

Advantage

Tax and business law intelligence for international companies

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Revenue Department is continuing with its interpretation that the one entity concept applies to BOI-promoted projects

Back in 1987, the Revenue Director-General issued a Notification (Notification of the Revenue Department dated 5 February BE 2530) prescribing that the one entity concept shall apply to BOI-promoted projects for the purposes of computing a company's corporate income tax liability. That is, in the case of a company having more than one BOI-promoted project in an accounting period, the company shall combine the profits and losses of all the BOI-promoted projects, and then apply that combined profit and loss result for the purposes of the company's tax computation under the provisions of the Revenue Code.

But this 1987 Notification was never enforced by the Revenue Department because shortly after it's issue, the Board of Investment referred the matter to the Counsel of State, which issued the opinion that as the Revenue Department's Notification was contrary to the provisions in the Investment Promotion Act, it could not be applied to BOI-promoted projects.

Update to 15% withholding tax deductions on passbook savings accounts

Further to last month's edition of RSM Advantage, the Director-General of Revenue has now issued a new Notification on the withholding tax issue, and has also held a meeting with senior executives from the banks to explain and clarify the requirements.

The new Director-General Notification on Income Tax (No 181) prescribes that banks shall deduct the 15% withholding tax from interest they pay on passbook savings accounts only when:

- A taxpayer, who has multiple passbook savings accounts, earns a total amount of interest of more than Bt 20,000 in a tax year and has informed the bank to deduct the 15% withholding tax; and
- A bank pays more than Bt 20,000 in interest to a taxpayer in a tax year.

However, notwithstanding the 1987 Counsel of State opinion, the Revenue Department is continuing with its interpretation that the one entity concept applies to BOI-promoted projects for the purposes of computing corporate income tax liability under the provisions of the Revenue Code.

In 2008, the Board of Taxation (which is a tax review body made up of officials from Finance, Revenue, Customs, Excise, Fiscal Policy, Counsel of State, and three others) considered questions put to it by the Revenue Department, and after considering same, the Board of Taxation issued their Ruling (Ruling No 38 dated 13 February 2009) agreeing to the Revenue Department's interpretation of the one entity concept for all BOI-promoted projects.

The Board of Taxation's Ruling No 38 prescribes that Section 31 of the Investment Promotion Act, which is a law that grants exemption from corporate income tax on the net profit derived from any BOI-promoted project, is a law that applies to all the BOI-promoted projects that a particular company may have, and as such, the Board of Taxation agrees with the Revenue Department's interpretation.

On 18 March 2009, the Counsel of State again issued the opinion agreeing with the Board of Investment's position that profits and losses from each individual BOI-promoted project should not be set off against each other for corporate income tax purposes, and disagreeing with the Board of Taxation's Ruling.

Whilst it is favorable for BOI-promoted companies to follow the opinion of the Counsel of State, it cannot be relied upon to mitigate any corporate income tax liability that could result from a Revenue officer's enforcement of the Board of Taxation Ruling.

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