

CHAPTER 3 BUSINESS PROMOTION INCENTIVES

There are two governmental organisations that have authority to grant incentives in order to encourage both foreign and local investment in Thailand. Firstly, the Board of Investment (BOI) may grant general investment privileges. These are based on the location of the enterprise. Presently, there are three general regional zones to which are allocated different levels of investment privileges.

The other governmental organisation is the Industrial Estates Authority of Thailand (IEAT). This has authority to grant investment privileges to enterprises that are located specifically within industrial estates that have been developed either by the IEAT, or as a joint venture between the IEAT and a private entity.

Board of Investment

General The BOI's powers are contained in the Investment Promotion Act (1977). Its purpose is to administer a program of incentives for both Thai and foreign investors who wish to establish or expand suitable businesses in Thailand. In appropriate cases and in accordance with the guidelines listed below, the BOI grants special privileges to those who invest in approved projects.

Service Centers Promoted companies and those planning to construct or obtain a license for a factory, are eligible for assistance at a Service Center. There are two such centers in Bangkok that provide assistance in obtaining licenses and permits, and dealing with other government agencies.

Doing business without BOI promotion Whilst the BOI provides valuable incentives, many Thai and foreign businessmen establish businesses without BOI assistance. Accordingly, investors should carefully consider the pros and cons of seeking BOI incentives before making an application.

Foreign ownership Foreign investors often desire to own all or at least a majority interest in their manufacturing subsidiaries established abroad. Where such a subsidiary in Thailand seeks BOI privileges, the BOI may allow it to be majority or 100% foreign owned, subject to conditions.

Application for privileges Investors who wish to seek promotional privileges should file an application in duplicate. The application may be either granted, refused, or referred for further clarification.

Promotional certificate If the application is approved, the applicant will be notified and provided with an application form for a Promotional Certificate. Within the times provided or any extension permitted, the applicant must submit the completed form and show compliance with the following matters:

1. a Thai company has been incorporated;
2. the required amount of capital has been remitted into Thailand;
3. the nationality profile of the shareholders meets BOI requirements; and
4. the existence of any relevant agreements providing for the transfer of technology.

The Promotional Certificate will list all the special privileges granted to the promoted company. It is essential that it is correct in every detail since, for example, the Customs Department, will not permit the duty free importation of any goods that do not clearly conform to the description contained in the Promotional Certificate.

Summary of BOI incentives The incentives available from the BOI are listed below. Many of these incentives are generally available to businesses that are not BOI promoted. However, these benefits are often greatly facilitated for those with promotional privileges.

The most important privileges available are summarized as follows:

1. Permission for majority foreign ownership of a promoted business which would otherwise be restricted under Schedule 2 or 3 of the Foreign Business Act (see Chapter 1 *Foreign Business Restrictions*).
2. Permission for the enterprise to own land for use in the promoted business.
3. Exemption from various taxes imposed on the business, including exemption from the requirement to withhold tax on dividends and royalty payments.
4. Permission to remit capital, profits, interest and principal on foreign loans, royalties, fees or other obligations in foreign currency.
5. Permission to employ foreign experts and technicians on more advantageous terms than permitted by the Ministry of Labour (see further Chapter 19 *Work Permits* and Chapter 20 *Immigration*).
6. Exemption from import duties for machinery imported for use in the business.
7. Exemption from import duty, or reduction of duty on raw or essential materials used in the business.

8. Exemption from corporate income tax for a period of three, five or eight fiscal years respectively in Zones 1, 2, and 3 (see below), depending on the size of investment or number of full time employees. An extended tax holiday may be granted to businesses located in certain provinces in Zone 3 for an additional five years, subject to further requirements.
9. Dividends may be exempted from tax for a period equal to the period of exemption from corporate income tax.
10. Exemption from tax on payments of royalties and fees for up to five years.

