

Legal Update

EXTENSION OF TAX REDUCTION ON PROPERTY TRANSACTIONS

According to the stimulus package for tax benefit on property transactions which will be expired on March 2009, the Cabinet on 2 December 2008 approved to extend the tax and fee reduction on sale of immovable property for another one year period (i.e. until 28 March 2010). Such extension will be then announced by the Ministry of Interior. The details are as follows:

1. The specific business tax is reduced from 3.00 percent to 0.10 percent.
2. The property transfer fee is reduced from 2.00 percent to 0.01 percent.
3. The property mortgage fee is reduced from 1.00 percent to 0.01 percent.

The above tax and fee reduction shall apply against the sale of both new and used immovable properties as follows: (1) a house; (2) land up to one rai (1,600 square meters) including a house; (3) raw land subdivided under a land allocation license (the license a developer gets to subdivide a larger tract); (4) land including house subdivided pursuant to a land allocation license; (5) condominium; (6) office building under the construction control law; or (7) land including an office building under the construction control law.

Source: <http://www.thaiqov.go.th> – December 2008

STIMULUS PACKAGE Tax Benefits from Cabinet Resolutions

The Cabinet on 20 January 2009 approved the new tax measures in order to boost the economic of the country, ease the cost of living and help small and medium-sized businesses, property market and tourism, the said tax measures are classified by sectors and activities as follows:

Small and Medium-sized Enterprises (“SMEs”)

For unsalaried individuals or group of individuals with no fixed income, the minimum taxable income subject to tax shall be increased to at the flat rate of 0.5% of Baht 1,000,000, up from Baht 60,000 i.e. the SMEs in all sectors earning less than Baht 1,000,000 shall be exempted for income taxes.

Community Enterprises

For the income during the year of 2009-2010, the community enterprises or community projects with an income of Baht 1,800,000 will be exempted from tax, up from the former of Baht 1,200,000.

Venture Capital (“VC”)

To adjust the criteria of VC businesses which invest in SMEs, including but not limited to the followings:

- (1) Extend the period of registering to be a VC juristic person with the Office of Securities and Exchange Commission (SEC) until 31 December 2011;
- (2) Revoke the initial capital requirement which requires VC to invest in SMEs at least 20% of such SMEs' registered capital; and
- (3) Exempt the income tax on gains arising from the sale of shares of SMEs in the Stock Exchange of Thailand (SET).

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Legal Update

Property Market

The new home buyer (first hand) is eligible to personal income tax deduction at a maximum Baht 300,000 of the principle, but the ownership shall be transferred within the year of 2009. This is the additional measure from the existing measure which the homebuyer is eligible to a tax deduction of Baht 100,000 per year for payment of loan interest relating to new and used immovable properties. Therefore, the total personal income tax of the new home buyer can be deducted to maximum of Baht 400,000.

The tax-deductible income of Baht 300,000 of the principle shall apply against only the new immovable properties. However, the Finance Minister might consider expanding such privileges to cover second-hand homes and self-built homes as well.

Tourism

The company or the juristic person partnership's expenses for arranging seminar or meeting at domestic tourist destination shall be entitled to the tax deduction up to twice the actual expenses during year of 2009.

Debt Restructuring of Non-Performing Loan ("NPL")

Certain tax privileges to be granted for the debt restructuring of NPL which shall be made in compliance with the rules and regulations of debt restructuring of the financial institutes as prescribed by the Bank of Thailand (BOT) during the year of 2009 shall include the followings:

- (1) Exempt income tax to the debtor of either financial institute or non-financial institute creditor for the release of debt. The creditor shall be able to dispose of bad debt from such release of debt without complying with general regulations;
- (2) Exempt income tax, value-added-tax ("VAT"), specific business tax ("SBT") and stamp duty to the debtor of either financial institute or non-financial institute creditor on the income so received from transfer of assets, sale of goods or services and entering into any instruments due to the debt restructuring and reduce the registration fee with the Land Department; and
- (3) Exempt income tax, VAT, SBT and stamp duty to the debtor of the financial institute on the income so received from transfer of mortgaged property to non-financial institute creditor and the debtor must utilize such for repaying loan to the financial institute creditor, provided that only not more than outstanding debt or obligation of the debt security agreement to financial institute shall be applied.

Corporate Restructuring for Partial Business Transfer

The VAT, SBT and stamp duty on any activities incurred or arising due to partial business transfer between a limited company and/or a public limited company in accordance with the applicable rules and regulations shall be exempted and the registration fee thereof with the Land Department shall be reduced, provided that the acquisition of partial business transfer shall be completed within 31 December 2009.

Source: Ministry of Finance News No. 5/2552 on 20 January 2009. Bangkok Post, The Nation, Thairath – January 2009

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Legal Update

E-PAYMENT DECREE

The Royal Decree regulating Electronic Payment Services Business B.E. 2551 (A.D. 2008) ("**E-Payment Decree**") has been in effect since 14 January 2009 onward. The E-Payment Decree's significance is to control the electronic payment services which are rapidly increased in Thailand through various electronic means such as mobile phone payments, over the counter payments, payment kiosks and payments over the internet as well as relevant businesses such as transaction switching through ATM pool, EDC Pool (Electronic Data Capture), ITMX (International Bank Transaction Management Exchange) and/or by credit card, debit card, with e-money or through settlement agents and settlement institutions. Certain significant provisions of the E-Payment Decree are summarized as follows:

Electronic Payment ("E-Payment") is an electronic transfer of the money from the customer's account to the merchant and/or service provider's account for payment of any goods, services and/or any expenditure.

