TMI EYES
TMI Associates (Thailand) Co., Ltd.

TMI Eyes No. 27: Entire Business Transfer: Tax Perspectives

Due to the recent increase in corporate restructuring transactions and mergers & acquisitions, esp., entire business transfer (EBT), TMI discusses tax benefits of EBT, which may be of interest or serve as an alternative approach for companies.

Entire Business Transfer (EBT)

An EBT is a strategic restructuring method commonly used to consolidate operations, streamline business activities, or facilitate mergers and acquisitions. It involves the transfer of all assets, liabilities, rights, and obligations related to business operations from one legal entity to another in a single, comprehensive transaction. Importantly, if the EBT qualifies under the Thai Revenue Code, it may also be entitled to significant tax benefits, as discussed below.

Corporate Income Tax (CIT)

First and foremost, Section 74(1)(c) of the Thai Revenue Code is legislated to remove a significant tax barrier that historically discouraged EBTs, where transferors would otherwise be subject to immediate tax on unrealized gains. More specifically, Section 74(1)(c) of the Thai Revenue Code provides that the transferor must appraise the assets to be transferred to the transferee at the market price, but any gain derived from such transfer is excluded from taxable income. This mechanism allows the transferee to acquire and continue the business as if it had not been transferred, effectively resulting in a deferral of CIT on gains arising from the transaction.

The readers should not that the CIT exemption applies only if the transfer qualifies as an "EBT" and the transferor registers its dissolution within the same accounting period in which the EBT is consummated. However, the law does not provide a clear and specific definition of what constitutes a qualifying EBT for CIT exemption purposes. In practice, the Revenue Department generally expects the transferor to transfer all assets, liabilities, rights, obligations, and business operations to the transferee. That said, full compliance is at times impractical. By law, the transfer of certain items—such as contractual obligations, debts, and employees—requires the consent of the counterparty or the employees themselves.

In such cases, it is reasonable and consistent with the spirit of Section 74 to adopt an interpretive approach aligned with VAT principles, i.e., even where some accounts receivable or payable incurred in the course of business prior to the EBT cannot be transferred, the transaction may still qualify as an EBT rather than a taxable sale of goods under Section 77/1(8)(f) of the Revenue Code. This approach promotes both legal coherence and the practical facilitation of business transfers.

Value Added Tax (VAT)

As mentioned earlier, the transfer of an entire business is not considered a sale for VAT purposes. Therefore, a qualified EBT is not subject to VAT.

Specific Business Tax (SBT) and Stamp Duty (SD)

An EBT that complies with the conditions under the Revenue Code and relevant laws is exempt from specific business tax on revenue derived from the sale of immovable property held for business purposes, pursuant to Section 5 decies of Royal Decree No. 10 issued under the Revenue Code. In addition, the transaction is exempt from stamp duty under Section 6(31) of Royal Decree No. 10 issued under the Revenue Code.

Income Tax Exemption for Shareholders

Furthermore, if certain conditions are satisfied, shareholders—both corporate and individual—of the transferring company may also be exempt from income tax on benefits derived from the EBT, where shares are exchanged for shares in the transferee company. (Royal Decree No. 10 B.E. 2500 (1957), and Ministerial Regulation No. 126 B.E. 2509 (1966).)

TMI's Note

An EBT presents a valuable alternative for companies seeking to restructure, streamline operations, or transfer business undertakings in a tax-efficient manner. When properly structured in accordance with the conditions prescribed under the Revenue Code and relevant regulations, an EBT can offer substantial tax benefits—including exemptions from corporate income tax, VAT, specific business tax, stamp duty, and income tax for shareholders. However, to fully realize these advantages, it is essential for companies to carefully assess the legal and tax requirements and ensure full compliance. With proper planning and execution, an EBT can serve as a powerful tool to facilitate business transformation while minimizing tax exposure.

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