In Focus: Thailand's Double Tax Agreements

By Jack Sheehan and Jidapa Tiamsuttikarn, DFDL

Thailand has an extensive network of double tax agreements (DTAs) with 61 countries, including many major economies, such as the United States, United Kingdom, Singapore, France, China, Australia, and Hong Kong.

DTAs can offer Thai and foreign investors significant benefits when planning a cross-border investment. In this article, we will discuss some of the salient features of Thailand's DTAs.

What is a DTA?

A DTA is a bilateral agreement between two countries to eliminate double taxation. The benefits of a DTA can help Thai and foreign investors plan a cross-border investment or transaction.

DTAs provide the following benefits:

- A reduction or exemption on withholding taxes (**WHT**) on certain income, including royalties, dividends, and interest.
- Allocate the taxing right on capital gains on the sale of shares between countries.
- Provide methods for the elimination of double taxation.
- Deal with issues of dual residency for companies and individuals.
- Provide a mechanism for the resolution of tax disputes.
- Provide permanent establishment thresholds for the taxation of business profits, including the cross-border provision of services.

Taxation of Cross-Border Payments under Thai Domestic Law.

Section 70 of the Thai Revenue Code prescribes that any payments made from or in Thailand (either by an individual or corporate entity) to a foreign recipient are subject to WHT at the following rates:

- Dividends – 10%
- Interest, royalties, and service fees – 15%
- Capital gains may be subject to tax of 15%

	Withholding Tax ("WHT") rates		
	Dividend	Interest	Royalty
Thai domestic WHT rate	10%	15%	15%
Thailand – US DTA	10% / 15%	10% / 15%	5% / 8% / 15%
Thailand – Australia DTA	15% / 20%	10% / 25%	15%
Thailand – Singapore DTA	10%	10% / 15%	5% / 8% / 10%
Thailand – Hong Kong DTA	10%	10% / 15%	5% / 10% / 15%

How can Taxpayers and Investors Benefit from Thailand's DTAs?

The table above shows the withholding tax rates under the DTAs between Thailand and the Unite.

For example, if a US company enters into a licensing agreement with a Thai entity for the right to use the US company's software in Thailand, royalty payments under a licensing agreement from the Thai entity would normally be subject to withholding tax at the rate of 15% under Thai domestic law. However, Article 12 of the DTA between Thailand and US provides a reduced WHT rate of 5% on the royalty for the right to use the software.

In this case, the Thai entity can withhold tax at the rate of 5% instead of the 15% usually applicable under Thai law. As a result, the US company benefits from the lower rate of withholding tax on licensing its software to Thailand.

In the above example, the reduction in the WHT applied to royalty payments from Thailand to the United States. However, this could also apply to other forms of income, such as interest on loans, payments for services, and capital gains on the sale of shares. Thai resident companies can also benefit from the reduction in WHT on payments of income from a foreign jurisdiction in the same manner.

If the WHT rates provided under the DTA are higher than those under a country's domestic law, the lower domestic rate will usually be applied. Therefore, the DTA will not increase the amount of taxation due under domestic law.

In Thailand, applying DTA benefits is automatic, and taxpayers do not need to apply to the Revenue Department to apply for the benefits under a DTA. However, this is not the case in some Asian countries, where taxpayers must apply for approval from the tax authorities before applying a benefit under the DTA.

Permanent Establishment (PE)

Foreign companies without a legal presence in Thailand carrying on business and deriving income in Thailand can be subject to tax under the Thai Revenue Code. However, under a DTA with Thailand, the profits of a foreign company carrying

on business in Thailand are only taxable in Thailand if carried out through a permanent establishment in accordance with the DTA between Thailand and the country of residence of the foreign country.

For example, for a US company that provides services through its employees in Thailand, Article 5 (3) of the US- Thailand DTA provides that a US company providing services in Thailand will create a PE in Thailand if the activity within Thailand continues for more than 90 days within any 12 months. Therefore, where US company does not have a PE in Thailand, it will not be subject to Thai corporate income tax on profits derived.

Recent Developments in Thailand's DTAs

Thailand deposited its instrument of ratification with the Organization for Economic Cooperation and Development (**OECD**) for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (**MLI**) in April 2022. The MLI entered into force in Thailand in July 2022 and is effective from January 2023.

The MLI introduced several changes to Thailand's DTAs, with countries also signing and ratifying the MLI. Such changes include the introduction of a new anti-tax avoidance rule called the Principal Purpose Test (**PPT**).

It is unclear at this stage how the Thai Revenue Department may apply the changes in the future.

However, taxpayers should closely monitor these developments and take professional advice on transactions involving benefits under Thailand's DTAs. ■

Jack Sheehan is a Partner and the Head of the Regional Tax Practice at DFDL.

Jidapa Tiamsuttikarn is a Senior Tax Adviser with extensive experience at DFDL.