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The global economic shift towards Asia and its growing economies have spurred multinational corporations to centralize global and regional functions. When deciding where to base their regional headquarters in Asia, multinational corporations tend to prioritize countries such as Singapore, Malaysia and Hong Kong, whilst not paying much attention to Thailand.

One of the principle reasons behind this is that Thailand has been historically regarded as a high-tax jurisdiction with one of the higher corporate income tax (CIT) and withholding tax (WHT) rates in the region, especially when compared to Singapore or Hong Kong. The current rate for CIT has been reduced to 20% until 2015, which may be extended (note that the Thai Revenue Code provides for a normal CIT rate of 30%), whilst Singapore and Hong Kong maintain a normal CIT rate of 17% and 16.5%, respectively. In addition, Thailand imposes CIT on the receipt of foreign-sourced income whilst in Singapore, certain foreign-sourced income can be exempt, and in Hong Kong, all foreign-sourced income is exempt.

This trend can be demonstrated by statistics, for example, since the introduction of the Regional Operating Headquarter (ROH) regime in Thailand over 12 years ago, only 120 companies exist operating as a ROH in Thailand. This number pales in comparison to those regional hubs, such as Singapore and Hong Kong. We look to determine why this is the case despite Thailand amending its ROH scheme in 2010 to provide attractive new incentives. The 2010 scheme was created by the Thai government as a way to compete with these regional hubs. In addition, we further aim to determine whether the Thai government achieved its goals.

More recently, on 25 November 2014, the Council of Ministers of Thailand (the Cabinet) approved a new promotion scheme, along with supporting tax and nontax incentive packages, for companies that set up International Headquarters and International Trade Centers in Thailand. The introduction of this scheme is intended to be an alternative to the ROH scheme already existing in Thailand. At this point, the tax incentives and non-tax incentives remain unknown but it is expected that those foreign investors and companies wanting to set up.

Before delving into the crux of the issues described above it is pertinent to understand what a ROH is and how the regime has developed in Thailand over the last two decades.

A brief history

On 22 December 2001, the Royal Thai Government introduced the framework for a new legal classification for businesses in Royal Decree No. 405, the ROH regime.

A ROH in Thailand is a type of corporate entity established in the Kingdom of Thailand for the purpose of providing managerial, administrative and technical support services to other affiliated companies operating in the region. It is worth noting that the operations of an ROH are limited, and as such, an ROH will not be able to perform the usual business operations of its affiliates and related entities.

The scope of works for ROHs are limited to the following:
(a) organizing administration and managing business planning;
(b) sourcing of raw materials, parts and finished products;
(c) researching and developing activities;
(d) providing technical support;
(e) marketing and sales promotion;
(f) regional human resources training and development;
(g) business advisory services (such as financial management, marketing, accounting, etc);
(h) investment feasibility studies and economic and investment analysis; and
(i) credit management and control.

More recently, in 2010, the Royal Government of Thailand introduced a more evolved form of the ROH regime which was based on the characteristics of the ROH regimes in neighboring countries. The intention when creating the revised scheme in 2010 was to directly compete with those countries known for being ROH hubs, like Singapore, Malaysia and Hong Kong, with the aim of offering the best tax incentives in the region.

The ROH scheme published in Royal Decree No.405 (Scheme 1) was Thailand's first attempt at bringing this unique business entity into the country. The various incentives offered to ROHs operating in Thailand included:

(a) A flat 10% CIT rate on service income, interest income and royalty income derived from all related companies and branches of the ROH (both domestically and internationally);
(b) Exemption from CIT on dividend income received from all related companies and branches of the ROH;
(c) Exemption from WHT on dividend income paid to any related companies or branches outside Thailand.
(d) 15% flat rate of tax on salaries paid to expatriate employees for the hire of labor in Thailand for a period of four years and exemption from tax on salaries paid to expatriate employees for hire of labor outside Thailand; and
(e) Accelerated depreciation on the purchase or acquisition of buildings used in carrying out the operation of the ROH - a deduction of 25% of the asset value is allowed as an initial allowance and the remaining balance can be deducted over 20 years.

