Memorandum

Accounting Losses and Corporate Tax Payment under Thai Tax Law

Background:

Some companies show accounting losses in their books, but still pay corporate income tax. This looks at first sight quite remarkable because in principle corporate tax is calculated based on the accounting profits. However, there are some special effects that can explain this.

Legal Analysis

The Profit according to the applicable accounting principles (such as IFRS, US GAAP, Thai GAAP, German HGB etc.) do not necessarily coincide with the taxable income but merely provide a basis for its calculation. Thailand's accounting standards, in principle, follow IFRS, however, the Thai Revenue Code sometimes applies different principles.

The most common examples which may lead to an effective tax rate which is different to the nominal 20% in accordance with the revenue code are:

1. The company may need to pay taxes from last year after an assessment by the revenue department. In most jurisdictions, such (additional) tax is shown in the same line as the current tax, explaining why the company may have an accounting loss in a specific year, but still pays corporate profit tax.

2. A reserve set aside for bad debts or suspected bad debts. Bad debts under IFRS are recorded if there is a certain risk that the full amount cannot be collected from the debtor.

Tax wise, Ministerial Regulation No. 186 (1991) defines bad debts that are eligible to be written off. The conditions for debts over THB 500,000 are far more strict. In principle, a debt can, once recorded, only be written off if

- it is time barred or
- there is a final court order confirming that the debt cannot be collected.

Details are rather complicated and should be discussed with your auditor or tax consultant.

Accordingly, such bad debt reserve or write off of a claim may lead to a (temporary) difference between profits per corporate income tax return and profits per IFRS.[1]

3. Expenses for personal gifts, or charitable purposes are non-tax deductible unless these expenses are for public charity or public benefits (donations) as the Director-General prescribes. If the charity is approved by the government, in any case the amount cannot exceed 2 % of the net profit. This applies also to expenses for education and sports with the same limitations.[2]

4. Entertainment or service fees which are not in accordance with the rules of the Ministerial Regulations are non-tax deductible and can lead to an increase of tax payment while still decreasing the profits.[3] These are expenses that are considered not necessary or not of general business practice or paid for persons who are not obligated by their duty to participate in the entertainment.

5. Capital expense or expense for the addition, change, expansion or improvement of an asset. This means if a company improves an asset, such as a building, and this improvement is more than for pure maintenance, these expenses are not tax-deductible, but will increase the value of the assets and will be written off at the normal rates.

6. If the company has to pay a fine, surcharge or criminal penalty, these expenses are not tax-deductible.

[1] Sec. 65 Ter R C.
[2] D G. IT No. 44.
[3] M. R. No. 143.

7. Any part of the salary paid to a shareholder or partner of a company which is in excess of an appropriate amount is not tax-deductible. The Revenue Department will compare what is usual and acceptable. The amount above the appropriate amount will not be tax-deductible, although it remains an accounting expense.

8. Expenses that are not actually incurred or expenses that should have been paid in another accounting period are not tax-deductible expenses.

9. Expenses that occurred but are not for the purpose of making profits because these are private withdrawals or other expenses that are not supported by Thai tax laws are not tax-deductible.

10. Expenses that are not for the purpose of business in Thailand are not tax-deductible in Thailand.[4]

11. If a payer cannot exactly identify the recipient, then these expenses are not tax-deductible. If the recipient is not identified, the Revenue Department has no potential chance to check if the expenses are declared correctly. They cannot check the kind of expenses and also cannot ask for cross-checks.

12. When it comes to revaluation of assets in the form of an extraordinary decrease of the book value (e.g. building, land, IP rights) or investments (share of non-traded companies), the difference is not tax-deductible. Only in case the asset is finally sold or destroyed or totally useless and the value gets realised, the losses will be fully tax-deductible.

13. IFRS requires companies to book a provision for potential retirement payments under the Labour Protection Act (statutory severance payment in case of reaching the retirement age). Such provision is not tax deductible and therefore increases the taxable income.

14. Cost related to a previous accounting period has to be accounted for, if not booked correctly in previous years, however, is not tax deductible.

[4] R.CT.No.13 / 2529.

Summary

There are many reasons why the accounting or a trade profits can be significantly different from the tax calculation , which can even lead to a situation of paying taxes while still having an accounting loss. In all of the above described situations, the Thai Revenue Code does not allow expenses in the tax calculation of profits. These items can be found in various places in the Thai Revenue Code, as an example see Section 65 Ter or various Ministerial Regulations or other regulations we cited for you in the footnotes.