



Overview of Tax Treaties in Lao PDR

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Lao PDR – party to 8 Agreements for Avoidance of Double Taxation (DTAs):

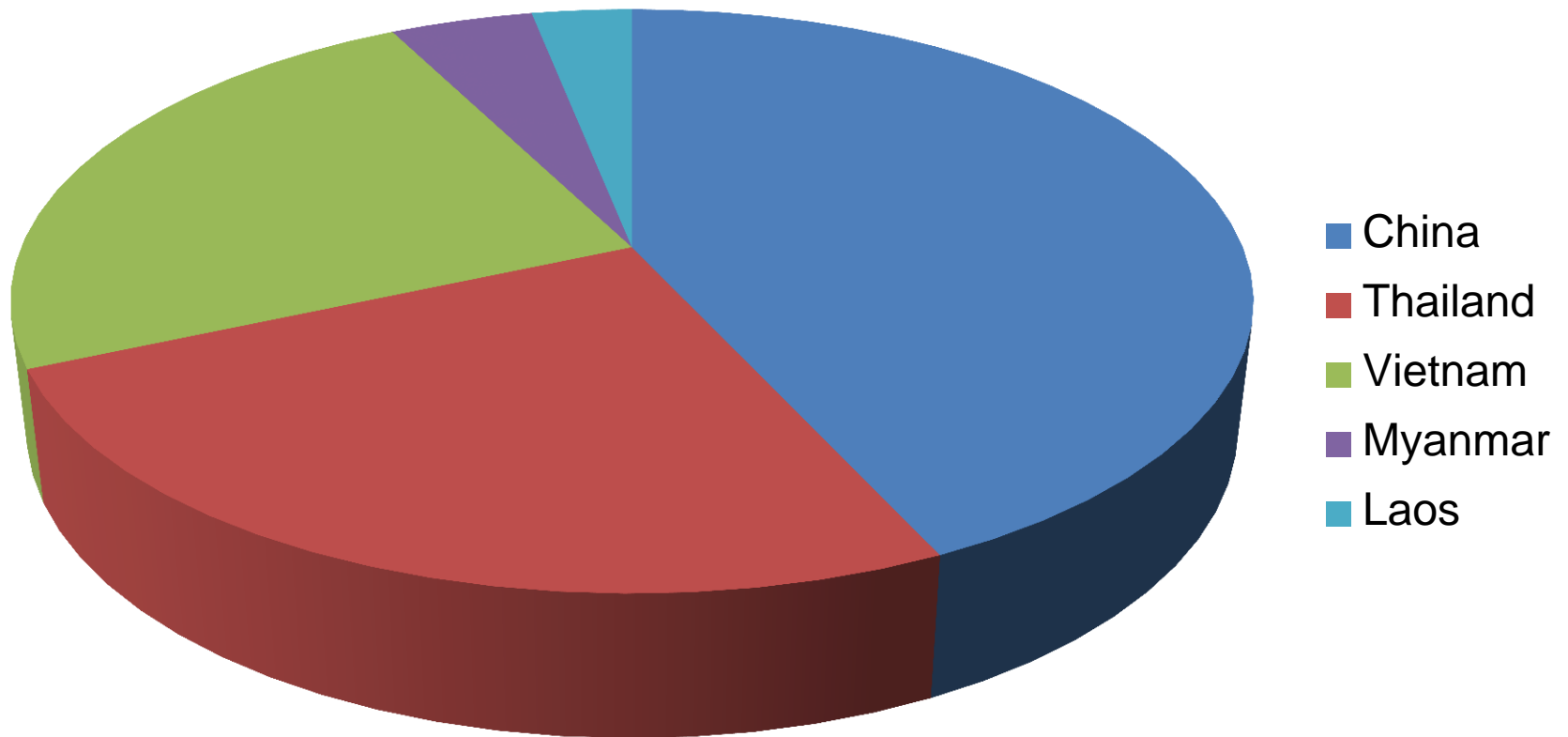
- ✓ Myanmar
- ✓ Vietnam
- ✓ Thailand
- ✓ China
- ✓ North Korea
- ✓ South Korea
- ✓ Brunei
- ✓ Malaysia



+ Luxembourg, Russia, Kuwait and Indonesia (not yet in force)

+ negotiation with Singapore, India

Number of DTAs (in force)



