

CHANDLER MHM

Newsletter

Tax Exemption on Profit Distribution of PFPO's Corporate Unit holder is Now Repealed

Since 20 May 2019, the mutual funds established under Thai or foreign laws have been included in the definition of a "Company or Juristic Partnership" under the Revenue Code and its gross income under Section 40(4)(a)¹ is subject to 15% income tax on a fund's gross income. Moreover, the distributions and capital gains received from the mutual fund units are included in the income under Section 40(4)(b) and Section 40(4)(g), respectively.

The Revenue Department has announced the Royal Decree Issued under the Revenue Code Governing Exemption from Revenue Taxes (No. 689) B.E. 2562 dated 12 November 2019, which came into force on 13 November 2019. This Royal Decree provides income tax exemptions in relation to specified mutual funds, including the exemption on income of provident funds and retirement mutual fund, and the exemption on profit distributions from a fixed income mutual fund. In addition, it repeals and replaces the current tax exemptions under the Royal Decree issued under the Revenue Code governing exemption from revenue taxes (No. 263) B.E. 2536.

The Royal Decree No. 263 had provided a corporate tax exemption on profit distributions of unit holders received from all types of the mutual funds established under the Securities and Stock Exchange Act B.E. 2535, provided that a unit holder shall be an entity who holds such investment units for a period not less than three months from the date of acquiring such investment units up to the date of obtaining such income, and not transfer such investment units before the end of three months from the date of obtaining such income. The types of entities that could receive such exemption are as follows:

- (1) a company organized under Thai law; or
- (2) a registered company

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¹ Section 40(4)(a) of the Revenue Code, Income that is:

(a) Interest on a bond, deposit, debenture, bill, loan whether with or without security, the part of interest on loan after deduction of withholding tax under the law governing petroleum income tax, or the difference between the redemption value and the selling price of a bill or a debt instrument issued by a company or juristic partnership or by any other juristic person and sold for the first time at a price below its redemption value. Such income also includes income assimilated to interest, benefit or other consideration derived from the provision of a loan or from a debt-claim of every kind whether with or without security

A Type I Property Fund, a property fund for public offering (PFPO), is the first type of real property mutual fund and is listed on the Stock Exchange of Thailand. The corporate's unit holders of the PFPO, as a mutual fund established under the Securities and Stock Exchange Act B.E. 2535, have enjoyed the exemptions under Royal Decree No. 263 for a long time.

The concept of the exemption under the Royal Decree No. 263 was mirrored in the Royal Decree No. 689 for the corporate's unit holders of all types of mutual funds, **except PFPOs, Property Funds for Resolving Financial Institution Problems (Type II Property Fund) and Property and Loan Funds (Type III Property Fund)**. Therefore, the corporate unit holder of the PFPO, Type II Property Fund and Type III Property Fund is now subject to Corporate Income Tax (CIT) on its profit distributions. 10% withholding tax, which is creditable to the CIT, is imposed on such profit distributions.

Furthermore, since the PFPO is considered as a "company or juristic partnership" and the distributions and capital gains received from the PFPO's units are categorized as income under Section 40(4)(b) and Section 40(4)(g), from 20 August 2019, the foreign unit holder of the PFPO is subject to the final withholding tax on the income from PFPO's units, i.e., the distributions are subject to 10% withholding tax and the capital gains are subject to 15% withholding tax.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact person(s) at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed in the far-right column.