

REGIONAL OPERATING HEADQUARTERS (“ROH”)

Qualification and criteria in respect of the establishment of the ROH company according to the Revenue Code and applicable regulations:

The qualification and criteria for an ROH company which is entitled to tax benefits are as follows:

1. Being a company or a juristic partnership which is established under Thai law.

Remark: Such company may be a Thai or foreign majority owned company (subject to the condition that such foreign majority owned company shall obtain foreign business license / certificate under the Foreign Business Act (“FBA”) prior to commencing ROH’s operations as stated below) and may be either an established company currently operating and intending to become the ROH, or a new company established in Thailand for ROH purposes.

2. Providing managerial and administrative, technical services, and/or supporting services to its affiliated enterprises or branches both in Thailand and in foreign countries which must be at least 3 countries apart from Thailand.

Supporting services include:

- (1) General administration, business planning and coordination
- (2) Procurement of raw materials and components
- (3) Research and development of products
- (4) Technical support
- (5) Marketing and sales promotion planning
- (6) Personnel management and regional training
- (7) Financial advisory services
- (8) Economic or investment research and analysis
- (9) Credit control and administration
- (10) Any other activities stipulated by the Director-General of the Revenue Department

3. The company must have and maintain the paid up capital at not less than Baht 10,000,000 at the end of each fiscal year.
4. The company must have income from providing services to or income on royalties derived from research and technology development of the ROH that are conducted in Thailand and received from its affiliated enterprises or branches in other countries (excluding Thailand) not less than 50% of its total income, except for the first three years from the year of notifying the establishment of ROH company, such income can be lower than 50% of its income derived from other countries but must not be less than 1/3 of its total income.
5. The company must notify its operation under rules, procedures and conditions stipulated by the Director-General of the Revenue Department (“RD”), i.e. the Notification of the Director-General of RD on Income Tax (No.109), Subject: Rules, Procedures and Conditions for Reduction and Exemption from Income Tax for Company which is a ROH, provided that tax benefits will be given to the ROH commencing from the notified fiscal year period onwards.

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“**Affiliated Enterprise**” means a juristic company or partnership which is related to the ROH in the following manners:

- (1) a juristic company or partnership holding shares in the ROH not less than 25% of total capital.
- (2) a juristic company or partnership in which the ROH holds shares or is a partner not less than 25% of total capital.
- (3) a juristic company or partnership in which a juristic company or partnership under (1) holds shares or is a partner not less than 25% of total capital.
- (4) a juristic company or partnership which has the power to control or supervise the operation and management of the ROH.
- (5) a juristic company or partnership in which the ROH has the power to control or supervise the operation and management.
- (6) a juristic company or partnership which a juristic company or partnership in (4) has the power to control or supervise the operation and management.

Tax Benefits of ROH:

- (1) Exemption on corporate income tax of the ROH for income on providing services outside Thailand to its foreign affiliated enterprises or branches.
- (2) Reduction of corporate income tax of the ROH to the rate of 10% of its net profit for income earned from providing services in Thailand.
- (3) Reduction of corporate income tax of the ROH from the rate of 30% of its net profit to the rate of 10% of its net profit for income on royalty that the ROH receives from its foreign affiliated enterprises or branches, which this is only applicable to the amount of royalty derived from research and technology development of the ROH that are conducted in Thailand.
- (4) Reduction of corporate income tax of the ROH from the rate of 30% of its net profit to the rate of 10% of its net profit for interest income that the ROH receives from a loan that it makes to its foreign affiliated enterprises or branches, which this is only applicable to the interest from the amount of loan that the ROH has borrowed from other source to lend to its affiliated enterprises or branches.
- (5) Exemption on corporate income tax of the ROH for the dividend that the ROH receives from its affiliated enterprises or branches.
- (6) Exemption on corporate income tax of other enterprises which is established under the foreign law and not operating its business in Thailand, for dividend received from the profit of the ROH.

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- (7) Exemption on personal income tax to expatriate workers for his/her income from employment which such income is received in foreign country due to his/her assignment to work in foreign country by the ROH and the income received by him/her is not brought to deduct as an expense of the ROH. The expatriate workers shall be entitled to such benefit during their employment with the ROH for no more than four (4) consecutive years, regardless of whether or not they occasionally depart Thailand during such period. An expatriate worker who resumes his/her employment in any ROH within one (1) year after his/her previous employment in any ROH shall not be entitled to the said benefits for his successive employment.
- (8) Allowing expatriate workers to choose making payment of his/her personal income tax from his/her wages received from the ROH for working in Thailand at the flat rate of 15% provided that (i) ROH withholds tax at the time of payment at such rate, (ii) when filing of tax returns form, he/she must not request for the refund or credit of the amount of the withheld tax either wholly or partly and (iii) must not bring his/her other income, i.e. interest and others which was tax withheld to calculate for his/her personal income tax. The expatriate workers shall be entitled to such benefit during their employment with the ROH for no more than eight (8) consecutive years, regardless of whether or not they occasionally depart Thailand during such period. An expatriate worker who resumes his/her employment in any ROH within one year after his/her previous employment in any ROH shall not be entitled to the said benefits for his successive employment.
- (9) Deduction of wear and tear and depreciation in respect of an asset in the category of permanent building that the ROH purchased or acquired for the purpose of carrying on its business shall be allowed on the date of purpose or acquisition at the rate of 25% of the cost value. The remaining shall be gradually deducted within 20 years. This benefit is granted to assets purchased or acquired on and after 1 January 2002.

