CHAPTER 16
DOUBLE TAXATION TREATIES

Tax treaties are concerned with the avoidance of double taxation and the prevention of fiscal evasion. They usually provide a means whereby a person who has income that would normally be subject to taxation in more than one country, is granted relief from paying tax twice on the same income, or credit for tax paid in one country is given against a taxpayer's liability to tax in another country. In addition to providing benefits to taxpayers, double taxation treaties also provide for cooperation between governments in preventing the evasion of taxes.

Taxes not covered The tax treaties to which Thailand is a party usually cover only taxes on income.

They do not cover value added tax, specific business tax or inheritance tax. Since petroleum income tax is an income tax, it is generally covered by the tax treaties.

List of countries Thailand has tax treaties with the following countries, which respectively came into force, or will come into force, on 1 January in the tax year shown below:

1. Armenia – 2003
2. Australia - 1990
3. Austria – 1986
4. Bahrain – 2004
5. Bangladesh - 1999
6. Belgium – 1980
7. Bulgaria – 2002
8. Cambodia – 2018
9. Canada – 1985
10. Chile - 2011
11. People's Republic of China – 1987
12. Cyprus - 2001
13. Czech Republic - 1996
14. Denmark – 2000
15 Estonia – 2014
16. Finland - 1987
17. France - 1975
18. Germany - 1967
19. Hong Kong S.A.R. - 2005
20. Hungary - 1990
21. India – 1 January 2017 (revised)
22. Indonesia – 2004
23. Ireland - I January 2016

24. Israel - 1997
25. Italy - 1978
26. Japan – 1991 (revised)
27. Kuwait - 2007
28. Laos – 1998
29. Luxembourg - 1999
30. Malaysia – 1983
31. Mauritius – 1999
32. Myanmar - 2012
33. Nepal - 1999
34. Netherlands (only that part in Europe) – 1976
35. New Zealand - 1999
36. Norway – 2004 (amendment)
37. Oman - 2005
38. Pakistan - 1979
39. Philippines - 2019
40. Poland - 1983
41. Romania – 1998 (withholding tax in force 1 June 1998)
42. Russian Federation - 2010
43. Seychelles - 2007
44. Singapore – 1 January 2017 (revised)
45. Slovenia - 2005
46. South Africa – 1997
47. South Korea – 1977
48. Spain - 1999
49. Sri Lanka - 1991
50. Sweden - 1990
51. Switzerland – 1997
52. Taiwan - 2013
53. Tajikistan - 2014
54. Turkey - 2006
55. Ukraine - 2004
56. United Arab Emirates - 2001
57. United Kingdom - 1981
58. United States (only the 50 states and District of Columbia) – 1997
59. Uzbekistan – 2000 (withholding tax in force 1 February 2001)
60. Vietnam - 1993

As at September 2018, the following tax treaties have been signed but are not yet in force: Brunei, Kenya, Lithuania, Morocco, Papua New Guinea, Zimbabwe.

<u>Avoidance of double taxation</u> The treaties generally provide that persons and companies do not have to pay tax on the same income in more than one country, or where there is a duplication of taxation, a credit will be granted in the second country for tax paid in the first country.

Permanent establishment The concept of a permanent establishment is most important with respect to taxation under the tax treaties. Generally, a business receiving income from one country is exempt from tax in that country, unless it has a permanent establishment there.

If there is no permanent establishment, then only certain categories of income such as interest, dividends, and royalties may be taxed in the country in which the income arises. In most cases, the rate of tax on such income is usually reduced from the rate imposed on residents of non-tax treaty countries.

A permanent establishment is defined in part as a place of management, a branch, office, factory, workshop, warehouse, farm or plantation, mine or quarry, building site, construction, installation or assembly project, which exists for more than six months.

The following are not permanent establishments:

- the use of facilities solely for the purpose of storage,
- display or delivery of goods or merchandise belonging to the enterprise;
- the maintenance of a stock of goods or merchandise belonging to the enterprise, solely for the purpose of storage, display or delivery;
- the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another,
- the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
- the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise.