Country	Dividends	Interest	Royalties	Service Fees
Laos (domestic)	10%	10%	5%	4.8%
Vietnam	10%	10%	10%	
Thailand	15%	10% (fin inst.)/15%	15%	
China	5%	5% (Laos)/10% (China)	5% (Laos)/10% (China)	
North Korea	10%	10%	5%	
South Korea	5% (10% direct holding)/10%	10%	5%	
Brunei	5% (10% direct holding)/10%	10%	10%	10%
Myanmar	5%	10%	10%	
Malaysia	5% (10% direct holding)/10%	10%	10%	10%

Double Taxation may arise because:

- Two countries tax on worldwide basis
- One country taxes on worldwide basis, the other country taxes on source basis
- Two countries tax on source basis

Types of Double Taxation:

- Legal - both countries impose tax on the same income of the same person
- Economic - both countries impose tax on the same income but on the level of different persons (income is earned by a corporation => corporate tax and then distributed to individual shareholder => income tax)

League of Nations: 1927 – first Model Treaty – “Bilateral Convention for the Prevention of Double Taxation” followed in 1933 by the “Draft Convention for the Allocation of Business Income between States”

OECD: 1963 – “Draft Double Taxation Convention on Income and on Capital” published followed by first OECD Model – “Model Double Taxation Convention on Income and Capital”

UN: 1967 – set-up of ad hoc Working Group of Experts and Tax Administrators, 2001 – updated UN Double Taxation Convention Model; revised “Commentary to the UN Income and Capital Model Convention” published

Several countries use their own Model Tax Treaty

Lao PDR – mixed – mostly OECD Model Tax Convention, some follow UN Model

Structure of a tax treaty:

Art. 1-2 - Personal and Material Scope

Art. 3-5 - Definitions of Terms

Art. 6-22 - Distributive Rules for Different Types of Income

Art. 23 - Avoidance of Remaining Double Taxation

Art. 24 - Non-discrimination

Art. 25 - Mutual Agreement Procedure

Art. 26-27 - Administrative Assistance

Art. 28-31 - Miscellaneous Provisions

Personal Scope

“This Agreement shall apply to persons who are residents of one or both of the Contracting States.”

Who is entitled to claim treaty benefits – two requirements:

- ✓ Person => Art. 3(1)(d) Lao-Thai DTA – *“individual, company, any other body of persons, as well as any entity treated as a taxable unit in either State”*
- ✓ Resident => Art. 4

Taxes Covered

“taxes on income” – PIT, PT (Laos)

Income Tax, Petroleum Income Tax (Thailand)

BUT no applicability to VAT, excise tax etc.

See e.g. Art. 11 (1) Lao-Thai DTA

“Interest arising in a Contracting State and paid to a RESIDENT of the other Contracting State may be taxed in THAT OTHER STATE”.

=> ? Which of the two States is the Residence State and which is the Source State

Art. 4(1):

INDIVIDUALS: Subject to worldwide taxation by reason of domicile, residence (US also citizenship)

CORPORATIONS: Subject to worldwide taxation by reason of place of management, seat, incorporation

Art. 4(2) and (3): Tie-breaker rules in case a person is resident in both States

The term '**permanent establishment**' (“PE”) means 'a fixed place of business through which the business of an enterprise is wholly or partly carried on'.

This term includes in particular:

- a place of management;
- a branch;
- an office;
- a factory;
- a workshop;
- a mine or any other place of extraction of natural resources.

NB: No definition in Amended Tax Law of Lao PDR – practical issues

A permanent establishment does not exist if:

- premises used solely for the purpose of storage, display or delivery of merchandise;
- maintenance of a fixed place of business solely for purposes of processing by another enterprise;
- a fixed place of business is used, by the business, solely for the purpose of advertising, providing information, scientific research or similar activities which are of a preparatory or auxiliary nature.

