

NEWSLETTER

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LEGAL UPDATE

1. Continued Legal Audit on Illegal Thai Nominee Shareholder

A use of a Thai nominee shareholder who holds shares in a limited company or a public limited company in trust for and on behalf of a foreign beneficial owner amounts a violation of the Foreign Business Act, B.E. 2542 (1999) (the "FBA"). An FBA violation could result in the sentencing up to three year in jail or a criminal fine from Baht 100,000 to Baht 1,000,000.

In 2017, FBA's regulator, the Department of Business Development, Ministry of Commerce plans to collaborate with other regulators, the Department of Land, the Department of Special Investigation, the Department of Tourism and the Department of Administration to audit the illegal use of Thai nominee shareholder on three groups, tourism business, land trading and property business and agricultural business. There are approximately 17,000 juristic persons that will be targets for this audit.

This audit will focus on target provinces, Phuket, Surathani, Krabi, Pang-gna, Chomporn, Ranong, Prachuapkhirikhan, Petchaburi, Chaing Mai, Chaing Rai, Lumpang, Lumpon, Chonburi, Chantaburi, Rayong, Trad and Bangkok. 12 target businesses are restaurant, food and beverage, tour operator, car rent, spa, souvenir shop, drug store, herbs, supplemental food, rubber products, property sale, agency, property brokerage, agricultural product separation, agricultural product sale, and agricultural product internal trade. For more information, please contact our lawyers for consultation.

TAX UPDATE

2. New Standard Deduction Rate for Personal Income Taxpayer

The government introduces new deduction rates for standard deduction for Section 40(1) income (employment income), Section 40(2) income (hire of work income) and Section 40(8) income (income from business, commerce, agriculture, industry, transportation, and other income) in 2017 and thereafter in an effort to lower personal income tax burden for people who are on payroll and encourage sole proprietors to convert business into a limited company or a juristic partnership. The government also makes personal income tax cut (reduced progressive rates) permanent. The tables on next page summarize these changes to personal income tax.

New Standard Deduction Rates

Item	Existing Law	New Law
1. Personal Income Taxpayer's Personal Deduction	Baht 30,000	Baht 60,000
2. Child Deduction	Baht 15,000 per one child	Baht 30,000 per one child
3. Child Tuition Deduction	Baht 2,000	Revoked.
4. Personal Income Tax Cut (Reduced Progressive Rate)	Temporary	Permanent
5. Standard Deduction for Section 40(1) Income (Employment Income) and Section 40(2) (Hire of Work Income)	40% of Income, but Not Exceeding Baht 60,000	50% of Income, but not exceeding Baht 100,000
6. Standard Deduction for Section 40(8) Income (Business, Commerce, Agriculture,	61%, 65%, 70%, 75%, 80%, or 85% of income, depending on a type of income.	60% of income, regardless of type of income. (The government intends to take away a high standard deduction to discourage an entrepreneur from operating business as a sole proprietorship, but to operate business as a limited company.)

New Permanent Rates

Net Income (Baht)	Tax Rate
0-150,000	Exempt (0%)
Exceeding 150,000 to 300,000	5%
Exceeding 300,000 to 500,000	10%
Exceeding 500,000 to 750,000	15%
Exceeding 750,000 to 1,000,000	20%
Exceeding 1,000,000 to 2,000,000	25%
Exceeding 2,000,000 to 5,000,000	30%
Exceeding 5,000,000	35%

As sole proprietor loses a significant portion of the standard deduction (every standard deduction is capped at 60% of Section 40(8) income, it might be a good idea for any sole proprietor to reevaluate whether it is better to continue to operate as a sole proprietorship or to convert into a limited company. If any entrepreneur continues with the sole proprietorship, one has to decide whether it is acceptable to use a lower standard deduction of 60% of income or to claim deductible expenses on an actual basis, which necessitates more accounting bookkeeping. In many cases, it makes sense for some sole proprietors to convert to a limited company.

For more information, please contact our lawyers for consultation.

LEGAL UPDATE

3. No More Presumption of Guilt for Company Representatives

A principle of presumption of innocence prevails in most jurisdictions in the world. In Thailand, ironically many statutes still automatically presume that legal entity's legal representatives i.e. a director, an officer, a managing director or a person who is responsible for operation of the legal entity to be guilty of a crime committed by the legal entity, unless the legal representatives can manage to prove otherwise. This means if a public prosecutor or a plaintiff's attorney can prove to the court beyond a reasonable doubt that the legal entity is guilty of the crime, its legal representatives (as prescribed by a relevant statute) is automatically presumed to be guilty of the same crime committed by the legal entity, unless the legal representative can prove that the legal representatives played no part in committing such crime. This unfairly passes a burden of proof for innocence to legal representatives. In general, the burden of proof rests solely on the prosecution. In many cases, the Constitutional Court held that this presumption of guilt provision unconstitutional and that the aforementioned statutory provision is contrary to the rule of law and Article 11 of the Universal Declaration of Human Rights. In compliance with the decision of the Constitutional Court, the National Legislative Assembly passes the Act Amending Statutory Provisions Pertaining to Criminal Liability of Juristic Person Representatives, B.E. 2560 (2017) (the "Amending Act") to repeal statutory provisions presuming the guilt of legal representatives of companies and partnerships in 76 pieces of legislation.

For more information, please contact our lawyers for consultation.

TAX UPDATE

4. New Investment Law Offers Tax Holiday up to 13 Year

The National Legislative Assembly passes the Investment Promotion Act (No. 4), B.E. 2560 (2017) (the “BOI Act No. 4”) to empower the Board of Investment to grant a promoted person corporate income tax exemption up to 13 years.

For more information, please contact our lawyers for consultation.

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