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Advantage

Tax and business law intelligence for international companies

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TAX RISK MANAGEMENT
Insight into RD Practices

Beware of Evading Bodies!

If you are filing a Body of Persons tax return to save tax, beware! Your Body could be investigated.

The Revenue Department audit officials have been monitoring the tax return filings of Bodies of Persons, and they are concerned about Bodies being used to evade tax liability.

A Body of Persons is a non-registered partnership of (normally two) individuals. It is not any form of legal entity, but it is recognized as a tax entity under the Revenue Code. That is, the Revenue Code treats the income received by a Body of Persons as being received in the name of the Body.

As a non-legal and non-complicated entity, it is a very basic form of business structure for two individuals. No Ministry of Commerce registration is required, no financial statements are required to be prepared, no auditor is required, and tax compliance is far simpler than for a registered juristic partnership.

For a Body of Persons, a personal income tax return (Form PND90) is simply filed, and the Body just pays personal income tax on the amount of the calculated taxable income of the Body.

Whilst the normal marginal personal income tax rates of 0-37% apply to the amount of the taxable income of a Body in the same way these marginal rates are applied to the amount of one's salary income, a Body of Persons is permitted to reduce its taxable income by claiming:

- A deduction for costs ranging from 65% to 85% of the Body's gross income; and
- An allowance of Bt 30,000 per partner (limited to Bt 60,000 in total).

Another significant tax advantage is that the taxable income of the Body of Persons is not treated as the income of the individual partners, meaning that the individual partners are exempt from tax on their share of the taxable income of the Body.

The Revenue Department audit officials have noticed a rise in the number of PND90 Body of Persons tax returns being filed, and they have become concerned about the use of Bodies as a "tax planning" scheme to save tax on employment income.

Below is a simple example of how a Body of Persons "tax planning" scheme works when slotting in a Body between an employer and an employee.

Say a Body of Persons tax return if filed with income (which income has been diverted from an individual's employment income) of Bt 1 million.

After a standard deduction claim of 80% against the income amount, and the standard allowance claim of Bt 60,000 for the two partners, the taxable income of the Body is only Bt 140,000. This amount of taxable income is within the tax-free threshold of Bt 150,000, and results in no tax being payable on the Bt 1 million of employment income diverted from the individual's salary.

Beware! If you have filed a PND90 Body of Persons tax return for the purposes of diverting income away from you personally, you should expect the taxman to come knocking on your door.

If you are a foreigner, you should also be aware that you could possibly be violating the immigration and work permit regulations, and if you don't have the required Foreign Business License from the Ministry of Commerce, you could also be violating the Foreign Business Act.

More Tax Audits on the Agenda!

The Revenue Department will be hundreds of billions of Baht behind their tax revenue collection target for the 2009 year, and the Department chiefs are now in crisis meetings over the matter.

Changing (or suggesting changes) to the tax laws is just about out of the question for turning around a current year revenue shortfall of this magnitude, and this leaves the Revenue chiefs with virtually only one agenda item for their crisis meetings … to order the indians to increase their tax audit activities.

Back in the 2001/02 years, we witnessed a change in the Revenue's thinking through the introduction of the Business Operation Visit (BOV) program. But whilst the BOV program was supposedly launched to advise and assist taxpayers with tax compliance matters, it very quickly developed into a tax audit (investigation) tool for the Revenue officers. Virtually no advice or assistance is provided to taxpayers under the BOV program. Instead, the Revenue audit officers use the information gathered during a BOV to pinpoint targets for tax investigation activity.

The first you hear of a BOV is your staff informing you that the Revenue Department officers will be visiting your premises on such and such a day.

PND50
Corporate Income Tax Returns

Your company's corporate income tax return (PND50) for the 2008 financial year is due for lodgment with the Revenue Department on or before 1 June 2009. If your accountant or auditor is running late, you can beat the Revenue Department's late payment interest surcharge. If you can't file the PND50 tax return form with the completed audited financial statements on or before 1 June 2009, you can do an advance filing of the PND50 tax return and pay the tax shown therein without the audited financial statements (saving the late payment interest surcharge) and do an additional filing of the PND50 tax return form with the audited financial statements when they are completed.

The reasons provided to your staff for the BOV are:

- To understand the nature of the business, goods or services sold, and it's accounting and general ledger recordings etc; and
- To examine a sample number of withholding tax and VAT returns, and the annual and half-yearly corporate income tax returns, for tax compliance.

But, during these visits, the Revenue officers will also gather all sorts of other company information, such as details about its international transactions and related party transactions, etc.

The information gathering and document examining activities of a BOV enable the Revenue Department officers to easily assess a company's target profile.

The BOV program has been hugely successful to the Revenue Department, yielding far higher and sooner tax revenue that in the days before the BOV, and the BOV has now become the mainstay of the Revenue Department's tax compliance practices.

When a BOV advances to a tax investigation, virtually no company walks away from the audit with a clean bill of health. The Revenue officers will (just about always) find something to challenge a company for additional tax, penalties and surcharge, and very few companies are able to close a tax investigation case without any tax payment being made.

Now that you know that a BOV is the Revenue's main tool for spotting tax investigation matters, it is vitally important that the CEO or CFO gets involved in the BOV right at the start, by attending the BOV meetings and managing them properly.

You should particularly ensure that every question is answered properly and thoroughly, and ensure that no Revenue officer ever leaves a BOV with any doubt or uncertainty about the company's compliance with the tax laws.

The information herein was contributed by Steven Herring, an experienced and senior RSM International Tax Consultant, for RSM Advisory (Thailand) Limited.