



Tax News (November 2011)

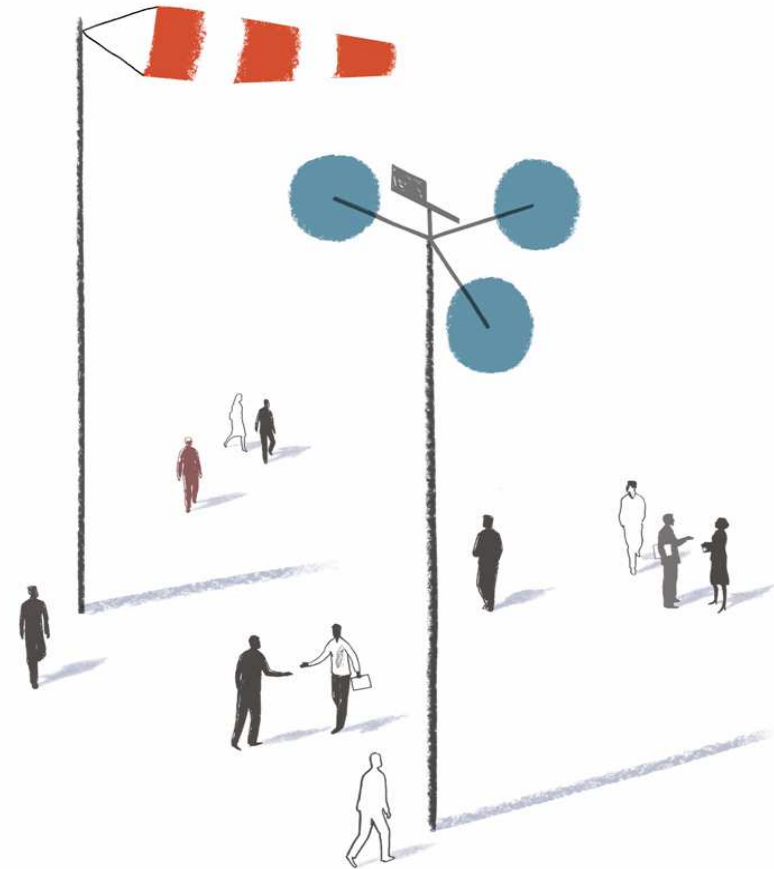
Disaster Recovery Management

The disastrous floods that have destroyed and damaged a vast number of manufacturing factories in Thailand during October 2011 have created a number of tax and customs duty issues that must be addressed as part of 'recovery operations'. The failure of a company to take the appropriate steps during clean-up may trigger substantial unwarranted tax and custom's duty liabilities especially for exporters. To date neither the Revenue Department nor the Customs Department have issued any pronouncements that would alleviate these concerns.

Factors to be considered are: (i) the location of the facilities (Duty-free zone; Bonded Warehouse; Industrial Estate and elsewhere); (ii) existence of BOI Incentives; and (iii) Exporter (Direct & Indirect)

The Tax and Customs Duty Exposure is particularly severe for those companies that are not located within a Duty-free Zone or Bonded Warehouse. As presented in the following pages a company may have already triggered substantial Tax (VAT) and Customs Duty exposures as a result of the complete loss or damage to its Machinery & Equipment, Raw Materials, Essential Materials, Work-in-Progress and Finished Goods.

The only solution available will be for the Thai Government to adopt new tax and customs duty regulations that will alleviate and eliminate these liabilities.



Issues of Concern

These issues must immediately be addressed by the Thai Government in order to provide substantial tax relief to affected companies:

1. The destruction of raw materials and essential materials that have been imported in order to manufacture export goods, together with goods-in-process and finished goods manufactured therefrom may create immediate liabilities for VAT and Customs Duties.
2. The destruction of Machinery & Equipment that has been used for less than 5 years and which was imported duty free under BOI incentives may now be subject to VAT and Customs Duties.
3. The temporary cessation of business operations may also result in the following:
 - The expiration of tax loss carry-forwards that may be used for only a 5 year period.
 - The inability to utilize the full period of BOI corporate income tax incentives.
 - Difficulty in preparing and filing monthly tax reports on a timely basis, with the risk of being assessed substantial penalties and interest as a result thereof.
4. The location of the facilities is also an important factor – Duty-free zone, Bonded Warehouse, Industrial Estate or other industrial location.
5. Those companies that have Customs Duties privileges from the BOI (either 100% or 50% exemption) have other requirements to meet in order to avoid adverse VAT and Customs Duty liabilities.
6. Companies with BOI Incentives that provide for the reduction of import duties on raw and essential materials used for producing products for export are also subject to immediate imposition of Customs Duties upon damage or destruction from a natural disaster. Existing BOI Announcements only cover losses incurred because of defective materials or because of damages to finished goods during the production process.