BUT:

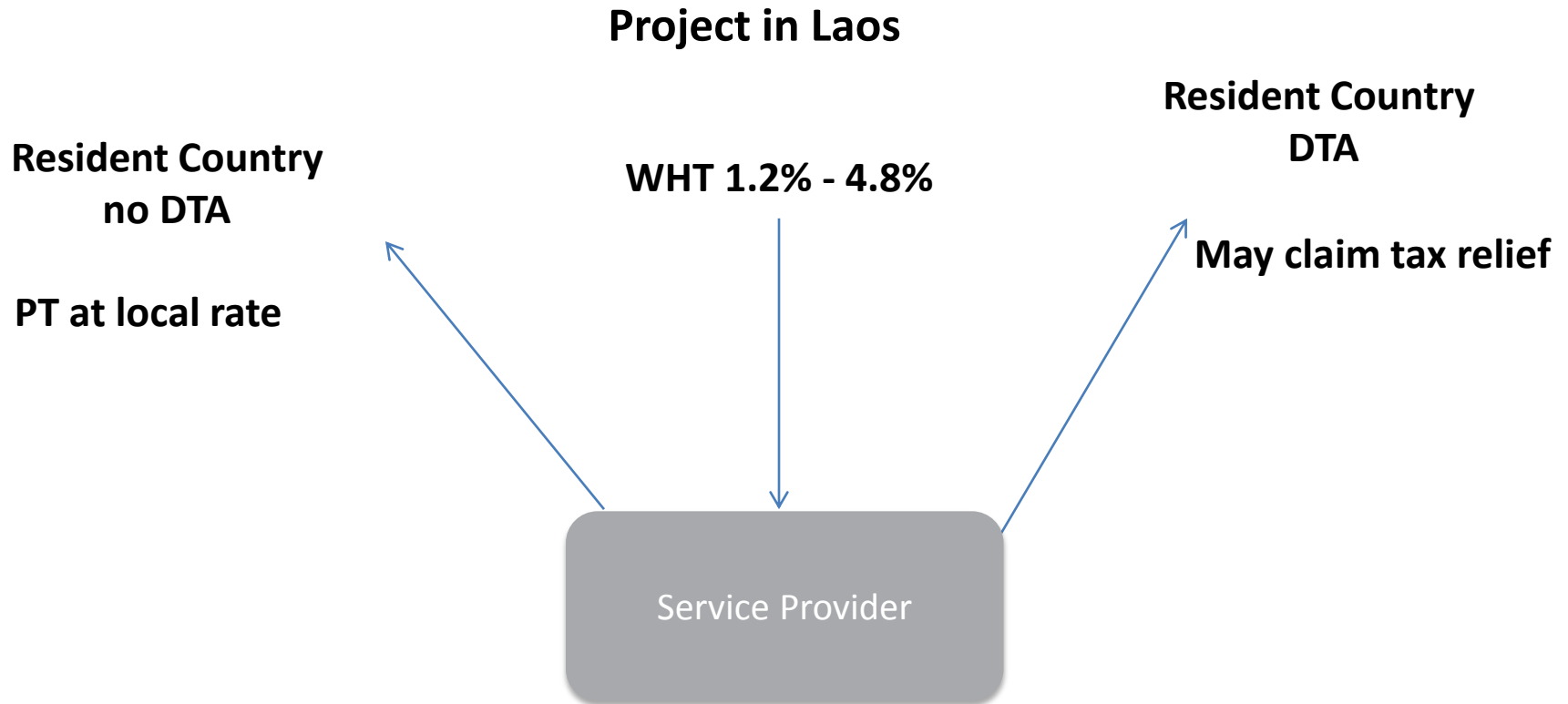
1. building site, construction, installation or supervisory activities > 6 months
2. furnishing of services, including consultancy through personnel + same/connected projects + > 6 months

Article 5 - Permanent Establishment (PE)

- If no DTA between Laos and residence country of service provider – WHT in Laos, possibly taxed also at the resident country

Class of Income	Deemed Profit Rate	Tax rate	Effective rate
Commerce/Trade	5%	24%	1.2%
Manufacturing	8%	24%	1.92%
Transportation and Construction	10%	24%	2.4%
General Services	20%	24%	4.8%

