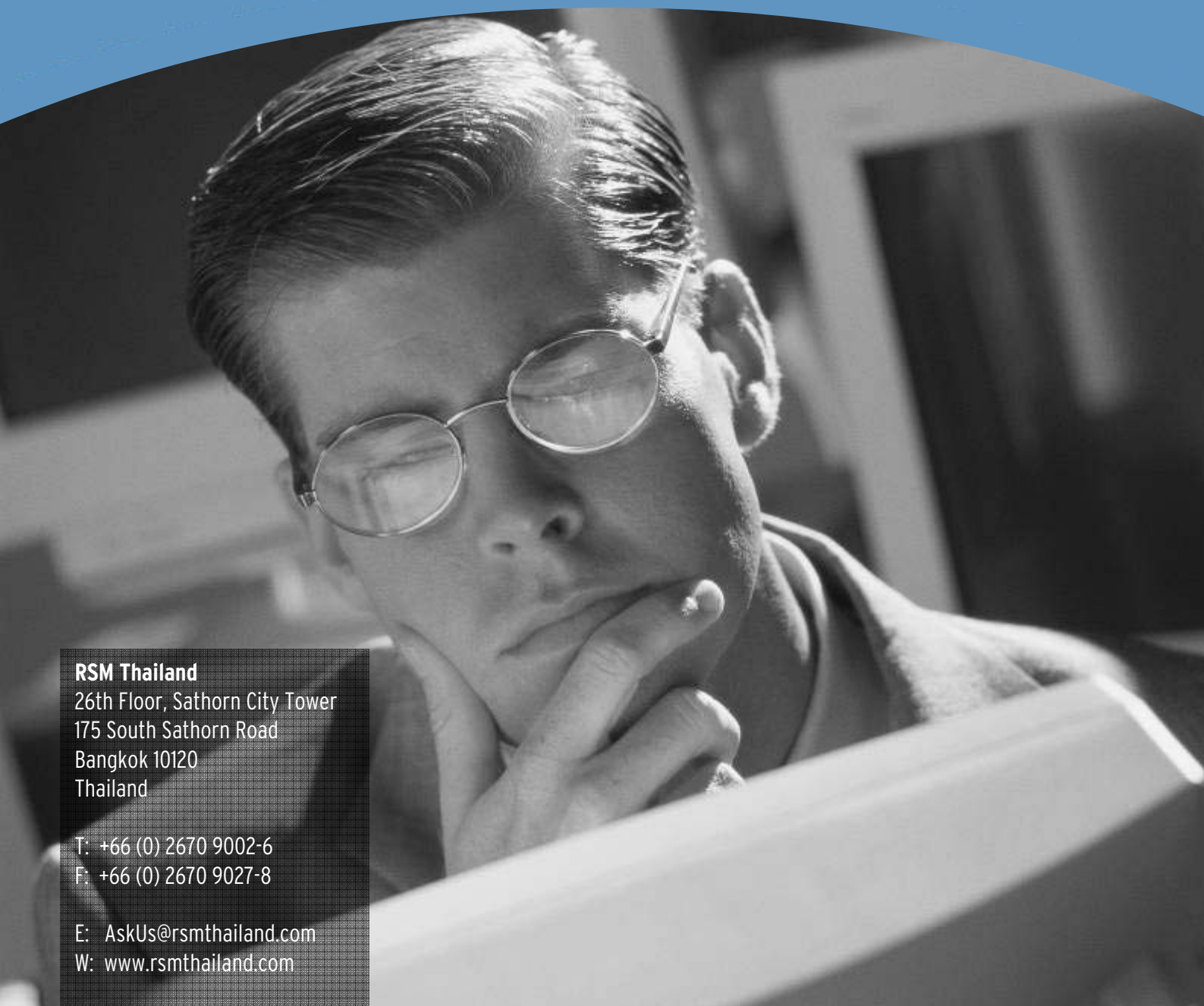


Advantage

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PASSBOOK SAVINGS ACCOUNT 15% withholding tax uncertainties continue

On 27 October 2004, the then Finance Minister was reported to be concerned about the 15% withholding tax that banks were deducting from interest they paid on passbook savings accounts, and he was quoted as saying that "tax was being collected from the rich and poor at an equal rate, but that was not proper".

