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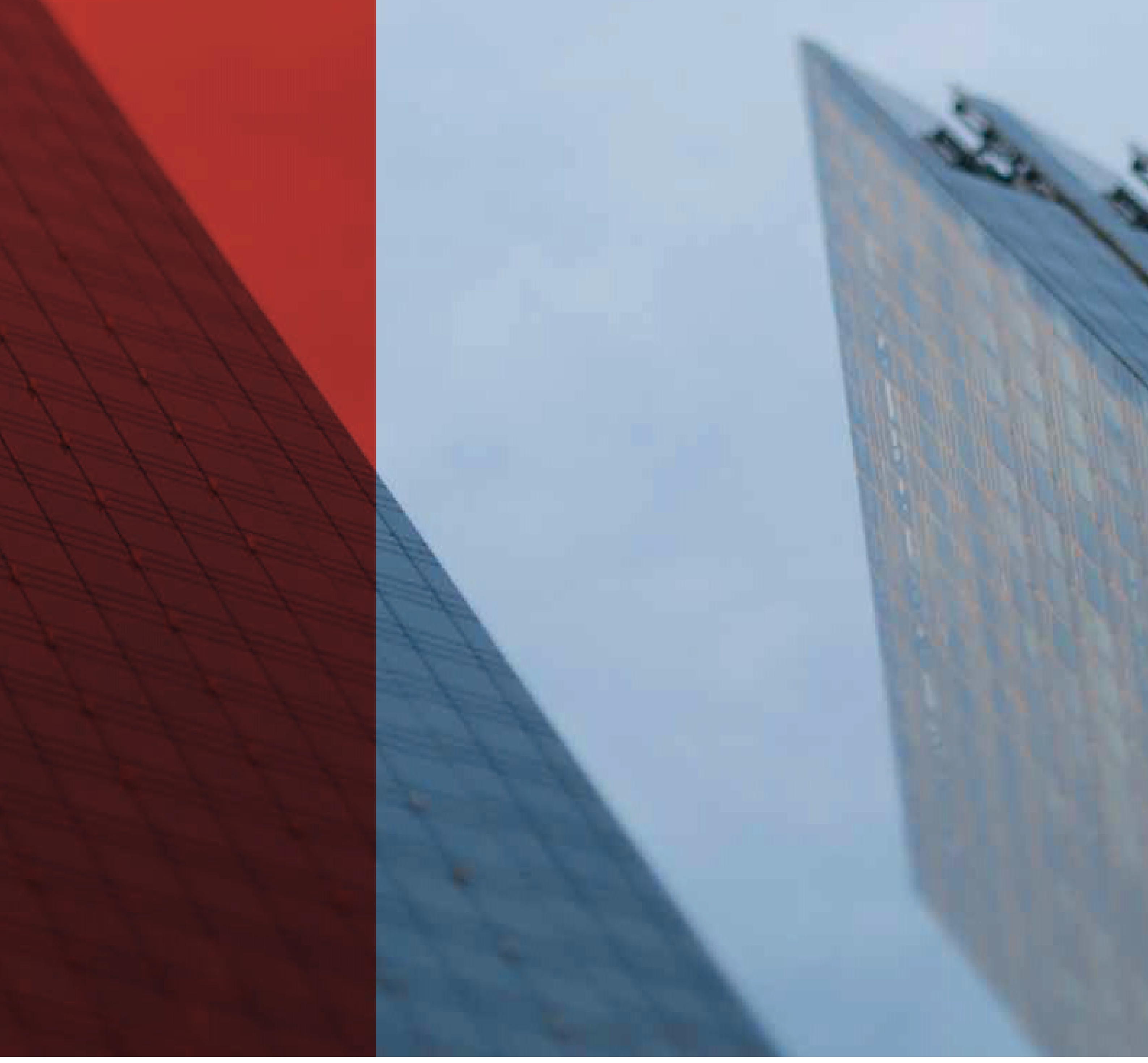

A Closer Look at Thailand's International Headquarters Regime

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One of the most significant tax law developments in Thailand in 2015 was the issuance of Royal Decree No. 586 by the Thai Revenue Department on April 28, 2015. This was seen by many as the latest attempt to encourage businesses to consider Thailand rather than the usual favorites—Singapore and Hong Kong—as the location to establish their international headquarters.

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The Thai Revenue Department ("TRD") has taken into consideration the feedback from the international community in respect of the obstacles or constraints under the previous regional headquarter laws with the new rules for regional/international headquarters, which now impose less stringent conditions and requirements to utilize tax benefits over a longer period.

