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Tax Incentives For Qualified Treasury Centres In Thailand

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In 2015, the Royal Decree on Tax Reduction (No. 586) B.E. 2558 (2015) was issued, pursuant to the Revenue Code, to provide exemption from and reduce certain types of taxation in relation to international headquarter businesses including treasury centre services. While the tax incentives associated with international headquarters have been in place for some time, it has recently received a lot of attention from market participants due to a recent liability management exercise transaction in the international debt capital market where we acted on. This note is to provide general information regarding such tax incentives and qualifications of international headquarters and treasury centres.

Objective and qualifications of treasury centre

A treasury centre is set up to manage foreign currency funds for its group companies[1]. The scope of treasury centre business includes:

(a) purchasing foreign currency obligations or invoices from its group companies or being an agent of its group companies for receiving and making payments under foreign currency obligations or invoices from/to counterparties;

(b) netting income or obligations arising from or in connection with treasury centre business operation;

(c) foreign currency sale, purchase or exchange and foreign exchange risk management; and

(d) managing foreign exchange liquidity by:

(i) borrowing foreign currency(ies) from (A) authorised agents, (B) individuals or legal entities in other countries, or (C) its group companies;

(ii) issuance and sale of foreign currency denominated financial instruments in Thailand and outside Thailand;

(iii) lending foreign currencies to (A) individuals or legal entities in other countries, or (B) its group companies; or

(iv) depositing of foreign currencies with authorised agents or in other countries, investing in other countries or investing in foreign currency denominated financial instruments issued and offered in Thailand.

Key qualifications that a treasury centre must have include:

(a) being a company registered in Thailand which is not a company operating financial business[2];

(b) being in the same business network with its group companies for which it provides foreign currency management;

(c) providing foreign currency management to its group companies on the following conditions:

(i) providing foreign currency management to at least three group companies registered in Thailand, Vietnam or countries bordering Thailand; or

(ii) providing foreign currency management to at least two group companies registered in Thailand, provided that its group companies must consist of at least two companies registered in or having branch offices in two other countries,

on condition that those companies must carry on import-export business, international trading business or international services or holding business and must not be a company operating financial business[3]; and

(d) providing foreign currency management to its group companies with an appropriate total international trade/service volume – there is no clear guideline/regulation as to what amount would be considered "appropriate" in this regard and therefore it is in the discretion of the Bank of Thailand (the **BOT**).

In short, the main purpose of a treasury centre is to perform its duties falling under the scope of business set out above without being required to obtain a licence to operate foreign exchange business.

1 **group companies** means companies within the same group of a treasury centre comprising (i) its parent company, (ii) its affiliate companies, or (iii) companies having related business or having business relationship with the treasury centre, which appoint the treasury centre to manage their foreign currency funds in accordance with the rules prescribed by the foreign exchange officer.

2 **company operating financial business** means (i) a commercial bank holding a foreign exchange licence, (ii) a finance company, credit foncier company, credit retail bank, or specialised financial institution under financial institution business law, (iii) a securities company under securities and exchange law and (iv) a life insurance company or non-life insurance company under insurance law and non-life insurance law.

3 Please refer to footnote 2.

Any qualified company wishing to operate as a treasury centre must apply for an approval from the Ministry of Finance (the **MOF**) through the BOT. Once a complete set of application and supporting documents is submitted to the BOT, it takes no more than 60 days to obtain the MOF approval. Upon obtaining the MOF approval, the treasury centre must register an amendment of its objectives with the Ministry of Commerce before it can commence the treasury centre business and it must also submit such amendment to the BOT.

Qualifying for tax incentives

A treasury centre would qualify for some tax incentives (discussed below) if it is an international headquarter (**IHQ**) and so not all treasury centres would be able to obtain such tax benefits. In order for the treasury centre to become an IHQ, it must apply for becoming, an IHQ and obtain an approval therefor from the Director General of the Revenue Department, provided that it must have the required qualifications (discussed below). It may take approximately 30 days from the date on which the Revenue Department has received a complete set of application and supporting documents for a qualified treasury centre to obtain such an approval.