And now this year (on 23 July), the current Finance Minister announces that a streamlining of the rules is required in relation to the 15% withholding tax that is being imposed on passbook savings accounts. The Finance Minister noted that pursuant to the tax code, interest income on passbook savings accounts up to the amount of Bt 20,000 per year was free of tax and that pursuant to the Director-General's Notification No 55, banks were not required to withhold the 15% tax, but that they were deducting this tax because of "uncertainties" in relation to the rules.

The tax laws referred to by the two Finance Ministers were actually enacted on 29 November 1995 (almost 14 years ago), and the referred to Director-General's Notification No 55 was issued on 21 December 1995.

The rules state that interest income up to the amount of Bt 20,000 per year that a taxpayer receives on passbook savings accounts that are not linked to any checking or debit card account is exempt from tax.

The passbook savings accounts shall be held in the name of the taxpayer who is liable to income tax and who is the beneficiary of the interest.

The taxpayer shall not include the whole or any part of the exempt interest in his computation of personal income tax.

If the total amount of the interest income received by a taxpayer exceeds Bt 20,000 in a tax year, the bank shall deduct the withholding tax at source and remit the withholding tax to the Revenue Department.

The taxpayer receiving the interest income shall be determined as follows:

1. If a husband and wife hold an account jointly or severally, the interest income shall be treated as being received by the husband;
2. If marital status does not exist throughout the tax year, the interest income shall be treated as being received by a non-juristic body of persons, which cannot claim the exemption;
3. If a father and/or mother and a child are joint holders, the interest income shall be treated as being received by either the father or the mother who has the parental power or by the father in the case of joint power;
4. If a father and/or mother make deposits in the name of a child, the interest income shall be treated as being received by the child.

The taxpayers shall notify the bank of their Taxpayer ID Nos. and produce their Personal ID Cards to the bank.

Finally, the bank shall, within the month of January the following year, provide details of the interest paid and the Taxpayer ID Nos. to the Revenue Dept.

RSM Advantage does not know what "uncertainties" there are in relation to these rules, but whilst the "uncertainties" exist, the banks are continuing to withhold the tax and the Government is continuing to take it.

And whilst taxpayers have the right to request a refund of the 15% withholding tax from the Revenue Department, very few are doing so, which translates into a tax windfall for the Government.

It is hoped that the Finance Minister can resolve the "uncertainties" quickly so that taxpayers can enjoy the rights they are entitled to under the laws.

RESTRUCTURING Tax Incentives on Offer for 2009

As part of the Government's tax stimulus measures for the economic meltdown, tax incentives for debt and partial business restructurings are reintroduced, and combined with the restructuring incentives that are permanently embedded in the tax laws, even the most complicated restructurings can be achieved in a tax efficient manner.

Companies should note that the incentives for debt and partial business restructurings are only available for the current year ending 31 December 2009, and whilst the Government could possibly extend these exemptions for another year, there are no guarantees of this happening, and if your circumstances dictate that a debt or partial business restructuring should be undertaken in order to position your company for the economic recovery, you should carry it out before the end of this year.

A summary of the restructuring tax incentives on offer for 2009 is as follows:

Debt Restructurings

- Exemption from income tax on income that arises from a discharge of debts owing to a financial institution creditor or other creditor under the debt restructuring rules of the Bank of Thailand; and
- Exemption from income tax, value added tax and specific business tax on income that arises from a transfer of property or a provision of services to a financial institution creditor or other creditor under the debt restructuring rules of the Bank of Thailand.

Partial Business Transfers

- Exemption from value added tax, stamp duty and specific business tax on income that arises from a transfer of assets to an affiliate company under the rules for partial business transfers.

Entire Business Transfers

- Exemption from corporate income tax, value added tax, stamp duty and specific business tax on income that arises from a transfer of all assets to another company under the rules for entire business transfers.

Share Restructurings

- For individual shareholders subject to personal income tax, the tax law prescribes that tax shall be paid on the amount by which "the proceeds derived exceed the cost of the investment". The personal income tax law then simply prescribes the sales value of shares (for individuals) as the amount of "the proceeds derived". That is, the amount that an individual shareholder determines to be his sales price.
- For corporate shareholders subject to corporate income tax, the tax law prescribes for "the market price" to apply, but for shares in Thailand private limited companies, the long-time rule of practice in Thailand is to value the market price simply by dividing the total net assets of the company as recorded in the previous year's audited financial statements by the total number of issued shares in the company. That is, no account is made for any goodwill value.

Capital Reductions

- Capital reduction restructurings are free of tax in Thailand when a company carrying out a capital reduction has no retained earnings in its accounts or after all its retained earnings have been paid out as dividends prior to the reduction of capital.

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