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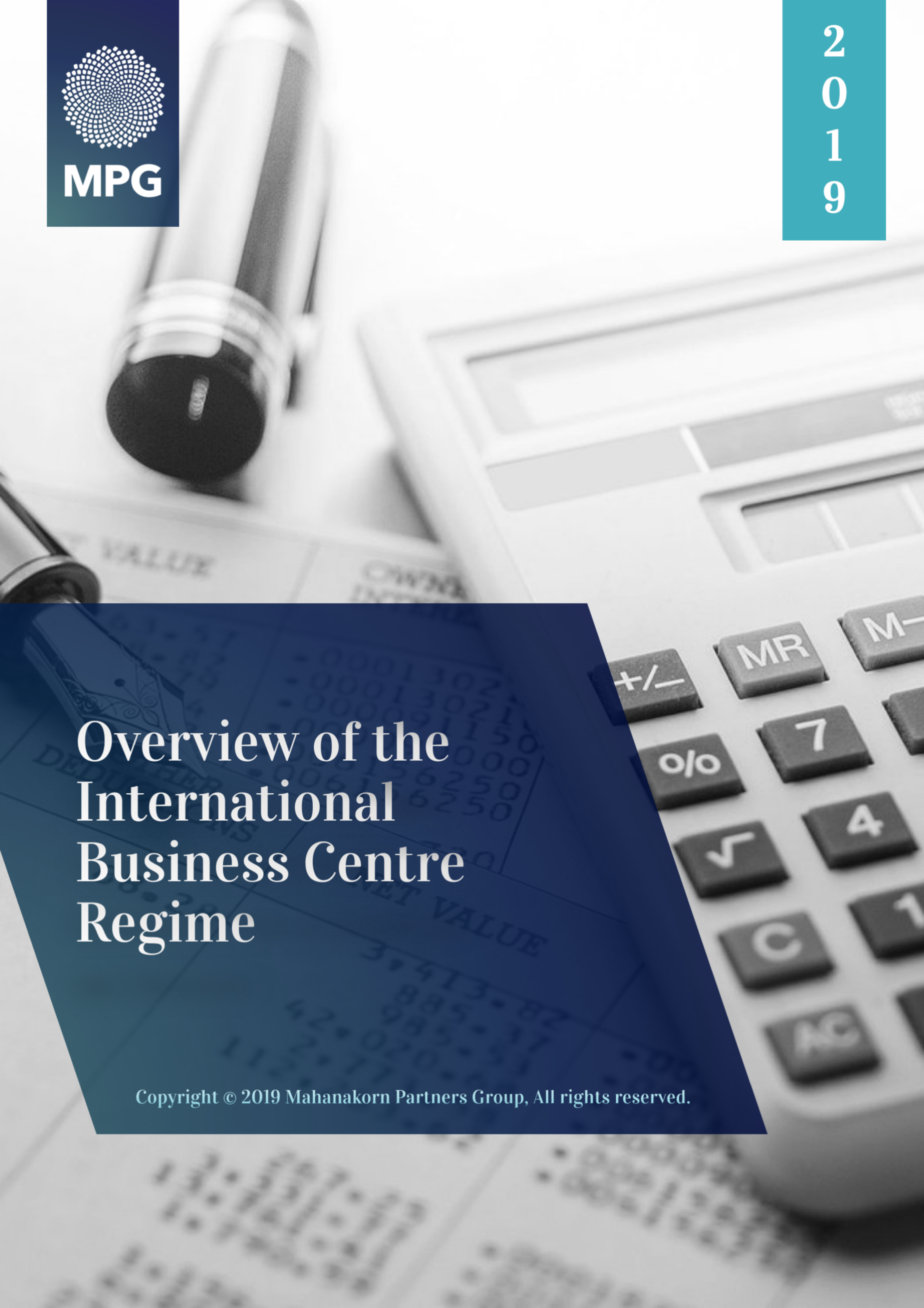

Overview of the International Business Centre Regime

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Summary

On 26 March 2019, the Thai Cabinet passed a resolution approving the issuance of three Royal Decrees aimed at abolishing the tax incentives provided under the Regional Operating Headquarters (ROH), International Headquarters (IHQ) and International Trading Centers (ITC) regimes. The implementation date for the proposed cancellation of these incentives is 1 June 2019 for corporate income tax incentives, and 1 January 2020 for personal income tax incentives.

Replacing the tax measures provided under the old regimes is the International Business Centre Regime (IBC). In addition to aligning Thailand's tax measures with international standards, the new IBC tax incentive regime reflects the Thai government's intention to continue promoting Thailand as a global investment hub for Southeast Asia.

