

Thailand - recent developments in wealth management

There have been a number of recent legal and regulatory changes in Thailand that have impact from a wealth management perspective.

BY:

Panya Sittisakonsin, Partner
Chanida Leelanuntakul, Lawyer
Supagorn Jittimaporn, Lawyer
[Baker McKenzie](#), Thailand

Deadline extension for the tax-free swap of business assets until 31 December 2018

Last year, the Revenue Department allowed partnerships and groups of individuals to enjoy a tax-free swap of business assets to a company or juristic partnership, and reduced the transfer fee for immovable property to 0.1% of the government's appraisal value. A change in the business vehicle from either an ordinary partnership or a group of individuals to a corporate entity will allow the business to pay tax at a flat rate of 20% of its net profit and 10% of its profit sharing or dividends distributed to each shareholder, thereby reducing the effective tax rate to 28%.

As the tax benefits expired at the end of 2017, the director-general of the Revenue Department verbally announced that the tax benefits will be extended to the end of 2018. The draft royal decree has been proposed to the Cabinet, and will be officially announced soon.





Recent developments on property tax

The draft Land & Building Tax has been in discussion and development by the National Legislative Assembly for a long time. The draft bill has gone through two public hearings in 2017. It is expected to be enforced in the beginning of 2019. Although the contents of the draft bill have not been agreed upon by the subcommittee's members, consideration is now turning to measures which should alleviate the impact of the legislation, including an exemption on tax collection from certain buildings and other structures. It was proposed that golf courses, zoos, and airports should enjoy tax alleviation measures under the draft Land & Building Tax. In addition, the exemption threshold for tax first-home owners was lowered to THB 20 million or lower.

Additionally, the Fiscal Policy Office of the Ministry of Finance published its comments on the public hearings. For example:

- The criteria used for agricultural and residential lands are a major concern among the public, and it was noted that the Ministry of Interior and the Ministry of Finance will enact preliminary criteria to define taxable residential and agricultural land.
- Parcels of land that are connected and owned by the same person will be treated a single parcel for the purposes of tax collection, even if they are documented in separate land title deeds.

New gift tax ruling: Donee's lost basis of tax-exempted gift

Thailand commenced the collection of gift tax and inheritance tax due to the Government's effort to redistribute income and wealth. Since then, a gift or gratuitous transfer by parents to their children is no longer exempted from tax. The recipient will be subject to a 5% gift tax on the value of the gift that exceeds THB 20 million in any calendar year. As for inheritance tax, a 5% or 10% tax is imposed on heirs who receive an inheritance exceeding THB 100 million.

THAILAND COMMENCED THE COLLECTION OF GIFT TAX AND INHERITANCE TAX DUE TO THE GOVERNMENT'S EFFORT TO REDISTRIBUTE INCOME AND WEALTH.

Recently, the Thai Revenue Department issued a private tax ruling clarifying that the gratuitous transfer of shares by parents to their children will be subject to 5% gift tax if the transfer occurs after the gift tax became effective. More importantly, the cost basis of the tax on these shares would be zero or appear to be lost, as the donee does not exchange anything in return for the gift shares (no consideration is paid to the donor). This means that, unlike other countries, the Thai Revenue Department neither allows the donor's original or existing cost basis to be carried over as the donee's adjusted basis, nor does it allow the donee's cost basis to be adjusted to a fair market value when a gift is made. Therefore, when the donee transfers the shares in the future, the entire amount of sale proceeds received would be treated as taxable income of the donee.

As a result of this interpretation, the donee may be subject to double taxation, because both gift tax and future capital gains tax with the lost basis may be imposed on the gift properties.

In gratuitous transfer transactions that qualify for gift tax exemption, the future consequence may not be just a tax deferral but also the donee's loss of tax basis for the property received as a gift.

It will be interesting to see whether the Revenue Department will also apply this zero-cost basis to inherited properties or would allow and accept the new adjusted cost basis at the fair market value of the inherited properties.

Cabinet's approval of the Property Right Act: A real value creation for landlords - lease vs. property right?

Under the current Thai law, a leasehold is considered a non-transferrable right specifically granted to the lessee. It cannot be transferred, inherited, sublet, or used as collateral by the lessee without consent from the landlord. To unlock these restrictions to enhance the value and liquidity of the leasehold right, the Cabinet approved the Property Right Bill in principle on 9 January 2018, which is designed to create a new transferrable right equivalent to the normal leasehold, a so-called "property right."

Like a normal lease, a property right is a temporary right to hold land or condominiums, granted by the landlord to the right holder. However, it

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differs from a normal lease in the aspect that it can be transferred, inherited, sublet, or even mortgaged by the right holder without specific consent from the landlord.