BOI policies concerning applications The BOI has issued regulations that set out its policies in relation to applications:

1. The efficiency and effectiveness of tax privileges will be enhanced. Privileges will be granted to projects that actually benefit the economy and good governance will be used for managing and supervising the application of tax and duty privileges. Promoted entities must report the operating results of their promoted projects to the Board of Investment for review prior to the application of tax and duty privileges for that year.
2. Every promoted project that has investment capital of 10 million baht or more (excluding land and working capital) must obtain ISO 9000 certification or similar international certification within a specified period of time.
3. Previous conditions regarding exports and use of local material are repealed, so that the criteria for promotion will be in line with international trade and investment agreements.
4. Special promotion shall be given to regions or areas with low income and inadequate investment facilities. Maximum tax and duty privileges will be offered to these regions or areas.
5. Importance is given to SMEs by applying a minimum level of investment capital of 1 million baht (excluding cost of land and working capital) for projects eligible for promotion.
6. Priority is given to activities in agriculture and agricultural products, projects related to technological and human resource development, public utilities and infrastructure, environmental protection and conservation and targeted industries.

Criteria for project approval BOI regulations set out the criteria for approval of a project:

1. Projects with investment capital (excluding cost of land and working capital) not exceeding 500 million baht, should meet the following criteria:
 - (a) The value added is not less than 20% of sales revenue, except for projects that manufacture electronic products and parts or process agricultural produce, and other projects as specified by the BOI;
 - (b) The ratio of liabilities to registered capital should not exceed 3:1 for a newly established project.
 - (c) Modern production processes and new machinery are used. Where old machinery will be used, its efficiency must be certified by reliable institutions and the Board's approval must be obtained;
 - (d) Adequate environmental protection systems are installed. For projects with a potential environmental threat, special conditions can be imposed on the location of the project and the manner of pollution treatment.
2. For a project with investment capital exceeding 500 million Baht (excluding the cost of land and working capital), the criteria above apply and a feasibility study must also be submitted.
3. For a concession project or privatization of a state enterprise project, the criteria are as follows:
 - (a) Projects of state enterprises will not be granted promotion;
 - (b) For a Build Transfer Operate or Build Operate Transfer concession project by the private sector, the state agency that owns the project must submit its project to the BOI for consideration prior to any invitation to bid, and bidders must be informed of any promotional privilege entitled to them, prior to bidding. In principle, the BOI will not consider a project where the private sector pays for a concession, unless such payment is deemed to represent a reasonable investment for the state;
 - (c) For a Build Own Operate project, including a lease by the private sector or rental payment to the state, normal criteria are applied;
 - (d) For privatization of state enterprises, only expansion after the privatization will be considered for promotion.

Criteria for shareholding by foreign investors The current rules regarding foreign shareholdings in a promoted project are as follows:

1. Agriculture, animal husbandry, fisheries, mineral exploration, mining and services under Schedule 3 of the Foreign Business Act - Thais must hold not less than 51% of the registered capital;
2. For manufacturing projects, foreign investors may hold a majority of the shares;
3. The Board may specifically fix the shareholding of foreign investors on some promoted projects when it is deemed appropriate.

Investment Zones Thailand is divided into three investment zones for BOI promotional purposes:

Zone 1: Bangkok, Samut Prakan, Samut Sakhon, Pathum Thani, Nonthaburi and Nakhon Pathom (six provinces).

Zone 2: Samut Songkhram, Ratchaburi, Kanchanaburi, Suphanburi, Ang Thong, Ayutthaya, Saraburi, Nakhon Nayok, Chachoengsao, Chon Buri, Rayong and Phuket (12 provinces).

Zone 3 The remaining 58 provinces.

All Zone 3 provinces are designated as Investment Promotion Zones.

Criteria for Granting Tax and Duty Privileges The tax and financial privileges available, on a zone by zone basis, are as follows:

Zone 1 projects:

1. 50% reduction of import duty on machinery subject to import duty of not less than 10%;
2. Corporate income tax exemption for three years for projects located within industrial estates or promoted industrial zones, provided that such a project with capital investment of 10 million baht or more (excluding cost of land and working capital) obtains ISO 9000 or similar international standard certification within two years from its start-up date, otherwise the corporate income tax exemption will be reduced by one year;
3. Exemption from import duty on raw or essential materials used in the manufacturing of export products, for one year.

Zone 2 Projects:

1. 50% reduction of import duty on machinery subject to import duty of not less than 10%;

2. Corporate income tax exemption for three years, increased to five years for projects located within industrial estates or promoted industrial zones, provided that such a project with capital investment of 10 million baht or more (excluding cost of land and working capital) obtains ISO 9000 or similar international standard certification within two years from its start-up date, otherwise the corporate income tax exemption will be reduced by one year;
3. Exemption from import duty on raw or essential materials used in the manufacturing of export products for one year.

