April 29, 2020



**TAX & LEGAL UPDATE**

**EMERGENCY COVID-19 MEASURES**

In this Tax & Legal Flash, we have summarized some of the emergency measures, which the Thai government has announced. The focus here is on those measures which likely are relevant to companies conducting business in Thailand.

* **Completely virtual international meetings of board of directors & shareholders now valid**

“Royal Decree governing teleconferences via electronic means B.E. 2563 (A.D. 2020)” (“Act”) has taken effect on April 19, 2020. By virtue of this law, generally, board of director meetings can now be validly held via electronic means, whereby meeting attendants are not at any same place during the meeting. The fact that there was no physical “place” for the meeting itself would no longer be grounds for challenging, in court, the validity of the meeting itself. Details and conditions under this Act include the following:

“Meetings Via Electronic Means” means, meetings held via electronic means, whereby meeting participants are not required to be at the same place, and discussions and statements can be exchanged between all participants.

“Meeting Attendant” means, the chairman, directors, secretary, persons who make clarifications and provides opinions to the board of directors, etc.

This Royal Decree does not apply to the following (“Exclusions”):

1. Meetings of the Members of Parliament, the Senate, and the Parliament;
2. Meetings for the preparation of judgments or court orders;
3. Meetings according to the process of the procurement for governmental agencies, local governmental agencies, state enterprises, public organizations, and other state agencies; and,
4. Other meetings as specified in Ministerial Regulations.

According to the note to this Act, this Act was enacted in response to the COVID-19 situation and, social distancing requirements which it created. It also states that there is the necessity to enable state administration as well as the private sector to continue their activities. The notes recognizes the problem whereby companies are being forced to indefinitely postpone general shareholders meetings. One can draw the inference from the note, and definition of Meeting Attendant, and the fact that they are not in the list of Exclusions, that this act is applicable to, inter alia, board of directors meetings, and shareholder meetings of private limited companies and public limited companies.

The text of the Act is silent as to the location of the Meeting Attendants or the meeting organizer. It also does not prohibit all Meeting Attendants to participate from outside of Thailand. The note also recognizes that the previous requirement that certain meeting participants be located in Thailand is no longer in line with current times, and that relevant technology has advanced. Therefore, it would be safe to conclude that, none of the Meeting Participants necessarily needs to be in Thailand during the meeting.

However, a meeting organizer must satisfy the following conditions, to hold a valid “meeting via electronic means”:

1. Arrange for Meeting Attendants to identify themselves, via electronic means, before the meeting starts;
2. Enable meeting attendants to vote, whether it is open voting or secret voting;
3. Prepare written minutes of the meeting;
4. Record Enable audio or audiovisual recording of all Meeting Attendants, throughout the entire meeting, in electronic data format, except if it is a secret meeting;
5. Preserve the electronic traffic data of all Meeting Attendants;
6. The security standards of the meeting must satisfy requirements specified by the Ministry of Digital Economy and Society, as will be published in the Government Gazette. (Until this is published, the security standards under the Notification of the Ministry of Communication and Information Technology R.e. Security Policy and Standards of Conference Meeting Through Electronic Devices B.E. 2557 (2014) must be satisfied.) (See Appendix ก in [this government issued brochure](https://www.mdes.go.th/storage/contents/file/IDB6U40FRvdkrUOWD7APGbtj6Mg4XPPMkuwnCfl1.pdf) for further details.)

Under the Act, notices for calling Meetings Via Electronic Means can be sent by e-mail. Therefore, there is no longer the requirement to send invitations to shareholders by Thai registered mail, when calling a general shareholders meeting. However, such notice must be preserved (hard copy or in electronic format).

* **Deadline extensions (VAT, Withholding Tax, Specific Business Tax, and Stamp Duty)**

The deadline to file and pay VAT, Withholding Tas, Specific Business Tax, and Stamp Duty has been extended as per the following table.

Applicability: All business operators that require extensions for the filing and payment of the subject taxes due to the impact of COVID-19.