With regards to foreigners working for ROH, IHQ and ITC, the tax incentives under the old regimes will be in place until 31 December 2019, whereas for foreign companies or juristic partnerships holding shares in ROH, IHQ and ITC, the tax measures under the old regimes will not be replaced until 1 January 2021.

ROH1, ROH2 and IHQ that are required to undergo changes in order to become IBC will do so under relaxed conditions. They will receive assistance with the application process, as will ITC expanding the scope of their businesses in order to be promoted as IBC.

The Revenue Department has begun accepting applications for IBC approval.

Background to the changes

Strategically located in the heart of Southeast Asia, with modern network infrastructure, a skilled labor force and an easy access to raw materials, Thailand has become a worthy candidate for the regional hub status. As a result, a number of tax incentive packages were introduced in an effort to attract multinationals to choose Thailand as a location for their headquarters and shared service centers.

In 2017, Thailand joined the OECD's Inclusive Framework on base erosion and profit shifting (BEPS). BEPS Action 5 is one of the four BEPS minimum standards which all Inclusive Framework members have committed to implement. One section of the Action 5 minimum standard pertains to preferential tax regimes where a peer review is undertaken to identify features of regimes that can facilitate base erosion and profit shifting, with the potential consequence of unfairly impacting the tax base of other jurisdictions.

In the OECD's 2017 Progress Report on Preferential Regimes, Thailand's International Headquarters, Regional Headquarters, Treasury Centre and International Trade Centre regimes have all been identified as Preferential Regimes featuring harmful tax practices. In response to this, the four regimes were suspended in October 2018, paving the way for the new International Business Centre (IBC) tax incentive regime.

The draft application format for the new IBC regime was announced in April 2019. The final IBC application form was officially presented on 2 May 2019 under Royal Decree No. 674.

To qualify for tax incentives, companies must now meet a higher expenditure threshold amounting to Baht 60m per annum for new applicants. Current beneficiaries of the ROH, IHQ and ITC regimes willing to transition into the new IBC regime face a reduced minimum annual expense requirement of Baht 15m, which shows that the new IBC regime encourages such a conversion.

Conditions to qualify as an IBC

- ✓ The company must be set up under Thai law to provide qualifying support services or treasury services to its affiliates.
- ✓ The company must have paid up capital of at least Baht 10m on the last day of each accounting period.
- ✓ The company must have annual operating expenditure in Thailand of at least Baht 60m.
- ✓ The company must have at least 10 qualified employees or a minimum of 5 qualified employees in the case that it acts solely as a treasury center.

Tax Benefits/Incentives available

Under the Royal Decree, qualifying companies under the new IBC regime will be eligible for a number of incentives for a standard period of 15 years, including:

- ✓ A reduced corporate tax rate on qualifying income as follows:
    - A 3% rate if the IBC incurs at least Baht 600m in expenditures locally per annum.
    - A 5% rate if the IBC incurs at least Baht 300m in expenditures locally per annum.
    - An 8% rate if the IBC incurs at least Baht 60m in expenditures locally per annum.
- ✓ Tax exemption on both domestic and foreign sourced dividend income derived from affiliates.
- ✓ Withholding tax exemption on dividends paid to offshore shareholders and on interest payments to foreign beneficiaries in relation to loans for treasury activities.
- ✓ Exemption from specific business tax on qualifying treasury center income.
- ✓ Flat personal income tax rate of 15% for eligible expatriate employees.

To obtain approval to use the tax incentives, a company must apply to the Revenue Department.

Revocation of benefits

A failure to comply with any one of the conditions in a given year would result in the incentives ceasing to apply for the specific year.

If the prescribed conditions are not met in more consecutive years, the IBC status may be revoked and the incentives granted in previous years may be withdrawn.

Conversion to IBC

Companies promoted under the current regimes may apply to convert to the IBC regime, subject to meeting the prescribed conditions.

Non-Tax Benefits available

In accordance with the government's policy to promote the new IBC regime, Thailand's Board of Investment (BOI) also offers non-tax incentives.

An IBC promoted by the BOI would be entitled to receive non-tax incentives, such as:

- Permission for 100% foreign ownership of the IBC.
- Visa and work permit privileges for foreign nationals working for the IBC.
- Permission to own land for use in the business of the IBC.

Moreover, machinery used for R&D or in training may receive an import duty exemption.

Other key considerations

Thailand has recently legislated transfer pricing rules for related party transactions.

Therefore, it will be imperative for businesses who are contemplating establishing an IBC in the Kingdom, to adequately consider the pricing of its transactions with related parties.

Taxpayers are advised to be cautious when framing policies for inter-company services as these charges are highly likely to also be reviewed by the recipient country's tax authorities.

It is therefore recommended that an IBC establishes and documents specific protocols for identifying chargeable costs to each affiliate. A benchmarking exercise should be undertaken to determine the appropriate pricing of charges to affiliates.

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