VICKERY & WORACHAI LTD.

LAWYERS

LEGAL NEWSLETTER

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New Laws and Regulations

- Royal Decree
  Issued under Revenue Code
  Governing Reduction of Rates and Exemption of
  Taxes and Duties (No. 405) B.E. 2545 (A.D. 2002)

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- Notice of Director-General of Revenue Department
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  Re: Bases, Procedures and Conditions for Reduction of Rate and Exemption of Income Tax of Company Operating Business of Regional operating headquarter

Laws and Regulations Updated

- Draft Ministerial Regulations
  describing minimum capital and duration for bringing or remitting the minimum capital into Thailand

- Draft Ministerial Regulations
  describing the conditions regarding the alien business operation

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Royal Decree Issued under Revenue Code
Governing Reduction of Rates and Exemption of Taxes and Duties (No. 405)
B.E. 2545 (A.D.2002)

Effective: *16 August 2002*

Relevant Authority: *Ministry of Finance*

The reason for enacting this Royal Decree is because the government has a policy to support the investment of foreign companies in the form of the establishment of a **regional operating headquarter (ROH)** in Thailand. In order to promote said investment, it is then deemed suitable to grant tax rights and privileges to the regional operating headquarter and also the **aliens** who work for the said regional operating headquarter including companies or juristic partnerships holding shares in the regional operating headquarter.

The significant details of this Royal Decree are as follows:

1. A regional operating headquarter entitling to tax privileges under this Royal Decree must possess the following qualifications:

(1) must be a company or a juristic partnership which is established under Thai law and must have paid-up capital on the last day of each accounting period from Baht 10 million upwards.

(2) must have provided supporting services to its **associate enterprises** abroad or its branches in foreign countries in at least three countries.

(3) must have incomes from providing supporting services to its associates enterprises that paid from or in foreign country altogether not less than 50% of the total incomes, except within the first three accounting periods from the accounting period it is registered as a regional operating headquarter which it may earn the said income less than 50%, but it must not be less than one-third of the total incomes.

(4) must have notified as a regional operating headquarter according to the bases, procedures and conditions prescribed by the Director-General of the Revenue Department.

(5) must comply with the bases, procedures and conditions prescribed by the Director-General of the Revenue Department.

2. Tax exemption and tax reduction for regional operating headquarter:

(1) Reduction of corporate income tax of the regional operating headquarter from the rate of 30% of its net profit to the rate of 10% of its net profit for income on providing services to its affiliated enterprises or branches.

(2) Reduction of corporate income tax of the regional operating headquarter from the rate of 30% of its net profit to the rate of 10% of its net profit for income on royalty that the regional operating headquarter receives from its affiliated enterprises or branches, which this is only applicable to the amount of royalty derived from research and technology development of the regional operating headquarter that are conducted in Thailand.

(3) Reduction of corporate income tax of the regional operating headquarter from the rate of 30% of its net profit to the rate of 10% of its net profit for interest income that the regional operating headquarter receives from a loan that it makes to its affiliated enterprises or branches, which this is only applicable to the interest from the amount of loan that the regional operating headquarter has borrowed from other source to lend to its affiliated enterprises or branches.

(4) Exemption on corporate income tax of the regional operating headquarter for the dividend that the regional operating headquarter receives from its affiliated enterprises or branches.

(5) Exemption on corporate income tax of other enterprises which is established under the foreign law and not operating its business in Thailand, for dividend received from the profit of the regional operating headquarter.

3. Tax exemption and tax reduction for an alien:

(1) Exemption on personal income tax to expatriate workers for his/her income from employment which such income is received in foreign country due to his/her assignment to work in foreign country by the regional operating headquarter and the income received by him/her is not brought to deduct as an expense of the regional operating headquarter. In addition, this applies only to expatriate workers who work for the regional operating headquarter in Thailand for not exceeding 2 years regardless whether during such employment period the expatriate worker will depart from Thailand from time to time. An expatriate worker who resumes his/her employment in any regional operating headquarter within 1 year after his/her previous employment in any regional operating headquarter shall not be entitled to the said benefits for his successive employment.

(2) Allowing expatriate workers to choose making payment of his/her personal income tax from his/her wages received from the regional operating headquarter for working in Thailand at the flat rate of 15% provided that (i) the regional operating headquarter withholds tax at the time of payment at such rate, (ii)

when filing of tax returns form, he/she must not request for the refund or credit of the amount of the withheld tax either wholly or partly and (iii) must not bring his/her other income, i.e. interest and others which was tax withheld to calculate for his/her personal income tax. This benefit is granted to expatriate workers who will work in Thailand not longer than 2 years only. An expatriate worker who resumes his/her employment in any regional operating headquarter within 1 year after his/her previous employment in any regional operating headquarter shall not be entitled to the said benefits for his successive employment.

"**Alien**" means an ordinary person who has not obtained Thai nationality.

"**Regional operating headquarter**" means a company established under Thai law to operate a business of providing management or technical services, or providing supporting services, to associate enterprises or branches of its own, irrespective of whether they be located in Thailand or in foreign countries.

"**Providing of supporting services**" means providing of supporting services in respect of the following matters:

(1) general management, business planning, and business coordination;
(2) procurement of raw materials and parts;
(3) research and development of products;
(4) technical support;
(5) marketing and sale promotion;
(6) personnel management and training in regional areas;
(7) giving of financial advice;
(8) analysis and research on economy and investment;
(9) management and control of credit;
(10) other supporting services as prescribed by the Director-General of Revenue Department.