Usually a permanent establishment is not constituted where the enterprise has a person in the country unless that person regularly negotiates contracts, maintains merchandise from which regular deliveries are made, secures order wholly or almost wholly for the enterprise or another enterprise controlled by the first enterprise.

A permanent establishment does not include an agent or representative, unless that agent or representative acts wholly or almost wholly for the foreign principal.

The fact that a business in one country is controlled by a business in another country does not make the first business a permanent establishment of the second business.

Since Thailand often attempts to levy tax on foreign companies that have an agent or representative in Thailand, it is often useful to rely on a tax treaty to gain

an exemption from this tax, on the basis that merely having a representative or agent in Thailand does not in itself constitute a permanent establishment so as to subject the foreign company to taxation.

Exempt income Under tax treaties, income from services, and rent from movable property is generally exempt from taxation in the country from which it is paid. However, under the Thai-Japanese tax treaty all rent, including income from the rental of movable property is subject to taxation. In this particular treaty, there is no exemption for this type of income.

Qualifications for withholding tax exemption Generally, in order for payments to qualify for the withholding tax exemption, the payment must be made to an entity that is subject to taxation in the receiving country.

For example, payments made to a United Kingdom company that is not domiciled or subject to taxation in the UK do not qualify. Similarly, payments to the Singapore bank account of a Hong Kong company do not qualify for the benefits of the Thai-Singapore tax treaty merely because the money is sent to Singapore since this factor alone would not make the Hong Kong company subject to taxation in Singapore.

Nationality requirements Generally, the nationality of the taxpayer is not important in determining tax benefits under a tax treaty. Foreigners who have paid tax in a tax treaty country may usually claim the benefits of the treaty, regardless of their nationality.

While in most cases residence, physical presence and the place where one pays tax are more important than nationality in determining benefits under a tax treaty, most tax treaties contain general language which provides that the citizens of one tax treaty country may not be required under similar circumstances from paying more taxes or taxes in a more burdensome manner than citizens of the other tax treaty country.

Examples of benefits under certain tax treaties The following examples concern benefits that are available under the various tax treaties where the income arises in one country but is wholly or partially exempt from taxation in the country in which it arises.

Dividends

Dividends from shares and mutual funds paid to individuals Since the maximum tax on dividends to individuals in 10% under domestic law and as no tax treaty provides for a lower rate, no tax treaty provides any particular benefit to individuals who receive dividend payments.

Dividends paid to companies Since the maximum tax on dividends to companies abroad is 10% there are no special tax treaty advantages concerning Thai tax rates.

Interest Since the Thai tax on interest paid to ordinary foreign companies and individuals does not exceed the tax treaty rates, there is generally no advantages under the tax treaties for interest paid by one private company to another private company abroad. For interest paid to banks and financial institutions, there is generally a 10% tax limit under the tax treaties and so it is advantageous to claim treaty benefits under such circumstances.

Capital gains

Capital gains paid to individuals Capital gains paid to individuals from share sales on the Securities Exchange of Thailand and from mutual funds are exempt under domestic law and so there is no particular benefit under any tax treaty.

Juristic persons Capital gains paid to companies are generally subject to a 15% withholding tax.

Pensions Generally speaking, pensions are taxable only in the country in which they arise and not in the country in which the recipient lives. Accordingly, if a person from a tax treaty country shows the Revenue Department that his pension is paid from a tax treaty country, he will not be required to pay tax on this income.

Persons from other countries, including the United States, are often required to pay taxes on pensions, including government pensions such as military pensions and social security.

Temporary employment Persons who work in Thailand for a period not exceeding 183 days in a fiscal year, and the services are rendered for or on behalf of a person or company in Singapore (or other tax treaty country) where the remuneration is not borne by a permanent establishment in Thailand, then payment to the resident of Singapore would be exempt from Thai income tax.

For example, if a Singapore company sends a person to Thailand to investigate the possibility of opening a factory in Thailand, his salary would most likely be exempt from Thai income tax, provided that he spends less than 183 days in Thailand.

