1 April 2019
Global Tax Alert

Thailand repeals grandfathered tax incentives for certain incentive regimes

Executive summary

On 26 March 2019, Thailand's Cabinet approved the repeal of the grandfathered tax incentives under the Regional Operating Headquarters (ROH) I and II, International Headquarters (IHQ), Treasury Center (TC) and International Trading Center (ITC) regimes.[1] The repeal will become effective as of 1 June 2019 after completion of all legislative processes.

This measure is in response to the *Harmful Tax Practices – 2017 Progress Report on Preferential Regimes (Inclusive Framework on Base Erosion and Profit Shifting (BEPS)*[2]*: Action 5*) in which Thailand's regional/international headquarters, trading and treasury hub regimes were identified as harmful tax practices. This action will also ensure that Thailand will not be classified as "Potentially Harmful" or "Actually Harmful" by the Forum on Harmful Tax Practices (FHTP) and BEPS.

Detailed discussion

Changes and impacts

Following the introduction of the International Business Center (IBC) regime,[3] no new applications under ROH II, IHQ, TC and/or ITC regimes have been accepted since October 2018. However, entities that were previously granted tax and other incentives under these regimes remain eligible for these incentives under existing conditions until their status expires. This could be up to 15 years for an IHQ/ITC, while those with ROH I status (which does not have a time limit) can only enjoy the incentives until the end of the accounting year 2020. The repeal of the grandfathered tax incentives means that all entities that currently have ROH, IHQ and/or ITC status will lose their eligibility for tax incentives and will be subject to the 20% normal corporate income tax rate (CIT), effective as of 1 June 2019.[4] Foreign employees will be subject to personal income tax (PIT) at the normal progressive rates of up to 35% effective from 1 January 2020.

The following table illustrates the effective dates of the repeal of the various tax incentives granted under the ROH I, ROH II, IHQ and ITC regimes and the applicable tax rates thereafter.

Regimes	Tax rates	Types of incomes	Effective date
ROH I ROH II	20% CIT	▸ Service fees ▸ Interest ▸ Royalties ▸ Dividends*	1 June 2019
	10% withholding tax (WHT)	Dividend distribution to overseas shareholders	1 January 2021**
	Up to 35% PIT	Employment remuneration for qualifying foreign employees	1 January 2020
IHQ	20% CIT	▸ Service fees ▸ Interest ▸ Royalties ▸ Dividends* ▸ Capital gains ▸ Out-out trading income and associated service fees	1 June 2019
	10% WHT	Dividend distribution to overseas shareholders	1 January 2021**
	Up to 35% PIT	Employment remuneration for qualifying foreign employees	1 January 2020
ITC	20% CIT	Out-out trading income and associated service fees	1 June 2019
	10% WHT	Dividend distribution to overseas shareholders	1 January 2021**
	Up to 35% PIT	Employment remuneration for qualifying foreign employees	1 January 2020

* *Dividend income received by a Thai entity (i.e., ROH I, ROH II or IHQ) from a Thai-incorporated company and a foreign-incorporated company may be eligible for corporate income tax exemption, provided that certain conditions are met under other Thai tax regulations.*

** *Dividend distributions made by an ROH II, IHQ or ITC to its overseas shareholders on or before 31 December 2020 will remain eligible for withholding tax exemption, provided that they are paid out of qualifying profits generated prior to 1 June 2019.*

Further legislative processes will be required to enact the repeals.

Next steps

Entities entitled to tax incentives under the ROH or IHQ/ITC regime (other than a stand-alone ITC) should assess their ability to meet the additional IBC condition to employ a minimum of 10 employees (or 5 employees for a TC) and consider converting to an IBC to continue their tax-incentivized regional hub activities.

The following table provides summaries of the key incentives and conditions of the newly introduced IBC.

Main tax incentives and conditions	New IBC
CIT ▸ Qualifying service, TC and royalty incomes ▸ Dividend income from local and overseas companies ▸ Capital gains ▸ Trading income	 8%, 5% or 3%* (both overseas and local) Exempt (both overseas and local) Normal CIT rate Normal CIT rate
WHT ▸ Dividend distribution to overseas ▸ Interest payment to overseas	 Exempt** Exempt
Specific business tax ▸ Qualifying TC income	 Exempt
Personal income tax ▸ Qualifying expatriates	 15%
Minimum paid-up capital	THB10 million (US$310K)
Minimum annual local spending	THB60 million (US$1.85 million)***
Minimum number of employees	10 (5 for TC)

* *A qualifying IBC is entitled to reduced CIT rates of 8%, 5% or 3% provided it meets the minimum annual local spending requirements of THB60 million, THB300 million (US$9.23 million) or THB600 million (US$18.5 million), respectively. For an ROH I that converts to an IBC, there is no minimum local spending requirement for a reduced 8% CIT rate; while a converting ROH II or IHQ is required to have minimum local spending of THB15 million (US$471K) per accounting year for the reduced 8% CIT incentive. The same spending requirements apply to the 5% or 3% rates.*

** *Dividends must be paid out of the reduced-CIT profits of the IBC's operations and/or the defined qualifying profits from the ROH/IHQ's operations within one year after the IBC conversion is approved.*

*** *Minimum annual local spending requirement is not applicable to an ROH I that converts to an IBC. An ROH II or IHQ that convert to an IBC are only required to continue maintaining at least THB15 million of local spending per accounting year.*

New Royal Decrees for rules and procedures associated with IBC tax incentive applications are expected to be issued soon.

Endnotes

1. See EY Global Tax Alert, *Thailand enacts International Business Centers regime to replace existing incentive regimes*, dated 7 January 2019.
2. Base Erosion and Profit Shifting.
3. See EY Global Tax Alert, *Thailand enacts International Business Centers regime to replace existing incentive regimes*, dated 7 January 2019.
4. For a calendar year taxpayer, a blended rate will apply to the 2019 taxable year.

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