

NEWSLETTER

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TAX UPDATE

1. New Inheritance Tax and its Impacts on Foreign Residents in Thailand

The National Legislative Assembly acting as Parliament under the Interim Constitution just passes the Inheritance Tax Bill (the "Inheritance Tax Bill") and the Bill Amending the Revenue Code (No.....) (the "Gift Tax Bill"). The details of Inheritance Tax Bill and Gift Tax Bill are summarized here below.

Summary of New Inheritance Tax Bill

Topic	Details
Tax Rates	10% for others or 5% for a recipient who is a parent, a grandparent or a descendant of a de cujus (deceased person).
Initial Exemption	<p>The first Baht 100 Million of inherited value per one de cujus (deceased person) is exempt from inheritance tax. Any value of inherited property in excess of the first Baht 100 Million will be taxed at an applicable rate.</p> <p>The initial exemption of Baht 100 Million is subject to a review every five years by enactment of the Royal Decree, which must take into consideration a consumer price index computed by the Ministry of Commerce.</p>
Taxable Assets	<ul style="list-style-type: none">(i) Immovable property (real estate);(ii) Securities under the securities and exchange law;(iii) A deposit or other similar money that a de cujus (deceased person) is entitled to withdraw or claim from a financial institution or any person taking the money;(iv) A vehicle with registration evidence; and(v) Any financial asset prescribed by a Royal Decree.
Nontaxable Assets	Other classes of assets, i.e. a vehicle without registration evidence, cash, gold, silver and collectibles.
Persons Liable for Inheritance Tax	<ul style="list-style-type: none">(i) A Thai citizen;(ii) A noncitizen permanent resident of Thailand;(iii) A noncitizen who inherits any property located in Thailand but only for any property located in Thailand;(vi) A legal entity registered in Thailand; and(vii) A legal entity registered under the law of a foreign country but with 51% Thai shareholding or a majority of officers being Thai citizens.

Summary of New Inheritance Tax Bill (Cont'd)

Topic	Details
Spousal Exemption	Any inheritance by a spouse is not subject to inheritance tax.

Summary of New Gift Tax Bill

Topic	Details
Tax Rates	A flat rate of 5% without a need for an earner to include the value of gift(s) with other types of income in a computation of a total annual income, which is normally subject to progressive rates from 5% to 35%.
Initial Exemption	<ol style="list-style-type: none"> 1. The first Baht 10 Million of gifted value per one calendar year is exempt from gift tax if an earner receives a gift from a person who is not a parent, a grandparent or a spouse. Any value in excess of the first Baht 10 Million will taxed at an applicable rate. 2. The first Baht 20 Million of gifted value per one calendar year is exempt from gift tax if an earner receives a gift from a person who is a parent, a grandparent or a spouse. Any value in excess of the first Baht 20 Million will taxed at an applicable rate. <p>The initial exemption of Baht 10 Million or Baht 20 Million is not indexed to a consumer price in anyway.</p>
Conditions for Initial Exemption	<ol style="list-style-type: none"> 1. In order to qualify for the initial exemption of Baht 10 Million and the 5% flat rate of gift tax, the income must be income derived from maintenances and support under moral obligations, or gift made in a ceremony or on occasions in accordance with established customs received from a person other than a parent, a grandparent, a descendant or a spouse. 2. In order to qualify for the initial exemption of Baht 20 Million and the 5% flat rate of gift tax, the income must be income derived from maintenances or the gift from a parent, a grandparent, a descendant or a spouse.
5% Withholding Tax on Property Transfer from Parent to Child	Any transfer of immovable property (real estate) from a parent to a child is exempt from gift tax up to Baht 20 Million per year. Any value of immovable property given by a parent to a child in excess of Baht 20 Million per one calendar year is subject to 5% withholding tax.

Potential Impacts for Foreign Residents/Investors in Thailand

1. Under the Inheritance Tax Bill, Thai permanent residency becomes less attractive at least for those who have not applied yet as a noncitizen permanent resident of Thailand is liable to pay inheritance tax on both Thailand assets and offshore assets.
2. If a foreign investor directly holds
 - (i) the shares in a company incorporated in Thailand,
 - (ii) any immovable property (real estate) in Thailand,
 - (iii) a bank account in Thailand, or
 - (iv) any other taxable asset in Thailand,his or her heir will be liable to pay inheritance tax regardless of whether the heir holds a Thai permanent residency or not.

