

## Newsletter

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### Bangkok

5th Floor and 21st-25th Floors  
990 Abdulrahim Place  
Rama IV Road, Silom, Bangrak  
Bangkok 10500  
Thailand

## Thailand Introduces New Investment and Tax Scheme on International Business Center

### Part I: IBC as promoted by the Board of Investment

The Thailand Board of Investment ("**BOI**") has repealed its investment promotion policy to promote International Headquarters ("**IHQ**") and International Trading Center ("**ITC**") businesses on 11 December 2018. These two activities have been replaced with a new investment promotion activity known as International Business Center ("**IBC**"). This is also in line with the Thai Revenue Department's ("**TRD**") policy to promote the IBC scheme. The objective driving such change is to support the government's policy which aims to transform Thailand into investment hub being able to compete with regional and global players. The scope of activities, conditions and benefits of the IBC regime specified by the BOI are summarized below.

#### A. Scope of IBC activities

The IBC regime under the auspices of the BOI is essentially the combination of the IHQ and ITC schemes. IBC companies may only provide services to its domestic or foreign associated enterprise, except for ITC activity. According to the BOI's current interpretation, ITC activity includes only wholesale businesses. The activities that an IBC can undertake are as follows:

General business management, business planning, and business coordination	Sourcing of raw materials and parts	Research and development of products	Technical support
Marketing and sales support	Human resources management and training	Advisory relating to finance	Economic and investment analysis and research
Credit control and management	Treasury center	International trading center	Other business as announced by the Revenue Department





In general, an IBC business is considered a service business by the Ministry of Commerce. Therefore, a company deemed as a "foreigner" under the Foreign Business Act would require the following: (i) foreign business license or (ii) foreign business certificate issued pursuant to the investment promotion from the BOI, to operate in Thailand. In practice, the second option is preferable in terms of the application process as the first option requires disclosure of more extensive information regarding the business and generally has a lengthier overall process. Further, once investment promotion has been granted by the BOI, the promoted business will be entitled to certain benefits and privileges as opposed to the first option.

### **B. Conditions for applying for investment promotion under BOI incentives**

A company that wishes to operate the scope of activities mentioned above in Thailand may apply for investment promotion from the BOI as an IBC if all conditions set out in the table below are met.

<b>No.</b>	<b>Conditions</b>	<b>Remarks</b>
1.	The company must have registered capital of at least THB 10 million.	-
2.	The company must have a minimum investment capital (excluding the cost of land and working capital) of THB 1 million for the IBC investment project.	This condition generally refers to investment in machinery (including computers, servers and software) and buildings. Although the BOI strictly requires the applicant to invest in machinery, it does not require the applicant to invest in a building. Therefore, the applicant may lease the building or use its existing building for its IBC operations. However, the applicant must invest in machinery.  The promoted company will be given three years from the issuance date of the



No.	Conditions	Remarks
		investment promotion certificate to meet this condition.
3.	The company must have at least ten employees working in the IBC or five employees if the IBC only provides services relating to financial management.	-
4.	For a newly-established company, the company must have a debt-to-registered capital ratio of no more than 3:1. For an existing company, the BOI normally requires that the debt-to-equity ratio, including the new investment, to not exceed 3:1.	-
5.	If the company wishes to undertake the ITC business which is one of the permitted scope of activity, it must also undertake another scope of activity together with the ITC business.	-
6.	Machinery that will be used in the investment project which includes computers, servers and software, must be brand new.	This refers to machinery that is used to operate the proposed business, e.g. computers that are used to generate reports and documents and conduct day-to-day operations relating to the IBC business.

### **C. Non-tax privileges granted to an IBC under BOI promotion**

Similar to the repealed IHQ and ITC schemes, the BOI will provide incentives to investors; including permission to own land for IBC operations, work permits for experts and technicians, exemption of import duty on machinery that is used for research and development and training, and permission to take out or remit money abroad in foreign currency.



Please note that this change in policy will not impact the business operations of existing IHQ and ITC-promoted companies.

