No. 2
Edition December 2006

NEWSLETTER

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LEGAL UPDATE

1. Bank of Thailand's 30% Foreign Exchange Reserve Requirement on Short Term Capital Inflows

Bank of Thailand's Foreign Exchange Control Officer issues the Notification of Foreign Exchange Control Officer Re Stipulation of Foreign Exchange Criteria and Methods (No. 6), requiring the foreign exchange currencies bought or exchanged against Baht be subject to the 30% reserve requirement. In accordance with the 30% foreign exchange reserve requirement, financial institutions are required to withhold 30 % of foreign currencies bought or exchanged against the Thai Baht except those related to trades in goods and services, repatriation of investments abroad by residents, foreign direct investments, stock market investments (excluding mutual fund investments), real estate investment (excluding real estate mutual fund investments). This means anyone who sells more than US$20,000 worth of foreign currency for Thai Baht, other than for the exempted purposes shall have to deposit 30% of it with the Bank of Thailand at zero interest for one year.

In order to get the full deposit back, customers must prove that the fund remains in Thailand for at least one year. Should any customers wish to repatriate their funds earlier than one year, they would be refunded only two-thirds of the amount.

For more information, please contact us.

TAX UPDATE

2. Reserve Requirement's Impact on Use of Thin Capitalization in Tax Planning

The Reserve Requirement is likely to make the use of Thin Capitalization in tax planning more complicate. Thin Capitalization means the arrangement that non-resident multinational corporations invest in local subsidiary companies in Thailand through excessive debt capital with small equity capital to extract corporate profit in the form of deductible interest, which is subject to Thailand's 15% withholding tax, rather than as nondeductible dividend, which is effectively subject to 37% income tax. Thailand still does not have the anti-avoidance rule on Thin Capitalization.

Any loan in a foreign currency granted by an overseas lender to a Thai borrower shall be subject to the 30% foreign exchange reserve requirement. This will make it more complicate for an overseas lender to grant a loan to a borrower in Thailand. 30% of the drawing of the loan shall be reserved for a year as the fund in a foreign currency is converted into Thai Baht. The official at the Bank of Thailand clarifies that even if the intention of this reserve requirement is to tackle the short term capital inflow, a loan with a one year term or longer period is not exempted.

For more information, please contact us.

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