RESPONDEK & FAN

LEGAL E-BULLETIN

VOLUME 7

19/11/2010

Dear Reader,

The Thai cabinet had the intention to create the best tax incentives for "Regional Operating Headquarters (ROH)" in the region and has therefore completely revised the existing ROH regulations. The new ROH regulations incorporate a number of significant changes as compared to the 2002 ROH regulations and were published on **08 November 2011.** As of today, no official English translation of the new regulations has been published yet.

As usual, if you have any comments, remarks or questions, we would love to hear from you. Please contact me at +65 -6324-0060 or by email to respondek@rflegal.com.

Kind regards,
RESPONDEK & FAN
Dr Andreas Respondek
Managing Director

Thailand's New „Regional Operating Headquarters" (ROH)

1. Legislation

The first version of Thailand's ROH regulations (enacted on 16.08.2002) failed to make Thailand the center of regional business operations that the Thai government had hoped for. As of today, there are less than 100 ROH's established in Thailand (http://www.rd.go.th/publish/29218.0.html). Therefore the Thai government decided to completely revise the existing ROH regulations with the goal to make them more attractive and to become the location of choice for international investors. After the Thai Cabinet had approved the new ROH regulations on 02 June 2010, on 05 November 2010 these regulations were endorsed by Royal Decree, and published in the Royal Gazette on 08 November 2010.

2. Tax benefits for ROH activities

2.1 Reduced corporate income tax rate

There is an exemption of corporate income tax on qualifying income earned from the services provided to associated enterprises outside Thailand, i.e. a 0 % tax rate. Income generated from associated companies inside Thailand will be taxed at a concessionary rate of 10 %.

2.2 Taxation of dividends

There is a corporate income tax exemption on dividends received from Thai and/or overseas associated enterprises for 10 years.

2.3 Taxation of interest and royalties between associated enterprises

The rate of corporate income tax on interest income and royalty income for use of R&D products developed by the ROH in Thailand received by the ROH from Thai and/or overseas associated enterprises is reduced from 30 % to 10 % for 10 years.

2.4 Withholding tax

There is a withholding tax exemption on certain dividends of the qualified ROH company distributed to overseas corporate shareholders.

The income tax reductions/exemptions summarized under Nos 2.1 to 2.3 above will be granted for 10 consecutive years and can be extended for another 5 years up to a maximum of 15 consecutive years, provided that at the end of the 10th fiscal year, the ROH has accumulated operating expenses in Thailand exceeding THB 150 mio.

3. Benefits for expatriate ROH employees

Expatriate employees are eligible for tax benefits, provided they are high ranking experts who must be registered as employees with the Revenue Department. Such ROH employees can choose the taxation of their income between a flat rate of 15 % for their entire ROH income or the normal personal income tax rate ranging from 0 to 37 %. These benefits are limited to 8 years.

SINGAPORE Office
1 North Bridge Road
#16-03 High Street Centre
Singapore 179094
Tel: +65-6324-0060 Fax: +65-6324-0223

THAILAND Office
323 Silom Road, United Center,
39th Floor, Suite 3904 B
Bangkok 10500
Tel: +66-2-635-5498 Fax: +66-2-635-5499

VIETNAM Office
5th Fl., Suite 5.03,
58 Dong Khoi Street, District 1
Ho Chi Minh City
Tel: +84-8-3824-8887 Fax: +84-8-3824-8885

RESPONDEK & FAN

VOLUME 7 LEGAL E-BULLETIN 19/11/2010

4. Qualifying criteria / conditions

4.1 Companies established under Thai Law

The above benefits are only available to companies established under Thai law which carry on business in Thailand and provide qualifying services to their associated companies or branches. The following services are considered as "qualifying services" for the ROH under the new regulations:

- General management, business planning and coordination
- Procurement of raw materials and components
- Research and development of products
- Technical support
- Marketing and sales promotion planning
- Personnel management and regional human resources training
- Business advisory services
- Economic and investment research and analysis
- Credit management and control
- Any other activities stipulated by the Director-General of the Revenue Department

If such services are provided to non-affiliated companies, then such ROH income will be taxed at the normal corporate income tax rate of 30 %.

