

Case Study

Post-COVID-19 Measures in Thailand

Background:

The COVID-19 pandemic has affected many businesses and life in general. Once business operations will resume back to normal, there are some legal issues that we would like to bring to your attention to prepare for the post-COVID-19 time.

Legal Analysis

1. Tax

a) Personal Income Tax (PIT)

The deadline for PIT submission (PhorNgorDor.90, 91, 95) for the 2019 accounting year has been postponed to 31 August 2020.

b) Corporate Income Tax (CIT)

The deadline for CIT submission has been postponed as follows:

- Annual tax return (PhorNgorDor.50, 55) for companies whose fiscal year ended between November 2019 and March 2020: postponed to 31 August 2020.
- Half-year tax return (PhorNgorDor.51) for the 2020 accounting year: postponed to 30 September 2020.

Business operators should keep in mind the new deadline to avoid the non-submission or late submission which will subject to fines.

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c) Value Added Tax¹

Fast-track VAT refund process (online: within 15 days; offline: within 45 days) will be granted to VAT operators with minimum paid-up capital of THB 10 million who are registered as a good exporter with the Customs Department.

d) Withholding Tax

For certain types of payments², the withholding tax rate has been reduced as follows:

- For payments made between 1 April and 30 September 2020:
The withholding tax rate is reduced from 3% to 1.5%.
- For payments made between 1 October 2020 and 31 December 2021:
The withholding tax rate will be reduced from 3% to 2%, but only for payments made through e-withholding tax.

e) Deductibility of labour cost³

A 300% tax deduction will be granted for labour expenses incurred between 1 April and 31 July 2020 under the following conditions:

- The employer has not reduced the number of employees since 31 December 2019;
- The employer must have operated its business for at least 12 months prior to 30 September 2020;
- The employer's annual revenue must not exceed THB 500 million;
- The employees must be registered in the social security system;
- The deduction will be granted for a maximum number of 200 employees per employer
- and the maximum deductible salary is THB 15,000 per month per employee.

2. BOI

On 13 April 2020, the Board of Investment of Thailand (BOI) approved a series of measures to mitigate the impact of the COVID-19 outbreak on

¹ Pending official legislation.

² Hire of work/service fee/commission fee (Sec. 40 (20) Revenue Code); License fee/royalty fee/goodwill (Sec. 40 (3)); Professional fee (Sec. 40 (6)); Contract of work (Sec. 40 (7)); Hire-of-work that is not under Sec. 40 (2), award, discount, or other benefits from sales promotion and service but not including hotel service, restaurant service, and life insurance premium (Sec. 40.(8)).

³ Pending official legislation.

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businesses, including steps to encourage rapid investment in the manufacturing of medical equipment.

The BOI also approved incentives to promote technology-based “smart farming” solutions as well as research and development in a broader range of sectors.

a) Accelerate investments in the medical sector

Apart from the 3 to 8 year tax holidays, a reduction of 50 percent of corporate income tax for an additional 3 years will be given to qualified investments in the medical sector. Examples include the production of medical devices and parts, non-woven fabric used as raw materials in the production of medical supplies, diagnostic test kits, drugs, and active pharmaceutical ingredients. This measure covers projects that apply for promotion between 1 January and 30 June 2020 and must start production and generate income by 31 December 2020. Distribution or donation domestically of at least 50 percent of the output must take place in 2020-2021.

In addition, support will be granted to promote the adjustment of existing production lines to manufacture medical devices or parts by exempting import duties on machinery on the condition the equipment is imported within 2020 and the application for production line adjustment is filed by September 2020.

Lastly, the benefits granted for the production of raw materials used in the manufacture of medical products will be adjusted to encourage a more complete value chain in Thailand. For instance, pharmaceutical grade alcohol production can now be entitled to an 8-year corporate income tax exemption. Additional benefits will also be granted for the production of non-woven fabric used as raw materials for the production of medical masks or medical devices, by expanding the corporate income tax exemption to 5 years, from 3 years.

b) Temporary relaxation of investment conditions

A relaxation of investment conditions was approved to mitigate the impact of the virus outbreak, which has affected economic activity both directly and indirectly on BOI promoted businesses. The BOI agreed to relax deadlines in cases such as the **duty-free importation of machinery and the full operation start-up**, as well as waivers for applications for temporary cessations of operations for a period of more than two months.

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c) Support to Research and Development

The BOI has broadened the scope of activities eligible for duty-free importation of materials used in research and development to cover all activities required to conduct R&D.

d) Encourage the development of smart farming

To encourage investment in technologies supporting the modernization of the agricultural sector and allow local start-up enterprises to participate in the overall development of digital platforms, the BOI has simplified the conditions of investment promotion of smart farming service while retaining attractive tax incentives.

3. Labor Law

a) Substitute holidays

The Thai government postponed the Songkran holidays, which were scheduled for 13-15 April 2020, and asked for the private sector to do the same. The substitute holidays in compensation will be announced by the government at a later stage. We propose to keep in mind that the skipped holidays will have to be compensated later this year. Employers have the following two options:

- to announce the substitute public holidays on the date that the government announces the official substitute public holidays; or
- to announce the substitute public holidays on other official public holiday that the company previously did not intend to observe.

The substitute public holidays cannot be announced on other normal working days because public holidays must be chosen from the list of official holidays, religious or local traditional holidays.⁴

b) Salary payment and reduction

Companies affected by shutdown orders (e.g. restaurants, gyms) kann release their employees from their duties without pay (“no work no pay”).

⁴ Sec. 29 para. 2 Labor Protection Act.

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In this case, employees are entitled to social security benefits although their employment has not been terminated.

All other companies can temporarily release employees but have to continue paying at least 75% of their salary. Any measures beyond this would require the employees consent.

4. Social Security

Social security contributions have been postponed for three months. The postponed contribution for March 2020 salary will have to be paid together with June 2020 salary (i.e. by 15 July 2020), and so on.

Salary of	Postponed contribution payment date
March 2020	15 July 2020
April 2020	15 August 2020
May 2020	15 September 2020

Please also note that the social security contribution rate has been reduced for employers (from 5% to 4%) and employees (from 5% to 1%). The reduction is available for three months (March-May 2020 salary). After that, the normal rate applies.

5. Miscellaneous

- a) Provide low-interest loans (“**soft-loan**”) to small business operators in the tourism-related industry with a principal amount of maximum THB 3 million at an interest rate of 3% for the first 2 years. The Thai Government Savings Bank will be the leading bank to support this measure.
- b) Reduce the electricity rate by 3% from April – June 2020 which will be granted to all types of consumers. Additionally, the relaxation of payment due date will be granted to specific industries, such as hotel and apartment rental.
- c) Reduce the water rate by 3% from April – June 2020 which will be granted to all types of consumers. Additionally, the relaxation of payment due date will be granted to specific industries, such as hotel and apartment rental.
- d) Visa amnesty: Foreigners whose visa expired from 26 March 2020 will be granted an automatic extension until 31 July 2020.