employees also raises a personal income tax issue for the company to withhold the appropriate tax from employees who receive the gifts.

Going back to the case of the lucky draw, gifts to employees must also be included as their assessable income for the purpose of computing personal income tax, unless it can otherwise be shown that the gift is indeed of small value which is accepted as a gift given in a ceremony or on an occasion in accordance with established custom.

Having read all of the above, you will now know that the tax practice in offering gifts to different recipients, even for the same occasion, can be different.

Doing so without due consideration of how to manage the tax liability could unavoidably lead to an unnecessary tax burden.

It's time to question whether your company has the right tax practice in dealing with this matter.

Sirisuk Manmettakul is PwC's associate director.



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