Zone 3 Projects:

1. Exemption of import duty on machinery;
2. Corporate income tax exemption for eight years, provided that a project with capital investment of 10 million baht or more (excluding cost of land and working capital) obtains ISO 9000 or similar international standard certification within two years from its start-up date, otherwise the corporate income tax exemption will be reduced by one year;
3. Exemption from import duty exemption on raw or essential materials used in the manufacturing of export products for five years;
4. A project located in one of the following 36 provinces: Krabi, Kamphaeng Phet, Khon Kaen, Chanthaburi, Chai Nat, Chumphon, Chiang Rai, Chiang Mai, Trang, Trat, Tak, Nakhon Ratchasima, Nakhon Si Thammarat, Nakhon Sawan, Prachuab Khiri Khan, Prachin Buri, Phangnga, Phattalung, Pichit, Phitsanulok, Phetchaburi, Phetchabun, Mukdahan, Mae Hong Son, Ranong, Lop Buri, Lamphang, Lamphun, Loei, Songkhla, Sa Kaew, Sing Buri, Sukhothai, Surat Thani, Uttaradit, and Uthai Thani will be granted tax and duty privileges as above and further privileges, as follows:
 - (a) A project located within industrial estates or promoted industrial zones is entitled to: 50% reduction of corporate income tax for five years after the exemption period; and double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from promoted activity;
 - (b) For a project located outside industrial estates or promoted industrial zones, a deduction can be made from net profit of 25% of the project infrastructure installation or construction cost for 10 years from the date of first sale, and net profit for one or more years of any year can be chosen for such deduction. The deduction is additional to normal depreciation.

5. A project located in one of the following 22 provinces: Chaiyaphum, Kalasin, Nakhon Phanom, Narathiwat, Nan, Nong Khai, Buri Ram, Pattani, Phayao, Phrae, Maha Sarakham, Yasothon, Yala, Roi Et, Si Sa Ket, Sakhon Nakhon, Sathun, Surin, Nong Bualamphu, Amnat Charoen, Udon Thani, and Ubon Ratchathani will be granted tax and duty privileges as above and further privileges as follows:

- (a) 50% reduction of corporate income tax for five years after the exemption period;
- (b) Double deduction from taxable income of transportation, electricity and water costs for ten years from the date of first revenue derived from promoted activities;
- (c) Deduction from net profits of 25% of the project's infrastructure installation or construction costs for ten years from the date of first sales, and net profit for one or more years of any year can be chosen for such deduction. The deduction is in addition to normal depreciation.

Priority activities BOI regulations also describe certain activities that are regarded as a priority for promotion, namely: agriculture and agricultural products, technological and human resource development, public utilities and infrastructure, environmental protection and conservation, and specifically targeted industries. These projects are entitled to the following privileges:

1. Exemption of import duty on machinery, regardless of location.
2. Corporate income tax exemption for eight years, regardless of location.
3. Other privileges as above, depending on the zone in which the project is located.

Criteria for factory relocation Specific criteria have also been issued and will apply where a promoted business relocates into a different promotional zone.

Reporting operating results Promoted business are required to report their annual operating results to the BOI for review, prior to the BOI granting tax and duty privileges for that year.

BOI discretion Although the BOI must follow the criteria above in considering investment promotion applications, it has discretion in certain cases, to make a decision outside the guidelines expressed above.

Activities eligible for promotion Regulations have been issued by the BOI with regard to the activities that are eligible for promotion:

1. A minimum level of investment capital (excluding cost of land and working capital) of one million baht is required for all types of activities eligible for promotion.
2. Promoted projects must comply with the conditions specified for each type of activity.
3. The rights and benefits provided for promoted projects must be in accordance with BOI regulations regarding policies and criteria for investment promotion.
4. The following activities have been designated as priority activities:
 - (a) Agriculture and agricultural products as specified in the list below: projects with direct involvement in technological and human resource development, specifically: research and development, scientific laboratories, calibration services, and human resource development.
 - (b) Infrastructure, public utilities and basic services, specifically the following: public utilities and basic services, mass transit systems and transportation of bulk goods.
 - (c) Environmental protection and conservation, specifically the following: industrial zones for environmental preservation, waste water treatment, disposal services for refuse, industrial waste or toxic chemicals.
 - (d) Targeted industries, specifically the following: manufacture of steel casting using induction furnace; manufacture of forged steel parts; manufacture of specified machinery and equipment; manufacture of sintered products; manufacture or repair of aircraft and aircraft parts; manufacture of vehicle parts, specifically: manufacture of ABS, substrate for catalytic converters, and electronic fuel injection systems; heat treatment; manufacture of material for microelectronics; electronic design; software; software parks; and international distribution centers.

