

Summary of Tax Measures for the Government to Consider

Categories:

1. **Highly Important** – tax measures that will have immediate affect, without compromising tax collections. In fact, these tax measures will stimulate activity that would otherwise not exist without the tax measures. In addition, they will help companies and individuals obtain necessary capital for investment, restructure inefficient operations, and spend more on and/or keep employees. ***THESE MEASURES WILL NOT REDUCE TAX COLLECTIONS.***
2. **Equally Important** – tax measures that are equally important but will take time. These tax measures are meant to ensure or maintain Thailand's competitiveness in the region, as well as boost capital for companies and individuals.
3. **Specifically Important** – tax measures that request tax reductions to help certain sectors and encourage spending or increase transactions.

HIGHLY IMPORTANT

Reduce capital gains tax

One step that can stimulate economic growth is to increase the number of capital markets transactions, particularly mergers and acquisitions. Thai and foreign companies in Thailand face a shortage of capital to grow their businesses, or to soften the impact of the global financial crisis on their businesses. These companies are interested in joining with strategic partners. Unfortunately, the global financial crisis has significantly lowered valuations, discouraging companies from seeking new investors or pursuing mergers. The reduction of capital gains tax will encourage transactions because the decrease in valuations will be made up by the increase in cash from the reduced tax rate, which in turn can be reinvested. More importantly, reducing the tax rates will NOT REDUCE TAX COLLECTION. In fact, tax collection should rise from the increase in activity.

The capital gains tax on the sale of shares in a private transaction (outside the stock market), including partial business transfers or transfers where ownership is changed, and on the sale of assets, will be reduced. Currently capital gains tax resulting from a sale of assets or shares is included in the computation of corporate and personal income tax. Corporate tax is at the rate of 30% while personal tax rate is as high as 37%. The high tax rates discourage mergers, business acquisitions, and purchase of new assets to replace long-lived assets, while valuations continue to decline.

We propose a temporary reduction of corporate and personal tax rates on capital gains, to 10% for 2009 and 2010.

Exemption for debt restructuring

While the Cabinet has approved tax exemptions for debt restructuring, the exemption is for companies under bankruptcy proceedings with the Bankruptcy Court. We believe the tax exemption on debt restructuring should be extended to the financial institution loans of companies that do not need to file for bankruptcy. Financial institutions, particularly foreign banks, are willing to work with Thai corporate borrowers that are significantly leveraged and/or struggling to meet existing payment terms, to restructure current debt, perhaps discounting the existing debt as much as 50%. However, the discount is a forgiveness of debt, which equates to income and is therefore subject to corporate tax at the rate of 30%. The tax exemption will allow companies to restructure and in certain cases replace existing debt with better terms, to free up needed capital and to avoid filing for bankruptcy, which can be expensive and have a severe impact on the economy.

Update since 11 May 2009. We understand that Royal Decree No. 483 B.E. 2552, dated 17 May 2009, has been issued which allows for exemptions on debt restructuring for companies not under the bankruptcy proceedings. While this Royal Decree provides tax exemption, the exemption is only for

one year and it is not provided to foreign financial institutions when there is no participation from any of the Thai financial institutions. We, therefore, request the Government to consider extending the Royal Decree through 31 December 2010 because the settlement of the debt restructuring may take longer than the remaining 7 months and to include foreign financial institutions because a number of companies have foreign loans without participations from local financial institutions.

Extension of loss carried forward utilization

We anticipate a number of companies will incur significant tax losses in 2008, 2009, and 2010. Corporate tax is a big part of capital investment decisions, and without tax benefits, many capital investments simply will not be made. The expiration of unused tax losses eliminates tax benefits from new investments. Extension of the period in which tax losses can be carried forward would provide a critical economic incentive to companies with large actual or anticipated tax losses, to encourage them to keep investing in Thailand. It would also be attractive to strategic partners considering acquiring or increasing the capital of companies with tax losses, knowing that the large tax losses will not be lost.

We propose an extension of loss carried forward, from five years to ten years, for tax losses suffered in 2008, 2009, and 2010. The extension will not apply to tax losses in 2011, which will be subject to the original five-year provision. Should enough profit be achieved before the tenth year with all tax losses suffered in 2008, 2009, and 2010 utilized, such profits will be taxed. This provision will have absolutely no effect on tax revenues for the first five years.

Extension of loss carried forward, while temporary, will effectively help companies that have financially suffered by the global financial crisis and encourage them to continue investing in Thailand. Meanwhile, this measure will not have any impact on the Government's tax revenues for at least five years. Furthermore, it will help Thailand compete with its neighbors, particularly Malaysia, Singapore, Hong Kong, and India, for foreign investments. Currently, Malaysia, Singapore, and Hong Kong do not impose any time limit on loss carried forward, while India allows for tax losses to be offset up to eight years.

EQUALLY IMPORTANT

Reduction of corporate tax rates

We do understand that reducing corporate tax rates will likely reduce tax collections, which may impact the Government's ability to spur growth and stimulate recovery. However, Thailand will need to stay competitive in the region with Indonesia and Vietnam reducing corporate tax rates for 2009 and 2010 (28% in 2009 and 25% in 2010 for Indonesia, and 25% for Vietnam in 2009) and the corporate tax rate in Malaysia being 26%. Thai businesses will suffer a tax burden that is not comparable to other businesses in the region and the Kingdom will lose its competitive edge in attracting foreign investments.