Other Observations

The final versions of the Inheritance Tax Bill and the Gift Tax Bill are much more generous to taxpayers than the initial versions proposed by the Ministry of Finance.

1. Under the Gift Tax Bill, a parent or a grandparent can effectively give one child/ grandchild up to Baht 40 Million per one calendar year, Baht 20 Million for immovable property (real estate) and Baht 20 Million for other classes of assets rather than immovable property (real estate).
2. Largely assets with registration are taxable under the Inheritance Tax Bill, while assets with registration are not taxed.
3. The rate of inheritance tax is reduced to 5% for a heir who is a parent, a grandparent or a descendant of a de cujus (deceased person).
4. The initial exemption is raised to Baht 100 Million and is indirectly indexed to a consumer price every five year.

For more information, please contact our lawyers for consultation.

LEGAL UPDATE

2. Additional Amendments to Guarantee Law and Mortgage Law

In late 2014, the National Legislative Assembly enacted the Act Amending the Civil and Commercial Code (No. 20), B.E. 2557 (2014) (the "2014 Amendment Act") to amend guarantee law and mortgage to shift the weight in favor of a guarantor and a mortgagee at the expense of a creditor. The National Legislative Assembly acting as Parliament under the Interim Constitution passes the Bill Amending the Civil and Commercial Code (No. ...) (the "2015 Bill") to further revise guarantee law and mortgage law.

Summary of Amendments to Guarantee Law

Previous Guarantee Law	2014 Amendment	2015 Amendment
<p>The guarantor may agree to be liable jointly and severally to the creditor with the primary debtor as a co-debtor.</p> <p>In the event that the guarantor agrees to be liable jointly and severably to the creditor with the primary debtor as a co-debtor, the guarantor will lose the following statutory rights:</p> <ul style="list-style-type: none">(i) the right to require the creditor to call upon the primary debtor to perform an obligation (pay debt), unless the primary debtor has been adjudged bankrupt, or his whereabouts in Thailand is unknown;(ii) the right to prove that the primary debtor has the means to perform an obligation (pay debt) and that execution would not be difficult, even after the primary debtor has been called upon as provided in (i), in order to request the creditor to first make execution against the property of the primary debtor; and	<p>The guarantor may not agree to be liable jointly and severally to the creditor with the primary debtor as a co-debtor.</p>	<p>The guarantor may not agree to be liable jointly and severally to the creditor with the primary debtor as a co-debtor <u>unless the guarantor is a legal entity</u>.</p> <p>In the event that the <u>juristic</u> guarantor agrees to be liable jointly and severably to the creditor with the primary debtor as a co-debtor, the guarantor will lose the following statutory rights:</p> <ul style="list-style-type: none">(i) the right to require the creditor to call upon the primary debtor to perform an obligation (pay debt), unless the primary debtor has been adjudged bankrupt, or his whereabouts in Thailand is unknown;(ii) the right to prove that the primary debtor has the means to perform an obligation (pay debt) and that execution would not be difficult, even after the primary debtor has been called upon as provided in (i), in order to request the creditor to first make execution against the property of the primary debtor; and

Summary of Amendments to Guarantee Law (Cont'd)

