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Official language is Thai language

BOARD OF TAXATION'S RULING

No. 38/2552

Re: Corporate Income Tax in Case of Offsetting of Loss of Investment-Promoted Business
against the Net Profits Accrued after Expiration of the Period of Corporate Income Tax
Exemption

1. In the case where a company is eligible to deduct an annual loss incurred during the period of being exemption of corporate income tax from the net profits derived after the expiration of the period of corporate income tax exemption for a period of not more than five years from the expiration date of income tax exemption period under section 31, paragraph four of the Investment Promotion Act, B.E. 2520 (1977) as amended by the Investment Promotion Act (No. 3), B.E. 2544 (2001). The question is such annual loss should be calculated from the income and expense of each project entitled to corporate income tax exemption or be calculated from the income and expense of all projects entitled to corporate income tax exemption within the same accounting period.

2. When the period of corporate income tax exemption for the business receiving investment promotion has expired, but the company is still entitled to a reduction of fifty percent of the normal rate of corporate income tax on the net profit derived from the investment for a period of not more than five years from the date following the expiration of the period of corporate income tax exemption. The question is how the company is required to deduct an annual loss of the business receiving investment promotion and entitled to corporate income tax exemption from the net profit of the business that is entitled to such reduction of corporate income tax or from the net profit of the business that is not entitled to corporate income tax exemption.

The Board has considered and granted a ruling in the meeting no. 40/2551, dated 21 November B.E. 2551 (2008) that:

1. in the case where a company is engaged in a business receiving investment promotion and there is more than one project receiving investment promotion under each type of business, since section 31 of the Investment Promotion Act, B.E. 2520 (1977) as amended by the Investment Promotion Act (No. 3), B.E. 2544 (2001) governs the calculation of net profit or net loss of business receiving investment promotion, the calculation shall be based on income and expenditure from all types of promoted business within the same accounting period prescribed by the provisions of the Revenue Code. Thus, in the case where any business has multiple promoted projects, income and expenditure from all of

such projects within the same accounting period shall be computed to obtain net profit or net loss of the promoted business. If there is a net loss, it shall be deemed as an annual loss of the promoted business and the company shall be entitled to deduct such annual loss incurred during the period of receiving exemption of corporate income tax from the net profits of the promoted business accrued after the expiration of the period of corporate income tax exemption for a period of not more than five years from the date following the expiration of that period. The company may choose to deduct such loss from the net profit of any one or several years under section 31, paragraph four of such Act.

2. After the calculation of net profit of promoted business in accordance with the criteria in 1., if the company has an annual loss and thereafter the period of corporate income tax exemption of any promoted business has expired while the company is still entitled to a reduction of fifty percent of the normal rate of corporate income tax on the net profit derived from the investment for a period of not more than five years from the date following the expiration of the period of corporate income tax exemption under section 35 (1) of the Investment Promotion Act, B.E. 2520 (1977) as amended by the Investment Promotion Act (No. 3), B.E. 2544 (2001), in this case the company may have both a promoted business entitled to a reduction of corporate income tax and a non-promoted business not entitled to corporate income tax exemption. As such, the company is entitled to first deduct the entire amount of the annual loss of the promoted business from the net profit of the promoted business entitled to a reduction of fifty percent of the normal rate of corporate income tax under section 31, paragraph four of the Investment Promotion Act, B.E. 2520 (1977) as amended by the Investment Promotion Act (No. 3), B.E. 2544 (2001), and if there is any remaining annual loss from the promoted business after the deduction, the company is then entitled to deduct such loss from the net profit of the non-promoted business subject to corporate income tax at the normal rate under section 65 *ter* (12) of the Revenue Code.

Given on the 13th Day of February B.E. 2552 (2009)

Sathit Limpongpan

(Mr. Sathit Limpongpan)

Deputy Permanent Secretary of Ministry of Finance, Chief of the Revenue Cluster

For Permanent Secretary of Ministry of Finance

Chairman of the Board of Taxation