

(Unofficial Translation)

The Head of the National Council for Peace and Order

Order No. 45/2559

Extension of the Corporate Income Tax Filing Date as Prescribed in the Revenue Code
to Restore Fairness for Investors

The promotion of investment in the Kingdom of Thailand has always been a key policy for every Thai government, as evident with the enactment of the Investment Promotion Act B.E. 2520, which established the Office of the Board of Investment of Thailand, and the Board of Investment in order to devise international-standard investment facilitation measures, rights and incentives for investors. These investment promotion efforts aim to increase investor confidence, increase the national income, create employment and the consumption of domestic resources, as well as enable technology transfer and enhance the overall competencies of the Kingdom. However, in practice, one legal agency's understanding of the laws with regards to investment promotion may sometimes vary with that of another legal agency. Hence, the responsible agency is obliged to coordinate with related agencies and provide a solution in order to resolve any conflicting issues and create codes of conduct as appropriate.

One contradictory understanding with significant importance is with respect to the calculation of net profit and net loss for BOI-promoted projects, in the event a company's project generates an operating loss. The calculation of net loss in the understanding and code of conduct of the Office of the Board of Investment, which is in-line with the Council of State's opinion and the Central Tax Court's judgement, differs from the Board of Taxation's ruling and the Revenue Department's notification. Subsequently, the Supreme Court's judgement No. 15345/2558 [2015], passed on May 16, 2016, ruled that the method of how to calculate corporate income tax of BOI-promoted projects is under the jurisdiction of the Revenue Code, as calculated by revenue officers. This stipulates that companies must pay taxes on revenue, but with the expiry date having passed for the filing of, and paying of taxes, as stipulated by the law, these companies are obliged to pay the shortfall in tax with penalties and surcharges.

Section 3 octo (8) paragraph 2 of the Revenue Code gives the power to the Minister of Finance to extend the deadline for filing tax payments, or extend the deadline for filing tax returns, as deemed appropriate by the Minister. The Ministry of Finance issued a notification, dated June 16, 2016, on the Extension of the Corporate Income Tax Filing Date as Prescribed in the Revenue Code, approving the extension of the aforementioned expiry date to August 1, 2016, in accordance with the criteria, methods and conditions as prescribed. This resulted in companies and registered partnerships not having to pay penalties and surcharges. In the event that companies already paid penalties and surcharges, the deadline for filing penalty and surcharge returns was also extended to August 1, 2016. The rationale given in the ministry's notification is that the extension was granted because there was a discrepancy among government agencies' codes of conduct, with no intent on the part of companies' to evade taxes. Nevertheless, the ministry's notification does not extend to cover some cases that fall under the same rationale but are not in accordance with some of the criteria and conditions as prescribed in the notification. Hence, the NCPO hereby issues new criteria with regards to the extension of the corporate income tax filing date as prescribed in the Revenue Code to uphold fairness and in keeping with the significance of the rationale, and in order to maintain a supportive investment climate and economic stability. It shall be understood that all parties must still uphold the Supreme Court's judgement. However, the matter of when to pay taxes and under which criteria taxes shall be paid is the subject of legal execution and measures, which, according to Section 3 octo (8) paragraph 2, fall within the realm of executive power.

By virtue of Section 44 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557, the Head of the National Council for Peace and Order, with consent of the National Council for Peace and Order, hereby issues the orders as follows:

1. In this Order:

The "Ministry's notification" means the Ministry of Finance's notification, dated June 16, 2016, on the Extension of the Corporate Income Tax Filing Date as Prescribed in the Revenue Code.

2. Extension of the corporate income tax filing date of the Ministry's notification to August 15, 2016, which will result in companies and registered partnerships not having to pay penalties and surcharges. In case companies already paid penalties and surcharges, the deadline for filing penalty and surcharge returns is also extended to August 15, 2016.

The extension of the tax filing date in paragraph 1 is the exercise of power for the Minister of Finance in accordance with No. 2 of the Ministry's notification, in which virtue of Section 3 octo (8) paragraph 2 of the Revenue Code applies *mutatis mutandis*. The extension shall apply to companies that failed to properly file and pay corporate income tax as a result of a discrepancy among government agencies' codes of conduct, with no intent on the part of companies' to evade taxes, as stipulated in No. 3 of the Ministry's notification. The extension shall also apply to companies that failed to properly file and pay corporate income tax, to whom the court had delivered a final judgement that the companies properly pay taxes before the issue of the Ministry's notification.

3. The Ministry of Finance and the Office of the Board of Investment shall cooperate in order to reach a mutual consent/agreement on the code of conducts regarding to each related governed law/acts and responsibility. The final explanation shall convey to the investor without delay in an attempt to restore the investor confidence.

Content in paragraph 1 also applies to other investment-related authorities, in order to facilitate business conduct and investment, establish fairness and restore investor confidence.

4. This Order shall come into force immediately from the date of its publication in the Government Gazette.

Given on the date of July 29, 2016

General Prayut Chan-o-cha

The Head of the National Council for Peace and Order