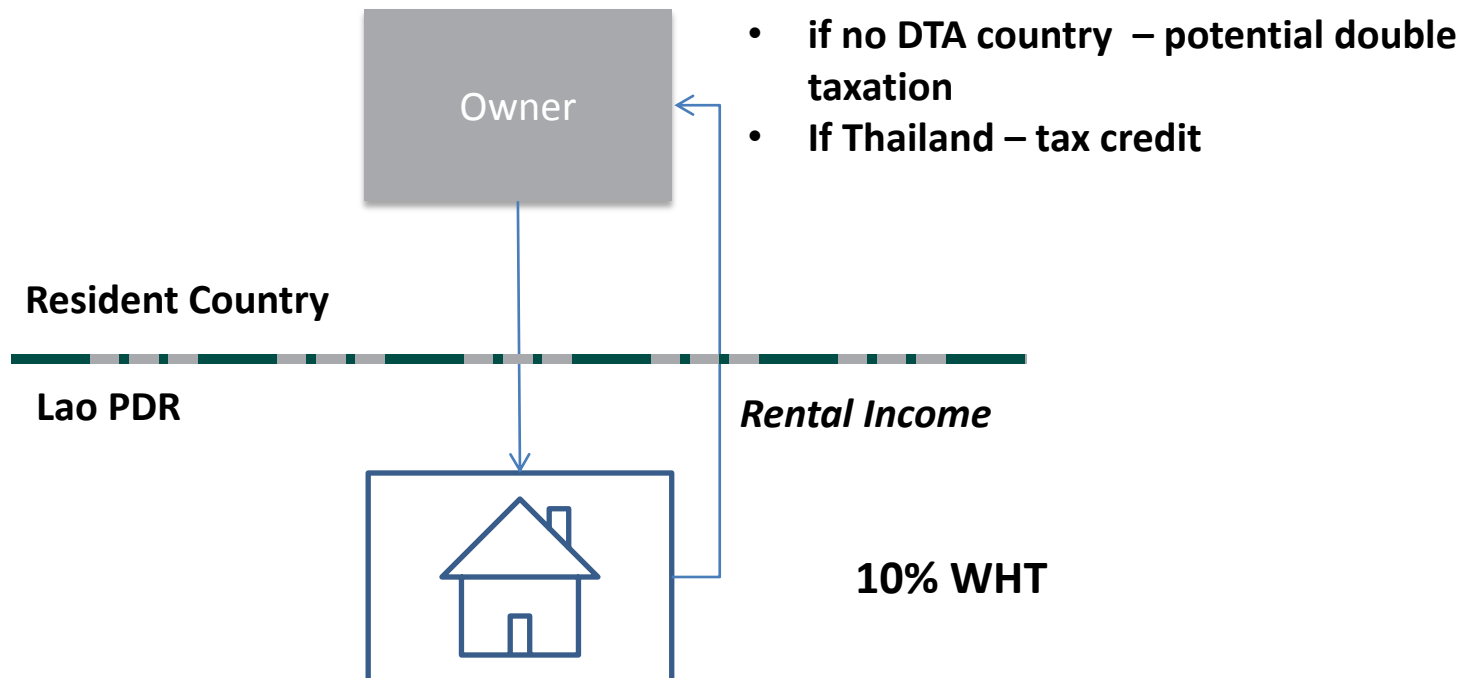
- If DTA between Laos and residence country of service provider – service provider may claim treaty relief from taxation at source unless services PE



- ⇒ resort to national tax law of residence country
- ⇒ double taxation likely

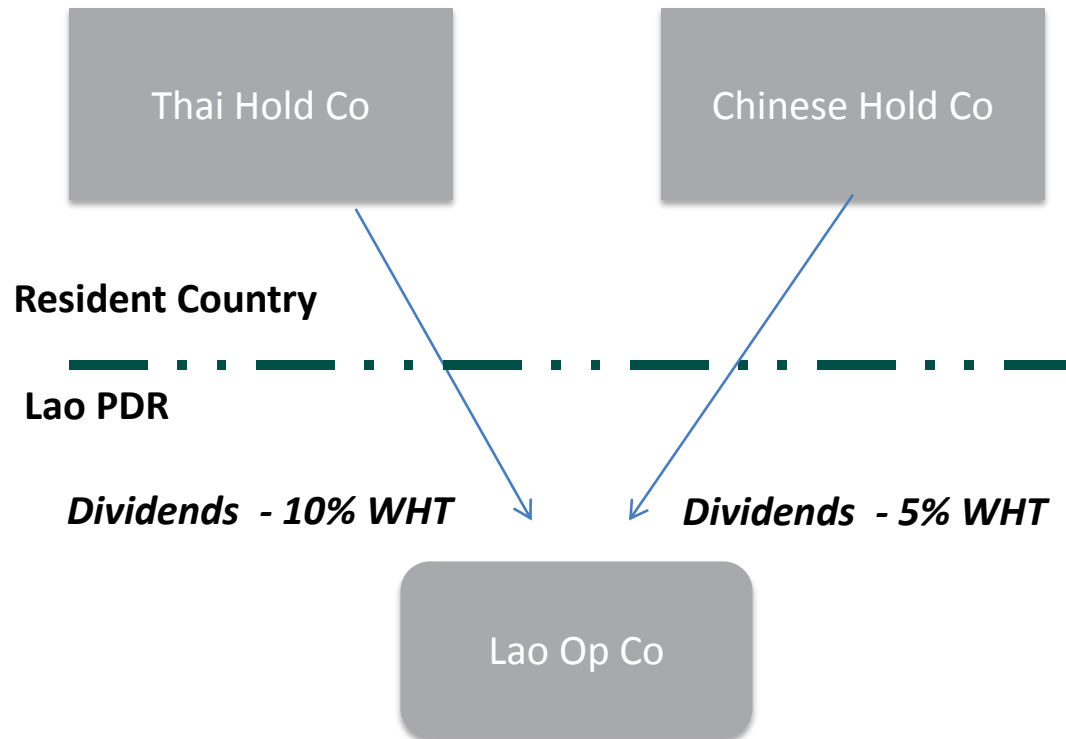
“Income derived by a resident of a Contracting state from immovable property situated in the other Contracting State may be taxed in that other State”

