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NEWSLETTER

IN THIS ISSUE

TAX UPDATE

1. Impact of SET's New Big Lot Sale Regulations on Tax-Free Share Sale in the SET

The Stock Exchange of Thailand (the "SET" or the "Exchange") recently issues the new big lot sale regulations to be effective on September 3, 2007. For the securities trading in the SET, the price must be made within the range between the ceiling price and the floor price. The ceiling price is 30% above the last trading price on the immediately preceding trading day, while the floor price is 30% below the last trading price on the immediately preceding trading day.

Under the existing regulations, the ceiling price and the floor price do not apply to the big lot trades. However, under the new regulations, the ceiling price and the floor price will apply to the big lot trades except for any of the following circumstances:

1) Merger;
2) Change of shareholders structure that triggers the tender offer; or
3) Any other case that the Exchange approves.

Any trade made at the price exceeding either the ceiling price or the floor price under any of these three exceptions will have to be made during the off-hour trading.

This new change to the SET big lot regulations has significant impact on the tax free share sale in the SET. When an individual shareholder sells the big proportion of shares in a listed company to a buyer in the SET through the big lot sale, normally such individual shareholder may sell the shares at the price substantially higher than the last trading price on the immediately preceding trading day to reflect the control of a company that the buyer will get, the special arrangement made between the individual shareholder and the buyer, or the depressed price of the share. On the other hand, if the price of share is way over-valued in the market, such individual shareholder may sell the shares at the price substantially lower than the last trading price on the immediately preceding trading day. In either case, such individual shareholder may sell through big lot at the price exceeding the ceiling price or the floor price. In the event that such case does not fall into any of three exceptions, 1) merger, 2) tender offer and 3) any other case that the Exchange approves, such tax free share sale cannot be made in the SET. The Exchange will have the power to either approve or reject the big lot sale exceeding the ceiling price or the floor price in the third exception. Then, effectively the Exchange will have the final say whether such sale of shares can be made tax free or not.

For instance, the sale of 20% shares of a company from one individual shareholder to a buyer will not trigger the tender offer as it is still lower than 25%. But this sale will give the buyer 20% shares in the company and some sort of control that comes with such shareholding. The price of share is so depressed that the buyer agrees to buy the shares at 140% of the last trading price on the immediately preceding trading day. This case does not fall into either the first exception (merger) or the second exception (tender offer). Therefore, the parties have to seek the approval from the Exchange for the third exception. If the Exchange refuses to approve this above-ceiling big lot sale, then effectively the Exchange forces the individual shareholder to sell the shares outside the SET and pay the capital gain tax. So the Exchange can make the tax free sale into the transaction that is subject to the capital gain tax.

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Thus, in the event that any individual shareholder of a listed company plans to sell the shares through big lot at the price exceeding the ceiling price without any merger or any tender offer, it should be cautious that his tax free share sale depends entirely on the approval of the Exchange. So if the above-ceiling big lot sale is rejected by the Exchange, such individual shareholder should prepare for other tax planning schemes.

For more information, please feel free to contact us.

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