

New provisions for tax breaks

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Generally speaking, Specific Business Tax (SBT) is an alternative tax that is levied on certain types of businesses – particularly those in the financial services sectors. It was first introduced in tandem with the value-added tax (VAT) regime in 1992. The method for collecting SBT can be likened to that of sales tax, which was used in Thailand in the previous incarnation of indirect tax collection, before VAT.

The Thai Revenue Code contains a list that specifies which business operators are required to pay SBT. They include commercial banking, finance, securities, credit foncier, life insurance, pawn brokerage, sale of immovable property, and businesses involving transactions similar to commercial banking, among others.

SBT is collected on a gross-revenue basis at fixed rates, which may differ depending on the category of business. Returns for SBT must be filed every month within 15 days from the end of the month for which the SBT is to be accounted. SBT rates vary between 0.1% and 3.0%, and they exclude 10% municipality tax, which is levied on SBT.

The government recently issued a new Royal Decree that makes a number of important amendments to the exemptions under SBT. This article will look at the exemptions granted under the old Royal Decree, and the changes in the new Decree.

Royal Decree No. 240: The old Royal Decree, formally called the "Royal Decree Issued under the Revenue Code Governing Designation of Businesses Exempt from Specific Business Tax (No. 240) B.E. 2534", set out a number of exemptions. These included, among other things, the business of selling securities on the Stock Exchange of Thailand or Market for Alternative Investment; certain income of businesses belonging to financial institutions under the law governing asset management companies; certain businesses that sell immovable properties, normally conducted by government agencies or state enterprises (e.g., the Agricultural Land Reform Office and the Islamic Bank of Thailand); a sale with a right of redemption; the business of property funds and the right of claim set up under the law governing securities and exchange (provided only for commercial banks); and the business of futures trading on the Agricultural Futures Exchange of Thailand. Several of the exemptions are subject to multiple specific conditions.

Royal Decree No. 571: On Dec 23, 2013, a new Royal Decree (No. 571) was issued, which amended the earlier Royal Decree No. 240. In essence, the new Decree adds three exemptions to SBT, all of which are largely consistent with Departmental Instruction No. Paw 26/2534 Re: Interest for Business with Regular Transactions Similar to Commercial Banking under Section 91/5(5) of the Revenue Code (Paw 26).

These three amendments can be summarised as follows:

- The exemption was expanded in respect of interest generated from inter-company loans, where the borrower and the lenders are associated companies and do not carry on the business of commercial banking, finance, securities, credit foncier, or life insurance. Specifically, it was amended to include juristic partnerships. Further, a new definition of "affiliated companies or juristic partnerships" was added, which eased the six-month shareholding requirement for companies that have undergone an amalgamation or an entire-business transfer.
- An exemption was added for interest at a normal rate generated from deposits with banks or promissory notes purchased from other financial institutions. Although it is worded slightly differently, this provision is largely consistent with Instruction Paw 26.
- An exemption was added for interest generated from employee welfare loans made from accumulated funds or any other funds for employees, for those having employee welfare regulations to that effect. This wording is also largely consistent with Paw 26.

It is interesting to note that the new Royal Decree applies retroactively from Jan 1, 2012. As noted above, two of the three amendments simply bring consistency between the Royal Decree and Paw 26. As for the provisions in the Royal Decree that add juristic partnerships and the amended definition, these amendments, though minor, are good for taxpayers, as they expand availability of the exemption.

As a next step, the Revenue Department may replace and/or amend Paw 26, on order to establish consistency with the new Royal Decree.