4.2 Registered capital

The ROH company must have and maintain at least THB 10,000,000 capital fully paid up at the end of each fiscal year.

4.3 Provision of services

The ROH must provide qualifying services to at least 3 foreign affiliates, 1 affiliate during the first year, 2 affiliates within 3 years and to a third affiliate within 5 years. All associated enterprises must have real operations with a physical presence and staff.

4.4 Operating expenses

The ROH must incur operating expenses of at least THB 15 mio or have paid at least THB 30 mio on capital expenditure in Thailand per fiscal year.

4.5 Staffing requirements

The ROH must have skilled staff with minimum knowledge as prescribed by the Director General of the Revenue Department. Starting from the third accounting year onwards, the ROH must have (i) at least 75 % skilled staff, (ii) pay annual staff benefits of at least THB 2.5 mio per person to at least 5 employees. As of today, the required "qualifications" have not been defined yet.

4.6 Income requirements

To be eligible for the corporate income tax benefits for (i) the preferential tax rate on interest income and royalties, (ii) income tax exemption on dividends from Thai and/or overseas associated enterprises, (iii) withholding tax exemptions on dividends and (iv) the expatriate employee benefits, at least 50 % of the total income of the ROH must be generated from qualifying service income or qualifying royalty income from overseas.

In case the ROH does not meet any one of the above conditions in any fiscal year, the ROH will be disqualified for tax incentives retroactively starting from the first accounting year, i.e. in such case taxes will be assessed retroactively. It appears that this important aspect has been neglected in most publications summarizing the new ROH regulations.

5. Procedural aspects

For foreign investors the application process will usually involve two steps, i.e. first an application to the Thai Board of Investment (BOI). Then as a second step, provided the BOI application has been successful, the registration procedures with the Thai Revenue Department ("RD")will have to follow.

It should be noted that already existing ROH's which are of the opinion that the new regulations would be more beneficial to them cannot just simply "switch" to the new regulations, but would have to reapply again with the BOI and the RD.

SINGAPORE Office
1 North Bridge Road
#16-03 High Street Centre
Singapore 179094
Tel: +65-6324-0060 Fax: +65-6324-0223

THAILAND Office
323 Silom Road, United Center,
39th Floor, Suite 3904 B
Bangkok 10500
Tel: +66-2-635-5498 Fax: +66-2-635-5499

VIETNAM Office
5th Fl., Suite 5.03,
58 Dong Khoi Street, District 1
Ho Chi Minh City
Tel: +84-8-3824-8887 Fax: +84-8-3824-8885

6. Conclusion

The new regulations have certainly a number of very attractive features. But it should not be overlooked that a number of new and sometimes onerous conditions have also been added to the new ROH regulations. In comparison with other ROH regulations in the region, Thailand's ROH regulations are still rather complicated. Some companies may reach the conclusion that the proverbial Damocles sword will be permanently hanging over their operations because of the risk that at some time in the future the ROH conditions may not be met and then retroactively taxes would be levied against such company. Interested companies should therefore carefully weigh the costs and benefits of all ROH requirements in their entirety.

S I N G A P O R E Office
1 North Bridge Road
#16-03 High Street Centre
Singapore 179094
Tel: +65-6324-0060 Fax: +65-6324-0223

T H A I L A N D Office
323 Silom Road, United Center,
39th Floor, Suite 3904 B
Bangkok 10500
Tel: +66-2-635-5498 Fax: +66-2-635-5499

V I E T N A M Office
5th Fl., Suite 5.03,
58 Dong Khoi Street, District 1
Ho Chi Minh City
Tel: +84-8-3824-8887 Fax: +84-8-3824-8885