=> The Source State has primary taxing right => Residence State has to grant relief from double taxation under Art. 23A or B

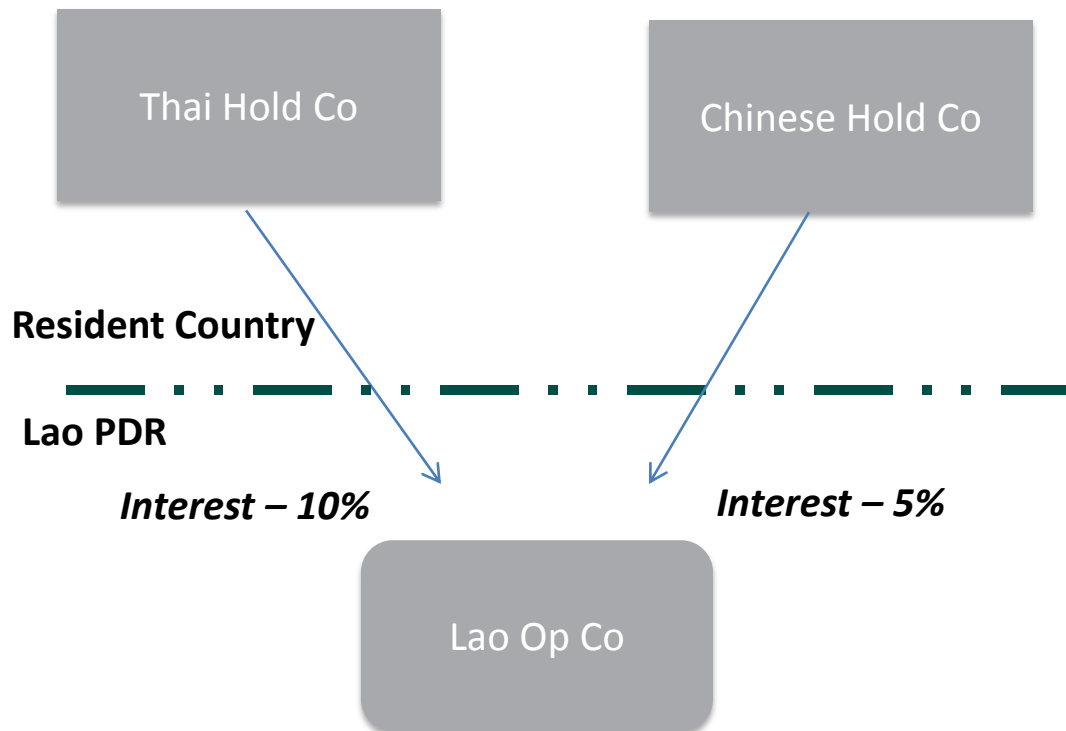


Lao – Thai DTA – “**dividends**” = income from shares, mining shares, founders’ shares or other rights, as income from other corporate rights with same taxation treatment as dividends in the Source country.

