



2020 Midyear Tax Update Summary

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1. New Precedent on Statutory Limitation on Time for Gov's Tax Claim

A landmark Supreme Court Judgment practically changes the statutory limitation on time on Government's claim for income tax from 5 to 10 yrs. (Supreme Court Judgment No. 4546/2561).

It was believed until this judgment is entered that a statutory limitation on time on government's claim for income tax (either CIT or PIT) for a practical purpose is 5 yrs from a filing date due to certain limitations under the Revenue Code.

A. Tax Assessment Based on Investigation/Audit under Section 20 of the Revenue Code

Before an assessment official may make any tax assessment based on an investigation/audit under Section 20 of the Revenue Code, the assessment official has to issue a summons to demand for accounting records and documentary evidence from a taxpayer under Section 19 of the Revenue Code first.



Section 19 requires that the assessment official must issue the summons to the taxpayer within 5 yrs from a tax return filing date. And practically after this deadline (or the period of 5 yrs) passes, the assessment official can no longer issue any summons under Section 19 and practically may not (cannot) make any tax assessment based on an investigation/audit under Section 20. Logically, the assessment official has to do some investigation/audit before deciding to make an assessment or not.

B. Tax Assessment Based on Information Containing in Tax Return under Section 18 of the Revenue Code

In addition to the Section 20 assessment, alternatively an assessment official may make any tax assessment based on the information in a tax return in accordance with Section 18 of the Revenue Code. But this Section 18 assessment was understood to cover only apparent mistakes in the tax return in question, such as miscalculation, or wrongly claiming a deduction. As there is no requirement to issue the summons under Section 19, so that 5 yr period does not apply and the assessment official may make the Section 18 assessment within 10 years from a deadline to file any particular tax return.

Recent Supreme Court Judgment

In this Supreme Court Judgment, it is held that an assessment official may alternatively make the Section 18 assessment under of the Revenue Code. (Effectively, the requirement to issue the summons within 5 yrs from a filing date under Section 19 does not apply here and the assessment official will now have up to 10 yrs from a return filing deadline to make the tax assessment under Section 18.) In this case, the assessment official did not issue any summons to a taxpayer to turn over the accounting records and documentary evidence under Section 19 because the period of 5 yrs under Section 19 had already passed. But the assessment official inspected the business of the taxpayer and requested the taxpayer to turn over details on allocation of revenue and expenses of the BOI's investment promoted business and the non-investment promoted business. Eventually, the assessment official ended up making the tax assessment under Section 18 of the Revenue Code (as it was not possible to make the tax assessment under Section 20).

The taxpayer filed a lawsuit against the Revenue Department, challenging a validity of the Section 18 assessment made by the assessment official, which allegedly was based on the information not containing in the tax return in question.

The court noted that the only dispute/difference in this case is a method for computing rights and benefits under the investment promotion for 17 projects and further noted that it did not appear that both the Plaintiff and the Defendant were disputing the authenticity of the facts pertaining to a profit or a loss. It was held that the fact that assessment official verified the facts and requested the taxpayer to turn over additional documents is an audit according to the items the taxpayer filled in the tax return to obtain the fact that the items which are exempt from tax, the taxpayer filled in correctly or not. The Supreme Court by a resolution of the general meeting of the Supreme Court rules that the assessment by the assessment official made by virtue of Section 18 of the Revenue Code was lawful.

2. Additional Tax Privileges for Debt Restructure



To encourage and support the debt restructure in accordance with the criteria laid down by the Bank of Thailand, the government introduce additional tax privileges for the debt restructure in 2020 to 2021, on the top of the more limited existing privilege.

Existing Privilege: The Royal Decree No. 623 issued by virtue of the Revenue Code exempts PIT and CIT on value of debt released (debt release) granted by a financial institution in a debt restructure under the criteria laid down by the Bank of Thailand for a debtor of the financial institution.

Additional Privileges: The Royal Decree No. 709 issued by virtue of the Revenue Code (the “Royal Decree No. 709”) offers additional privileges for the debt restructure.

