

Call in for a Coffee

It's time for year end tax planning!

Most companies in Thailand have a 31 December balance date, and as you approach your year-end, it's time to focus on tax planning issues. Broadly, year-end taxation planning involves the deferral of income (to the following year), acceleration of expenses (to the current year) and other tax planning initiatives. Some of the matters that you may like to consider for the 2005 year-end are outlined below.

Timing of income derivation

Section 65 of the Revenue Code prescribes that income subject to income tax shall be the net profits, which is computed by taking into account, all revenues arising or in consequence of the business carried on.

Accordingly therefore, if revenue does not "arise" before 31 December 2005, it may not constitute taxable income in 2005, but taxable income in year 2006. Conversely, if revenue does "arise" in 2005, it may be taxable in 2005 and not be taxable in 2006.

Income from the sales of goods can be deferred or accelerated according to when goods are delivered and legal title passes to the purchaser. By either delaying deliveries or speeding up deliveries, taxable income can be either deferred until year 2006 or accelerated into year 2005.

Taxable income from services is derived when services are rendered and there is a legal right to receive fees in respect of the services rendered. Similarly to the sale of goods, by delaying the rendering of the services or the speeding up of the delivery of the services, taxable income can be deferred/accelerated.

Property developers have a particularly good method of deferring/accelerating taxable income. As we reported in our Call in for a Coffee in October 2004 (Edition No 21), property developers are subject to corporate income tax in Thailand on the installment sales basis, according to the legal right to receive payments from the purchaser. The dates on which the payments fall due determine the recognition of income, irrespective of the date of transfer of ownership of the property. Property developers can therefore negotiate their sales contracts in a manner to defer/accelerate their taxable incomes.

Expenses

Revenue Code Section 65 prescribes that expenses complying with the conditions in Sections 65 bis and 65 ter, shall be deductible from the income arising from or in consequence of the business. Some of the expenses provisions provide for some

scope for the accelerating of expenses into year 2005 and deferring expenses into year 2006, if that is what is required. Here are some:

Finance leases

For finance leases, the actual installment amounts paid are taken as deductible expenses. If your accountant or auditor records finance leases in accordance with the accounting standards requirements for depreciation of interest, the depreciation and interest amounts should be added back and the (usually) higher amount of lease installment payments, claimed as a deduction.

Repairs and maintenance

Repairs and maintenance expense items can often be accelerated or deferred, as the case requires.

Depreciation

An SME (defined for the purposes of depreciation as a company with assets of no more than 200 million baht and no more than 200 employees) is entitled to special depreciation allowances, which could be taken advantage of in the 2005 year:

- 40% initial deduction on the date of acquisition of computers and computer equipment (the balance depreciated over 3 years); and
- 40% initial deduction on the date of acquisition of machinery and equipment (the balance depreciated over 5 years).

Cars

If you're looking at a car, you can deduct depreciation on the cost of a car up to the value of 1 million baht (the cost value over 1 million baht is non-depreciable). You may therefore consider leasing a car, for which a deduction of 36,000 baht per month is allowable.

Trading stock

The Revenue Code prescribes that stock on hand must be valued at the lower of cost or market value. Valuing stock at market value may provide an opportunity for deferring/accelerating taxable income. This should not be confused with the accounting method adopted, which must be consistently applied, unless the approval of the Revenue Department is first obtained.

Destroyed stock

Destroyed stock, scrap, waste, etc should be written off before 31 December 2005 in order to obtain a deduction in 2005. The following procedures need to be followed:

- Companies in an export processing zone need to follow the procedures prescribed by the Industrial Estate Authority of Thailand, and have an auditor to witness the destruction and to prepare a record of the destruction;
- Companies receiving BOI promotion on imported raw materials need to follow the procedures of the BOI, and have an auditor to witness the destruction and to prepare a record of the destruction;
- For other companies, there must be an examination and approval of the destruction by the company's authorized person, persons from the warehouse, accounting, sales and auditing (where relevant) departments who must investigate and sign the destruction record as a witness. In addition an auditor shall witness the destruction.

Bad debts

Bad debts should be written off before 31 December 2005 in order to obtain a tax deduction in year 2005. The following procedures need to be followed:

- For bad debts less than 100,000 baht, a demand for payment must have been made;
- For bad debts greater than 100,000 baht and less than 500,000 baht, a court must have accepted the complaint and claim; and
- For debts over 500,000 baht, a court injunction or order must have been issued.

Accruals and provisions

Similar to many other jurisdictions, accruals and provisions are not allowed as a tax deduction until there is a legal right to pay, and in fact, are paid. Typical ones are provisions for obsolete/damaged goods, provisions for doubtful debts, accrued bonuses, accrued warranties, etc. Year-end tax planning considerations for obsolete / damaged goods and bad and doubtful debts have been mentioned above. With respect to accrued expenses, such as accrued bonuses, you may like to consider the possibility of accelerating the tax deduction to the 2005 year. You can possibly ensure that there is a legal right to pay such bonuses before year-end by holding a director's meeting for the payment of bonuses (before year-end) and accelerating the bonus payments so they are paid on or before year-end.

Donations

Socially conscious and charitable companies may like to receive a helping hand from the Thai Government for their donations. If you are considering making some donations on or before 31 December 2005, you may like to make such donations for educational programs and athletics, for which the Revenue Department may give you a double taxation deduction.

Dividends

Dividends received by a company that holds at least 25% of the voting shares in the company paying the dividends where the company paying the dividends does not hold any shares in the company receiving the dividends, are entitled to 100% tax exemption.

However, for such tax exemption, the shares must be held for at least 3 months before and after the dividend payment. Accordingly, therefore, when the payment of such dividends is contemplated, it would be wise to defer / accelerate such dividend payments to ensure that the payment falls within the required time frame.

Share investments

Pursuant to the regulations issued under the Revenue Code, where an investment loss looks like arising from a share investment, the loss cannot be claimed as a tax deduction until such time as the shares are sold or the company is dissolved through liquidation. For year-end tax planning purposes, where such an investment loss is likely and you would like to crystallize that loss for year end tax purposes, you may like to consider selling the shares (to another company) for the market value of the shares before year-end.

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