

Thailand: Guidance issued on criteria for partial transfer of business

A notification issued by the Thai Revenue Department on 9 July 2010 clarifies the availability of certain tax incentives in respect of partial transfers of a business. A Royal Decree issued in 2009 (Decree No. 496) provided for the following exemptions on partial business transfers carried out in 2009 (subsequently extended through 31 December 2010): an exemption from VAT on the transfer of assets; an exemption from the specific business tax applicable to the transfer of immovable property; and an exemption from stamp duty on the share transfer documents.

The recent notification sets out the criteria that must be met for a company to qualify for the exemptions:

- The partial transfer must take place between companies in the same group, and both the seller and the purchaser must maintain a direct or indirect shareholding of at least 50% of the voting shares in the other party for a period of not less than six months after 31 December 2010;
- The transferee must have paid-in capital not less than the value of the net assets being transferred;
- The seller and the purchaser must submit the restructuring plan and the list of assets/liabilities being transferred to the Revenue Department by 31 December 2010;
- The transfer must be completed by 31 December 2010;
- The partial transfer may not be considered a sale in the normal course of business and the purchaser must continue to use the assets transferred for a VAT-registered business;
- The seller must transfer the assets at a market price; and
- The external auditors of the seller and the purchaser must be qualified according to Revenue Department criteria.

The incentives are intended to promote the restructuring of businesses in the same group.

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