In order to receive the benefits listed in (a) - (e) above, the ROH had to meet stringent requirements. The first requirement was that the ROH company is required to be incorporated under the laws of the Kingdom of Thailand comprising of a paid-up capital of at least THB 10 million (USD307,980). There were additional requirements which required the ROH to provide its services to at least three related companies and branches of the ROH outside of Thailand. The final requirement to operate a ROH in Thailand was a requirement that the ROH had to earn at least one-third of its total income from related companies and branches of the ROH outside Thailand for the first three years, and thereafter, not less than 50% of its total income from related companies and branches outside Thailand.

The onerous requirements resulted in the scheme being relatively unsuccessful in the long run. Another reason for the limited success of the scheme, which saw only 80 companies registered during its eight year tenure, was that the incentives offered by Thailand paled in comparison to the incentives offered in Malaysia, Singapore and Hong

Kong, which also had more liberal schemes. These factors, coupled with poor marketing, meant that the scheme was ineffective in achieving its intended purpose.

To address the criticism which followed the introduction of Scheme 1 and to increase participation in the regime, the Royal Thai Government attempted to revamp its policy to allure more foreign investment into Thailand. The revised scheme was created with the aim of achieving the best tax incentives in the region.

Under the revamped scheme (Scheme 2), the following tax incentives were offered:

(a) Exemption from CIT on service income from related companies and branches of the ROH outside Thailand for a period of 10 years;
(b) Exemption from CIT on dividend income received from all related companies and branches of the ROH for a period of 10 years;
(c) Exemption from WHT on dividends paid to any related companies or branches outside Thailand;
(d) 15% flat rate of tax on salaries paid to expatriate employees for hire of labour in Thailand for period for eight years and tax exemption on salaries paid to expatriate employees for hire of labor outside of Thailand.

Scheme 2 further allowed new and existing companies to qualify as a treasury center enabling them to transfer to, lend to or borrow from their overseas affiliates in a foreign currency rather than being restricted to convert into Thai baht (THB). To further facilitate the ROH's operations, no approval is required for foreign currency deposit for money borrowed from domestic commercial banks, foreign deposit, and investment abroad, if the sum borrowed is under USD500 million.

The requirements were also liberalized in the sense that, the company would still have to be incorporated under the laws of the Kingdom of Thailand whilst comprising of at least THB10 million. The requirement to have the ROH provide its services to at least three related companies was reduced to only providing services to one related company during its first and second year of operations. During its third and fourth year of operation, the ROH is required to provide services to at least two affiliates, and finally in the fifth and subsequent years of operations, the ROH is required to provide services to at least three affiliates.

If the ROH fails to meet the criteria after the fourth year of operation, taxes will be assessed retroactively, and as such, would require the company to pay taxes that would have been owed in the previous four years in the absence of the incentives.

Comparison to other regional hubs

Let us examine the incentives offered in those jurisdictions which are considered to be the hub for multinational companies to base their regional headquarters.

Singapore

According to the Singapore Economic Development Board (EDB), by the end of 2013, there were in excess of 1,600 companies operating under the headquarters award.

Singapore provides incentives to encourage companies to use Singapore as a base for conducting headquarters management activities to oversee, manage and control their regional and global operation and businesses.

The incentives are only available to entities incorporated or registered in Singapore. The applicant company must satisfy the following conditions in order to apply for such incentives:

- The company should be (or belong to a group that is) well-established in its respective business sector or industry and has attained a critical size in terms of equity, assets, employees and business share;
- The company should be the nerve center in terms of organization reporting structure at senior management levels for its principal activities with clear-cut management and control for the activities;
- The company should have a substantial level of headquarters activities in Singapore that may include:
  - Strategic Business Planning and Development
  - General Management and Administration
  - Marketing Control, Planning and Brand Management
  - Intellectual Property Management
  - Corporate Training and Personnel Management
  - Research, Development and Test Bedding of New Concepts
  - Shared Services
  - Economic or Investment Research and Analysis
  - Technical Support Services
  - Sourcing, Procurement and Distribution
  - Corporate Finance Advisory Services
- The personnel employed by the applicant for its headquarters operations should be based in Singapore and would include management, professionals, technical personnel and other support staff.

As a "Regional Headquarter", the company will be entitled to an incentive tax rate of 15% for three plus two years on incremental qualifying income from abroad. In other words, if the company satisfies the requirements (discussed below) by Year 3, it will enjoy the 15% concessionary rate for an additional two years on the qualifying income.