## **Part II: IBC as promoted by the Revenue Department**

Thailand launched the IBC scheme to replace Regional Operating Headquarter ("**ROH**") (consisting of ROH1 and ROH2), IHQ and ITC schemes, due to the requirements under BEPS Action 5 on Harmful Tax Practices.

Please note that companies can apply for the IBC scheme with the BOI and the TRD separately. The IBC application with the TRD is for the IBC to be entitled to tax privileges, while the application with the BOI is for non-tax privileges, as mentioned in Part I above.

The criteria and tax privileges granted to an IBC are summarized below.

### **A. Scope of IBC activities**

Tax privileges for an IBC are granted under the Royal Decree No. 674 ("**Royal Decree**"), which became effective on 29 December 2018. An IBC is defined as a company which is established under the laws of Thailand carrying on the businesses of providing management services, technical services, support services, or financial management services to the Associated Enterprises,<sup>1</sup> or operating business of ITC.

- (i) Support services are defined as:
  - a. General business management, business planning, and business coordination;
  - b. Sourcing of raw materials and parts;
  - c. Research and development of products;

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<sup>1</sup> Under the Royal Decree, associated enterprises are defined as:

- (1) A company or a juristic partnership that holds at least 25% of shares in the IBC, either directly or indirectly;
- (2) A company or a juristic partnership which is owned by the IBC for at least 25% of the total capital, either directly or indirectly;
- (3) A company or a juristic partnership which is owned by a company or a juristic partnership under item (1) above for at least 25% of the total capital, either directly or indirectly;
- (4) A company or a juristic partnership that has power to control or manage the IBC;
- (5) A company or a juristic partnership in which the IBC company has power to control or manage over; and
- (6) A company or a juristic partnership in which a company or a juristic partnership under item (4) above has power to control or manage over.



- d. Technical support;
- e. Marketing and sales support;
- f. Human resources management and training;
- g. Advisory relating to finance;
- h. Economic and investment analysis and research;
- i. Credit control and management; and
- j. Other services as prescribed by the Director-General of the Revenue Department (not yet announced).

(ii) Financial management services are defined as:

- a. Financial management services of a treasury center approved under exchange control laws; and
- b. Borrowing and lending THB loan by a treasury center approved under exchange control laws.

(iii) International trading center means cross-border procurement and sale of goods as well as the provision of services in connection with such international trading.<sup>2</sup>

To qualify for the IBC scheme provided by the TRD, a company needs to submit an application, business plan, list of Thai and foreign Associated Enterprises, and list of expatriates. Existing ROH1s, ROH2s and IHQs may convert to the IBC scheme by submitting an application to the TRD.

## **B. Criteria of IBC**

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<sup>2</sup> Under the Royal Decree, the services in connection with international trades are defined as:

- (1) Sourcing of goods;
- (2) Storage of goods pending for delivery;
- (3) Packaging;
- (4) Transportation of goods;
- (5) Insurance over the goods;
- (6) Advisory services, technical services, and training in relation to the goods; and
- (7) Other services as prescribed by the Director-General of the Revenue Department (not yet announced).



The criteria for obtaining tax privileges under the IBC scheme with the TRD is as follows:

- (i) The amount of paid-up capital on the last day of each accounting period shall be at least THB 10 million;
- (ii) At least ten employees, who possess knowledge and skills necessary for IBC business, or at least five employees if the IBC operates financial management services only;
- (iii) Minimum expenditure of IBC business ("**IBC Expenditure**")<sup>3</sup> paid to recipients in Thailand of at least THB 60 million in each accounting period. Existing ROH1s that wish to convert to IBC are not subject to this condition. While, existing ROH2s and IHQs that wish to convert to IBC are subject to minimum IBC Expenditure paid to recipients in Thailand of at least THB 15 million; and
- (iv) Other criteria to be prescribed by the Director-General of the Revenue Department (not yet announced).

