

News Update

March 2018

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Corporate income tax - filing of tax return together with surcharge payment for underestimating net profit by more than 25% of actual net profit for the accounting period

If a company files an interim tax return (P.N.D.51) declaring an estimated net profit that is more than 25% lower than the actual net profit from business operations in the accounting period, it is subject to a surcharge of 20% on the tax shortfall, and must file an additional P.N.D.51 with the surcharge payment. However, if a company later files a tax return (P.N.D.50) together with the surcharge on the tax shortfall, and did not submit an additional P.N.D.51 to pay the surcharge, the Revenue Department rules that the payment of the surcharge under the P.N.D.50 is in accordance with Section 67 ter of the Revenue Code, but the company is still required to submit an additional P.N.D.51 filing with a remark "this tax return is filed to declare an additional item relating to the surcharge payable, which has already been paid under a P.N.D.50 filing", together with the number and the date of the receipt issued for the payment made under the P.N.D.50. No additional surcharge would then be payable.

(Ref: Revenue Ruling No. Kor Khor 0702/72 dated 5 January 2018)

**Value added tax -
penalty for use of
unlawfully issued tax
invoices**

If a VAT operator uses tax invoices, debit notes or credit notes issued by unauthorized entities (such as tax invoices issued by local transportation companies or operators who are not VAT registrants) for the calculation of input VAT, this will not be deemed a use of fraudulent tax invoices in the VAT calculation provided the VAT operator is able to prove that VAT was collected on the actual purchases/sales of goods, or a provision of services in the same amount as the amount in the corresponding tax invoice. The VAT operator will then not be subject to the penalty of two times the amount of VAT payable per the tax invoice, in accordance with Section 89 (7) of the Revenue Department, but will still be subject to a penalty in an amount equal to the underpaid or underremitted tax, in accordance with Section 89 (3) and (4) of the Revenue Code.

(Ref: Revenue Ruling No. Kor Khor 0702/Phor./8380 dated 22 December 2017)

**Value added tax –
provision of local
material sourcing for
manufacture of goods
for export**

A company engaged in the export of goods outsources the manufacture of the goods to local manufacturers. However, in some cases a manufacturer may be unable to procure sufficient raw materials to fulfil purchase orders from the company's overseas customers, and the company then agrees to find a source of the raw materials. The company only notifies the manufacturer about the supplier, and the manufacturer agrees the terms of material purchases directly with the supplier. When issuing the invoice, the company issues a commercial invoice for its raw material management service fee to the overseas customer, separately from the charge for the goods. In this case, a service was not rendered in Thailand and used overseas, but rather was used in Thailand and therefore is subject to 7% VAT.

(Ref: Revenue Ruling No. Kor Khor 0702/Phor./8320 dated 21 December 2017)

Personal income tax on proceeds from dissolution of provident fund by employer

A company, as an employer, established a provident fund (the Fund), and subsequently withdrew from the Fund to save costs and enable the company to continue its operations in a time of economic distress. In this case, it is deemed that the Fund has been dissolved, and employee membership is terminated as a result. Therefore, the proceeds the employee received from the dissolution of the Fund are deemed income derived from employment under Section 40 (1), not severance pay. This is because the employee who received the proceeds from the Fund has not resigned from the company and still fulfil their work duties as usual. The employee is therefore required to include the proceeds in the calculation of other assessable income under Section 48(1) and (2) of the Revenue Code, and may not elect to pay tax under Section 48(5) of the Revenue Code.

(Ref: Revenue Ruling No. Kor Khor 0702/875 dated 31 January 2018)

Rules, procedures and conditions for double deduction of expenses incurred for investment in electronic payment devices

Following the issuance of Royal Decree No. 640 B.E. 2560, the Director-General of the Revenue Department has issued a notification on rules, procedures and conditions for double deduction of expenses incurred for investment in digital payment devices, which is summarized below.

1. Corporate income tax: A juristic person making an investment in electronic payment devices is entitled to a double deduction of the expenses incurred in such investment.
 - 1.1 The investment agreement is made between 1 November 2016 and 31 December 2018, and the deduction of asset depreciation also begins in the same period.
 - 1.2 The expenses are paid between 1 November 2016 and 31 December 2018, and the deduction is equal to the actual amount paid in the period in which the deduction of asset depreciation begins.
 - 1.3 A report on electronic payment device installation and cancellation for this investment must be prepared and available for examination by tax assessment officers.
2. Personal and corporate income tax: Fees paid on receipts of payment by debit card using electronic payment devices occurring between 1 November 2016 and 31 December 2021 are eligible for double deduction.
 - 2.1 These fees are the merchant discount rates (MDR) paid by individuals or juristic persons to a provider of electronic payment services for processing payments by debit card using electronic payment devices.
 - 2.2 The fees under 2.1 must not be fees collected from the buyer of goods, or recipient of services.
 - 2.3 Evidence of payment of the fees under 2.1 must be available for examination by the tax assessment officers.
 - 2.4 An individual eligible for the double deduction must meet the following criteria.
 - 2.4.1 The individual must have assessable income under Section 40(5), (6), (7) or (8) of the Revenue Code.
 - 2.4.2 The individual must pay the fees under 2.1 in order to receive assessable income under 2.4.1.

Rules, procedures and conditions for double deduction of expenses incurred for investment in electronic payment devices

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2.4.3 Income tax must be calculated based on the actual expenses paid in relation to each type of income (not a fixed rate) and documentary evidence of fee payment for each type of assessable income must be prepared and available for examination by the tax assessment officers.

2.4.4 In filing of a personal income tax return, expenses eligible for double deduction are to be deducted from assessable income after deduction of other expenses.

3. This notification is effective from 1 November 2016.

(Ref: Notification of Director-General of the Revenue Department Regarding Income Tax No. 317 dated 14 March 2018)

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APAC no. 15000502
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