

Topics July 2020

(Explanation) Income tax exemption on dividend derived from BOI business

A company who obtaining BOI certificate issued by Board of Investment is given the privilege of corporate income tax exemption from net profit of certain business for certain period under Section 31 of Investment Promotion Act B.E. 2520 (1977) (hereinafter “BOI business”). When dividend is paid to the shareholders of the company from taxable profits of BOI business, such dividend is exempted from the computation of income tax for shareholders as well (Section 31 of Investment Promotion Act B.E. 2520 (1977)). As a result, such company is also exempt from withholding tax at 10% of dividend amount which is requested under Revenue code.

In order for shareholders of such company to obtain income tax exemption for the dividend, the company should remind the following matters

(1) A dividend must be paid by the promoted person from only net profits arising during corporate income tax exemption period under BOI certificate. However, net profit in this case means taxable net profits which is described in corporate income tax return (PND50). In some case, BOI certificate provide tax privilege where the promoted person can deduct 2 times of utilities expense as deductible expense from revenue of such BOI Business. So, if the promoted person uses this tax privilege, taxable net profits from such BOI business is decreased so that dividend amount exempt from income tax is also decreased (Figure1). Therefore, we recommend the promoted person should not use this tax privilege in the accounting period when BOI business has net profits (Figure2) while the promoted persons should use this tax privilege in the accounting period when BOI business has net losses. The promoted person can use accumulated BOI losses arising during corporate income tax exemption period in 5 years after such tax exemption period (Section 31 para 4 of Investment Promotion Act B.E. 2520 (1977)) (Figure 3)

(Figure1)

BOI income	1000	
BOI expense	▲ 800	
BOI net profit	200	
Add back	100	
Deduct Back	▲ 50	⇒2 times of Utilities expense
BOI taxable profits	250	⇒Source for dividend subject to income tax exemption

(Figure2)

BOI income	1000	
BOI expense	▲ 800	
BOI net profit	200	
Add back	100	
Deduct Back	0	⇒No 2 times of Utilities expense
BOI taxable profits	300	⇒Source for dividend subject to income tax exemption

(Figure3)

BOI income	1000	
BOI expense	▲ 1200	
BOI net profit	▲ 200	
Add back	100	
Deduct Back	▲ 50	⇒2 times of Utilities expense
BOI taxable profits	▲ 150	⇒Carried forward losses after corporate income tax exemption period

Moreover, In case that the promoted person is carrying on several BOI businesses, taxable profits from those BOI businesses must be net. This interpretation has been disputed for long time however Supreme Court finally ruled so (Supreme Court Judgment No.15345/2558). Therefore, if BOI business A has taxable profits 100 while BOI business B has taxable profit ▲ 150, net taxable profits should be ▲ 50. So, in this case, even though the dividend is paid from 100 of BOI business A, the shareholder shall not be entitled to exempt from income tax for such dividend.

(2) The dividend exempt from income tax for shareholders must be paid to them within 6 months from expired date of corporate income tax exemption period (Section 34 of Investment Promotion Act B.E. 2520 (1977)).

(3) In the case that the promoted person is carrying on businesses which is granted corporate income tax exemption (BOI business) and without corporate income tax exemption (Non-BOI business), the recipient of such dividend shall be given income tax exemption for only dividend portion from net profits of BOI business only. Therefore, the promoted person must clarify such dividend is paid either from net profits of BOI business or from net profits of Non-BOI business. In practice, we recommend the promoted person should specify how much is net profits from BOI business and the dividend paid from such net profits in shareholders' meeting minutes or board of directors' minutes.

In the case that the promoted person does not specify that the dividend is paid from the net profit of which business, such dividend shall be allocate according to the net profit of the business which is exempted from corporate income tax and the net profit of the business that is not exempted from corporate income tax. Therefore, in this case, the promoted person must deduct withholding tax at 10% from portion of dividend which is deemed to be paid from Non-BOI business.

(4) Even the promoted person paid dividend from net profits of BOI business, the promoted person cannot pay dividend over retain earnings of the company (Section 1201 of Civil Commercial Code). Moreover, 5% of dividend must be allocated to legal reserve until reaching 10% of registered capital (Section 1202 of Civil Commercial Code).

The dividend that the shareholders' meeting or the board of directors resolve to pay dividends must be remitted within one month from the date that a resolution was issued under Clause 1201 of the Civil and Commercial Code.

Pathornwaj Chaysuwan
Lawyer under Thailand law