Worst Case Scenario

- For Export Manufacturing Companies that are located outside of a Duty-free and which do not have BOI Incentives that would exempt such raw materials and essential materials from customs import duties:
 - the loss and destruction of raw materials, essential materials, work in process and finished goods will trigger immediate liability for the payment of Customs Duties on Import (assuming that payment was secured by bond).
 - Also liable for the payment of VAT on Import.
 - If payments have been secured by Bond, the Customs Department could make an immediate claim against the Bond for not only the duties and VAT, but also surcharges and interest calculated from the dates of original import.
 - For companies that have made payment of customs duty in anticipation of receiving a refund, this will not be possible.
- Neither the current Revenue Code (including regulations, announcements, etc.) nor the existing Customs Law and Regulations provides any exemption for the payment of VAT and Customs Duties where the raw materials and essential materials are destroyed or damaged by natural disaster. The law requires that the raw materials and essential material together with the finished goods resulting therefrom are exported from Thailand within a defined period. If this doesn't occur (for whatever reason), taxes are then due.
- The only recourse available is for the Government to adopt special provisions that would provide relief from these requirements.



Duty free zone; export processing zone; bonded warehouse

Facilities located in duty free zone, export processing zone and bonded warehouse

1.Imported raw materials, essential materials, work-in-process and finished goods.

- Where suffer damage or destruction must provide evidence to the Customs Department and Revenue Department to prove damage and destruction. In such case no liability for either customs duties or VAT. This is necessary in order to avoid a presumption that these items were transferred into Thailand from the zone.
- Evidence should include photographs, detailed stock and inventory records as of the date damaged was suffered.
- Request officials from the Customs Department and Revenue Department to actually observe the damage.
- BOI has also announced that for imported raw materials, work-in-progress and finished goods that have not suffered damage, these can be removed and transferred to a new location without incurring any liabilities for customs duties and VAT. Only requirement is to provide notice to the BOI. It is not necessary to obtain prior approval from the BOI for the move. Again it is important to document the items that have been removed.

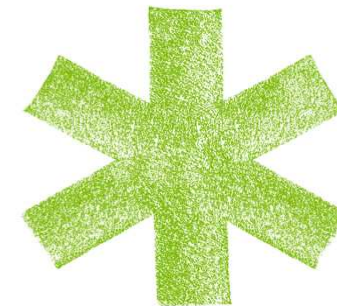
2.Imported machinery & equipment

- Must also provide similar evidence to the Customs Department and Revenue Department as for imported raw materials.
- BOI has also announced that for purposes of rehabilitation of the machinery & equipment, these can be moved upon providing notice to the BOI. Not necessary to obtain prior approval for the move.



BOI incentives – exemption from import duties

- 1. Company has received exemption from the payment of import duty or reduction of import duty (no export required)**
 - As there is no requirement for the export of finished goods, there is no obligation for the payment of customs duties on damage or destruction of either the raw materials, essential materials, work-in-process or finished goods
 - Must still advise and provide proof to the BOI that items have suffered unintentional damage or destruction in order to avoid imposition of VAT on deemed sale.
 - If because of unanticipated events, can request the BOI to extend the period of exemption.
- 2. Company has received incentives for reduction of import duty on raw and essential material for production of products for export**
 - Existing BOI Announcement (No. Por 5/2543) is not specifically applicable as this is directed toward losses incurred during the production process, such as defective raw materials, production losses, or defective finished goods. Even in this situation, a company must comply with specific procedures requiring advance notice to the Office of the BOI including details of the loss, methods for sale or destruction, and make the items available for inspection.
 - **It will be necessary for the BOI to adopt new regulations (with the cooperation of the Revenue and Customs Departments) that specifically covers the losses incurred in the current flood situation.**



Other Suggestions

All Companies that have suffered damage from the flood should to the extent possible:

- Recover and reconstruct all accounting records as of a date immediately prior to the flooding, and in particular those relating to:
 - Raw and essential material inventory stock cards.
 - Details of work-in-process and finished goods on hand.
 - Details of all fixed assets (machinery & equipment) that were originally imported into Thailand under customs duty exemptions together with details of damage or destruction.
 - All tax filings and customs duty payments.
 - Personnel and wage records
- Create photographic evidence of the destruction and damages incurred to all property. The photo should include a small sign or other identifier of the property shown.
- The Revenue Department has announced that the due date for filing all monthly tax returns for the months of August through November 2011 has been extended to 30 December 2011 for the Provinces of Ayutthaya, Chainat, Singburi, Ang Thong, Uthai Thani, Lopburi, Pathum Thani, Pichet and Nonthaburi. Extensions have also been announced for other areas that have been flooded in the Provinces of Saraburi, Nakornpratom, Sukhothai, Nakorn Sawan, Phisanulok, Chiang Mai, Ubonrajthani, Loei and Satun. Confirmation of the specific areas should be obtained from the Revenue Department. In addition, an extension is to be provided for those areas within Bangkok that have been impacted by flooding. Details are to be announced by 7 November. Companies in Bangkok should contact the local area Revenue Department Office to determine if such extension has been granted for their area.
- As the BOI has announced that effected companies can move damaged imported machinery & equipment from the current factory site to another site without causing the imposition of customs duties or the cancellation of BOI incentives. However, prior notice and details must be provided to the BOI.



Contact

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