Similarly, a person from a non-tax treaty country would be subject to taxation on any income earned as a result of his work in Thailand, even if the income was paid from abroad and kept abroad.

Students and trainees Persons from one tax treaty country who come primarily to study or train for a temporary period in another tax treaty country, are normally

exempt from taxation in the country in which they are studying and training based on remittances they receive from their home country. They are also partially exempt on earnings in the country in which they are studying or training, where those earnings are in connection with their training or study and are necessary to maintain themselves.

Teachers Under many tax treaties, a professor or teacher from one tax treaty country who visits another tax treaty country for the purpose of teaching or engaging in research at a recognized school or university is exempt for income earned from his teaching or research in the visited country, for a period not exceeding two years.

Transport Airlines of one tax treaty country generally do not have to pay income tax in any other tax treaty country.

Shipping Income from the carriage of goods by sea in international trade where the ship belongs to a company in one tax treaty country, is usually taxed at half the normal rate in the other tax treaty country in which it has income. However, as many ships are registered in tax havens, there is often little opportunity for shipping companies to claim benefits under this treaty provision.

Athletes and entertainers supported by a governmental entity These persons are generally exempt from taxation in the country in which they perform, if their income is derived from a governmental entity in their home country. In other cases, the rules for athletes and entertainers is the opposite of the rule that applies to other temporary workers. Athletes and entertainers are subject to taxation in the country in which they work, even temporarily, no matter from where they are paid, provided that they are paid from private sources.

Directors' fees Generally, directors' fees are taxed in the country in which they arise. However, if a director in Singapore actually performs day to day services in Singapore for a Thai company, then his compensation would be treated as compensation for personal services performed in Singapore and would be exempt from taxation in Thailand.

Tax credits The tax treaties generally provide that where taxation is due to more than one country on the same income, then the second country must usually provide a tax credit for taxes paid in the first country.

For example, if a Singapore company owns shares in a Thai company and receives dividends, the Singapore company would have to pay Singapore income taxes on the dividend but would receive a credit for the 10% withholding tax paid to Thailand. If the Singapore company owns not less than 25% of the Thai company then the credit shall include the income taxes paid by the Thai company on its income in addition to the taxes paid on the dividend. In any

event, the credit may not exceed the Singapore tax rate, that is, you may not get a credit greater than what you would owe to Singapore on you Thai income.

Tax credits even where no taxes are paid Singapore and some other countries, but not the United States, also permit a credit against their taxes for taxes that would have been due and payable to Thailand but that are exempt from taxation in Thailand under the Investment Promotion Act.

Associated enterprises Where one company directly or indirectly controls another company, or where the same persons manage companies in two different tax treaty countries, and in dealings between the two companies, there are financial conditions which differ from that which one would expect from unrelated companies, then the revenue authorities may adjust the income between the two companies to reflect the usual commercial situation.

For example, if a Thai company sells its products to a Singapore company at $10.00 a piece, whereas the market price is $12.00, and the Singapore company controls the Thai company, then the Thai Revenue Department may assess tax based on the market price of the products.

Inheritance tax As noted in Chapter 15 *Other Taxes,* Thailand brought into force for the first time, inheritance tax on 1 February 2016. In the double tax treaties that Thailand has entered into, inheritance tax is not dealt with or referred to. Accordingly, the question arises if inheritance tax is paid under Thai tax law, and the deceased owned assets in another country which are subject to probate and inheritance tax, or vice versa, whether a payment of inheritance tax in the first country will be credited against the IHT bill in the second country.

A further difficulty arises in that in Thailand, the person liable to pay the tax is the beneficiary/transferee of a particular asset, whereas in common law countries such as the United Kingdom, the person(s) liable to pay the tax will be the executors (administrators in the case of an intestacy) who are liable to pay tax on the whole of the net estate.

Back to back tax treaties In some cases where Thailand does not have a tax treaty with one country, it is possible to route a payment for a business transaction through an intermediate tax treaty country, that is with a country that has a tax treaty with both Thailand, and the third country.

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