The interesting aspect of the new rules is that they allow for the international headquarters ("IHQ") to provide international trading activities under certain conditions (trading only with foreign associated enterprises on the condition that the goods do not enter Thailand, etc.) which also makes it a "qualified" international trading center ("ITC"), which is also being promoted along with the IHQ. Along with these trading activities, the IHQ may also provide management or technical services and supporting services or financial management to foreign and domestic *associated enterprises*.

Under the new laws, an entity can register with the Board of investment of Thailand ("BOI") as an ITC and would not be limited to just trading with foreign associated enterprises. As a registered ITC, it would be able to trade with any foreign enterprises and enjoy certain tax incentives similar to the IHQ.

Under Royal Decree No. 586 ("RD No. 586"), the term "associated enterprises" is defined as follows:

(i) A juristic company or partnership that holds shares in the IHQ of not less than 25% of total registered capital.

(ii) A juristic company or partnership in which the IHQ holds shares in or is a shareholder of not less than 25% of total registered capital.

(iii) A juristic company or partnership in which the juristic company or partnership under (i) holds shares in or is a shareholder of not less than 25% of total registered capital.

(iv) A juristic company or partnership that has the power to control or supervise the operation and management of IHQ.

(v) A juristic company or partnership that the IHQ has the power to control or supervise its operation and management.

(vi) A juristic company or partnership which a juristic company or juristic partnership in (iv) has the power to control or supervise the operation and management.

Revenue that the IHQ receives from foreign associated enterprises in the form of management service fee payments, interest, royalties, dividends are exempt from corporate income tax ("CIT") in Thailand and revenue received by the IHQ from domestic associated enterprises will be subject to a reduced CIT rate of 10% from the current rate of 20%. Other tax benefits include personal income tax reduction at a flat rate of 15% for expatriate employees, withholding tax exemption, etc. The tax benefits will apply for 15 accounting periods if the IHQ continues to meet the criteria and conditions specified. The details are specified below.

I. Tax Benefits

A. CIT Reduction from 20% to 10%: (Domestic Income)

- Income from the provision of management or technical services and supporting services or financial management services to its associated enterprises that are incorporated under Thai law.
- Royalty received from its associated enterprises that are incorporated under Thai law.

B. CIT Exemption: (Foreign Sourced Income)

- Income from the provision of management or technical services and supporting services or financial management services to its associated enterprises that are incorporated under foreign law.
- Royalties received from associated enterprises that are incorporated under foreign law.
- Dividends received from associated enterprises that are incorporated under foreign law.
- Income received from the transfer of shares of associated enterprises that are incorporated under foreign law, only on the gain on the transfer of shares, where the transaction has used the valuation method according to the rules procedures and conditions that the Director-General of Revenue stipulates.
- Income from the sourcing and procurement of goods in a foreign country where the goods are not being brought into Thailand or do not enter Thailand through transit or transhipment under Customs Regulations; and
- Income received from providing services that are related to international trading to the associated enterprises incorporated under foreign law.

C. Personal Income Tax Incentive

- Full-time expatriate employees of IHQ are eligible for the flat rate of 15% PIT during the period of employment for the IHQ.

D. Withholding Tax Exemption for Foreign Associated Enterprises

- Dividends (normally WHT 10%) received from the IHQ, being dividends that are paid from the income that has been exempt from CIT.
- Interest (normally WHT 15% or 10%) received from the IHQ that is interest related to the loan that the IHQ borrows to relend to its associated enterprises under the financial management scheme.

E. Specific Business Tax ("SBT") Exemption on Interest

- Generally, interest on loans is subject to specific business tax ("SBT") of 3.3%. Under the IHQ scheme, the interest income received from loans the IHQ provides to its foreign associated enterprises under the financial management scheme shall be exempt.

II. Qualifications/Conditions

- Has paid up capital of not lower than 10 million baht ($275,133) on the last day of each accounting period.
- Provides management or technical services and supporting services or financial management to associated enterprises incorporated under foreign laws.
- Has operational expenses that are related to IHQ's business paid to recipients in Thailand of not less than 15 million baht ($412,700) for each accounting period. Submits the application and receives approval to be established as an IHQ from the Director-General of Revenue according to the rules, procedures and conditions that the Director-General of Revenue stipulates and complies with the rules, procedures and conditions, as designated by the Director-General of Revenue.

The following section specifies the "qualified" services of an IHQ. This is an important aspect that a potential taxpayer must consider as any other income from services other than those approved as "qualified" will not be regarded as IHQ income and will not be exempt/reduced from the CIT, as the case may be.

A. Qualified "Supporting Services"

- General management, business planning and coordination;
- Procurement of raw materials and components;
- Product research and development;
- Technical support;
- Marketing and sales promotion;
- Personnel management and regional training;
- Financial advisory services;
- Economic and investment research and analysis;
- Credit management and control; and
- Any other supporting services designated by the Director-General of Revenue.