Categorization of E-Payment Service Business

According to the E-Payment Decree, prior to providing E-Payment services in Thailand, the E-Payment service provider ("**Service Provider**") shall be required to notify, register with or obtain a license from the Bank of Thailand ("**BOT**"), as the case may be, based on the categories of services as follows:

Category A: Service Provider under this category, which shall be either an individual person or a juristic person (in form of either a registered partnership, limited partnership or a private or public limited company, as the case may be), is required to notify BOT their services.

The service under this category is Electronic Money (E-Money) for payment of goods and/or services relating to items as specified in advance by such Service Provider only.

Category B: Service Provider under this category, which shall be a juristic person in form of either a registered partnership, limited partnership or a private or public limited company, as the case may be, is required to register their services with BOT.

The services under this category are Credit Card Network Service, Electronic Data Capturing (EDC) Service, Switching Service and/or E-Money for payment of goods or services relating to items as specified in advance by several Service Providers at place of same system of distribution and service.

Category C: Service Provider under this category, which shall be a limited company or public company limited only, is required to obtain the license from BOT for their services.

The services under this category are Clearing Service, Settlement Service, E-Payment Service, Switching Service in Multi Systems, Payment Agency Service and E-Money for payment of goods / or services relating to items as specified in advance by several Service Providers at any place without limitation which are not subject to the same system of distribution and service.

The Compliance of E-Payment Decree

Service Providers commencing the business before the enforcement of E-Payment Decree shall notify, register or obtain the license, as the case may be, from BOT during 12 February 2009 -16 March 2009; otherwise, they can continue the operation of such business for the period of 120 days from the effective date only (i.e. until 13 May 2009).

Legal Punishments

In case the Service Provider under Category A or B conducts E-Payment Services without notifying or registering with BOT as required under the E-Payment Decree, or by violating the order of Electronic Transaction Commission ("**Commission**") prohibiting such business operation, as the case may be, it shall be subject to punishment under the Electronic Transaction Act as referred to in the E-Payment Decree which includes an imprisonment for a term not exceeding one year or a fine of not exceeding Baht 100,000, or both.

In case the Service Provider under Category C conducts E-Payment Services without obtaining the license from BOT, it shall be subject to punishment which includes an imprisonment for a term not exceeding two years or a fine of not exceeding Baht 200,000, or both.

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Legal Update

In case BOT found that the notification or registration of the Service Provider under Category A or B was incorrect or incomplete and the Service Provider fails to rectify same under the order of BOT within 7 days from the date of receiving such order, or the Service Provider violates or fails to comply with relevant laws, rules and regulations thereof, the Commission shall order the Service Provider to pay an administrative fine of not exceeding Baht 1,000,000 and may order such party to do all things to correct or rectify same until it is correct or appropriated. In case of failure to comply with such order or committing the same offenses repeatedly, the Commission shall have power to prohibit such party from conducting E-Payment Services as notified or registered, as the case may be, thereafter.

In case the licensed Service Provider under Category C violates or fails to comply with relevant laws, rules and regulations as well as the conditions contained in the license,, the Commission shall order the Service Provider to pay an administrative fine of not exceeding Baht 2,000,000 and may order such party to do all things to correct or rectify same until it is correct or appropriated. In case of failure to comply with such order or committing the same offenses repeatedly, the Commission shall have power to revoke the license thereof.

Source: <http://www.bot.or.th>

DEPOSIT PROTECTION

The Cabinet on 28 October 2008 approved in principle the draft Royal Decree to be issued in accordance with the Deposit Protection Act B.E. 2551 (A.D. 2008) specifying the increase of the deposit protection amount to be full amount in the second and third year as proposed by the Ministry of Finance. Such Royal Decree is not enforceable until it is announced in the Government Gazette, which is still under the process.

Due to the global economic crisis, many financial institutions faced with the lack of liquidity, one of the measures to keep confidence to public against the financial institution system in Thailand and to prevent risk of moving money to other countries is to increase the period of having full guarantee of reimbursement to the depositors from only the first year to the second and third year as well.

The draft Royal Decree has fixed the deposit protection amount and duration as follows:

Year	Duration	Deposit Protection (Current)	Deposit Protection (New)
1	11/08/08 to 10/08/09	Full Amount	Full Amount
2	11/08/09 to 10/08/10	100 Million Baht	Full Amount
3	11/08/10 to 10/08/11	50 Million Baht	Full Amount
4	11/08/09 to 10/08/12	10 Million Baht	50 Million Baht
5	From 11/08/12	1 Million Baht	1 Million Baht

Source: Ministry of Finance News No. 80/2551 on 28 October 2008

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