L&P

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Investment Promotion for International Business Centers (IBC)

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I. Introduction

On 29 December 2018, the Royal Decree for International Business Centers ("**IBC**") came into effect, which replaces the Regional Operating Headquarters ("**ROH**"), International Headquarters ("**IHQ**") and International Trading Centers ("**ITC**") schemes.

The initiative was considered necessary to avoid sanctions from other OECD member countries since Thailand joined the OECD inclusive framework on base erosion and profit shifting (BEPS) in June 2017.

II. Qualifying Criteria

In order to qualify for tax privileges, an IBC must fulfil the following criteria:

- Registered and fully paid-up capital of at least THB 10 million; and
- Annual expenses in Thailand of at least THB 60 million; and
- Employment of at least 10 employees (or at least 5 employees in case of an IBC providing only financial management services).

If the IBC does not meet the criteria in any given fiscal year, the tax privileges will be revoked for such fiscal year.

In case the IBC does not meet the criteria in more than one consecutive fiscal year, the tax privileges will be revoked from the first fiscal year.

III. Tax Privileges

An IBC that meets the aforementioned criteria will be granted the following tax privileges for up to 15 years:

- Reduction of corporate income tax (CIT) for income from services provided to affiliates in Thailand and overseas, depending on the amount of annual expenses paid in Thailand:

CIT rate	Annual expenses paid locally[1]
8%	THB 60 million
5%	THB 300 million
3%	THB 600 million

- Exemption of CIT for dividends received from affiliates
- Exemption from withholding tax for payments to companies established abroad and not doing business in Thailand on:
  - Dividends paid to the IBC's corporate shareholders abroad (*provided such dividends are paid out of the IBC's net profits and such income that is granted CIT reduction*);
  - Interest paid to companies abroad (*provided such interest is paid on loans that are taken out by the IBC for the purpose of providing loans to affiliates in Thailand or abroad*).

[1] "Expenses" in this regard does not cover the cost of goods or personnel under international trading activity, but would include only the cost related to the intercompany service activities, e.g. salary of service and admin personnel in Thailand.

- Exemption from specific business tax on income from financial management services
- Reduced personal income tax ("**PIT**") of 15% flat for expatriates who work for the IBC (criteria are yet to be defined).

Only income from the following activities is qualified for the CIT exemption:

- Intercompany services, e.g.
  - Organizational administration and management, business planning and business co-ordination;
  - Sourcing of goods;
  - Research and development of products;
  - Technical support;
  - Marketing and sales promotion;
  - Human resources and training management;
  - Financial advisory;
  - Economic and investment analysis and research;
  - Credit management and control;
  - Treasury centre;
  - Any other activity stipulated by the Director-General of the Revenue Department.
- Royalties incurred from the technological research and development conducted in Thailand (both conducted by IBC or outsourced) which IBC receives from affiliates

In addition to the abovementioned qualified income activities, an IBC is permitted to perform the following international trading activity and the following services related to the sourced goods, which however do not qualify for tax exemption:

- Procurement[2]
- Storage of goods during transition
- Packing/ packaging
- Transportation
- Insurance of goods
- Advisory service, technical service and training related to goods sold

When calculating the CIT-exempt profit, the IBC has to separate non-qualified income from qualified income and its related expenses. If the expenses cannot be separated, the IBC must apportion non-qualified and qualified expenses by the ratio of the received income. However, if such method of apportion does not reflect the reality of business, the IBC may request approval of the Director-General of the Revenue Department to use other, more accurate and realistic ways of calculation.

IV. Approval Process

In order to obtain the benefits mentioned above, an approval needs to be obtained from the Director-General of the Revenue Department.

Existing IHQ/ITC companies can file an application to register as IBC to receive the aforementioned tax benefits, or continue under their existing promotion.[3] Applications for tax benefits under the IHQ and ITC schemes have been suspended with immediate effect.

V. BOI Promotion

The BOI has cancelled the previous IHQ/ITC promotion and announced the IBC promotion on 11 December 2018. The permitted activities are similar to the abovementioned IBC activities under the Revenue Department's regulation.

Qualifying Criteria for BOI promotion:

[2] Under the current interpretation of the BOI, this would also include wholesaling of goods in Thailand. However, this interpretation may be subject to change.

[3] Existing ROH that do not wish to convert will remain eligible for tax incentives until 2020, or, as the case may be, until completion of their 10- or 15-year promotion period. Existing IHQ and ITC, that do not wish to convert will remain eligible for tax incentives until completion of their 15-year promotion period.

- Registered and fully paid-up capital of at least THB 10 million;
- Employment of at least 10 employees (or at least 5 employees in case of an IBC providing only financial management services);
- In case of performing international trading, the IBC must perform at least one of the other permitted activities as well.

VI. Conclusion

Thailand is competing with neighboring countries for foreign investors who are seeking to establish their trading hub in Southeast Asia. Hong Kong and other tax havens use the so-called "Territorial Tax System" which levies CIT only on income sourced within the country. Thailand, on the other hand, uses the so-called "Residential Tax System" which means that companies that are registered in Thailand have to pay CIT on their **worldwide** profits. By granting tax incentives to IBC – and thereby de facto granting an exemption from the Residential Tax System – Thailand was able to attract more foreign investment. The tax reductions under IBC are by far not as beneficial compared to the previous scheme and Thailand may lose its appeal to foreign investors seeking to establish their headquarters in the region. However, since the reduced CIT rate which applies to both domestic and foreign affiliates at the same rate may benefit the IBC having domestic affiliates.

We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.

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