

ASEAN Tax and Investment Strategies 2013

Opportunities and Challenges for Thai Investors

Repatriation of Income Technique and Cross-Border Taxation in ASEAN

Tuesday 27th August 2013, Holiday Inn Silom, Bangkok

Mr. Jack Sheehan

- * Regional Director, Tax & Customs Practice Group, DFDL
- * Chartered Institute of Tax in UK, Advanced Diploma in International Tax (associate member)
- * Member of the Association of Chartered Certified Accountants (ACCA) in the UK
- * Tax Pocket Guide To Investing in Myanmar (2013 Edition)
- * Guest speaker at Lao Stock Exchange, Cambodian Stock Exchange

Judge Prapas Kong-ied

- * Legal counsel, Ministry of Finance
- * Former judge at the Central Tax Court
- * Master of Laws (International Tax Program), Harvard University, Massachusetts, U.S.A.
- * International taxation, the University of New South Wales, Australia
- * International Tax Law Course at University of London
- * National Committee, ASEAN Association Thailand

Dr. Wuttipong Sirichantranon

- * Legal officer (Tax Treaty), the Revenue Department, Ministry of Finance
- * Doctorate degree (Tax Law), University of Paris II, Paris, France (Mutual Agreement Procedure under the DTA)
- * Master of Law (Tax Law), University of Paris II, Paris, France

Mr. Suttipong Srisaard

- * Tax consultant at DFDL Legal & Tax
- * Former senior tax economist and chief of revenue officer at the Revenue Department (18 years experience)
- * Highly experienced tax expert at Big 4 (Taxation and Customs)

Crucial Issues & Strategies to be Updated and Explored :

- ◆ Learn how to repatriate income to Thailand tax efficiently from Cambodia, Laos, Vietnam and Myanmar (CLMV)
- ◆ Understand what recent taxation updates and trends impacting on Thai and international investors
- ◆ Learn how Thai investor can apply “Mutual Agreement Procedure” to resolve international tax disputes in ASEAN—Transfer pricing, royalty, P.E., interest, dividend etc.
- ◆ Understand how to manage tax audits and tax disputes in Cambodia, Laos, Myanmar and Vietnam - What Thai CFO need to know in practice!
- ◆ ASEAN Economic Community (AEC) : Focusing on tax issues
- ◆ Cross-border tax planning techniques for outbound investment from Thailand
- ◆ Profit repatriation through shareholder loans, royalties, service fees and dividends
- ◆ What are the Transfer Pricing developments and trends in Cambodia, Laos, Myanmar and Vietnam
- ◆ Which regional holding structure is more tax efficient for Thai investors in Cambodia, Laos, Myanmar and Vietnam?
- ◆ Update international tax dispute settlement under ‘Tax Arbitration’ : Thailand’s position

Overview of Seminar :

Thai and foreign investors are not enough to just concentrate on making investments in ASEAN. It is also crucial to **optimize the after-tax returns** on their outbound investment. The ASEAN members also agreed to examine the possibility of an **ASEAN double taxation agreement**. What investment structuring ideas and tax planning opportunities exist for Thai and international businesses in ASEAN especially, **Cambodia, Laos, Myanmar and Vietnam (CLMV)**. *Unique Seminar & Training* would like to invite you to a seminar which examines recent cross-border tax and investment aspects of foreign investment in ASEAN. The crucial issues and strategies to be updated are as follows:

How to Repatriate Income to Thailand Tax Efficiently from Cambodia, Laos, Vietnam and Myanmar?

- ◆ Can **management fees and service fees** act as a tax efficient way to repatriate profits to Thailand?
- ◆ What taxes apply to **royalty** and intellectual payments?
- ◆ Is cross border financing from Thailand into Cambodia, Laos, Myanmar and Vietnam a practical option for Thai investors?
- ◆ What **Thin capitalization rules** and interest deductibility rules apply to Thai and international investors in Cambodia, Laos, Myanmar and Vietnam?
- ◆ Does the **tax treaty network** between Thailand and Cambodia, Laos, Myanmar and Vietnam make Thailand an attractive location as an **ROH**?

In the **Framework Agreement on the ASEAN Investment Area**, the member states agreed to expand the number of tax treaties between ASEAN members.

