

# TAX EFFECTIVE: GIFTS FOR OUR OLYMPIC HEROES

Gifts to our returning Olympians have come in a variety of forms and been both direct and indirect. Corporations and individuals have been quick to come forward and reward Thai medal winners, extending their generosity to those members of the team in London whose efforts did not meet with success.

Along with the athletes, their sports associations have also been the recipients of donations. With development of sport nationwide being a government policy, the private sector has been encouraged to make contributions to support the country's sporting activities. As an incentive for making this type of contribution, such donations and awards are, by law, allowed as tax deductible expenses for corporate donors and sponsors. This gives rise to a number of questions, such as, what are the criteria that will allow such donations and sponsorship to save tax? Can the donations be regarded as a business expense? Will the money that the athletes receive from donors or sponsors be considered as taxable income?

## INDIVIDUALS

For enhancing the nation's reputation in prestigious sporting events like the Olympics, the Revenue Department has set out tax guidelines for national athletes. Where they have received gifts in a ceremony or in accordance with established custom, the value of the gifts is generally not required to be included in their personal income tax return, provided that the athletes are not obliged to do anything in return for the donors or third parties. It is income exempt from tax under the Revenue Code.

## CORPORATIONS

Normally, expenses are tax deductible if they meet the various criteria laid down in Sections 65 bis and 65 ter of the Revenue Code. In principle, corporations are entitled to claim business expenses if their spending contributes to their business and helps the business profit.

Therefore, if any expenses are paid without any benefit to the corporation being received in return, they would not be tax deductible according to Section 65 ter (13) of the Revenue Code. Simply speaking, expenses that a corporation incurs must clearly benefit the business (examples are advertising and business promotion).

## GURU SPEAK



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Nevertheless, tax law does allow donations to promote sports affairs as a business expense provided that the donations are made directly to the sports associations authorised by the Revenue Department and that the amount of the donations does not exceed 2 per cent of net profit. However, the Revenue Department has ruled that donations and awards given directly to individual athletes are absolutely not allowed as business expenses.

Since corporations will not obtain any tax benefit when making donations directly to the athletes, could they otherwise donate to sports organisations under the condition that the donated funds will be used specifically, say, to sponsor the athletes who won medals at the Olympic Games? Will these expenses be treated as business expenses? Section 65 ter (3) of the Revenue Code does not stipulate any conditions for the donations made to sports organisations approved by the Revenue Department to qualify as business expenses. Therefore, donations under the above conditions should be allowed as business expenses.

However, in terms of business promotion and/or corporate social responsibility (CSR), could donations or sponsorship be allowed as business expenses in the view of the Revenue Department?

We would like to cite the Revenue Department's rulings on grants and scholarships to students as an analogy to the case of the individual athletes. In the rulings, corporations awarded grants and scholarships directly to students, bypassing the academic institutes, and yet such grants and scholarships were allowed as business expenses. In these cases, the scholarship-award ceremonies were officially organised and the media was invited

to witness the ceremonies so the corporations could promote their reputations. This is considered to be a benefit to the corporations. The Revenue Department ruled that the grants and scholarships awarded to the students were clearly for the purpose of advertising the business of the corporations. The corporations were therefore allowed to treat such grants and scholarships so awarded as business expenses, and did not contravene Section 65 ter (13).

The question then arises as to whether donations or sponsorship in the case of individual athletes could also be allowed as business expenses of the corporate donors or sponsors if they followed the above case and invited the media to the event so that it would be broadcast to the public and promote their business.

While corporations may wish to claim donations given under the above circumstances as business expenses, the Revenue Department is currently devising strategies to boost the country's tax revenue now that the corporate income tax rate has been reduced to 23 per cent. Therefore, corporations may find it worthwhile spending some time in developing a tax efficient strategy for their gifts and donations. However, extreme caution should be exercised in ensuring that they are up-to-date on the Revenue Department's current interpretation on this issue.

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