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ROYAL DECREE

Issued under the Revenue Code
Regarding Reduction of and Exemption from Revenue Tax (No. 331),
B.E. 2541

BHUMIBOL ADULYADEJ, REX.

Given on the 6th Day of October B.E. 2541;
Being the 53rd Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that;

Whereas it is expedient to grant reduction of and exemption from personal income tax and corporate income tax to borrowers and lenders of securities in certain cases.

By virtue of Section 221 of the Constitution of the Kingdom of Thailand and Section 3 (1) of the Revenue Code as amended by the Revenue Code Amendment Act (No. 10), B.E. 2496, the King's Most Excellent Majesty hereby enacts a Royal Decree as follows:

Section 1 This Royal Decree is called the "Royal Decree Issued under the Revenue Code Regarding Reduction of and Exemption from Revenue Tax (No. 331), B.E. 2541". .

Section 2 This Royal Decree shall come into force as from 1 January B.E. 2541.

Section 3 In this Royal Decree:

"borrower or lender" means a securities borrower or lender who is one of the following persons:

(1) a person licensed to undertake securities business in the category of securities borrowing and lending under the law governing securities and exchange,

(2) a securities depository center under the law governing securities and exchange,

(3) Thailand clearing house under the law governing securities and exchange,

(4) Bank of Thailand,

(5) a person who delegates another person under (1), (2), or (3) to be an agent or broker in executing a securities borrowing or lending agreement,

(6) a person who executes a securities borrowing or lending agreement with the person under (1), (2), or (3);

(as amended by Royal Decree No.582 B.E. 2558; come into force as from 27 March B.E. 2558)

“securities borrowing or lending agreement” means a securities borrowing or lending agreement according to the definition ascribed in the third paragraph of Clause 2 of the Notification of the Ministry of Finance Re: Prescribing Other Businesses which are Related to Securities as Securities Business dated 27th February B.E. 2540 as amended by the Notification of the Ministry of Finance Re: Prescribing Other Businesses which are Related to Securities as Securities Business (No. 2) dated 26th June B.E. 2540;

“reimbursement of dividends” means a sum which the borrower or the lender must pay to the lender or the borrower as a result of the payment of dividends on securities lent or used as collateral during the borrowing or lending of such securities;

“reimbursement of interests” means a sum which the borrower or the lender must pay to the lender or the borrower as a result of the payment of interests on securities lent or used as collateral during the borrowing or lending of such securities.

Section 4 Income tax under Division 2 and Division 3, Chapter 3, Title 2 of the Revenue Code shall be exempted for borrowers and lenders on incomes arising from transfer of securities or properties as the result of securities borrowing or lending, subject to the rules, procedures and conditions prescribed by the Director-General of Revenue Department.

In case that the borrowers or lenders under the first paragraph are companies or partnerships incorporated under the laws of foreign country and not carrying on business in Thailand, if they receive a reimbursement of dividends or a reimbursement of interests as the result of securities borrowing or lending, they must allow the payer of income to withhold tax at the rate of 10.0 percent of the reimbursement of dividends received or at the rate of 15.0 percent of the reimbursement of interests received in order to be eligible for tax exemption by virtue of the first paragraph.

Section 5 For the borrowers or lenders who are exempted from personal income tax under Section 4, if they allow the payer of income to withhold tax at the rate of 10.0 percent of the reimbursement of dividends received or 15.0 percent of the reimbursement of interests received, when the filing of a return is due, they shall be exempted from the inclusion of such reimbursement of dividends or reimbursement of interests in the computation for income tax payment, but only where they do not request for a refund of the withheld tax or a credit for the withheld tax either in whole or in part.

Section 6 Income tax under Division 3, Chapter 3, Title 2 of the Revenue Code shall be exempted on the dividends received from a company incorporated under the laws of Thailand or share of profits received from a mutual fund established under the law governing securities and exchange, for:

(1) the companies incorporated under the laws of Thailand which take the transfer back, in whole or in part, of securities which are issued by the same juristic person or mutual fund management project, and are of the same category, series and type, and are in equivalent amount as the securities lent or used as collateral in the borrowing, in an amount of one-half of the dividends or share of profits received;

(2) the companies under (1) which are listed companies or companies that hold shares in the company paying dividends at least twenty-five percent of all voting shares, provided that the company paying dividends does not directly or indirectly hold shares in those companies in an amount equivalent to the dividends or share of profits received.

The companies under (1) and (2) must be exempted from income tax under Section 4, and must have held shares or investment units that yield such dividends or share of profits for at least three months from the date of acquiring such shares or investment units until the date of earning such income and must continue to hold those shares or investment units for at least three months from the date of earning such income. Such period shall include the period of lending of shares or investment units or the period of use of shares or investment units as collateral

Section 7 The Minister of Finance shall have charge and control of the execution of this Royal Decree.

Countersigned by:

Chuan Leekpai

Prime Minister

Remarks :- The reason for the promulgation of this Royal Decree is due to the notification of the Ministry of Finance which prescribes securities borrowing and lending business as securities business under (7) of Section 4 of the Securities and Exchange Act B.E. 2535 in order to promote and develop capital market of the country. However, since securities borrowing and lending involve transactions that are subject to taxes and duties, investors are not motivated to engage in securities borrowing and lending. In order to promote and support the execution of securities borrowing and lending which will increase the volume of securities trading and benefit long-term development of capital market of the country, it is expedient to exempt personal income tax and corporate income tax for persons involved in securities borrowing and lending transactions in certain cases. Hence, it is necessary to enact this Royal Decree.

(Government Gazette, Decree Issue, Volume 115, Part 73 Gor, dated 16 October B.E. 2541)