### **C. Tax privileges granted to an IBC by the Revenue Department**

Tax privileges granted by the TRD to a company wishing to become an IBC are as follows:

- (i) Reduction of corporate income tax ("**CIT**") rate levied to income generated from IBC business ("**IBC Income**")<sup>4</sup> from current rate of 20% to 8%, 5%, or 3% for the IBC having the IBC Expenditure of at least THB 60 million, THB 300 million, and THB 600 million, respectively.

For existing ROH1s that have converted to the IBC scheme, which have IBC Expenditure of not more than THB 60 million

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<sup>3</sup> Under the Royal Decree, IBC Expenditure is defined as expenses which the IBC pays in order to generate IBC Income.

<sup>4</sup> Under the Royal Decree, IBC Income is defined as:

- (1) Income from providing management services, technical services, support services, or financial management services to the Associated Enterprises; and
- (2) Royalties derived from the Associated Enterprises as a result of research and development conducted in Thailand, regardless of whether the research and development are conducted by the IBC or IBC engages other persons to conduct the research and development. The conditions are to be prescribed by the Director-General of the Revenue Department (not yet announced).



in each accounting period, will be applicable for a CIT rate of 8%. Existing ROH2s or IHQs that have converted to the IBC scheme, which have IBC Expenditure of at least THB 15 million but not more than THB 60 million in each accounting period, will be applicable for a CIT rate of 8%.

Please note that income from an ITC business is not entitled to the above reduced CIT rates, and will be subject to CIT at the normal rate of 20%.

- (ii) Exemption of CIT for dividend received by the IBC from the Associated Enterprises.
- (iii) Exemption on specific business tax for income from provision of financial management services to the Associated Enterprises.
- (iv) Withholding tax exemption for foreign entity not carrying on business in Thailand from the receipt of following incomes:
  - a. Dividends distributed out of IBC Income (i.e. income derived from providing management services, technical services, support services, or financial management services to the Associated Enterprises, and such income is entitled to reduced CIT);
  - b. Dividends distributed out of income of ROH1s, ROH2s or IHQs converted to IBC, provided that the dividends are received within a year from the date of IBC approval; and
  - c. Interest paid by the IBC, only on the portion of loan borrowed by IBC in order to re-lend to its Associated Enterprises under the financial management services.
- (v) Personal income tax rate is reduced to 15% for taxable income received in connection with the permanent employment of expatriates by an IBC. The conditions for this particular tax privilege are to be prescribed by the Director-General of the Revenue Department (not yet announced).

Tax privileges mentioned above will begin after the Director-General of the Revenue Department has granted the applicant IBC approval. Tax



For further information,  
please contact:

Pornapa Luengwattanakit  
+66 2666 2824 Ext. 4556  
pornapa.luengwattanakit  
@bakermckenzie.com

Nopporn Charoenkitraj  
+66 2666 2824 Ext. 3705  
nopporn.charoenkitraj  
@bakermckenzie.com

Chana Sooppipat  
+66 2666 2824 Ext. 4047  
chana.sooppipat  
@bakermckenzie.com

Nuthari Borpitpitak  
+66 2666 2824 Ext. 3705  
nuthari.borpitpitak  
@bakermckenzie.com

Jaywon Yi  
+66 2666 2824 Ext. 4556  
jaywon.yi  
@bakermckenzie.com

Ansikarn Kristsmi  
+66 2666 2824 Ext. 3920  
ansikarn.kristsmi  
@bakermckenzie.com

privileges prescribed under items (i) – (iii) above will be available for 15 accounting periods.

It is worth noting that if an IBC does not satisfy any one of the criteria mentioned in items B above, tax privileges under items C (i) – (iii) will be terminated only for such particular accounting period, i.e. not retrospectively affecting the tax privileges utilized in previous accounting periods.

Nevertheless, if an IBC either does not satisfy any one of the criteria mentioned in items B above for more than one accounting period consecutively, or is not qualified as an IBC as defined under the Royal Decree, the Director-General of the Revenue Department has the authority to revoke IBC approval. In such case, all tax privileges under items C (i) – (v) will be terminated from the first accounting period (claw back).

Baker McKenzie will monitor the implementation of the new IBC scheme and will provide regular updates as necessary.