Remark:

- *In order to obtain the tax benefits as the ROH as stated above, there is no time flame on the duration for notifying the ROH operation to RD. The tax benefits will be granted to the ROH starting from the notified fiscal year onwards.*
- *According to the Cabinet's resolution on 2 June 2010 as disclosed to public, there is no details on the period for entitlement of such tax exemption and reduction, so the exact period for such tax benefit shall be depending upon the provisions of the Royal Decree to be enacted later.*
- *However, as appeared in some publishing media, the tax benefit under items (1) and (2) above might be given for 10 consecutive fiscal years. And for the tax benefit under item (8), it might be given for 8 consecutive years (the period is extended from 4 years under the current tax benefit).*

Foreign Business Act (FBA) and Investment Promotion for ROH's Operations:

According to the ROH's qualification as stated above, ROH must be a company incorporated in Thailand and the shareholding structure can be either a Thai or foreign majority owned company. However, in case of a foreign majority owned company, the operating as ROH is one of the restricted businesses under the Foreign Business Act which the ROH shall require to obtain prior foreign business license and/or foreign business certificate from the Department of Business Development, Ministry of Commerce ("**MOC**") prior to commencement of the ROH's business operations. Certain alternatives for a foreign majority owned company to obtain such foreign business license or foreign business certificate under FBA are as follows:

- (1) To Apply with MOC for obtaining a foreign business license. In this case, it is at the sole discretion of the authority on a case by case basis whether to allow a foreigner or foreign majority owned company to operate certain kind of prohibited / restricted businesses and the processes of such take quite a long time approximately six (6) months to one (1) year or more; or
- (2) To apply with the Office of the Board of Investment ("**BOI**") for obtaining the investment promotion for ROH business (category 7.13) for entitlement of exemption of import duty on machinery for research and development and training activities and non-tax privileges given under the Promotion Investment Act in addition to tax privileges given by the Revenue Department. Non-tax privileges to be granted by BOI will include entitlement for the land ownership, majority or total foreign ownership, hiring of expatriates, and repatriation of foreign currency; or
- (3) In case such company is qualified as an American national under the Treaty of Amity and Economic Relations between U.S.A. and Thailand ("**Treaty**"), it is entitled to claim for protection under the Treaty that shall not be subject to the restriction in business operation under FBA. The American owned company claiming for protection under the Treaty can operate the same kinds businesses as Thai majority owned companies (including but not limited to the operations as ROH), except for the following businesses which require specific licenses from Thai authorities concerned, i.e. communications, transportation, fiduciary functions, banking involving depository functions, exploitation of land or other natural resources, and domestic trade in indigenous agricultural products.

An American owned company entitling to claim for protection and privileges under the Treaty must have the following qualifications:

- (i) Majority of shares in such company are held by American(s), either individual(s) or entity(ies). In case that any shareholder is an American entity, such American entity must be ultimately owned and managed by American; and
- (ii) Such American owned company must be managed by American and/or Thai, i.e. majority members of the Board must be American and/or Thai nationals and for the authorized signatory, any third national director cannot sign without co-signature of Thai or American national director.

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In case of the alternative (2) or (3) above, if the investment promotion from BOI is granted or the company is qualified for claiming protection under the Treaty, the company shall apply with MOC for obtaining the foreign business certificate to be issued under FBA prior to commencing business operations as ROH in Thailand. The authority's processes take approximately within 30 days (after receiving all required and completed documents according to the applicable rules and regulations). The certificate thereof will be easily granted by MOC to the company within 30 days from the notification date. This process will take less time and procedures than applying for obtaining the foreign business licenses which shall also be subject to the sole discretion and decision of MOC, as mentioned above.

Once the foreign business license or certificate, as the case may be, is obtained, the ROH company can then legally operate ROH's businesses in compliance with FBA. And thereafter, the ROH company will then notify the Revenue Department of its intention to become ROH for its entitlement of the tax benefits under RD accordingly.

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