What do we "EXPECT" from the Board?

Director's compensations, what are the tax liability?

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What tax do directors pay?

Non-Executive Director (Non-ED) is not a company's employee, for example an independent director differs from an Executive Director (ED) in terms of legal relationship from the "beginning" of relationship between the company and the director.

Independent Director … is under "corporate law" and is appointed by "shareholders' meeting" in accordance with the principle of shareholders' rights or by the "Board of directors" pursuant to the exceptions for the appointment for "replacement directors" to fill vacancy that resulted from resignation or death.

Executive Director … is under "labor law" through employment and the appointment by the "shareholders' meeting" or by "Board of Directors" to also assume directorship.

What compensations do directors receive?

A. Executive Director (as an employee of the company)

"Executive Director" is employed by the company and is paid under the company's payroll in accordance with the organizational chart. This director will be liable to pay tax as an "employee", including:

(1) financial benefits such as salary, bonus, commission fee, vehicle expense, fuel expense, transportation expense, mobile phone expense, accommodation expense, golf membership, tuition fee for children (for ex-pat director), etc.; and

(2) non-financial benefits such as company car, accommodation, key man insurance, mobile phone , ESOP stocks, and other welfares.

B. Independent Director (Non-executive director)

Compensation of independent director is usually in the form of meeting allowance, monthly remuneration, director bonus, which are among the "financial benefits".

Some companies also provide other "non-financial benefits" to "independent directors" such as health insurance, company car, company's stocks, and director's credit card.

Director's compensations, what are the tax liability?

Personal Income Tax

Obviously, the director's benefits in a form of "financial benefit" is subject to "personal income tax" because director's role and duty is considered as an "individual performance", not a corporate performance.

The relationship between the company and directors is not in the form of an "employer and employee" stipulated in the labor law or social security law. It is also not in the form of a "hirer and contractor" stipulated in the law concerning hire of work contract. However, it is in the form of "principal" (company) and "agent" (director) under the "corporate law".

Director compensation, both financial and non-financial benefits, that can be computed into monetary value is considered "taxable income."

Tax issues concerning director's compensations usually involve with company stock, director bonus, key man insurance, and company car.

Nominal Stocks...Free Stocks... or Low-priced Stocks

Nominal, free or low-priced stocks given to a director are considered as "taxable benefit" that must be included in the personal income tax calculation which is taxed at progressive rates between 5 – 35%.

Tax base of non-listed stocks is calculated from a company's "book value", based on the latest financial statements before the shares are given to the directors. Net asset value can be calculated by deducting "liabilities" from "assets" in the balance sheet. Book value per share derives from dividing net asset value by "total number of shares" in the company.

Tax base of listed stocks for "IPO shares" are based on the IPO price on trade debut, while existing stocks are based on "average monthly price" at the time the stocks are given.

Personal income tax base in case of "nominal" stocks has been ruled by "Taxation Consideration Committee" published in the Royal Gazette since 1996. Therefore, tax calculation for stocks given to directors, executives, employees, and advisers are clear and has no arguable taxation issue.

Impact of nominal stocks on the company's "financial statements"

According to TFRS (Thai Financial Reporting Standard) No. 2 on Share-Based Payment which took effect since 2011 and was amended in 2018, share-based payment has substantial impacts on the IPO listing process and shareholding restructuring of companies, particularly on "retained earnings" that is part of "shareholders' equity" in the balance sheet.

The impact on the "balance sheet" is that there will be lower "retained earnings". Auditor will treat the sum of this amount as "special provision" that the company cannot use to pay dividend to write-down capital until the company is dissolved.

The impact on "profit and loss statement" is that there will be a higher accounting expense (no actual payment) resulting in lower net profit.

The impact on "statement of cashflows" is that there will be an accounting expense but is not a "tax expense" (disallowed expense). The company must "add back" this disallowed expense as its "taxable income", and pay a higher tax from the corporate tax adjustment.

Option to mitigate impacts from issuance of nominal stocks

One alternative option for a company to mitigate the impact from a nominal stock is that the company might consider not paying "stock compensation" but paying "extra cash" or "bonus" to directors instead. The directors can then use the cash to purchase company's stocks at fair value.

Director Bonus

According to "minutes of shareholders' meeting", numerous listed companies pay "director compensations", such as director, bonus based on the company's "earnings" or "dividend" paid to shareholders.

Director bonus is subject to personal income tax. However, the adverse financial effect on the company is that even though the director bonus payment is actually paid and book in financial accounting, it cannot be registered in tax accounting because it is a "disallowed expense" for calculating from the company's "earnings".

The Supreme Court once ruled that any expenses (such as director bonus) based on "dividend" or "earnings" of the company in the same "tax year" or an "accounting period" are considered as a "disallowed expenses" for corporate income tax purposes because the "dividend" is part of the company's after-tax "profits".

Option to mitigate the impact from director bonus

One alternative option for the company to mitigate the impact form the director's bonus is that the company might use a different "calculation basis" such as sales or profit of the year before, average earnings of past several years, etc. instead of "profits" or "dividend" in the particular year.

In the next edition, we will discuss "financial damage" from the compensation paid to the director in a form of a "non-financial benefit" such as company car, key man insurance, etc.