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| --- | --- | --- | --- | --- |
| (For 2020) | | | | |
| **Tax Category** | **Form No.** | **For Tax Month** | **Original Deadline** | **New Special Extended Deadline**  **(Filing & Payment)** |
| Withholding Tax | * PND 1   (For employee salary, etc.)   * PND 2 * PND 3 * PND 53 * PND 54 | March | * Within April 7th   (If paper filing)   * Within April 15th   (If online filing) | Within May 15th  (For both paper and online filing) |
| April | * Within May 7th   (If paper filing)   * Within May 15th   (If online filing) |
| VAT (Por Por 36) | * Por Por 36   (For royalty payments, import of services etc.) | March | * Within April 7th   (If paper filing)   * Within April 15th   (If online filing) | Within May 15th  (For both paper and online filing) |
| April | * Within May 7th   (If paper filing)   * Within May 15th   (If online filing) |
| VAT (Por Por 30) | * Por Por 30 | March | * Within April 15   (If paper filing)   * Within April 23rd   (If online filing) | Within May 23rd  (For both paper and online filing) |
| April | * Within May 15th   (If paper filing)   * Within May 23rd   (If online filing) |
| Specific Business Tax  (The purchase and sale of immovable property for commercial purposes are not subject to this extension measure) | * Por Tor 40 | March | * Within April 15   (If paper filing)   * Within April 23rd   (If online filing) | Within May 23rd  (For both paper and online filing) |
| April | * Within May 15th   (If paper filing)   * Within May 23rd   (If online filing) |
| Stamp Duty  (If paying by cash) | * Or Sor 4 * Or Sor 4 Gor * Or Sor 4 Khor |  | From April 1 to May 15 | Within May 15th |

Source: Notification of the Ministry of Finance, R.e.: Extension of period of submission of tax returns, remittance or payment of tax and duty, for persons liable to remit withholding tax, persons liable to remit juristic person income tax, remittance or payment of Value Added Tax, payment of Specific Business Tax, and payment of Stamp Duty. {Original (Notified 31 March 2020); and, No. 2 (Notified 3 April 2020)}

<https://www.rd.go.th/publish/fileadmin/user_upload/kormor/newlaw/mfexwht2.pdf>

* **Deadline extensions (Corporate income tax)**

The corporate income tax (CIT) filing and payment deadlines for non-listed companies have been extended. The taxpayer must submit an application to the Revenue Department (RD) to enjoy the special extension measures.

Applicability: Juristic companies and juristic partnerships, however excluding companies listed on the Thai Stock Exchange.

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| --- | --- | --- | --- | --- |
| **Type** | **Form** | **Qualifying financial year ends** | **Original deadlines (2020)** | **New Special Extended Deadlines**  **(2020)** |
| Annual CIT  (Filing & Payment) | PND50\* | Nov. 2nd, 2019  to  April 2nd, 2020 | Within 150 days from the financial year end date  (April 1 to August 30, 2020) | August 31st |
| Half-year CIT  (Filing & Payment) | PND51 | May 1st, 2020  To  July 29th, 2020 | Within 2 months after the financial half-year-end date  (July 1st to September 29th, 2020) | September 30th |

\* The Declaration Form for Related Parties and Related Party Transactions (the so-called “Transfer Pricing Disclosure Form) submission deadline, for companies having revenue of 200 million Baht or more, has also been extended to August 31st.

Submission of form PND55 (for foundations and associations) has also been extended as per the above table.

(Source: Notification of the Ministry of Finance Re.: Extension of period for submission of tax returns and payment of juristic person income tax under the Revenue Code (No 2) (Notified 3 March 2020), [Por Chor 22/2563 (24 March 2020)](https://www.rd.go.th/publish/fileadmin/user_upload/news/news22_2563.pdf)

* **Annual general meeting of shareholders, and financial statement submission deadlines extended**

