


Call in for a Coffee



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Thailand - Hong Kong DTA Exemption from Profits Remittance Tax

Another historic and first ever tax development has taken place between Thailand and Hong Kong.

As reported in Call in for a Coffee Edition No 29, on 7 September 2005, the Governments of Thailand and Hong Kong entered into a Double Tax Agreement (DTA), which was, at that time, Hong Kong's second only DTA and its very first DTA with an Asian country.

Believe it or not, that DTA now provides exemption from withholding taxes on remittance of profits from a Hong Kong permanent establishment in Thailand to its head office in Hong Kong.

Thailand's taxation laws follow the taxing principles of a "developing" nation whereby it claims its sovereign right to tax income and profits earned by foreign companies from sources in and from Thailand, and taxation on a remittance of profits out of Thailand to a head office in a foreign country is one of the basic tax principles of a "developing" nation.

Notwithstanding that, on 11 January and 21 February 2008, authorized representatives of the Governments of Thailand and Hong Kong exchanged official letters with each other, wherein The Excellencies prescribe as follows:

"... each Contracting Party shall not impose, in accordance with its domestic laws and regulations, a tax on profits remitted by a permanent establishment of an enterprise of the other Contracting Party situated in its territory, as defined under Article 5 of the said Agreement.

... this Note and Your Excellency's Note in reply to that effect shall constitute an agreement between the two Governments, which shall form an integral part of the above-mentioned Agreement and shall enter into force on the date of entry into force thereof."

Article 5 of the Thailand - Hong Kong DTA defines a permanent establishment as a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The definition of a permanent establishment includes a place of management, a branch, office, factory or workshop, a mine, oil or gas well, a quarry or other place of extraction, and a warehouse in relation to a person providing storage facilities for others.

A permanent establishment is also defined to include a building site, construction, assembly or installation project (and supervisory activities in connection therewith) where such site, project or activities last more than six months, and the furnishing of services (including consulting services) through employees or other personnel engaged by the enterprise for such purpose, where such activities continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than six months within any twelve months period.

In accordance with Thailand's domestic tax laws, a remittance of profits from a permanent establishment in Thailand to its foreign head office is subject to 10% withholding tax in Thailand.

The Excellencies' letters override Thai domestic tax laws, and a remittance of profits from a Hong Kong permanent establishment to its Hong Kong head office is exempt from 10% withholding tax.

Please note that this tax relief only applies to a Hong Kong permanent establishment, and not to any other foreigner's permanent establishment in Thailand.

The information herein was contributed by Steven Herring, an experienced and Senior International Tax Consultant, for RSM Advisory (Thailand) Limited.

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We welcome your comments and feedback. Please feel free to contact us on the details below:

RSM Thailand
26th Floor, Sathorn City Tower
175 South Sathorn Road
Bangkok 10120
Thailand

T: +66 (0) 2670 9002-6

F: +66 (0) 2670 9027-8

E: AskUs@rsmthailand.com

W: www.rsmthailand.com

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