- ◆ How can Double Tax Agreements in Cambodia, Laos, Myanmar and Vietnam help in tax optimization?
- ◆ How to optimize foreign tax relief from the income derived in **Myanmar**?
- ◆ How can a **consulting enterprise** have a PE in Myanmar without having any fixed place of business of their own?

A holding company in an intermediary jurisdiction allows an entity to hold and manage its investments in foreign subsidiaries. The international holding company helps in **regional tax planning**.

- ◆ Which **regional holding structure** is more tax efficient for Thai investors in Cambodia, Laos, Myanmar and Vietnam?
- ◆ What are good holding company locations for **Laos investments**? Thai, Singapore, Malaysia, other?
- ◆ How can intermediary holding companies work to **optimize taxes**?
- ◆ What are common holding company locations for **Myanmar**?

The Mutual Agreement Procedure (MAP) is an effective tool for resolving tax dispute by applying the Double Tax Treaty.

- ◆ **Who** is allowed to invoke a mutual agreement procedure?
- ◆ What **evidence** is required to prove *'a taxation not in accordance with the provisions of the DTA'*?
- ◆ What effects does a mutual agreement have on the tax case of the **taxpayer** who requested the procedure?

“Tax disputes are already happening as different parties interpret domestic tax laws differently. In some cases, it leads to taxpayers suffering from double taxation imposed by ASEAN governments..”

Source: Judge Prapas Kong-ied, the Central Tax Court, Thailand Source: The Nation March 16, 2012, the Asia-Pacific Tax forum

08.30 Registration & Morning Coffee

09.00 – 12.00

How to Repatriate Income to Thailand Tax Efficiently from Cambodia, Laos, Vietnam and Myanmar?

Mr. Jack Sheehan, Regional Director, Tax & Customs Practice Group, DFDL

What Management Needs to Know Tax & Customs in CLMV ?

- An overview of tax & customs in Cambodia, Laos, Myanmar and Vietnam
- What recent taxation updates and trends impacting on Thai and international investors
- How can Double Tax Agreements in Cambodia, Laos, Myanmar and Vietnam help in tax optimization
- What investment Structuring ideas and tax planning opportunities exist for Thai and international businesses in Cambodia, Laos, Myanmar and Vietnam

How to Repatriate Income to Thailand Tax Efficiently from Cambodia, Laos, Vietnam and Myanmar?

Regional overview

- ⇒ What withholding taxes apply to the repatriation of dividends Thailand?
- ⇒ What tax holidays are available to Thai investors in Cambodia, Laos, Myanmar and Vietnam?

Overview of indirect repatriation

- ⇒ Can management fees and service fees act as a tax efficient way to repatriate profits to Thailand?
- ⇒ What taxes apply to royalty and intellectual payments?
- ⇒ Is cross border financing from Thailand into Cambodia, Laos, Myanmar and Vietnam a practical option for Thai investors?
- ⇒ What Thin capitalization rules and interest deductibility rules apply to Thai and international investors in Cambodia, Laos, Myanmar and Vietnam?
- ⇒ How is other cross border transactions taxed such as leases?
- ⇒ Is a legal entity required to do business in Cambodia, Laos, Myanmar and Vietnam?

Transfer pricing & profit repatriation

- ⇒ What are the Transfer Pricing developments and trends in Cambodia, Laos, Myanmar and Vietnam
- ⇒ How do the tax authorities in Cambodia, Laos, Myanmar and Vietnam approach transfer pricing

issues

- ⇒ What Transfer pricing documentation is required in Cambodia, Laos, Myanmar and Vietnam
- ⇒ How to manage tax audits and tax disputes in Cambodia, Laos, Myanmar and Vietnam

Profit Repatriation from Cambodia

- ⇒ What withholding taxes apply on cross border payment to non-residents/Thai investors
- ⇒ Capital gains tax and exit planning from Cambodia
- ⇒ How to tax efficiently structure investments in Cambodia
- ⇒ How to structure a property holding company in Cambodia
- ⇒ Profit repatriation through shareholder loans, royalties, service fees and dividends
- ⇒ Tax incentives available to international investors in Cambodia
- ⇒ Common pitfall for international investors in Cambodia