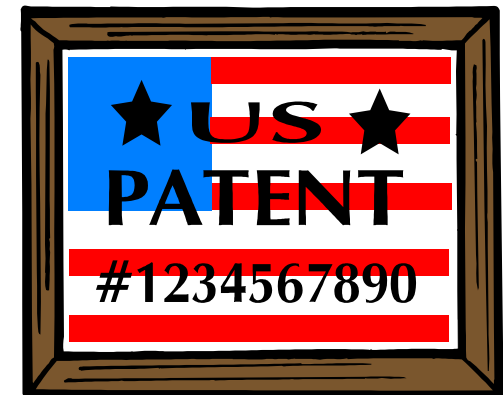
Distribution of taxation rights –taxable at the residence state, but may be taxed also at source with WHT 15% (Thai DTA) or 5% (China DTA) – WHT 10% (Amended Tax Law)



- Lao – Thai DTA – “*interest*” = income from debt-claim of every kind, irrespective of any securitization and right to participate in the debtor’s profits
- Distribution of taxation rights –taxable at the residence state, but may be taxed also at source with WHT 10%/5% (DTA) – WHT 10% (Amended Tax Law)
- No thin cap rules in Laos



- Lao – Thai DTA – “**royalties**” = any consideration for the alienation of or the use of, or the right to use, any copyright of literary, artistic or scientific work
- Distribution of taxation rights –taxable at the residence state, but may be taxed also at source with WHT 15% (DTA) – WHT 5% (Amended Tax Law)
- No definition of royalties in Amended Tax Law



Art. 13 – Capital Gains – the distribution of taxing rights depends on the type of assets, no DTA rate

- Immovable/movable property (if part of a PE) – may be taxed at the Source state
- Vessels, vehicles – only in the Residence State
- Any other property (shares including) – only in the Residence State irrespective of the source of the income

=> Leaves room for tax planning/tax structuring (shares in companies owning immovable property, sale of certain % of shares)

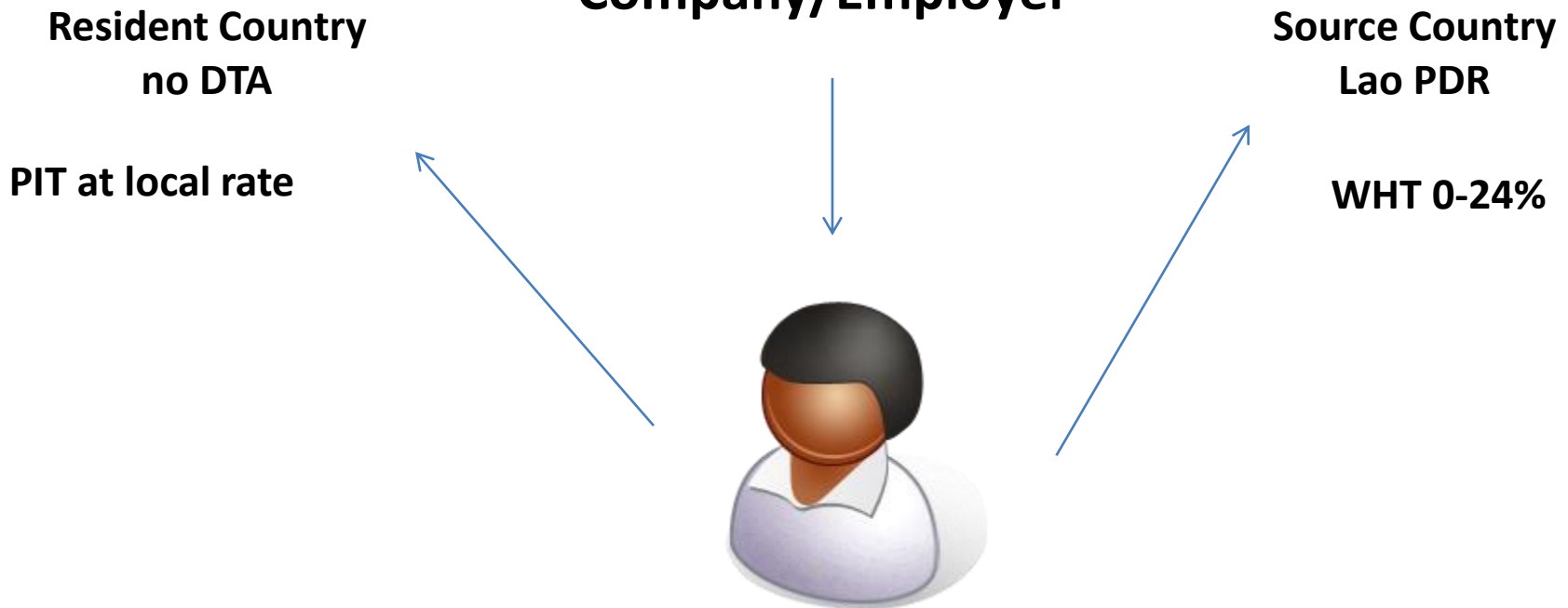
Laos – Amended Tax Law WHT 5% (immovable property) - 10% shares

