



TMI Eyes No. 25: Dividend Payouts - Legal, Tax, and BOI Considerations in Thailand

The dividend season is approaching for companies with an accounting year ending in December 2024 (and soon for those with an accounting year ending in March 2025). TMI will discuss the legal and income tax implications of dividends, particularly those distributed by companies operating under BOI-promoted projects with corporate income tax exemption.

Dividends

In Thailand, companies can declare and distribute dividends only if they have accumulated profits (i.e., retained earnings). Companies in a loss position are prohibited from paying dividends.

It is important to note that for corporate income tax (CIT) purposes, dividends paid from a non-BOI business are distributed from accounting profits, whereas dividends paid from CIT-exempt BOI income must be based on profits for tax purposes.

Additionally, under the Civil and Commercial Code, companies must complete dividend payments to shareholders within one month from the date the dividend resolution is approved by the Board of Directors or the Shareholders' Meeting.

Tax Implications of Dividend Payments

1. Dividends Paid from Profits of Normal Business

Companies paying dividends from profits derived from normal business operations must generally withhold tax as follows:

- 10% withholding tax applies when dividends are paid to:
 - 1) Individuals (Thai and non-Thai residents)
 - 2) Thai companies
 - 3) Foreign companies not carrying on business in Thailand
- However, withholding tax exemption applies if dividends are paid to:
 - 1) A listed company in Thailand
 - 2) A Thai company holding at least 25% of total shares in the dividend-paying company, without cross-shareholding

For exemptions (1) and (2) to apply, the shareholder must have held the shares for at least three months before receiving the dividend, and continue to hold the shares at least three months after receiving the dividend

2. Dividends Paid from Profits of a BOI-Promoted Project Exempt from CIT

If dividends are paid from profits exempt from CIT under Section 34 of the Investment Promotion Act B.E. 2520 (1977), then:

- No withholding tax applies, regardless of whether the recipient is an individual (Thai or non-Thai resident), a Thai company, or a foreign company.
- Thai companies receiving such dividends do not have to include them in their CIT calculations.

Key Considerations for BOI Companies Paying Dividends from CIT-Exempt BOI project:

- (1) Dividends must be entirely paid from profits of BOI projects that are exempt from CIT. Further, the dividends must be paid during the BOI tax exemption period, or within six months from the expiration date of the BOI tax exemption.
- (2) If a company fully utilizes its CIT privileges before the maximum BOI period (e.g., using up the tax exemption in Year 5 when the certificate allows 8 years), the BOI tax exemption automatically expires once the benefits are fully utilized. If the company pays dividends in Year 6, such dividends are no longer tax-exempt, and shareholders will be subject to income tax on those dividends.
- (3) For companies engaged in both BOI tax-exempt and non-BOI businesses, only dividends sourced from CIT-exempt BOI profits are tax-exempt. Companies may choose to distribute dividends only from BOI tax-exempt profits to ensure tax exemption. If companies cannot clearly identify the source of dividends, they must allocate dividends proportionally based on the ratio of CIT-exempt BOI and non-BOI profits.

TMI's Notes

It is crucial for companies to understand the legal and tax implications of dividend distribution to comply with The Thai Civil and Commercial Code, the Investment Promotion Act, and the Revenue Code. Particularly, companies must carefully plan the timing of dividend payments to ensure eligibility for withholding tax exemptions and income tax exemptions for shareholders. For example, dividends from CIT-exempt BOI income are tax-free only if distributed within the BOI tax-exemption period or within six months after its expiration.



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