In addition, any right holders can alter or construct buildings on the underlying land without prior consent from the landlord, and the ownership of the newly-constructed or altered building will be transferred to the landlord upon the termination of the property right, unless expressed otherwise in the agreement.

Under the Property Right Bill, the property right can only be granted by the landlord who owns land or condominiums.

The property right must be set out in a written agreement between the landlord and the first right holder, which must be registered with the officials of the Land Department, and the term is capped at 30 years. Upon registration, the land officials will issue a property right deed, similar to a land title deed, to the landlord and the grantee, for the future transfer or mortgage of the right.

Due to the property right's transferability and its registerable collateral feature, it is expected that this new form of leasing will create more value on real properties for landlords and attract more attention from investors.





The right holder and the investor should also benefit from this bill in terms of the higher liquidity for future divestment. Obviously, the landlord can expect to receive higher yield when granting the property right than leasing the property. At present, the bill is under public hearing and will be proposed for the National Legislative Assembly's consideration shortly.

Cabinet's approval on Escrow Account Act; extended coverage to all types of transactions

On 10 April 2017, the Cabinet approved a draft Escrow Account Act that extends coverage to all types of contracts on top of existing capital market-related transactions, product and service purchases, and real estate matters. Previously, escrow accounts were only accepted for capital market transactions. This new law allows parties to use an escrow account, a temporary pass-through account held by a third party, to facilitate their transactions until the completion of the transaction process. An escrow account will be operated by escrow agents, commercial banks, and financial institutions licensed by the Minister of Finance.

Relaxation of exchange control requirements for qualified investors' investment in overseas portfolios and derivatives

The new exchange control which became effective in January 2018 further relaxed the restrictions for investments in offshore securities and derivatives in terms of investment quota and administrative/reporting obligations. Prior to this new regulation, Thai investors who are qualified to directly

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invest in offshore securities and derivatives are limited to (1) institutional investors and (2) Thai individual or Thai corporate which has outstanding investment in securities, derivatives and/or deposit of THB 100 million. There is no investment limit for institutional investors.

However, the qualified Thai individual or non-institutional Thai corporate investors are subject to an investment limit of USD 5 million per investor per year.

After the effective date of the new regulation, Thai individuals or corporations that have outstanding investment in securities, derivatives and/or deposit of THB 50 million but less than THB 100 million are now qualified to directly invest in offshore securities and derivatives, as well as open a foreign currency deposit account pending offshore investment, subject to an investment limit of USD 1 million per investor per year – without being required to invest through a local securities broker or private fund like before. This relaxation will ease the offshore investment for high net worth investors.

Second hearing for the Private Trust Act Bill and its key features

After the Ministry of Finance proposed the first draft trust act to the Cabinet, the contents of the draft were developed and the draft again went through a second public hearing process which ended on 30 March 2018. The Ministry of Finance will analyse comments from the public and develop the act before it is proposed to the Cabinet for consideration.

The main purposes of the Private Trust Act are: (1) to provide a tool to manage and protect private financial assets and real properties efficiently and according to the property owners' true intention; and (2) to prevent the outward remittance of properties in Thailand to be managed overseas. We have summarised the key features below:

a. Setting up a trust

A trust can be set up by an agreement or will. The settlor, an individual or juristic entity, will transfer their properties to the trustee. A settlor cannot act as a trustee. Although the Private Trust Act does not specifically prohibit any property from being transferred to the trustee, the property will be determined by a trust agreement and depend upon the readiness of the trustee to manage the property. Although the law allows for a corporate settlor, the private trust cannot be set up for fund-raising purposes or for capital-market transactions that are already governed under a special trust law.

For setting up a trust, issues relating to foreign business, foreign ownership on immovable properties, investment restrictions, and license requirements to hold specific types of assets must also be complied with under relevant laws.

b. Trustee

A trustee must be a qualified person under the Private Trust Act and obtain a license from the Office of the Securities and Exchange Commission (the SEC Office). The Private Trust Act currently allows commercial banks, financial institutions, securities companies, and other juristic entities (to be determined in the future) to apply for a trustee license. It is noted that a trustee cannot be a beneficiary of the trust. Powers and responsibilities of a trustee are listed in the Private Trust Act.

A trustee must also comply with the duties set out in a trust agreement for the highest benefits of the beneficial. Failure to do so may lead to both criminal and civil liability.

c. Trust term

A 100-year term is the maximum term for the trust.

d. Other remarks

A trustee must prepare a financial statement for the trust that it manages in accordance with the accounting standards. A financial statement for the trust must be audited by the auditor approved by and submitted to the SEC Office.

It is noted that the SEC Office will supervise and oversee trust administration under the Private Trust Act.

The SEC Office may reasonably order a trustee to perform an action or not to perform action to prevent any damage if there is a violation of the Private Trust Act or mismanagement. ■

