

NEWSLETTER

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INSIDE THIS EDITION

- 1. Important Note for Landlord:
Property Co-Owners Must Restructure Their Holding
under Proposed New Tax Law 1**
- 2. More Rulings on Statutory Provision Imposing
the Presumption of Guilt on Representatives of
a Legal Entity 4**

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TAX UPDATE

1. Important Note for Landlord: Property Co-Owners Must Restructure Their Holding under Proposed New Tax Law

The cabinet passes a resolution to approve the Bill Amending the Revenue Code (Measure for Restructure of Personal Income Tax to Be Fair and Consistent with the Economic Conditions) (the "Bill"). At present, Parliament has not passed the Bill yet.

Existing Personal Income Tax Schedule

Net Income (Baht)	Tax Rate (%)
Not exceeding 150,000	0
Exceeding 150,000 to 500,000	10
Exceeding 500,000 to 1,000,000	20
Exceeding 1,000,000 to 4,000,000	30
Exceeding 4,000,000	37

New Personal Income Tax Schedule

Net Income (Baht)	Tax Rate (%)
Not exceeding 150,000	0
Exceeding 150,000 to 300,000	5
Exceeding 300,000 to 500,000	10
Exceeding 500,000 to 750,000	15
Exceeding 750,000 to 1,000,000	20
Exceeding 1,000,000 to 2,000,000	25
Exceeding 2,000,000 to 4,000,000	30
Exceeding 4,000,000	35

While the new personal income tax schedule is probably something you have read in papers, but the impact of this Bill on property co-owners have not been discussed much.

Income Derived from the Property Co-ownership

Under the Bill, the co-owners of property (either immovable property or movable property) can no longer claim the standard deduction as the deductible expenses in a computation of the net income for the purpose of paying personal income tax. But the co-owners of property must claim the deductible expenses on an actual basis (generally accepted accounting standards).

Case 1: Co-ownership in Land Plot for Non-Agricultural Use

Mr. A and Mr. B are the partners. They co-own a land plot, which they lease out to a developer for 30 years to operate a community mall. Under the existing law, out of Baht 100 rent they derive from the land plot, they can claim the standard deduction at the rate of 15% of the rent, so only 85% is left as the net income, which is subject to personal income tax at progressive rates.

The sad news is under the proposed new law, out of Baht 100 rent they derive from the land plot, they can claim the deductible expense at the rate of 0% of the rent. According the generally accepted accounting principles, the land does not depreciate at all. So a landowner cannot claim any depreciation charge.

Case 2: Co-Ownership in Land Plot for Agricultural Use

Mr. C and Mr. D are the partners. They co-own a land plot, which they lease out to a farmer. Under the existing law, out of Baht 100 rent they derive from the land plot, they can claim the standard deduction at the rate of 20% of the rent, so only 80% is left as the net income, which is subject to personal income tax at progressive rates.

The sad news is under the proposed new law, out of Baht 100 rent they derive from the land plot, they can claim the deductible expense at the rate of 0% of the rent. According the generally accepted accounting principles, the land does not depreciate at all. So a landowner cannot claim any depreciation charge.

Case 3: Co-Ownership in Land Plot and Building

Mr. D and Mr. F are the partners. They co-own a land plot and a building, which they lease out to a logistic company. Under the existing law, out of Baht 100 rent they derive from the land plot, they can claim the standard deduction at the rate of 30% of the rent, so only 70% is left as the net income, which is subject to personal income tax at progressive rates.

The sad news is under the proposed new law, out of Baht 100 rent they derive from the land plot, they can claim the deductible expense at the rate of 5% of the cost of the building (exclusive of the cost of the land plot) plus a house and land tax bill insofar as they follow the generally accepted accounting principles. They will have to hire an accountant to handle the computation. They are no longer allowed to claim the standard deduction. According the generally accepted accounting principles, the land does not depreciate at all, but the building does depreciate. So an owner cannot claim any depreciation charge only on the cost the building, exclusive the cost of the land plot.

Solution

If the Bill is enacted, co-ownership will not be an optimal form to own property any more. The solution is the partners should split the property. Anyone planning to acquire property on the basis on co-ownership should have a second thought about a property form of ownership. Even existing co-owners might want to find a way to restructure their holding to avoid unfavorable tax consequences.

Type of Property	Deductible Expenses under Existing Law	Deductible Expenses under New Law
Land Plot for Non-Agricultural Use	Standard Deduction at 15% of Rent	Deductible Expense is Not Allowed (Land Never Depreciates)
Land Plot for Agricultural Use	Standard Deduction at 20% of Rent	Deductible Expense is Not Allowed (Land Never Depreciates)
Land Plot with Building	Standard Deduction at 30% of Rent	5% of the Cost of the Building with Accountant's Computation

For more information, please contact our lawyers for consultation.

2. More Rulings on Statutory Provision Imposing the Presumption of Guilt on Representatives of a Legal Entity

The principle of presumption of innocence prevails in most jurisdictions in the world. In Thailand, ironically many statutes still automatically presume that legal entity's legal representatives i.e. a director, an officer, a managing director or a person who is responsible for operation of the legal entity to be guilty of a crime committed by the legal entity, unless the legal representatives can prove otherwise. This means if a public prosecutor or a plaintiff's attorney can prove to the court beyond a reasonable doubt that the legal entity is guilty of the crime, its legal representatives (as prescribed by a relevant statute) is presumed to be guilty of the same crime committed by the legal entity, unless the legal representative can prove that the legal representatives played no part in committing such crime. This unfairly passes a burden of proof for innocence to legal representatives. In general, the burden of proof rests solely on the prosecution.

In 2012, the Constitutional Court ruled that the statutory provision presuming the guilt of legal representatives is not the presumption of some facts that are components of a crime and that the statutory provision is contrary to the rule of law and Article 11 of the Universal Declaration of Human Rights. The Constitutional Court rules that the presumptive provision in the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) that presumes the guilt of a managing director, a manager or any person responsible for operation of a legal entity without appearing of any involvement of the person with the committing of the crime of the legal entity, is unconstitutional.

This decision of the Constitutional Court affects not only the Direct Sale and Direct Marketing Act, B.E. 2545 (2002), but also many other acts that presume the guilt of legal representatives of a legal entity if the legal entity is found to commit any crime. This list of the acts having the presumptive provision for legal entity's legal representatives includes the customs law and the Revenue Code. This decision will be a criminal defense tactic for the legal representatives who are charged for committing a crime along with the legal entity.

In the aftermath of the Direct Sale and Direct Marketing Act, B.E. 2545 (2002) decision, the Constitutional Court rules on constitutionality (legality) of the presumptive provision for legal entity's legal representatives in other acts as summarized in the below table.

Statute	Constitutional	Unconstitutional
Section 78 of the Telecommunication Business Act, B.E. 2544 (2001)		✓
Section 158 of the Labor Protection Act, B.E. 2541 (1998)	✓ It is not presumption of guilt as the plaintiff has to prove the crime is committed due to the instruction, the action or the inaction of a managing director or a responsible person.	
Section 74 of the Copyright Act, B.E. 2537 (1997)		✓

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