



GMS Flash Alert



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Thailand - Decrees Cancel Regional Operating Headquarters, Similar Regimes, but with 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 on 1 June 2019 for corporate income tax incentives and on 1 January 2020 for personal income tax incentives.¹

WHY THIS MATTERS

This action could create difficulties for companies that had been considering, or were on the verge of, expanding/relocating their business under the terms of the ROH, IHQ, and ITC rules. (For prior coverage of the rules of these regimes, see GMS [Flash Alert 2016-027](#), 19 February 2016.)

Notwithstanding the cancellation, 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 1 June 2019, unless they choose to “convert” to the new International Business Centre (“IBC”) and the rules under that regime (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](#).

Background

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.

Further Details on Three New Draft Royal Decrees

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

- Corporate Income Tax (“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 on 1 June 2019;
- Exemption from CIT on gains derived from disposal of shares in affiliated companies – cancelled on 1 June 2019;
- CIT rate reduction and exemption on income from trading activities and provision of services relating to international trade – cancelled on 1 June 2019;
- Personal Income Tax (“PIT”) rate reduction applicable to foreigners working in the ROH 2010, IHQ, or ITC entity – cancelled on 1 January 2020 onwards;
- Withholding Tax (“WHT”) exemption on dividends paid to foreign shareholders – cancelled on 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
- WHT exemption on interest paid by the Treasury Centre to a foreign recipient (the timing of this change 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.

New IBC Regime: Another Option?

Current beneficiaries of these canceled 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 going-to-press, online application for the new IBC regime is not yet available, although the Ministry of Finance declared that the TRD could 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, and ITC regimes to convert, as it provides a reduced minimum annual expense requirement of THB 15 million in case of conversion, as opposed to a minimum annual expense of THB 60 million for new applicants.

Supplementary laws and regulations on practical aspects of, and application process for, the new IBC regime have been released together with the official application. **Currently**, the TRD is open for the IBC submission, which the taxpayer is eligible **to submit by hand**. **The online submission** is expected to be ready **in early June 2019**.

KPMG NOTE

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 help ensure that Thailand is in compliance with the timelines agreed with the OECD's Forum on Harmful Tax Practices.² This should help 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 the IBC. It is recommended that they consider their alternatives in consultation with their professional tax advisers.

Given that supplementary laws and regulations are yet to be released, there is still a great deal of ambiguity on transitioning to the 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 the IBC, in order to make sure that there is no time 'gap' in tax preferential treatment of corporate and personal earnings, we recommend that affected taxpayers consider whether they 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.

FOOTNOTES:

1 To see (in Thai) **กระทรวงการคลังต้นมาตรการภาษีเพื่อส่งเสริมการจัดตั้งศูนย์กลางธุรกิจระหว่างประเทศ (IBC) เพื่อขับเคลื่อนไทยเป็นศูนย์กลางการค้าและการลงทุนของภูมิภาค, ฉบับที่ 38/2562, วันที่ 27 มีนาคม 2562**, go to: https://www.mof.go.th/home/Press_release/News2019/038.pdf.

2 Ibid.

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THB 1 = USD 0.0316
THB 1 = EUR 0.0282
THB 1 = GBP 0.0247
THB 1 = AUD 0.04575

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