"**Associate enterprise**" means a company or a juristic partnership that has relations with a regional operating headquarter in the following manners:

(1) company or juristic partnership holding shares in the regional operating headquarter at not less than 25% of the total capital thereof;

(2) company or juristic partnership which the regional operating headquarter holds shares in the Company or is a partner of the juristic partnership at not less than 25% of the total capital thereof;

(3) company or juristic partnership whose shares are held by the Company or the juristic partnership under (1), at not less than 25% of the total capital thereof;

(4) company or juristic partnership that has the power to control the business or to supervise the operations as well as the management of the regional operating headquarter;

(5) company or juristic partnership which the regional operating headquarter has the power to control or supervise the operation and management.

(6) company or juristic partnership which a company or juristic partnership in (4) has the power to control or supervise the operation and management.

Royal Decree Issued under Revenue Code Governing deduction of Wear and Tear and depreciation of Property s(No. 406) B.E. 2545 (2002)

Effective: *16 August 2002*

Relevant Authority: *Ministry of Finance*

The reason for enacting this Royal Decree is because the Government has a policy to support the investment of foreign companies in the form of the establishment of a regional operating headquarter in Thailand, thus, it is then deemed suitable to grant tax rights and privileges for the operations of business of regional operating headquarter, by allowing the regional operating headquarter to deduct basic wear and tear and depreciation for the permanent building purchased or acquired as a special case, other than the deduction of wear and tear and depreciation under general bases, for the purpose of computation of net profit or net loss for tax payment.

The significant details of this Royal Decree is that the deduction of basic wear and tear and depreciation of a property of permanent building category purchased or the ownership of which has been acquired by a regional operating headquarter for use in own business operation shall be made on the date of acquirement of said property at the rate of 25% of the cost thereof, however, specifically the property acquired on or after 1 January 2002.

In additional, the definition of “regional operating headquarter” and “providing supporting services” under the Royal Decree issued under Revenue Code governing reduction of rates and exemption of taxes and duties (No. 405) B.E. 2545 (A.D. 2002) shall apply hereto.

Notice of Director-General of Revenue Department Relating to Income Tax (No. 109) Re: Bases, Procedures and Conditions for reduction of rates and exemption of income tax of company operating business of regional operating headquarter

Effective: *16 August 2002*

Relevant Authority: *Revenue Department, Ministry of Finance*

The significant details of this Notice are as follows:

The company operating the business of regional operating headquarter that wishes to be entitled to the reduction of rate and exemption of corporate income tax under the Royal Decree Issued Under Revenue Code Governing Reduction of Rates and Exemption of Taxes and Duties (No. 405) B.E. 2545 (A.D. 2002) shall report the establishment of said regional operating headquarter to the Director-General of the Revenue Department as per the Form of establishment of regional operating headquarter. The said Form shall be submitted to the Tax Examination Bureau (Large Business Tax Administration Centre), the Revenue Department, or to the Revenue Area Office, Provincial Revenue Office, or Branch of Provincial Revenue Office, of the locality where the company operating the business of regional operating headquarter is located. In case there are several places of business, it may be submitted to the Revenue Area Office, Provincial Revenue Office, or Branch of Provincial Revenue Office, of the locality where the head office of the company operating the business of regional operating headquarter is located.

The computation of net profit and net loss of the company operating the business of regional operating headquarter shall be in accordance with the bases and conditions stipulated in Sections 65 and 65 bis of the Revenue Code.

In case the company operates both the business of regional operating headquarter and other businesses, said company shall make the computation of net profit and net loss of each business separately. If any expenses cannot be clearly separated as to whether which parts are the expenses of which business, the company shall average the said expenses according to the proportion of income between the income from the operation of business of regional operating headquarter and the income from other businesses. And if the business of the regional operating headquarter suffers a net loss, the said net loss shall be restricted to the business of regional operating headquarter only.

In case the company operates both the business of regional operating headquarter and other businesses, the said company shall separately file its income tax returns, working account, and profit and loss statement of each business. As for the balance sheet of the said company, it shall be filed together with income tax returns of either business, in which case it shall use the same tax payer identification number.

The company operating the business of regional operating headquarter that reports the establishment of regional operating headquarter in any accounting period shall be entitled to the reduction of rate and the exemption of juristic person income tax under the Royal Decree Issued Under Revenue Code Governing Reduction of Rates and Exemption of Taxes and Duties (No. 405) B.E. 2545 (A.D. 2002) from the said accounting period onwards.

Draft Ministerial Regulations describing minimum capital and duration for bringing or remitting the minimum capital into Thailand

Status: *Approved by the Cabinet*

Relevant Authority: *Department of Business Development, Ministry of Commerce*

The significant principles of this draft are as follows:

1. To determine procedures of the minimum capital for the use by an alien in the carrying out the business in Thailand including the expenditure budget of an alien's business operation.

2. To control an alien both a natural person or a juristic person that was not registered in Thailand to bring or remit the foreign currency that is the required minimum capital into Thailand.

3. To describe the rule stating that an alien must provide evidence related to the bringing or remitting of the minimum capital into Thailand by submitting such evidence to the Department of Business Development within 15 days from the date of bringing or remitting such minimum capital into Thailand.

Draft Ministerial Regulations
describing the condition regarding the alien business operation

Status: *Approved by the Cabinet*

Relevant Authority: *Department of Business Development, Ministry of Commerce*

The significant principles of this draft are as follows:

1. To describe that the loan borrowed by a foreigner, that is a juristic person registered in Thailand and has obtained a license under the Foreign Business Act B.E. 2542 (A.D. 1999) ("**Licensee**"), from the bank or any other financial institution shall not be made more than the rate at 1/3 of the capital.

2. To describe that at least one authorized director of the Licensee, which its authorized director(s) is/are alien(s), must have the address or residence in Thailand.

3. To describe that the Licensee must maintain its minimum capital in the kingdom as long as the business is actively operated except that the license is revoked or the notification of the termination of the business operation is made.