B. Financial Management Services

- Financial management through the licensed Treasury Center under the Exchange Control Act
- Borrowing and lending Thai baht in the following ways:
  - — Borrowing Thai baht from a Thai financial institution or from a domestic associated enterprise; and
  - — Re-lending the borrowed funds from (a) to foreign associated enterprises.

C. International Trading and Related Services

This is an attractive incentive that has been added to the activities of the IHQ as an ITC. As previously mentioned, an entity can register separately as an ITC and will receive tax and non-tax exemptions too, but as an IHQ, the IHQ is allowed to provide the international trading services to its foreign *associated enterprises* (whereas a normal ITC can transact with any foreign enterprise) and the income it derives shall not be taxed in Thailand.

- "International Trading Center" means a company incorporated in Thailand to engage in the procurement and sales of goods, raw materials and spare parts or to provide services related to international trading with foreign associated enterprises.
- The provision of "services related to international trading" means providing the following services:
  - — Sourcing of goods;
  - — Maintenance and storage of goods;
  - — Packaging and containers;
  - — Delivery of goods;
  - — Insurance of goods;
  - — Providing consultation and recommendation and product knowledge training; and
  - — Other services that the Director-General of Revenue prescribes.

The new laws provide significant opportunities not only for foreign multinational companies operating in the region but also for Thai companies that are expanding and investing abroad. By establishing an IHQ in Thailand with its abundant resources and lower labor costs than Singapore or Hong Kong and its geographical location for trade, companies should really contemplate planning a regional office in Thailand before immediately sticking to the past practices and establishing the regional headquarters in low tax jurisdictions such as Singapore or Hong Kong.

Table 1 shows a comparison of the regional office schemes in Thailand, Singapore and Hong Kong.

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Table 1

Conditions and Tax Benefits	Thailand IHQ	Singapore HQ Program	Hong Kong
Period of time	■ 15 years	■ 3 years + 2 years	■ No specific scheme
Paid-up capital requirements	■ 10 million baht ($275k) on the last day of each accounting period	■ SG$0.2 million and SG$0.5 million ($140k and $350k) by the end of Year 1 and Year 3, respectively	■ N/A
Annual expenditures	■ 15 million baht ($415k)	■ SG$2 million ($1.4 million) by year 3 in Singapore ■ SG$3 million ($2.1 million) in *cumulative*spending in the first three years	■ N/A
Permitted activities	■ Management, technical activities and supporting services; or ■ Financial management to foreign associated enterprise ■ Can also act as "international trading center" for foreign *associated enterprises*	■ Corporate support and headquarters-related services and business expertise on a regional or global basis	■ Suitable for trading, investment and holding activities and advantages for: – Trading companies – Regional sales/head office – Companies want to enter China market
Qualifications	■ Must have at least one foreign office served by Thai IHQ	■ At least three foreign offices by Year 3	N/A
Comment	■ Must hand in application to Board of Investment ("BOI") – non-tax incentives ■ Must hand in application to Thai Revenue Department ("TRD")	■ Limitation of relief under DTA ■ Substance rules	■ Must have substance under Hong Kong's new substance rules issued in January 2015.
Corporate Income Tax ("CIT")	■ 10% on domestic net profits from local associated enterprises ■ *Nil* on foreign net profits from foreign associated enterprises.	■ 15% on income from foreign affiliates (reduce to *nil* if meet requirements)	■ 16.5% ■ If qualified as "offshore" CIT is nil in Hong Kong assuming contracts for purchase and sale (and all steps to give effect to this) are outside of Hong Kong.
Withholding tax ("WHT") paid to non-Thai residents: 1. Dividends 2. Interest	1. Dividends: WHT 10% exempt 2. Interest WHT 10% or 15%: exempt if under the financial management scheme	1. Dividends: Nil (DTA and non-DTA) 2. Interest: 0% (meet conditions) or 15% (DTA) and 15% for non-DTA	1. Dividends: Nil (DTA and non-DTA) 2. Interest: Nil (DTA and non-DTA)
Personal income tax ("PIT") for employees who work for HQ	■ 15% flat rate during period of employment ■ Minimum salary: 2.4 million baht ($66k) ■ No limit on the number of expatriate employees	■ 75% skilled staff through incentive period ■ Hire another 10 professionals by Year 3 ■ SG$100k/year/person ($70k) for top five executives by Year 3	■ 2% to 17% progressive rate
Other benefits—tax and non-tax	1. Land ownership 2. 100% foreign ownership 3. Work permits for expatriate employees 4. Can also act as ITC and financial treasury center	1. Geography 2. Sign of commitment to the host region and an integration of center capable of controlling regional operations.	1. Stable economic environment 2. Transparent business environment 3. Strong legal framework 4. Sophisticated banking infrastructure