

New BOI Promotion and Tax Scheme for International Business Centers

13 February, 2019

Background

BOI Promotion

The International Headquarters (“IHQ”) and International Trading Centers (“ITC”) activities have been promoted by the Board of Investment (“BOI”) since 1 January 2015 under the Announcement of the Board of Investment No. 2/2557 RE: Policies and Criteria for Investment Promotion.

On 11 December 2018, the BOI issued Notification No. Ngor. 1/2018 RE: Ceasing of the Promotion of Business Categories 7.5 (IHQ) and 7.6 (ITC), and Notification No. Sor. 6/2018 RE: Promotion of International Business Center (“IBC”) Business. Key points of these two Notifications are:

- cancellation of the promoted categories for IHQ and ITC business;
- announcement of the promotion of IBC as the new investment category number 7.34 which became effective as of 11 December 2018; and
- International Trade Activity is now included as part of the list of promoted activities under IBC business where the nature of the other promoted activities is similar to the former IHQ and ITC. However, the business operator conducting International Trade Activity must also conduct at least one additional promoted IBC activity (other than an International Trade Activity) as service provided to affiliates.

However, cancellation of the above two categories will not affect BOI applications which were submitted, and for which the BOI acknowledged receipt, prior to 11 December 2018. Approvals for these applications, if granted by the BOI, will continue to be issued under the ITC or IHQ promoted categories, subject to the same conditions and criteria as were formerly in place for ITCs and IHQs.

To qualify for the BOI incentives, companies must apply via the BOI. Examples of key incentives under the new IBC category include: (a) permission for companies to bring in foreign technicians and experts to work on promoted projects, and (b) permission for companies to own land (except for the machinery import duty exemption for certain cases, there are no tax benefits

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provided under this category). Accordingly, companies must also separately file an application with the Revenue Department if they wish to enjoy further tax incentives (see review below).

Tax Scheme provided by the Revenue Department

On 28 December 2018, the Thai Government issued four new Royal Decrees to improve the Thai tax regime incentives now in place under the Revenue Department. Core essentials under the four Royal Decrees which became effective on 29 December 2018 are:

- cancellation of the tax incentive provided by the Revenue Department for Regional Operation headquarters (“ROH”), IHQ, and ITC;
- announcement of a new tax scheme incentive for IBCs provided by the Revenue Department.

Background

2015 - 2018		2019	
Activities previously promoted by BOI	Activities for Tax incentives previously provided by the Revenue Department	Activity currently promoted by BOI	Activities for Tax incentives currently provided by the Revenue Department
IHQ ITC	ROH IHQ ITC	IBC ⁽¹⁾	IBC

⁽¹⁾ Specifically, the IBC project under the BOI incentive promotion has been effective since 11 December 2018 as discussed above. The following Background Schedule was prepared for purposes of easy reference and understanding.

Qualifications

In order for the business operator of an IBC project to be eligible for the BOI privileges provided under the new BOI Announcement and/or tax incentives provided by the Revenue Department under the new Royal Decrees, the following criteria must be met:

The BOI	The Revenue Department
<p>1. There must be a business plan provided to affiliates covering the following:</p> <ul style="list-style-type: none"> • (i) General administration, management business planning and business coordination; • (ii) Sourcing raw materials and parts; • (iii) Research and development of products; • (iv) Technical support; • (v) Marketing and sales promotions; • (vi) Human resources management and training; • (vii) Financial advisory; • (viii) Conducting economic and investment analysis; • (ix) Loan management and control; • (x) Treasury center; • (xi) International Trade Activity, or • (xii) Other supporting services as notified by the Revenue Department. <p>2. In the case of International Trade Activity, there must be at least one additional activity</p>	<p>1. There must be a business plan provided to affiliates covering the following:</p> <ul style="list-style-type: none"> • (i) Administration services; • (ii) Technical services; • (iii) General administration, management business planning and business coordination; • (iv) Sourcing raw materials and parts; • (v) Research and development of products; • (vi) Technical support; • (vii) Marketing and sales promotions; • (viii) Human resources management and training; • (ix) Financial advisory; • (x) Conducting economic and investment analysis; • (xi) Loan management/control; • (xii) Treasury center; • (xiii) International Trade Activity, or • (xiv) Other supporting services; notified by Revenue Department. <p>2. In the case of International Trading Activity, there must be at least one additional activity (item (i) to (xii)) as stated above;</p> <p>3. There must be at least</p>

<p>(item (i) to (x)) as stated above;</p> <ol style="list-style-type: none"> 3. There must be at least THB 10 million paid-up registered capital; 4. There must be at least 10 full-time employees having the necessary knowledge and skills for the IBC activities except in the event that the IBC activities only provide financial management services to affiliates, in which case the minimum number of full-time employees must be at least 5 employees; and 5. No import duty exemption for raw material and essential material used in manufacturing of export product is provided. <p>NOTE:</p> <p>The BOI application process for IBC and other requirements remain the same.</p>	<p>THB 10 million paid-up registered capital;</p> <ol style="list-style-type: none"> 4. There must be at least 10 full-time employees having the necessary knowledge and skills for the IBC activities except in the event that the IBC activities only provide financial management services to affiliates, in which case the minimum full-time number of employees must be at least 5 people; 5. *There must be minimum expenditures in Thailand of at least THB 60 million in each accounting period; and 6. Other requirements as further notified by the Revenue Department which have not yet been issued. <p>NOTE:</p> <p>*Existing ROH or IHQ entities can also choose to convert their status into an IBC. In this case, the minimum annual expenditure of THB 60 million (as mentioned above in (5)) will not apply to these entities. However, they must have a minimum annual expenditure in Thailand of at least THB 15 million as previously required for ROH and IHQ entities.</p>
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Incentives

In brief, below are the incentives provided by the BOI and the Revenue Department for the IBC project.

BOI	The Revenue Department
<ul style="list-style-type: none"> • Machinery import duty exemption is provided for machinery used in research and development (R&D) and training; • The following non-tax incentives are provided: <ul style="list-style-type: none"> (i) Permission to bring in foreign nationals to conduct feasibility studies and work on promoted projects; (ii) Permission to own land in Thailand to carry out promoted projects; and (iii) Permission to remit foreign currency abroad. • No merit benefits are provided; and • No import duty exemption for raw material and essential material used in manufacturing of export product is provided. 	<ul style="list-style-type: none"> • *Reduction of corporate income tax of 8%, 5% or 3% depending on the level of annual expenditure in Thailand; THB 60 million, THB 300 million, or THB 600 million, respectively; • Dividends received by an IBC from its affiliates will be exempted from Thai tax; • Exemption on withholding tax on dividends or interest paid from an IBC will be provided in the case where the receiver does not operate its business in Thailand; • Specific Business Tax on financial management services provided by an IBC to its affiliates will be exempted; and • The personal income tax rate for foreign nationals who work full time in the activity of an IBC will be reduced to 15%. <p>NOTE:</p> <p>*In the case where ROH or IHQ entities are transitioning to the IBC tax regime and have a minimum expenditure in Thailand of at least THB 15 million (but which expenditure does not exceed THB 60 million), such ROH or IHQ entities will receive a corporate income tax reduction of 8%.</p>

With respect to the new tax scheme for IBC, there are currently no notifications issued under the new Royal Decrees which prescribe the rules and procedures for applying for the IBC tax incentives. Therefore, in practice, the business operator cannot yet apply for the IBC tax incentives with the Revenue Department *until* the new notifications issued under the new Royal Decrees are issued and effective.

However, the business operator of an IBC project can now apply to enjoy the privileges under the BOI promotion with the BOI.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed to the right above.