Rules, methods and conditions for exemption from income tax, value added tax, specific business tax and stamp duty on donations made to educational institutions

Pursuant to Royal Decree no. 654 B.E. 2561, the Director-General of the Revenue Department has announced the rules, methods and conditions for exemption from income tax, value added tax, specific business tax and stamp duty on donations made to educational institutions. These can be summarised as follows:

(1) Deductible donations must be made to educational institutions established in Thailand under a treaty or agreement between the Thai government and a Specialised Agencies of the United Nations.

(2) The donations must be made between 28 March 2018 and 31 December 2018.

(3) In the case of ordinary persons:

- Only monetary donations are eligible for deduction.
- A deduction equal to 200% of the actual amount of the donation is allowed, but this must not exceed 10% of assessable income after allowances and other deductions.
(4) In the case of companies or juristic partnerships:

- Donations could be in the form of cash, assets or goods.

  1) If an asset or goods are purchased for donation, documentary evidence of the purchase specifying the amount and value of the asset or goods must be provided. Such value is deemed to be the amount of the tax allowance.

  2) If a company donates an asset, the amount of the tax allowance is the net value of the asset, after deduction of wear and tear expenses and depreciation (NBV).

  3) If the donation is made in the form of goods produced or sold by the company, the amount of the tax allowance is the verifiable costs of the goods.

- Double deduction is allowed for the amount of donation made, but when combine with expenses paid to support education for projects approved by the Ministry of Education, and expenses paid for construction and maintenance of playgrounds, public parks, or private sports stadiums with free public access, or playgrounds, public parks or sports stadium of government agencies must not exceeding 10% of net profit before deduction of donations for charity, public benefits and for education or sport.

(5) Documentary evidence from the educational institutions receiving the donations, such as receipts (in case of cash donation), donation acknowledgement letters, certificates of appreciation and certificates of donation must be provided. Such documentary evidence must specify the donation amounts or the values of donated assets or goods.

(6) A donation for which a tax allowance is claimed under this scheme could not be treated as a deductible donation under Section 47 (7) of the Revenue Code, or as a deductible expense under Section 65 ter (3) of the Revenue Code.
Rules, methods and conditions for exemption from income tax, value added tax, specific business tax and stamp duty on donations made to educational institutions

(7) Exemption from income tax, value added tax, specific business tax and stamp duty are granted on the proceeds from any transfers of assets, sales of goods or execution of instruments in respect of donations made to the educational institutions above, provided that the educational institutions furnish documentary evidence of the donations made, in which the value and amount of assets or goods is specified.

(Ref: Royal Decree issued under the Revenue Code Regarding Tax Exemption no. 654 B.E. 2561 and Notification of the Director-General of the Revenue Department no. 7 dated 26 July 2018)
Amendment to rules for deduction of operating expenses under Persons with Disabilities Empowerment Act for corporate income tax purposes

Pursuant to Departmental Instruction no. Paw. 157/2561, which laid out guidelines for the treatment of expenses relating to hiring of persons with disabilities and other expenses incurred under Sections 33, 34 and 35 of the Persons with Disabilities Empowerment Act B.E. 2550 as deductible expenses in the calculation of net profit for corporate income tax purposes in accordance with the Revenue Code, the Director-General of the Revenue Department has announced amendments to the list of expenses paid for hiring subcontract employees or hiring employment services by special means, with details as follows:

(1) Hiring subcontract employees or hiring employment services by special means is employment of persons with disabilities or their caregivers to complete the intended work. A deduction is allowed for expenses paid by the employer or owner of the establishment in hiring subcontract employees or hiring employment services.

(2) Expenses paid to hire subcontract employees or hiring employment services must be:

- For the benefit of the employer's own business

- Made to the following organizations for charitable or public benefit purposes:
  1) Government agencies under the laws governing State administration
  2) The Thai Red Cross Society
  3) Temples
  4) Government medical facilities or government organizations
  5) Educational institutions of the government or government organizations, educational institutions established under the law governing private schools, and higher education institutions under the law governing private educational institutions
  6) Organizations or public charities prescribed by the Finance Minister in the Royal Government Gazette

If the hiring of subcontract employees or hiring of employment services is for the benefit of persons/organizations other than those specified above, or for any purposes other than charitable or public benefit purposes, the employer or owner of the establishment will not be allowed to treat the expenses paid as deductible expenses in the calculation of net profit for corporate income tax purposes.

(Ref: Revenue Department’s Instruction no. Paw. 157/2561 dated 20 August 2018)
A bank planned to provide trading services for a mutual fund through an omnibus account. The Bank was to be authorised by the Asset Management Company, which is the payer of profit sharing to mutual fund unitholders, to withhold tax on the profit sharing, remit the tax, and issue withholding tax certificates on behalf of the Asset Management Company in accordance with the Civil and Commercial Code, as the Asset Management Company did not have customer information. However, the Bank had not been granted approval by the Revenue Department to undertake the above on behalf of the Asset Management Company.