We propose that the Government consider reducing the corporate tax rate in 2009 to 28% and in 2010 to 25%. The reduced corporate tax rates will continue to encourage foreign investment and give Thai companies the competitive edge they need to maintain trade/production volumes or even raise sales with more competitive pricing, as exporters should not lose out from competitors domiciled in lower tax regimes. Thailand can also avert loss of foreign investments, thereby avoiding loss of tax collections. In fact, we believe the increase in foreign investments will surely increase tax collections.

Utilization of affiliated-company losses

We propose a temporary measure that will allow companies to utilize losses from affiliates at the domestic level, provided (i) that the affiliated companies are controlled by the same beneficial and/or major shareholder; (ii) that the tax savings utilized from affiliated losses are reinvested within the

group; (iii) that employee lay-offs are limited to no more than 5% of the total work force; and/or (iv) that the tax privilege be limited only to the period in which the affiliated companies are under control and tax losses are utilized only up to the percentage of ownership. "Control" shall mean having a shareholding interest equal to or greater than 30%, either directly or indirectly, with at least one director appointed by the parent company or beneficial shareholder on the company's board of directors.

While we propose a temporary measure of two years, the Government should consider a permanent change.

Reducing the requirements for Regional Office Headquarters

Regional Office Headquarters (ROHs) in Thailand are provided with competitive tax incentives when compared with Singapore and Hong Kong. However, obtaining ROH status in Thailand is restrictive and requires that the ROH provide services to at least three affiliates located outside Thailand. The restrictiveness of this provision is evident by the fact that only 77 companies have registered for ROH status, with six companies dissolving since registration. To increase foreign investment in establishing ROHs in Thailand, we suggest the requirement of having at least three affiliates outside Thailand be changed. The proposed requirement should be limited to one affiliate outside Thailand for the first two years of operations and then a second affiliate outside Thailand after two years of operations and a third affiliate by the fifth year of operation. Failing to meeting the revised requirements will result in the ROH being ineligible for the tax incentive.

Often times, foreign companies wish to begin trading in Southeast Asia and may wish to establish a regional office to monitor growth in Southeast Asia, but may begin with one or two bases of operation. If the ROH requirement were to remain unchanged, those foreign companies wishing to establish a foothold in Asia will choose Hong Kong or Singapore as their regional base. Thailand would lose its competitive edge and may find itself facing difficulty in attracting relocation of the regional headquarters established in Hong Kong and Singapore to Thailand.

Widening of personal income tax brackets

It is difficult for low-income earners and middle-class employees to increase their private spending when they are faced with high tax rates and high costs. The Government should consider widening personal income tax brackets across the board, in order to increase the purchasing power of low-income earners and middle-class employees. Additionally, the Government should consider increasing allowances and deductions, as this would help taxpayers meet their spending needs. Recently, many employers have requested that employees of all income brackets agree to a voluntary freeze on salary increases and, in a number of cases, have encouraged agreement to reductions in salary and/or forgoing of annual bonuses.

Reduction of withholding tax on dividends and interest

To stimulate private spending, another tax measure the Government should consider is the reduction of the withholding tax rate on dividends, from 10% to 5%, and on interest, from 15% to 10%, for new shareholders or affiliate-company loans entered into in 2009 and 2010. The tax savings on dividends will provide an increase in liquidity for individuals. The reduction of withholding tax on new loans will encourage new capital investments in Thai businesses.

SPECIFICALLY IMPORTANT

Provision of tax incentives for tourism industry

The global financial crisis has had a severe impact on the tourism industry in Thailand, especially on hotel owners and operators. The political unrest in the later part of 2008 and in 2009, particularly the closure of the two Bangkok airports, the disruption of the ASEAN Summit, and the riots in Bangkok, were a further blow to the industry. Foreign audiences were made aware of these events, which discouraged tourists and business people from travelling to Thailand, especially when foreign countries had issued travel warnings.

The Government should consider providing tax incentives or privileges to companies operating in the tourism industry, particularly hotel owners and operators, to alleviate their cash-flow constraints in 2009 and 2010.

Reduction of House and Land Tax

We understand that the Government is considering enacting a new property tax to replace the House and Land Tax. However, the change in the tax law will take at least two years for approval and broad implementation. Because of the delay, we propose that the House and Land Tax be reduced from 12.5% to 7%, equivalent to the current Value Added Tax rate, for two years, while the new property tax is debated, approved, and implemented. Currently, the business of leasing immovable property is taxed unfairly when compared to other businesses that are subject to Value Added Tax, as such tax can be offset by the Value Added Tax incurred from purchases. This off-set option is not available on House and Land Tax, however.

Waiver of stock option and stock grant taxes

Thai businesses struggle to adequately compensate key individuals or retain employees when liquidity is an issue. Thai businesses, especially SMEs and entrepreneurial ventures, generally resort to giving employees stock options or stock dividends, to ensure that the employees are retained during a financial crisis. However, individuals are taxed on stock options and stock grants at their personal tax rates. The Government should consider defer taxing stock options and stock dividends until such stock options or stock dividends are cashed out by employees.