KPMG

Tax & Legal News Flash

KPMG in Thailand

Issue 56 : March 2019
ROH IHQ and ITC Grandfathering

On 26 March 2019, the Thai Cabinet approved three draft Royal Decrees proposed by the Ministry of Finance cancelling all tax incentives granted by the Thai Revenue Department ("TRD") under the Regional Operating Headquarters 2010 ("ROH 2010), International Headquarters ("IHQ") and International Trade Center ("ITC") regimes with effect from 1 June 2019 onwards for corporate income tax incentives and 1 January 2020 for personal income tax incentives.

Previously announced grandfathering of tax incentives under ROH, IHQ and ITC regimes will not be available

Readers of KPMG's tax newsletters will be aware that in October 2018, the TRD suspended registrations for the ROH, IHQ and ITC corporate tax regimes in accordance with the implementation plan of the Inclusive Framework on the Base Erosion and Profit Shifting (BEPS) joined by Thailand.

Notwithstanding the suspension, the TRD previously confirmed that existing beneficiaries of the ROH, IHQ and ITC regimes would be able to continue benefitting from the associated tax incentives of these regimes in normal circumstances until the relevant expiry date, unless they would choose to convert to the new International Business Centre ("IBC") (i.e. the tax incentives for current beneficiaries would be grandfathered). Further details on the previous suspension and grandfathering of these regimes can be found **here**.

However, on 26 March 2019, the Thai Cabinet approved three Royal Decrees cancelling all tax incentives provided under the above regimes with effect from 1 June 2019 onwards for corporate income tax incentives and 1 January 2020 for personal income tax incentives.

Subject to the Royal Decrees to be issued, the following benefits will be cancelled for ROH 2010, IHQ (including Treasury Centre) and ITC regimes:

- CIT rate reduction and exemption on income from provision of services to affiliated companies, as well as interest, royalties and dividends received from affiliated companies – cancelled from 1 June 2019;
- Exemption from CIT on gains derived from disposal of shares in affiliated companies – cancelled from 1 June 2019;
- CIT rate reduction and exemption on income from trading activities and provision of services relating to international trade – cancelled from 1 June 2019 onwards;
- PIT rate reduction applicable to foreigners working in the ROH 2010, IHQ or ITC entity – cancelled from 1 January 2020 onwards;
- WHT exemption on dividends paid to foreign shareholders – cancelled from 1 June 2019, except for dividends paid out of profits derived before 1 June 2019 provided that the dividends are paid by 31 December 2020; and

Key contacts

Benjamas Kullakattimas
Head of Tax,
KPMG in Thailand
benjamas@kpmg.co.th

John Andes
Partner,
International Tax Services
jandes@kpmg.co.th

Tatiana Bespalova
Partner,
International Tax Services
tbespalova1@kpmg.co.th

Thanita Pubordeepong
Director,
International Tax Services
thanitap@kpmg.co.th

- WHT exemption on interest paid by the Treasury Centre to a foreign recipient (the timing requires clarification).

All current tax benefits under the ROH 2002 regime will also be cancelled, however there is some uncertainty about the timing, which KPMG is currently trying to clarify.

Current beneficiaries of these suspended regimes can transition into the new IBC regime provided the relevant conditions of the IBC regime are satisfied and an online application for conversion is made by the current beneficiary. As of today, online application for the new IBC regime is not yet available although the Ministry of Finance declared that the TRD will start accepting applications in April 2019. An overview of the IBC conditions and the associated incentives can be found **here**.

The IBC regime appears to encourage current beneficiaries of the ROH, IHQ, ITC regimes to convert, as it provides a reduced minimum annual expense requirement of THB 15 million in case of conversion, as opposed to minimum annual expense of THB 60 million for new applicants.

Supplementary laws and regulations on practical features and application process to the new IBC regime are expected to be released soon (the exact timing has not been confirmed by the relevant authorities).

KPMG's comments

Although the abrupt cancellation of these tax incentives is inconsistent with the previously announced grandfathering, the Thai Cabinet commented that the measure has been taken in order to ensure that Thailand is in compliance with the timelines agreed with the OECD's Forum on Harmful Tax Practices. This should avoid Thailand being blacklisted by the OECD and European Union and prevent punitive counter-measures being applied by other countries.

This unexpected turn of events introduces urgency for current beneficiaries of the ROH, IHQ and ITC regimes to make the decision on whether to convert to IBC.

Given supplementary laws and regulations are yet to be released, there is still a lot of ambiguities on transitioning to IBC and the mechanics of how the new regime would apply to current beneficiaries of the existing regimes. It is critical that the TRD provides clarifications and opens the online application system expeditiously.

Despite the lack of clarity on certain aspects of IBC, in order to ensure that there is no time 'gap' in tax preferential treatment of corporate and personal earnings, we recommend that you start considering whether your organization will be able to meet the requirements under the IBC regime and start preparing to take action as soon as the application process is open.

KPMG is at the forefront of these developments in Thailand and we will continue keeping you abreast of any further developments.