The Revenue Department considered the rules and conditions above and gave its ruling, which is summarized as follows:

1. Profit sharing from the mutual fund is deemed to be assessable income under Section 40 (8) of the Revenue Code. Therefore, the Asset Management Company, as the payer of income, is obliged to remit withholding tax at the rate of 10% of income in accordance with Section 50 (2) of the Revenue Code, and file a withholding tax return (P.N.D.2) within 7 days after the end of the month in which the assessable income is paid.

2. In the case where the Asset Management Company, which is the payer of income, is unable to withhold and remit tax, and issue withholding tax certificates, the bank, as the fund registrar, has the right to act on its behalf in accordance with Section 797 of the Civil and Commercial Code, provided that:

- The Asset Management Company shall make an agency agreement and prepare a written power of attorney authorising the bank to act on its behalf; and

- The bank shall file a withholding tax return (P.N.D.2) which specifies “the bank acting on behalf of the payer of income” as the withholding tax agent.

(Ref: Revenue Department’s Ruling no. 0702/4908 dated 21 June 2018)
Corporate income tax - consignment sales agreement with foreign juristic person

The Company was engaged in the manufacture and sale of jewelry and home interior decorations to both local and overseas markets. The Company exported its products to a consignee, which was a trading partner overseas, under a consignment sales agreement, but ownership of the exported products remained with the Company until sales actually occurred, i.e. when the consignee delivered the goods to local or overseas buyers.

The ruling on recognition of income for corporate income tax purposes was summarized as follows:

1. An export of goods to an overseas consignee under a consignment sales agreement is deemed a sale of goods in Thailand, and the market price of goods as at the export date is deemed to be income for the accounting period in which the goods are exported. The seller is then allowed to treat the costs of exported goods as deductible expenses in the calculation of corporate income tax.

2. If the consignee fails to sell the goods and returns them to the Company within one year after the export date, the sale will not be deemed a sale of goods in Thailand. In such a case, a company could adjust the sales reported in the corporate income tax return filed for the accounting period in which goods were exported, and recognize the returned goods as inventory at the determined price.

(Ref: Revenue Department’s Ruling no. 0702/5047 dated 27 June 2018)
Supreme Court Ruling no. 3874/2560 regarding interest on late payments for shares

According to the Civil and Commercial Code, shareholders that do not make payment for shares on the specified date are liable to pay interest on the amount due, from the specified date until the date the payment is actually made, and the company's director sends a notification letter to any shareholder who fails to make payment for shares on the specified date by registered mail, demanding payment of amount due, together with interest thereon.

In this case, the plaintiff did not notify the defendant (shareholder) of the interest chargeable in the letter. The Supreme Court has ruled that the plaintiff retained the right to charge interest on the late payment, and if the interest rate was not explicitly prescribed by the legal transaction undertaken, or the relevant laws, the applicable rate would be 7.5% per year. Therefore, shareholders in default are required to pay interest to the plaintiff at the rate of 7.5% per annum, starting from the due date for share payment, in accordance with Sections 1122, 7 and 224 of the Civil and Commercial Code.

(Ref: Supreme Court Ruling no. 3874/2560)
Withholding tax on front-end fee payment

The Company is engaged in the manufacture of wooden furniture. It obtained a bank loan of Baht 5 million, carrying interest at the rate of 4%, together with a front-end fee at 4% of the loan amount as of the day the loan was granted (30 September 2015). The bank charged the Company a fee of Baht 50,000, on which 3% withholding tax, or Baht 1,500, had to be withheld according to the notification given to the bank by the Company. The bank informed the Company that the fee was not subject to withholding tax. However, the Company had already remitted the withholding tax on this fee using its own funds, as the Company’s understanding was that the fee was assessable income under Section 40(8) of the Revenue Code, and thus the Company was required to withhold tax on payment of income from provision of services by banks in accordance with the law on commercial banks, and by companies under the law on undertaking of finance business, securities business and credit foncier business dated 1 May 2002.

The front-end fee charged by the bank to the Company is deemed income of a similar nature to interest, benefits or other considerations received from providing a loan, which is assessable income under Section 40(4)(a) of the Revenue Code. Therefore, the Company was not obliged to withhold any tax on the fee paid to the bank, as there is no law requiring such tax withholding.

The Company paid the front-end fee to the bank, and remitted the tax withheld on the fee, together with a surcharge, amounting to Baht 1,522.50, using its own funds on 29 October 2015. As the Company was not obliged to withhold tax on the fee payment, it has the right to file an application for a tax refund within 3 years after the due date for filing of the tax return, in accordance with Section 27 Ter of the Revenue Code.

(Ref: Revenue Department’s Ruling no. 0702/1833 dated 2 March 2018)
This document is prepared to present brief issues in tax. It does not present sufficient information. Further study and consultation may be necessary.