1. Exemptions for Debt Restructure’s Transactions of Debtor of Financial Institution

The Royal Decree No. 709 exempts PIT, CIT, VAT, SBT and stamp duty incurred on the following transactions: (i) a transfer of property, (ii) a sale of goods, (iii) a supply of services, and (iv) making an instrument arising out of the debt restructure under the criteria laid down by the Bank of Thailand by a financial institution for the debtor of the financial institution insofar such transaction occurs from Jan 1, 2020 to Dec 31, 2021 (the “Eligible Period”).

2. Exemptions for Release of Collateral for Debtor of Financial Institution

The Royal Decree No. 709 exempts PIT, CIT, SBT and stamp duty for (i) any money derived from a transfer of immovable property (being mortgaged as collateral to the financial institution creditor) owned by a debtor of the financial institution creditor to any third party who is not the financial institution creditor and (ii) any instrument made by virtue of such transfer of immovable property for the debtor of the financial institution. Terms and conditions apply, including these conditions.

1. The debt restructure must comply with the criteria laid down by the Bank of Thailand.
2. A registration of the transfer of the immovable property and a corresponding instrument must occur during the Eligible Period.
3. Sale proceeds must be used to settle the debt owed to the financial institution creditor. The tax exempt portion must not exceed any outstanding debt the debtor has with the financial institution creditor.

Note on Non-Financial Institution Creditor: Under the Royal Decree No. 709, the tax exemptions on (a) the debt release, (b) the applicable transactions and (c) the release of collateral (a transfer of immovable property being mortgaged as collateral) also apply *mutatis mutandis* to the debtor of the creditor who is not a financial institution insofar as the debtor restructure complies with the criteria laid down by the Bank of Thailand and the conditions of each exemption are fulfilled accordingly.

Other terms and conditions (i.e. filing requirement) apply.

3. 150% Special Tax Deduction for Machinery Investment 2020

Needless to say at a time of pandemic, reserving a cash for rainy days and putting off an immediate investment may make sense. However, the government wants those who can to invest in the machinery now within this year (2020).



Under the Royal Decree No. 695 issued by virtue of the Revenue Code, a corporate taxpayer may claim 150% additional deduction (as a deductible expense in computation of a net profit/loss for a purpose of paying corporate income tax) on any expenses incurred in a purchase of a machine from January 1, 2020 to December 31, 2020. Certain terms and conditions apply, including the below conditions.

1. A machine must be brand new (has never been used before).
2. The machine must be procured and ready for using within Dec 31, 2020. (A contract, a purchase order, a hiring order or a similar agreement must happen from Jan 1, 2020 to Dec 31, 2020.)
3. The machine must be in Thailand.
4. The machine must not fall under any other tax privileges/benefits (i.e. BOI's investment promotion or targeted industries law or Easter Economic Corridor law).

4. Tax Exemption for BOT Bond Interest

At present, Section 70 of the Revenue Code exempts CIT on (i) any interest derived from a bond issued by the Thai government and (ii) any interest derived from a bond issued by a financial institution incorporated under the specific Thai laws for the purpose of lending to promote agriculture, commerce or industry.



The Royal Decree No. 708 issued by virtue of the Revenue Code (the “Royal Decree No. 708”) exempts CIT for a foreign incorporated company not operating in Thailand on (i) any interest derived from the bond issued by the Bank of Thailand, and (ii) any interest derived from a bond issued by the Financial Institutions Development Fund. This Royal Decree No. 708 revokes the Instruction No. 17/2561 of the Leader of the the National Council for Peace and Order, which had exempted CIT on these bond interests retroactively from October 13, 2010 (but the Instruction No. 17/2561 was issued in B.E. 2561 (2018)).

With this exemption, it is possible to do tax planning for an investor who invest in government issued debt instruments.

This legal article was written by Narit Direkwattanachai, a corporate & tax attorney at NARIT & Associates with expertise in corporate & commercial, commercial dispute and tax law. He holds a bachelor of laws (1st class honors) from Chulalongkorn University, a master of law from the University of Cambridge, UK and an MBA in finance from the Georgia Institute of Technology, USA. He can be reached at narit@naritlaw.com

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