Previous Guarantee Law	2014 Amendment	2015 Amendment
(iii) the right to request the creditor to pursue a claim against the property of the primary debtor if the creditor holds the property of the primary debtor as collateral.		(iii) the right to request the creditor to pursue a claim against the property of the primary debtor if the creditor holds the property of the primary debtor as collateral.
There is no duty for the creditor to notify the guarantor upon occurrence of primary debtor's default of a secured obligation.	Within 60 days after primary debtor's default of a secured obligation, the creditor has to notify the guarantor, otherwise the guarantor shall be released from the liability for an interest and a compensation and other encumbrance expenses of the debt that arise after expiration of the period of 60 days.	Within 60 days after primary debtor's default of a secured obligation, the creditor has to notify the guarantor, otherwise the guarantor shall be released from the liability for an interest and a compensation and other encumbrance expenses of the debt that arise after expiration of the period of 60 days. <u>The guarantor may not waive the right to receive the aforementioned default notice.</u>
There is no special requirement.	If the creditor agrees to reduce an amount of debt with a condition that the primary debtor has to pay the creditor within a specified deadline, the guarantee will be discharged in any of these events: (i) the primary debtor fully pays off the reduced amount of debt; (ii) the primary debtor partially pays the creditor the reduced amount of debt, but the guarantor pays a remaining amount to the creditor; or (iii) the primary debtor fails to pay the reduced amount of debt, but the guarantor pays fully the reduced amount of debt.	If the creditor agrees <u>with the primary debtor</u> to reduce an amount of debt with a condition that the primary debtor has to pay the creditor within a specified deadline, <u>the creditor must notify the guarantor in writing of the debt reduction agreement within 60 days from the date of the agreement.</u> In that case the guarantee will be discharged in any of these events: (i) the primary debtor fully pays off the reduced amount of debt; (ii) the primary debtor partially pays the creditor the reduced amount of debt, but the guarantor pays a remaining amount to the creditor; or (iii) the primary debtor fails to pay the reduced amount of debt, but the guarantor pays fully the reduced amount of debt.

Summary of Amendments to Guarantee Law (Cont'd)

Previous Guarantee Law	2014 Amendment	2015 Amendment
	<p>The guarantee is discharged regardless of whether the guarantor manages to pay the creditor the reduced amount of debt within or after the aforementioned deadline.</p>	<p>The guarantee is discharged regardless of whether the guarantor manages to pay the creditor the reduced amount of debt within or after the aforementioned deadline <u>under the condition that guarantor's payment must be made within 60 days after an expiration of the aforementioned deadline.</u></p> <p><u>In the event that the creditor notifies the guarantor in writing of the debt reduction agreement after the expiration of the aforementioned deadline to pay the reduced amount of debt, the guarantor will be entitled to pay the creditor the reduced amount of debt under the agreement between the creditor and the primary debtor within 60 days from the date that the guarantor receives creditor's notice.</u></p>
<p>Creditor's extension of time will result in the guarantee being discharged, unless the guarantor agrees to the extension of time. The guarantor may agree in advance to the extension of time.</p>	<p>Creditor's extension of time will result in the guarantee being discharged, unless the guarantor agrees to the extension of time. The guarantor may not give the agreement in advance to the extension of time.</p>	<p>Creditor's extension of time will result in the guarantee being discharged, unless the guarantor agrees to the extension of time.</p> <p><u>After the primary debtor defaults on any payment, the creditor and the primary debtor may agree to reduce an amount of debt. If the agreement provides any extension of time for payment, the extension of time will not result in the guarantee being discharged.</u></p> <p>The guarantor may not give the agreement in advance to the extension of time <u>unless the guarantor is a financial institution or a person who regularly furnishes the guarantee for consideration.</u></p>

Summary of New Mortgage Law

Previous Guarantee Law	2014 Amendment	2015 Amendment
<p>There is no special requirement.</p>	<p>If a mortgagor mortgages his own property to secure debt of any third party, the mortgagor shall not be liable for the debt in excess of the price of the mortgaged property at the time of enforcement of mortgage.</p> <p>Any term that holds the mortgagor liable to the debt in excess of the price of the mortgaged property or holds the mortgagor liable as a guarantor shall be void regardless of whether the term is made in a mortgage agreement or a separate agreement.</p>	<p>If a mortgagor mortgages his own property to secure debt of any third party, the mortgagor shall not be liable for the debt in excess of the price of the mortgaged property at the time of enforcement of mortgage.</p> <p>Any term that holds the mortgagor liable to the debt in excess of the price of the mortgaged property or holds the mortgagor liable as a guarantor shall be void regardless of whether the term is made in a mortgage agreement or a separate agreement <u>except the case where the primary debtor is a legal entity and a person with a power to manage the legal entity under law or a person with a power to control an operation of the legal entity mortgages his own property to secure legal entity's debt and the aforementioned mortgagor executes a separate guarantee agreement.</u></p>

Even with the 2015 Bill, guarantee law still offers relatively weak protection for the creditor. From creditor's viewpoint, a guarantee is not as powerful as it was and guarantee law becomes a bit more complicated. Any settlement with the primary creditor must be made with care to ensure that the creditor does not lose certain rights.

For more information, please contact our lawyers for consultation.

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