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A legal framework to promote social enterprises in Thailand

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For some years now, the Thai government has had a policy of promoting social enterprises to improve the quality of life of citizens and to enable the private sector to work with the government to help communities and society.

Tax exemption for social enterprises: To help promote the activities of social enterprises, the Royal Decree on Tax Exemption (No. 621) was passed in 2016. To meet the definition of a "social enterprise", a company or juristic partnership must:

be established under Thai law, with the objectives of operating a business for the sale of goods or provision of services;

aim to promote employment at the location of its social enterprise, or solve problems or develop local communities, society or the environment; and

not emphasise maximising profits for shareholders or partners, with at least 70% of its profit invested back into the business, or for the benefit of farmers, the poor, the disabled, the disadvantaged, or other common benefits as prescribed by the finance minister.

Although a business may fall under the definition of a social enterprise, to qualify for a corporate income tax exemption on net profits, 100% of its profits must be invested in the business, or used for the benefits of the groups above, or other common benefits, in accordance with the rules, procedures and conditions prescribed by the director-general of the Revenue Department.

To be eligible for corporate income tax exemption, a social enterprise also must:

include the words "social enterprise" in its name;

be certified as a social enterprise by an agency prescribed by the director-general of the Revenue Department;

obtain approval from the director-general for its application to be a social enterprise, made in the form prescribed;

not pay assessable income under Section 40 (4) (b) or (d) of the Revenue Code (dividends, share of profits, or income from capital reduction) to shareholders or partners;

not transfer property used in the business, except for the transfer of property as prescribed by the director-general;

not be a contracting party of its shareholders or partners, and there must be no payment of any remuneration to its shareholders or partners, including persons to shareholders or partners, except where prescribed by the director-general;

not change the form of business operation from a social enterprise to another type of business before the lapse of 10 accounting periods, starting from the accounting period when the business was approved as a social enterprise;

comply with other rules, procedures and conditions prescribed by the director-general.

Tax exemption for investors and donors: Companies and juristic partnerships investing in social enterprises can enjoy a corporate income tax exemption of 100% of the amount invested, provided that the social enterprise meets all of the requirements specified above, with the exception that the social enterprise can pay up to 30% of its profits in dividends, share of profits, or capital reduction. Failure to meet the foregoing will result in loss of tax exemption for the investors. Similarly, if an investor transfers shares in the social enterprise prior to its dissolution, the investor would lose the tax exemption.

Companies and juristic partnerships donating money or property to a social enterprise can enjoy a corporate income tax exemption of up to 2% of their net profit, provided the social enterprise meets all of the conditions specified, with the exception that the social enterprise can pay up to 30% of its profits in dividends, share of profits, or capital reduction.

In considering the 2% cap, such donations must be included in aggregate with other qualified charitable donations. Failure to meet the foregoing will result in loss of tax exemption.

Registration: A company or juristic partnership engaging in social enterprise may register with the Business Development Department of the Commerce Ministry. As noted, the company or juristic partnership must have a specified charitable or social purpose listed in its objectives and meet naming requirements.

Non-compliance: If a social enterprise does not comply with the specified conditions, tax privileges are revoked from the beginning.

Possible future developments: The Social Enterprise Promotion Bill remains pending. If enacted, it would establish a National Social Enterprise Committee, a National Social Enterprise Office and a Social Enterprise Fund. The Office would be an independent state agency with the responsibility of providing support services and training for social enterprises.

The bill would set new definitions and promotion measures for social enterprises, including registration processes, and would prohibit the use of the title "social enterprise" by unregistered businesses, which would be an offence punishable by a fine. Other measures would support and incentivise investments in social enterprises, including loan privileges and knowledge support and training by the National Social Enterprise Office.

Although further changes may be introduced to the bill before it is passed into law, it has the potential to provide Thailand with a fully fledged legal framework for the effective promotion and regulation of social enterprises.

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