The time limit which annual general meeting of shareholders (AGM) must be held within, and the deadline to submit audited financial statements to the Department of Business Development (DBD) (Ministry of Commerce) has been extended as follows.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | AGMs | Audited Financial Statements (FS) | Shareholder List  (SH List) |
| Private Limited Companies | General Rule | * A general meeting of shareholders shall be held within six months after the registration of the company and shall subsequently be held once at least in every twelve months. (CCC\*, §1171) | * Must submit FS to the AGM within 4 months after the financial year-end. (CCC, §1197) * Must submit FS to the DBD\*\* within ratification at the AGM (CCC, §1199) | * Must submit an updated SH List to the DBD within 14 days after the AGM. (CCC, §1139) |
| Special Measures | Extensions due to the effect of COVID19 is permissible until it is possible to hold one. | * Must submit FS to the DBD within 1 month of the AGM date. * An explanation letter explaining the reason for the delay must also be submitted. | * Must submit to the DBD within 14 days after the AGM. * An explanation letter explaining the reason for the delay must also be submitted. |
| Partnerships, Joint Ventures, and Juristic Persons registered under foreign law (E.g. Rep. offices, and Branches) | Special Measures |  | Must submit to the DBD within August 31st, 2020.  (If the financial year-end is on or between October 31st, 2019 through March 31st, 2020) |  |
| \*CCC = Civil and Commercial Code of Thailand.  \*\* DBD = Department of Business Development, Ministry of Commerce | | | | |

Juristic persons registered under foreign law (E.g. Representative offices, branches, etc.): Prior to the above-mentioned extension measures, foreign juristic persons were required to submit their audited FS to the DBD within 5 months after the financial year-end date. With the new extension measures, the deadline has been extended to August 31, 2020 for financial year-ends falling from October 31, 2019 to March 31st, 2020. Therefore, the extension is not of any particular benefit if the financial year-end falls on March 31st, 2020. However, if it ends before such date, the deadline would have extended.

(Source: DBD, <https://www.dbd.go.th/news_view.php?nid=469417241>)

* **Personal Income Tax – Filing deadline extension**

Generally individual taxpayers are required to submit and pay personal income tax (PIT) for a calendar year, within March 31 after that calendar year-end date. However, due to COVID-19, such deadline has been extended to August 31st, 2020 for the calendar year of 2019.

|  |  |  |  |
| --- | --- | --- | --- |
| **Tax Form** | **Subject Tax Year** | **Original Deadline** | **Special Extended Deadline** |
| PND 90 | Calendar year 2019 | March 31, 2020 | August 31, 2020 |
| PND 91 |

(Source: [Por Chor 22/2563 (24 March 2020)](https://www.rd.go.th/publish/fileadmin/user_upload/news/news22_2563.pdf); [Por Chor 24/2563 (29 March 2020)](https://www.rd.go.th/publish/fileadmin/user_upload/news/news24_2563.pdf); Notification of the Ministry of Finance, R.e., Extension of Period of submission of tax returns and payment of tax for persons liable to pay natural person income tax regarding assessable income for the tax year 2019 (No. 2), Government Gazette, Volume 137, Special Issue, part 83 Ngor., April 10, 2020.)

* **Expedited VAT refund policy**

In response to the COVID-19 situation, refund of VAT to “Good Exporter” will be expedited as follows:

|  |  |  |
| --- | --- | --- |
| **Refund application method** | **General refund timeframe** | **Expedited refund timeframe** |
| Online | Within 30 days | Within 15 days |
| Paper | Within 60 days | Within 45 days |

* **Withholding Tax Rate Reductions**

Certain withholding tax rates as explained subsequently will re reduced from their general rate of 3% down to 1.5% during April to September, 2020. Thereafter it will increase to 2% during October to December, 2020. The following table are the details.

|  |  |  |  |
| --- | --- | --- | --- |
| **Current Rate** | **Temporarily Reduced Rates** | **Reduction Period**  **(2020)** | **Tax Payment Method** |
| 3% | 1.5% | April 1st to September 30th | Paper or online |
| 3% | 2% | October 1st to December 31st | If payment via “e-Withholding Tax System” only |

