RSM Thailand

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Divesting Your Company of Four Nominees

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On **1 July 2008,** a new amendment to the Civil and Commercial Code laws in relation to private limited companies comes into effect.

One particular amendment that may be of interest to you is the abolition of the requirement to have seven shareholders. Effective 1 July 2008, the number of required shareholders is reduced to just three.

Your existing private limited company (incorporated with seven shareholders) may take advantage of this new law. From 1 July 2008, you may like to divest your company of four shareholders by transferring the shares held by them to three remaining shareholders, or you may like to reduce your company's capital in relation to the shares held by the four shareholders.

In addition to the all-important legal considerations of such restructurings, you should also consider the tax costs of such plans.

Share Transfers

The first restructuring option that you could consider is a transfer of shares transaction. That is, a transfer of shares held by four shareholders to one or more of the three remaining shareholders.

The Thailand transaction tax costs under this option depend on whether the transferors (the shareholders selling the shares) are corporate shareholders or are individual shareholders.

Corporate shareholders are required to account for share transactions at their "market price", and for shares held in private limited companies, the practice of the Thailand Revenue Department is to accept a market price that is not less than the net book value of the shares, which is calculated by reference to the previous year's audited financial statements of the company.

Gains made by corporate shareholders will be subject to income tax according to the income tax rate of the company (base rate of 30%), and stamp duty tax will be payable at the rate of 0.1% of the sales price.

Individual shareholders, however, are not subject to a market price test, but are subject to income tax on the difference between the proceeds derived and the cost price of the shares.

A proceeds derived amount that is not less than the cost price of the shares would usually be accepted by Thailand Revenue Department officers for transfers of shares in private limited companies by individuals.

Gains made by individual shareholders will be subject to tax according to the progressive rates of personal income tax (0-37%), and stamp duty tax at the rate of 0.1% of the sales price will also be payable.

Reduction of Share Capital

A second restructuring option is for your company to effect a reduction of its share capital by reducing the number of its shares or a class of its shares (e.g. by redeeming preference shares).

Capital reductions cause tax implications in Thailand when the amount of the capital reduction is less than the amount of the company's retained earnings and reserves.

For Thai corporate shareholders receiving a capital reduction under such conditions, the tax rate is 30%, and in the case of individual shareholders the tax rate is according to the progressive rates of income tax (0-37%).

The information herein was contributed by Pardorn Suchiva, RSM's Legal Principal, and Steven Herring, an experienced and Senior International Tax Consultant for RSM Advisory (Thailand) Limited.

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Audit & Assurance
Prawit.Wipusirikup@rsmthailand.com

Audit & Assurance
Surachai.Damnoenwong@rsmthailand.com

We welcome your comments and feedback. Please feel free to contact us on the details below:

RSM Thailand
26th Floor, Sathorn City Tower
175 South Sathorn Road
Bangkok 10120
Thailand

T: +66 (0) 2670 9002-6
F: +66 (0) 2670 9027-8

E: AskUs@rsmthailand.com
W: www.rsmthailand.com