NB: Taxing of indirect share transfers (*Vodafone, Millicom*)

Article 44, para 4 Amended Tax Law – “foreign persons working in the Lao PDR who receive salaries *in the Lao PDR* or *abroad* shall pay income tax in the Lao PDR except as provided in a DTA...” – the 180-day rule removed

⇒ Article 15 Lao-Thai DTA – Thai resident will be exempt from tax on employment income ...only if (1) the employee is present <183 days within any 12-month period and (2) the income is not paid by or on behalf of a Lao PDR entity and (3) the employer does not have a PE or a fixed base in Lao PDR

Company/Employer



- ⇒ resort to national tax law of residence country
- ⇒ double taxation likely

- Directors’ Fees and other similar payments – may be taxed in the country of the company residence
- Amended Tax Law => rules on employment income applicable
- Possibility for double taxation at source and at the country of residence if no DTA/no tax credit provisions in the resident country

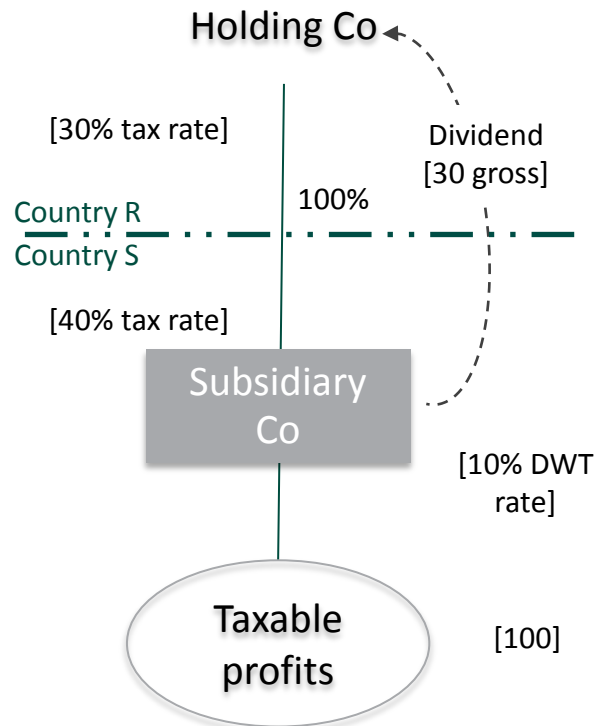
Art. 23(A)(1): Exemption method

“Where a resident of a Contracting State derives income...which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall... exempt such income from tax”

Art. 23(A)(3): Proviso Safeguarding Progression

For the calculation of the tax rate the exempt income may be taken into account

Example Exemption Method:



- Example:
 - Country S income tax rate: 40%
 - Country R income tax rate: 30%
 - Country S DWT rate: 10%
 - Subsidiary Co's profits: 100
 - Gross dividend: 30
- Group ETR:

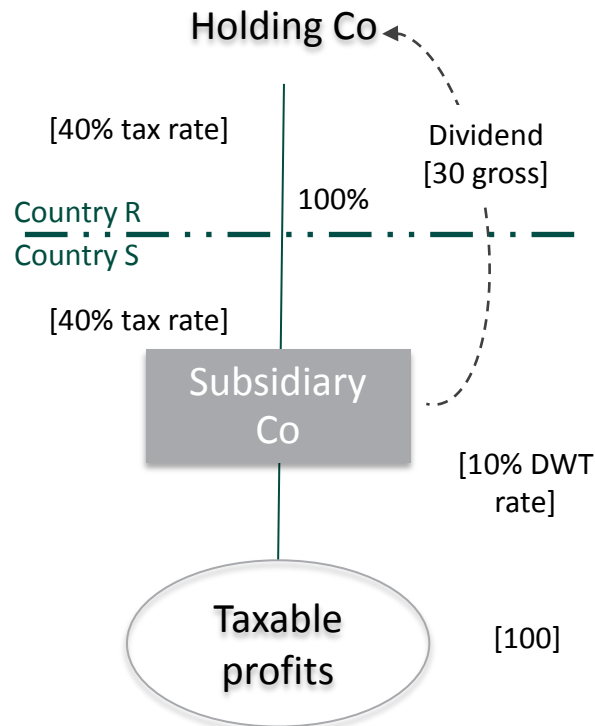
$$\frac{[100 \times 40\%] + [30 \times 10\%]}{100} = 43\%$$

Art. 23(B)(1): Credit method

Where a resident of a Contracting State derives income...which may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State.