The categories and types of income subject to such reduced withholding tax rates are summarized in the following table. They include service fees, royalties, hire of work fees, etc., which companies receive, but do not include withholding tax on salaries paid to employees. Details are as follows:

|  |  |  |
| --- | --- | --- |
| **Income Category**  **(As defined under the Revenue Code)** | **Income Recipient** | **Notes** |
| §40, (2) income | Companies and juristic partnerships\* |  |
| §40, (3) income | Companies and juristic partnerships\* | Reduction applicable to income only from goodwill, copyright, or other rights. |
| §40, (6) income | Persons liable to personal income tax, and corporate income tax\* |  |
| §40, (7) income | Persons liable to personal income tax, and corporate income tax\* |  |
| §40, (8) income | Persons liable to personal income tax, and corporate income tax\* | Reduction applicable to only income from hire of work, rewards, discounts, or any benefit from sale promotion, and the provision of services. However, excluding payments as specified in Ministerial Regulation No. 144, (3), (15), (16), (17), as well as payments for hotel services, restaurant services, and life insurance premiums. |
| \* Excludes for-profit foundations and associations, and those published under Section 47 (7) (b) of the Revenue Code. | | |

(Source: Ministerial Regulation No. 361, Issued under the Revenue Code; Departmental Regulation No. Taw Paw 324/2563.)

* **Triple deduction for salary expense (SMEs)**

Small and mid-sized companies (“SMEs”) will be able to deduct as expense three times (300%) of employee salary expenses when calculating its corporate income tax (“CIT”). All of the following conditions must be satisfied to enjoy this tax treatment.

1. Salaries paid for April, May, June, and July of 2020 will be eligible;
2. The revenue of the tax year which ended on or prior to September 30, 2019 must have been 500,000,000 Baht or less;
3. The number of employees for the tax year which ended on or prior to September 30, 2019 must have been 200 or less;
4. The salary of employees who receive 15,000 Baht or more per month will not be eligible for this tax treatment;
5. Salary expense for employees who have not registered for social security is not eligible for this tax treatment;
6. There must not be a reduction of employee count from that as at December 31, 2019 during the period in which the triple deduction is taken.

* **1.5 times deduction of interest payments (SMEs)**

SMEs who satisfy all of the following conditions are eligible to take a 1.5 times (150%) deduction of interest payments when calculating its CIT.

1. Only interest on loans, that have a two percent (2%) interest rate for the first two (2) years, which is a part of the government’s program to aid SMEs with 150,000,000,000 Baht is eligible for this tax treatment.
2. The revenue of the tax year which ended on or prior to September 30, 2019 must have been 500,000,000 Baht or less;
3. The number of employees for the tax year which ended on or prior to September 30, 2019 must have been 200 or less;
4. Interest incurred during April 1 to December 31, 2020 is eligible for this tax treatment; and,
5. There is only one set of accounts.

* **Personal Income Tax - Allowance for health insurance premiums increased**

If an individual taxpayer has paid qualifying health insurance premiums, he/she may use such payment amount as a tax deductible expense (an allowance) when calculating his/her personal income tax. Until now, the cap limit for taking such an allowance was 15,000 Baht. With the new COVID-19 measures, this amount has been increased to 25,000 Baht. Note that if a taxpayer wishes to also take a deduction for life insurance payments as well, then the deduction amount may not exceed 100,000 Baht.

(Source: [Por Chor 22/2563 (24 March 2020)](https://www.rd.go.th/publish/fileadmin/user_upload/news/news22_2563.pdf))

* **Personal Income Tax – Additional 200,000 Baht allowance for Super Savings Funds**

Until recently, investment amounts into qualifying Super Savings Funds (“SSFs”) could be used as a deduction when calculating personal income tax. The deduction was limited to 30% of gross income, or 200,000 Baht, whichever was lower. With the new tax measure, the maximum deduction amount was increased by another 200,000 Baht, bringing the total deductible cap amount to 400,000 Baht. To take such deduction, the following conditions must have been met.

1. 65% or more of the assets of the SSFs must be invested in stock traded on Stock Exchange of Thailand during April 1, 2020 to June 30, 2020; and,
2. The investment into the SSFs must be for at least 10 years.

* **Allowance for COVID-19 related donations (Individuals and companies)**

Natural persons and juristic persons that have made donations through the Revenue Department’s “e-Donation System” during the period of March 5th, 2020 to March 5th, 2021 in support of anti COVID-19 measures will be able to use such donation amounts as an allowance, subject to cap limits, when calculating their income tax. Further VAT will be exempted for VAT operators who have donated assets.

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