Profit Repatriation from Laos

- ⇒ What withholding taxes apply on cross border payment to non-residents/Thai investors
- ⇒ Capital gains tax and exit planning from Laos
- ⇒ How can the Thai-Laos Double Tax Agreement (DTA) benefit Thai investors?
- ⇒ What are good holding company locations for Laos investments? Thai, Singapore, Malaysia, other?
- ⇒ Profit repatriation through shareholder loans, royalties, service fees and dividends
- ⇒ Tax incentives available to international investors in Laos
- ⇒ Common pitfall for international investors in Laos
- ⇒ Taxation of non-resident suppliers of services to Lao companies : VAT and WHT issues

Profit Repatriation from Vietnam

- ⇒ What withholding taxes apply on cross border payment to non-residents/Thai investors
- ⇒ How does the Foreign contractor tax work in practice and what are the DTA implications
- ⇒ Profit repatriation through dividends, interest, royalties and management fees
- ⇒ Capital gains tax on shares and exit planning
- ⇒ Tax treatment on sale of shares in an offshore company
- ⇒ Vietnam's DTA network and opportunities for tax planning for international investors

Profit Repatriation from Myanmar

- ⇒ What withholding taxes apply on cross border payments from Myanmar to non-residents/Thai investors
- ⇒ How can the Thai-Myanmar Double Tax Agreement (DTA) benefit Thai investors?
- ⇒ How does the commercial tax work in practice?
- ⇒ What are the commercial tax credits that can be offset for international businesses in Myanmar?
- ⇒ How does the Thai-Myanmar DTA compare with the Singapore-Myanmar and Malaysia-Myanmar DTAs?
- ⇒ How to efficiently repatriate profits through shareholder loans, royalties, service fees and dividends
- ⇒ Tax incentives available to international investors in Myanmar under the new Foreign Investment Law
- ⇒ Common pitfall for international investors in Myanmar
- ⇒ Capital gains tax and exit planning from Myanmar
- ⇒ What are common holding company locations for Myanmar?

Tax Efficient Regional Structures: Case studies

- ⇒ Does the Thai ROH work in practice for tax optimization in Cambodia, Laos, Myanmar and Vietnam?
- ⇒ Does the tax treaty network between Thailand and Cambodia, Laos, Myanmar and Vietnam make Thailand an attractive location as an ROH?
- ⇒ Can the Thai ROH work efficiently for the for supply of technical support and management services to Cambodia, Laos, Myanmar and Vietnam

Which Regional Holding Structure is More Tax Efficient for Thai investors in Cambodia, Laos, Myanmar and Vietnam?

- ⇒ Singapore, Hong Kong, Netherlands or off shores locations such as BVI, Caymans as holding locations
- ⇒ How can intermediary holding companies work to optimize taxes?
- ⇒ Are indirect transfers of shares taxable?
- ⇒ What substance requirements are required to claim DTA benefits in Cambodia, Laos, Myanmar and Vietnam

Mr. Jack Sheehan
Regional Director, Tax & Customs Practice
Group, DFDL

Jack is the Regional Director, Tax & Customs Practice Group and is a member of the Association of Chartered Certified Accountants ('ACCA'). Jack specializes in providing **international tax planning** and consulting and compliance advice to a large range of industry sectors including retail, manufacturing, oil and gas, mining, aviation, banking, telecommunication and technology.

Details of Major Tax Projects Undertaken :

- ⇒ Advised Thai investors on tax structuring of Concession Agreement for USD 18 mio investment in hydropower project.
- ⇒ Advised Thai investors on structure of tax exemptions and cross-border transactions in relation to a USD 800 mio investment in Laos.
- ⇒ Advised on tax efficient holding company structure, analysis of DTA provisions, VAT and customs implications for an investment into a large manufacturing operation.
- ⇒ Outbound tax planning for a Thai based company seeking an investment into Indonesia.
- ⇒ Advised on tax efficient holding company structure and exit strategy for Canadian Mining Company.

Recent Publications :

- ⇒ "The DFDL Tax Pocket Guide To Investing in Myanmar", 2013 Edition.