As at October 2007, the BOI has issued a lengthy list of activities eligible for promotion grouped under seven headings: agriculture and agricultural products; mining, ceramics and basic metals; light industry; metal products, machinery and transport equipment; electronic industry and electrical appliances; chemicals, paper and plastics; and services and public utilities.

The full list should be consulted to ascertain what activities are currently eligible for promotion.

BOI discretion to vary eligible activities The BOI may temporarily or permanently suspend activities on the investment promotion list at any time, if it considers that promotion is no longer needed. The Board may also add new activities to the list, if it considers that such activities should be promoted.

BOI overseas offices As well as having several offices in Thailand, the BOI has offices in New York, Los Angeles, Paris, Frankfurt, Shanghai, Tokyo and Osaka and potential investors can make enquiries at those offices.

Industrial Estates Authority of Thailand

The IEAT The IEAT is a state enterprise established under the Ministry of Industry. It was created in order to implement the government's industrial development policy and provides investment incentives on a zoned basis.

Currently, IEAT manages 38 industrial estates consisting of 12 industrial estates owned and managed by IEAT, and 26 industrial estates jointly developed with the private sector.

IEAT's duties The IEAT's duties are:

- to establish industrial estates, and promote and support private sector or government agencies in setting up industrial estates.
- to set up and provide services for the facility and utility systems necessary for industrial and business operation.
- to promote and support the private sector to invest in and provide services for the facility and utility systems necessary for industrial and business operation.
- to organize and manage systems for environmental management and emergency prevention and response, and
- to grant permission and approval for business operation inside industrial estates, and to offer additional privileges, incentives, and facilitation to business operation and practices.

IEAT One Stop Service Center IEAT's has a One Stop Service Center designed to provide information on investment opportunities and availability of land in industrial estates throughout Thailand. Investors can obtain information and advice about procedures for industrial set-up, incentives, privileges and other information on aspects of industrial investment. The Center can assist in submitting forms, issuing permits and licenses for factory establishment or joint venture with IEAT to develop an industrial estate.

IEAT Zones There are generally five zones within an IEAT estate:

1. *General Industrial Zone*. This is designated for industry generally and contains factories with intended output to either the domestic or overseas market.
2. *Export Processing Zone*. This is designated specifically for those enterprises that are manufacturing for export.
3. *Export Processing Zone (Special)*. This is reserved for industries manufacturing for export and associated activities, e.g. trading, warehousing, transport, and research and development, etc.
4. *Commercial Zone*. This contains non-manufacturing activities such as banks, post offices etc. that support the activities of the industrial estate.
5. *Residential Zone*. This contains the housing accommodation for employers and employees.

IEAT incentives available The investment incentives offered by the IEAT are similar to those available from the BOI. Both the General Industrial Zone and the Export Processing Zone offer benefits relating to land ownership by a foreign entity, facilitation of work permits and visas for expatriates and remittance of foreign currency for the foreign entity. Additional benefits granted to those enterprises located in the Export Processing Zone relate to the exemption of import duties and VAT for the import of capital goods and spare parts, raw materials, packaging materials, the exemption of export duties and VAT on the export of goods and the exemption of export duties, import duties and VAT for local goods used in production.

Other incentives A person or company may also receive incentives in the form of clawback of import duty on materials imported in order to produce goods for export. Provided the goods are actually exported within the time permitted, there are tax rebates on components and machinery used for the production of goods for export, and below market interest rates provided as a packing credit for exporters.

Future direction of the BOI The fact that Thailand grants various incentives to exporters has been criticised by other countries, on the grounds that the incentives amount to improper subsidies. Some countries have threatened to impose countervailing duties on subsidized exports. The Thai government has acknowledged this and recognizes that the granting of extended tax holidays will have to end in the near future.

In response to this, the BOI is beginning to change its strategic role into a general information and advisory agency for foreign investment, with the ability to help foreign companies find manufacturing or joint venture partners, to set up manufacturing operations in Thailand, arrange OEM manufacturing, etc.

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