

TAX BREAKS ARTICLE JULY 2008



July 2008

Confusing Tax Depreciation Practice in Thailand

The Thai tax laws and regulations contained in the Revenue Code can often be misleading and contradictory. The rules regarding depreciation of an asset are one such example.

Section 65 bis of the Revenue Code allows a deduction for wear and tear and depreciation of assets in accordance with the rules, procedures, conditions and at the rates as prescribed by Royal Decree No. 145. These prescribed rules and rates state that any such deduction shall be made in proportion to its useful life commencing with the date of acquisition. Maximum annual rates are prescribed in Section 4 of the Decree and where an accounting period is less than 12 months, the deduction claim is to be pro-rated over that period.

Section 3 of that Royal Decree also stipulates that where a company has adopted an accepted accounting method and a deduction rate, such method and rate must be applied consistently and may be varied only with the approval of the Director-General of the Revenue Department or his delegate. But what if the asset is used partly for private purposes or for one reason or another is no longer used in the business but has not been sold?

Under internationally generally accepted accounting policies, depreciation should not be claimed if the asset is no longer used in the business. The Thai Accounting Standard No.32 (revised 2003), which has similar content as the International Accounting Standard No.16, on "Property, Plant and Equipment" (revised 1998), confirms that principle.

Most modern tax jurisdictions are quite clear on this issue. If an asset is not used in the business a deduction for depreciation cannot be claimed. This is consistent with the principle that any expense incurred must be for the purpose of producing income. A deduction is however normally granted for assets that are installed ready for use in the business even though not currently used in producing income (e.g. a building available to be used for rental income and advertised for that purpose). If the asset is used partly for private and business use, a proportionate adjustment is generally disallowed for the private use. If an asset has an effective life of 5 years and depreciation is claimed at the rate of 20% per annum commencing from the date of

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acquisition, no claim can be made after this 5 year period regardless of whether the depreciation claim has been completely exhausted. This is because most modern tax jurisdictions use the concept of “notional depreciation” and written down value. A notional claim is made against the cost of the asset, which effectively reduces its written down value. This notional claim, however, will not be granted a tax deduction because the asset is not used for the purpose of producing income.

The Thai legislation and practice is ambiguous on the one hand: Section 65ter (13) of the Revenue Code states that any expenses not exclusively expended for the purpose of acquiring profits or for the purpose of business are to be disallowed. This would appear to confirm the practice in other jurisdictions, that if the asset is not used for business purposes, a claim cannot be made.

On the other hand the Revenue Department has however produced some conflicting rulings and guidelines. Two tax rulings No.Gor.Khor.0811/Phor.10404 and No.Gor.Khor.0706/3141 indicate that assets not used in the business can continue to be depreciated. The first ruling relates to an asset that was defective prior to the expiry of the 5 year period and the latter relates to an office building that was no longer used to produce income but could continue to be depreciated.

The rulings do not expand or clarify the reasons for non-business use or whether the building for instance was in fact available to be used for producing income. As such, we can foresee difficulties in relation to this issue, which may be open to interpretation by the tax officer.

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