


Advantage

Tax and business law intelligence for international companies



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More on the Thailand - Hong Kong DTA Exemption from Profits Remittance Tax

Readers of RSM Thailand's other publication Call in for a Coffee may recall that in June 2008 (Edition No 73), RSM Thailand brought to your attention that Thailand branches of Hong Kong parent companies are now exempt from the requirement to withhold 10% tax when they remit their profits back to their Hong Kong parent companies.

There are certain paradigms and logics that countries around the world follow and comply with in relation to their rights to tax, and generally speaking, developing countries just about always claim a sovereign right to tax income that is sourced in and remitted from its jurisdiction.

In this regard, Thailand is no different to most of the developing countries around the world, and up until this year, the 10% withholding tax was imposed on just about all remittances of profits from Thailand, irrespective of the country to which the remittance was made. But now Thailand provides a privileged tax treatment for remittances of branch profits to only one country, Hong Kong.

Readers who have been in Thailand for a while will know that the WTO had exerted quite a considerable amount of pressure on Thailand over the granting of favored nation status to the USA under the Treaty of Amity, and the way out for Thailand was to either accord the favored nation status of the US to all other WTO member countries, or alternatively, cancel the favored nation status of the USA under the Treaty of Amity.

By granting withholding tax exemption to Hong Kong companies whilst not granting the same exemption to companies in any other country, does Thailand now have another favored nation case with which to deal?

Such a matter is for the foreign affairs regulators to determine, but within the scope of taxation consulting, we can advise further as follows:

Whilst the Thai Government granted the exemption to Hong Kong companies, you should note that the Thai Revenue Department had actually (earlier) denied the exemption. In July 2007, six months before the Thai Government confirmed the tax exemption, the Legal Bureau of the Thailand Revenue Department issued a tax ruling to a Hong Kong branch office taxpayer in Thailand stating that the provisions of the Double Tax Agreement between Thailand and Hong Kong did not provide for any relief from the 10% withholding tax.

That tax ruling was in fact correct. The DTA that was entered into between Thailand and Hong Kong on 7 September 2005 doesn't in fact provide for exemption from the imposition of tax on the remittance of branch profits to Hong Kong.

Moreover neither do the OECD and UN model DTAs, which most countries around the world use as the basis for their own DTAs. This is primarily because (as mentioned earlier) it is a basic sovereign right of countries to tax income sourced in and remitted from their jurisdictions.

Following receipt of the Thai tax ruling, the Hong Kong authorities announced "it was the intention of the Agreement for profits remitted by a branch office in Thailand to a Hong Kong head office would not be taxed by the Thai Government. After the Agreement became effective, the Hong Kong business sector has doubt whether profits remitted to a Hong Kong head office by a branch office in Thailand is subject to tax in Thailand. On 11 January and 21 February 2008, the two Governments exchanged Notes and confirmed the understanding that neither Party shall impose tax on profits remitted by a permanent establishment of an enterprise of the Other Party."

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

Thailand Personal Income Tax Foreign Pensioners Residing in Thailand

Generally speaking, the pension fund schemes of the advanced nations are government incentives to get their people covered for their retirement years instead of leaving them to rely on government social security, which stretches government budgets.

And as a government incentive, the pension schemes are (again generally speaking) advantageous to both the working taxpayer and the retiree. Tax breaks in the form of income tax deductions are provided to the working taxpayer, and tax-free status can be afforded to the retiree.

However, a tax-free status of a retiree may not in fact remain tax-free when a recipient of a foreign pension fund changes his or her country of residency, which can be the case when a foreign pensioner moves to Thailand and takes up residency here.

A determination of the Thai tax treatment for cross-border pension payments starts at the local law level. Section 41 of the Thailand Revenue Code prescribes that a resident of Thailand, who earns income from a post or an office held abroad or a business carried on abroad or from property situated abroad, shall, upon bringing that income into Thailand, pay income tax in Thailand. Section 41 defines a resident as a person who resides in Thailand for a period (or periods) that aggregates 180 days or more in the tax year (which runs from January to December).

Accordingly therefore, a foreign pensioner who is a tax resident of Thailand and living on the income from a foreign pension fund, shall, according to the local tax law, pay income tax on the amount of the pension brought into Thailand.

This local tax law requirement can however be overridden by a relevant provision in a Double Tax Treaty with Thailand, and the following is a brief summary of some of those DTT provisions:

Australia Pensions and annuities paid to a resident of a Contracting State shall be taxable in the State of residence.

Canada Pensions and similar remuneration arising from past employment in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

France Pensions or other remuneration for past employment arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.

Germany Private fund pensions and other payments for past employment as well as annuities derived by a resident of a Contracting State may be taxed in the other Contracting State but only if such payments are deducted as expenses in determining the profits of an enterprise of that other State or of a permanent establishment situated therein. Government fund pensions for past employment as well as annuities shall be exempt from tax in the other Contracting State.

United Kingdom No prescription for non-government pensions. Pensions paid by a Contracting State or local authority thereof shall be taxable only in that State, but such pension shall be taxable only in the other Contracting State if the recipient is a national of or a resident of that State.

United States Social security benefits and other similar public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

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