Such deduction...shall not, however, exceed that part of the income tax..., as computed before the deduction is given, which is attributable...to the income...which may be taxed in that other state.

Example Credit Method:



- Example:
 - Holding Co Country R tax calculation simplified):

Dividend (Net)	27
Gross-up for:	
DWT	3
Underlying tax:	
<u>30 x 30</u>	
70	13
	<u>43</u>
Country R tax @ 40%	17
Less: FTC	(16)
Country R tax	<u>1</u>

- Group ETR:

$$\frac{30 + 3 + 1}{100} = 34\%$$

Art. 24:

- prohibit only certain enumerated types of discrimination => general justification of discrimination not possible

Art. 24 (3):

The taxation of PE which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

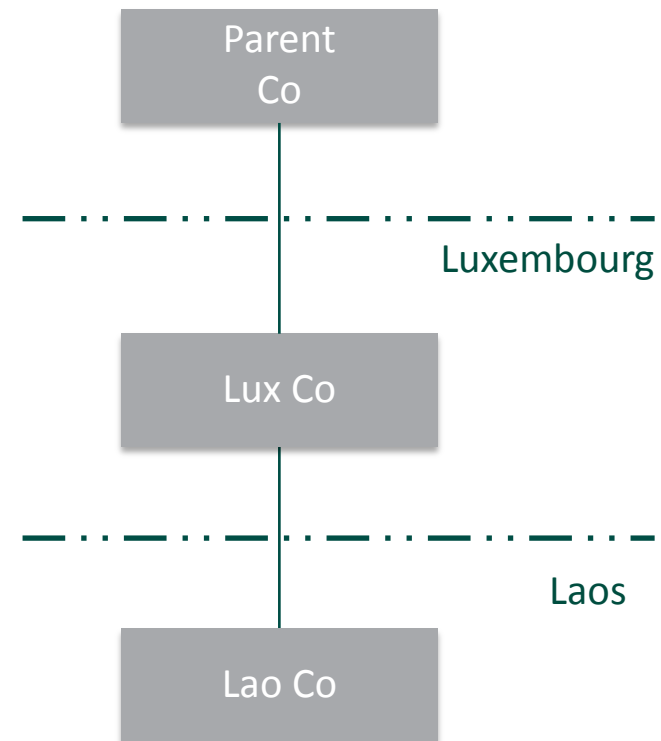
- Eol – important tool for cooperation between local tax authorities
- Exchange of such information as necessary for carrying out the provisions of DTA or the domestic laws concerning taxes covered by the DTA
- Limitations – violation of local laws, protected/confidential information
- Recent trends – increasing importance, concluding separate Eol agreements

- **Tax Planning** - Decision where to locate Hold Co - should also take into account the location of your OpCos e.g. if you have OpCos in, say, Vietnam or Thailand
- **Substance** – increasingly scrutinized by tax authorities, required that the HoldCo has some degree of economic and commercial substance and is not just a conduit company established for the purpose of claiming tax treaty relief
- **National anti-avoidance rules** - can disregard certain transactions if it is satisfied that the purpose of the arrangement is to alter the incidence of tax that would have been payable.
- **TP and thin cap rules** – can alter the overall tax effect of intra-group transactions
- **LoB** clauses - tax treaty benefits according only to “beneficial owners” of income, i.e. those that have the right to obtain this income

- 4th November 2012 - significant milestone signing of the Luxembourg – Lao PDR DTA
- New destination for possible Hold Co location for Lao investments for those interested in investing or restructuring existing investments in the Lao PDR

15% WHT on dividends paid unless exempt or DTA
0% WHT on interest paid
0% WHT on royalties paid

5% WHT on dividends paid
10% WHT on interest paid
5% WHT on royalties paid
4.8% WHT on service/mgmt fees if PE CGT 0%
under DTA



Thank you



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