Requirements of international headquarters (IHQ)

A treasury centre will be qualified as an IHQ and thus be entitled to some tax benefits if it meets the following requirements:

(a) having at least THB10 million paid up capital as at the last day of each accounting period;

(b) having provided management service, technical service or treasury management service to its affiliates[4] incorporated under foreign law (**Non-Thai Affiliates**) – "treasury management" is defined to include any of the following:

- (i) treasury management of a treasury centre which has obtained a relevant approval under the foreign exchange regulation; and
- (ii) borrowing and lending in Thai Baht in the following cases:
  - (A) borrowing in Thai Baht from financial institutions in Thailand or from its affiliates[5] incorporated under Thai law (**Thai Affiliates**); and
  - (B) on-lending in Thai Baht the Thai Baht loan proceeds received from (b)(i) or (b)(ii)(A) to its Thai Affiliates;

(c) having paid expenses of at least THB 15 million in relation to IHQ operation to recipient(s) in Thailand in each accounting period;

(d) having obtained an approval from the Director General of the Revenue Department to be an IHQ in accordance with the rules, procedures and conditions specified by the Director General of the Revenue Department; and

(e) having complied with other rules, procedures and conditions specified by the Director General of the Revenue Department.

If any of these requirements is not satisfied in any accounting period, such treasury centre will not be entitled to the tax benefits in such particular accounting period.

Tax benefits for IHQs

Upon obtaining an approval to be an IHQ (discussed above), the IHQ will be entitled to the following tax incentives:

(a) exemption of corporate income tax (for 15 accounting periods) on certain types of income including:

- (i) income derived from providing treasury management services to its Non-Thai Affiliates;
- (ii) royalties received from its Non-Thai Affiliates;
- (iii) dividends received from its Non-Thai Affiliates; and
- (iv) capital gains received from sales of its shares in its Non-Thai Affiliates;

(b) reduction of corporate income tax (for 15 accounting periods) to 10 per cent. of net profits of certain types of income including:

- (i) income derived from providing treasury management services to its Thai Affiliates; and
- (ii) royalties received from its Thai Affiliates,

provided that the total amount of income in items (b)(i) and (b)(ii) must not be greater than the total amount of income under items (a)(i) and (a)(ii) above; and

(c) exemption from specific business tax on income derived from providing treasury management services to its Thai Affiliates and Non-Thai Affiliates.

There is also an exemption from income tax imposed on corporates or partnerships incorporated under foreign law in respect of (i) dividends paid to them by the IHQ from revenues being exempt from tax under item (a) above and (ii) interest on loan received from the IHQ, provided that the IHQ must on-lend such loan proceeds to its affiliate(s) for treasury management.

Non-tax incentives

In addition to the tax incentives, a treasury centre which is qualified as an IHQ may also apply for non-tax incentives in accordance with Investment Promotion Act B.E. 2520 (1977). Non-tax incentives that may be available to an IHQ include (i) an increase in the applicable foreign shareholding limit, (ii) permission to own land, even if such IHQ is a foreign entity, and (iii) permission to bring skilled personnel and experts into Thailand to work in the promoted activities.

4 **affiliate** means a company or legal partnership having a relationship with the IHQ in the following manner:

(i) a company/legal partnership having an aggregate shareholding (whether direct or indirect) in the IHQ of at least 25 per cent. of its total capital;
(ii) a company/legal partnership at least 25 per cent. of the capital of which is held (whether directly or indirectly) by the IHQ;
(iii) a company/legal partnership at least 25 per cent. of the capital of which is held (whether directly or indirectly) by the company/legal partnership in (i);
(iv) a company/legal partnership having power to control or oversee the IHQ;
(v) a company/legal partnership the operation and management of which the IHQ has power to control or oversee; or
(vi) a company/legal partnership the operation and management of which the person under (iv) has power to control or oversee.

5 Please refer to footnote 4.

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