

# Advantage

Tax and business law intelligence for international companies



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## TAX MANAGEMENT

### Tax Rulings are Opinions, not Judgments

The Tax Ruling system of the Revenue Department in Thailand has been used by Revenue audit officers and taxpayers for a number of issues over countless numbers of years.

Both Revenue audit officers and taxpayers alike use the Tax Ruling system when they are unsure about an issue. They request the Revenue Department's Legal Bureau for a Tax Ruling on the particular issue and the resulting tax liability of the taxpayer.

The Tax Ruling that is issued by the Legal Bureau is accepted as a form of "judgment", whereby the vast majority of both audit officers and taxpayers treat the Ruling as an official determination of the issue, and taxpayers simply pay tax according to the Ruling.

But the verdict of the Criminal Court on 26 February this year clearly indicates that Tax Rulings are merely "opinions", not judgments.

The Court's verdict of 26 February concerned a case brought against Revenue Department legal officers for issuing a Tax Ruling in favor of a taxpayer who, as a wedding present, gifted shares to another taxpayer. The Court was required to consider two provisions of the Criminal Code, being Section 154 and 157, which prescribe as follows:

Section 154. *Whoever, being an official having the duty, or professing to have the duty of collecting or checking taxes, duties, fees or any other money, dishonestly collects or fails to collect such taxes, duties, fees or money, or does any act or does not do any act in order that the person having the duty to pay such taxes, duties or fees shall not have to pay them, or pay less than what such person has to pay, shall be punished with imprisonment of five to twenty years or for life, and a fine of two thousand to forty thousand baht.*

Section 157. *Whoever, being an official, wrongfully exercises or does not exercise any of his functions, or dishonestly exercises or omits to exercise any of his functions, shall be punished with imprisonment of one to ten years or a fine of two thousand to twenty thousand baht, or both.*

In relation to the first Section, the Court said that 154 deals with tax officials who have the duty to collect or check taxes. The Revenue Department officers who issued the Tax Ruling were not tax collectors and were not tax appeals officers. They were Revenue Department Legal Bureau officers who provided their "opinion" on the tax aspects of the matter, and since the wedding gift share transfer had occurred some time before their Tax Ruling was issued, there was therefore no intention by the Legal Bureau officers to assist the taxpayer to evade any taxes.

In relation to Section 157, the Criminal Court said that this provision applies to tax officers who have a lapse of duty, meaning that tax officers must be entrusted with the duty, which they fail to properly carry out, but the Legal Bureau officers who issued the Tax Ruling were not tax officers entrusted with the duty to collect tax from the taxpayer, and so they cannot fail to carry out such a duty.

Whilst this Court Case does not serve as precedent, it provides a very useful insight into how the Criminal Court views the status of Revenue Department Tax Rulings in Thailand.

This Court's verdict suggests that Tax Rulings issued by Revenue Department legal officers have virtually the same legal status as a private legal practitioner's opinion to a client.

That is, the Tax Rulings of the Revenue Department's Legal Bureau are "opinions", not judgments.

## CORPORATE INCOME TAX

### Dealing with your Half-Year Tax Payment

For most Thailand companies, 30 June is the end of their half-year, and it's time for the company to file a half-year (PND51) income tax return.

The PND 51 half-year tax return is to be filed (and the half-year tax payment made) within two months after the end of the half-year, i.e. by 31 August 2009 for companies with a 31 December year-end date.

You should note that there is a substantial surcharge of 20% if a company's half-year tax payment is short. This penalty also applies when a half-year tax return is not filed or when a half-year tax return is filed late.

The amount of the half-year tax payable is prescribed as follows:

- (1) For companies listed on the Stock Exchange of Thailand and for banks and financial institutions, the tax payment shall be computed and paid on the actual net profit for the half-year;
- (2) For all other companies, an estimate of net profit for the entire financial year shall be made and the tax payment shall be computed and paid on one-half of that estimate.

But for the 20% surcharge to apply, the law stipulates that a company must have short-paid its half-year tax without having a "reasonable excuse" for doing so.

Directors and managers of private limited companies, who are required to estimate the company's net profit for the entire financial year and pay tax on one-half of that estimate, should note that the Director-General of the Revenue Department has issued an Instruction (Departmental Instruction No Paw 50/2537 dated 31 August 1994) prescribing that when a company has estimated its net profit on the basis of the previous year's net profit, then the company shall be treated as having a "reasonable excuse".

Departmental Instruction No Paw 50/2537 states:

*"In the case where a juristic company or partnership has prepared an estimate of net profit and has filed a return for paying half-year tax on an amount of net profit that is not less than one half of the net profit according to the return filed for payment of corporate income tax for the previous accounting period, this case shall be treated as a reasonable excuse."*

This prescription is self-explanatory and therefore, in the case where your half-year tax payment is made on an estimated net profit that is not less than 50% of the net profit for the whole of the previous year (i.e. previous year's net profit x 50% rounded up), then the company will have the required "reasonable excuse", and the Revenue audit officers cannot impose any 20% surcharge on your company.

#### 2009 Economic Stimulus Update

##### New Personal Income Tax Deduction

The Government's 2009 economic stimulus proposal, granting a Bt 300,000 personal income tax deduction for purchases of property during the period 1 January to 31 December 2009, has been enacted.

##### Social Security Contributions

The Government's proposal to reduce Social Security contributions for the six-months period from 1 July to 31 December 2009 has been approved. The rate of contribution for this six-months period is reduced from 5% to 3%, i.e. from a maximum of Bt750 per month to a maximum of Bt450 per month.

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