"The use of tax treaties by third country residents to obtain treaty benefits not available directly to them is lawful, as long as it is not prohibited by treaty provisions or general international law."

Source: Roy Rohatgi

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12.00 – 13.30

Lunch

13.30 – 14.30

International Tax Dispute Settlement under Mutual Agreement Procedure: Thailand's position

Dr. Wuttipong Sirichantranon, Legal Officer of the Revenue Department

- What is **Mutual Agreement Procedure** (“MAP”)?
- Pros and cons of using MAP
- Who can be involved with MAP? Taxpayer vs. Tax Authorities
- How can taxpayer apply “MAP” to resolve international tax disputes?
- **In which situation should be resolved international tax disputes by MAP**
 - ⇒ Royalty & service fee, Transfer pricing, PE
 - ⇒ Taxation not in accordance with the provisions of DTA
 - ⇒ Interpretation and application of tax treaties
- **How to apply ?**
 - ⇒ Who is allowed to invoke MAP ?
 - ⇒ What about evidence required ?
 - ⇒ Taxpayer's rights and Tax authority's role under MAP
 - ⇒ Cost
 - ⇒ Time limit
- The Binding Status of MAP under International Law and Thai Law
- Is MAP binding on taxpayer, the tax authorities in ASEAN?
- What enough to disclose fact under MAP?
- The development of applying MAP in the future
- MAP via international scene : face to AEC
- Thailand's position regarding « **Arbitration** »

14.30 – 15.30

Tax Planning Techniques for Outbound Investment from Thailand

Mr. Sutthipong Srisa-ad, DFDL Tax and Legal (Thailand)

- Thailand's Outbound Incentives legislation
- Offshore based entity strategies – The Use of;
 - ⇒ Tax Havens
 - ⇒ Re-invoicing company, financial center, captive insurance company
 - ⇒ DTA - network : establishing an offshore servicing company
- Anti-tax avoidance measures;
 - ⇒ Thailand's Transfer Pricing Rules and AEC

Members

- Practical case studies

15.30 – 15.45

Coffee Break

15.45 – 16.45

ASEAN Economic Community: Focusing on Tax Issues

Judge Prapas Kong-ied, Former Judge of the Central Tax Court

- AEC : Single Market & Production Base
- **Liberalization of free flow of goods, services, investment, skilled labor and capital**
 - ⇒ Tax related to VAT, income tax, withholding tax, customs, excise tax and BOI
- **Framework for AEC Tax : If Applied the Same as EU Framework**
 - ⇒ ASEAN Law (Directive)
 - ⇒ ASEAN Court of Justice
- **AEC : Issues on VAT, customs and excise tax**
 - ⇒ Options to impose tax : ECs approaches
 - ⇒ Centralization vs. Decentralization
- **Intra-ASEAN Borderless Sales & Services – Excise tax reform**
 - ⇒ Intra-ASEAN Movement of Excisable Goods
 - ⇒ Definition of import under excise tax law
- **Practical AEC & VAT issues : Export of services**
 - ⇒ Update Thai Supreme Court decision concerning export of services
- **Practical AEC & Customs valuation issues : Royalty**
 - ⇒ Update Thai Supreme Court concerning customs valuation on royalties
- **‘Triangular Cases’ – The application of double tax treaties in AEC**
 - ⇒ Triangular situations - A case of double source taxation of interest, dividend and royalties
 - ⇒ Dual residence triangular cases
 - ⇒ Application of the treaty between the PE state and the source state
 - ⇒ Practical case study – Thailand, Vietnam, Laos and Cambodia
- **Practical case studies : Cross-border royalty tax issues**
 - ⇒ Could some amount of royalty be sourced and taxed in other ASEAN member countries?
 - ⇒ Could some amount of royalty be deducted as expense of branches in other ASEAN member countries? (payments made in Thailand)
 - ⇒ Are there any issues of VAT?

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Fee for one delegate <i>(Fee include lunch, refreshments and Materials)</i>	Early Bird (Thai Baht) Payment Before 21st August 2013 <u>(one person)</u>	Normal (Thai Baht) Payment within 21st - 27th Aug 2013 <u>(one person)</u>	Extra Price Payment Before 21st August 2013 <u>(two person)</u>
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