


Call in for a Coffee



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Anti-Tax Evasion Rules put into Practice**

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On Thursday 31 July 2008, we witnessed "a first" for Thailand ... the Government's actual use of Revenue Code Section 37 ... an anti-tax evasion provision that has been there since 1959.

We all know that Thailand is a land of contrasts that can very quickly swing from one side of the pendulum to the other, and although it's taken almost 50 years, you can just about be assured that the Thai Revenue Department will now be employing Section 37 with somewhat monotonous regularity.

In addition to tax evaders being taught a lesson, the tax administrators at the Revenue Department have had a very strong message sent to them ... comply with the tax laws ... or else.

The tax evasion decision of the Criminal Court on 31 July 2008 concerned a case involving a transfer of shares in a prominent Thailand company listed on the Stock Exchange of Thailand. In November 1997, 4.5 million shares in the company were transferred from a maid (a nominee of the true owner of the shares) to the transferor's brother. The Stock Exchange price of the shares was 164 Baht per share, making the total share transfer worth about 738 million Baht.

Through a round-robin issue of cheques, no money was actually paid by the transferee, but the share transfers were transacted through a Stock Exchange broker (and the applicable 0.1% stamp duty paid) to make it appear to be an on-market share transfer, which is exempt from tax under Section 42(17) of the Revenue Code.

However, as Section 42(17) exempts tax only for the transferor, the transferee (the brother) had to come up with a reason why the shares would be free of tax to him. And so, acting on the advice of a Thailand tax advisor they adopted the argument that the shares were transferred as a wedding "gift".

Presumably, they claimed that the shares were tax-free to the transferee on the basis of Section 42(10), which prescribes that:

"Maintenance income derived under moral obligations a legacy or inheritance or gifts made at ceremonies or occasions in accordance with established custom" shall be excluded from assessable income.

On the basis of evidence presented to the Court, the Court did not accept the share "gift" argument, found that the brother had received income subject to tax under Section 39 of the Revenue Code, and found that both the transferor and transferee had violated Section 37 of the Revenue Code.

Section 37 of the Revenue Code is Thailand's anti-tax evasion legislation, which prescribes as follows:

"Whoever:

(1) knowingly or willfully furnishes false information, makes false statements, gives false answers or produces false evidence with a view to evading payment of tax and duty under this Title; or

(2) by falsehood, fraud, artifice or any other similar device whatsoever, evades or attempts to evade payment of tax and duty under this Title;

shall be punished with imprisonment of three months to seven years and a fine of two thousand Baht to two hundred thousand Baht."

For the first time (publicly at least) we have witnessed a transferor being prosecuted under Section 37(1) for making false statements, giving false answers and/or producing false evidence, and have seen a transferee being prosecuted under Section 37(2) for evading or attempting to evade tax by falsehood, fraud, artifice or any other similar device. Beware!

It is important to note that this case is subject to appeal where the court ruling will either be upheld or reversed. Notwithstanding this, it is clear that the Thai Revenue Department and Court have together reached a landmark decision which may set a precedent for both past and future transactions.

Therefore it is imperative that all stakeholders partaking in complex transaction involving taxation matters, whether past or present should take expert advice from qualified, reputable, and experienced tax professionals that have a thorough understanding of both domestic and international tax law.

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