In order to enjoy the incentives under the "Regional Headquarter" status, the applicant company must satisfy all of the following minimum requirements and maintain them until the end of the incentive period:

- Paid-up capital of SGD0.2 million and SGD0.5 million by the end of Year 1 and Year 3, respectively;
- Provide three headquarter services to network entities in three countries outside Singapore by the end of Year 3. "Network entities" means any entity within the group, including subsidiaries, sister companies, branches, joint ventures, representative offices and franchises;
- Employ 75% skilled staff throughout the incentive period. Skilled employment refers to at least a NTC2 Certificate qualification;
- 10 professionals in Singapore by the end of Year 3. Professionals refer to at least a diploma qualification;
- Average remuneration per worker of SGD100,000 per annum for the top five executive designations by the end of Year 3;
- Additional SGD2 million in annual total business expenditure in Singapore by the end of Year 3. Total business expenditure refers to total operating costs minus the costs of work subcontracted outside Singapore, royalties and know-how fees paid overseas, raw materials, components and packaging;
- Additional SGD3 million in total businesses spending cumulatively for the first three years of the incentive period.

Note that the foregoing requirements are the minimum requirements listed by the EDB. If the company is committed to exceeding the minimum requirements, the EDB may grant (on a case-by-case basis) lower concessionary rates under the "International Headquarter" program.

As seen from above, Singapore offers a concessionary tax rate of 15% for five years on incremental qualifying income from overseas. Thus, it appears that the Thai ROH incentives, in many respects, surpass the standards set by Singapore by exempting tax completely for 10+5 years on the net profit earned from providing services to foreign affiliates (offshore profits) whilst maintain a flat 10% rate for a period of 10+5 years for services rendered in Thailand (for onshore profits).

There are a few points to highlight where Singapore's tax regime, in general, is more favorable. Firstly, under the Thai ROH scheme, the receipt of foreign-sourced dividends is exempt for a period of 10 years, whereas in Singapore, the receipt of foreign-sourced dividends can be exempt from tax without any time limitation. Secondly, although the Thai ROH provides for a 15% tax rate for salaries of expatriates for eight years, Singapore's individual income tax regime imposes tax on a progressive basis up to 20%; however, the effective tax rate in Singapore can be less than 15%. Further, there is no capital gains tax in Singapore.

Hong Kong

At the end of 2013, according to the Census and Statistics Department of Hong Kong, 1,379 regional headquarters were operating in Hong Kong. Hong Kong's high levels of inward and outward direct investment reflect its importance as a regional headquarters, business hub and international financial center. Hong Kong does not offer targeting incentive regimes to overseas investors or foreign-owned firms. However, despite not offering such incentives, its duty free status, low (or zero) tax rates, good infrastructure, freedom from government interference and available capital, make it an attractive destination for foreign investors, thereby making its system competitive with other countries.

Malaysia

Malaysia is more recently becoming another favorite for multinational companies in which to base their regional presence, with an excess of 600 companies operating under its headquarter scheme. An Operational Headquarter company is exempt from income tax in respect of (i) 100% of statutory income from the provision of qualifying services; and (ii) a part of income from the provision of services in Malaysia as determined according to the formula A / B x C (where: A is 25% of all income from the provision of qualifying services; B is the gross income from providing services to related companies in Malaysia; and C is the statutory income from services).

Similar to the qualifying conditions of ROHs in Thailand, Malaysia also has strict criteria for companies to comply for purposes of applying the incentives. To be eligible for the incentives, an Operational Headquarter of the company must meet the following conditions:

(i) Be incorporated in Malaysia;
(ii) Have a minimum paid-up capital of RM500,000;
(iii) Have a minimum total annual business expenditure of RM1.5 million;
(iv) Appoint at least three senior professional/managerial personnel;
(v) Serve at least three related companies outside Malaysia;
(vi) Have a sizeable network of companies with significant and substantial employment of qualified professional, technical and supporting personnel; and
(vii) Carry out at least three qualifying services.

Why not Thailand?

Given the additional incentives offered by the Board of Investment and the Revenue Department, Thailand's ROH scheme can be considered to be competitive with the schemes offered by Singapore, Hong Kong and Malaysia. Still, given the revamped ROH scheme in Thailand, Singapore continues to be the preferred base for international companies.

It would seem that the Thai ROH regime falls short because of Thailand's general tax regime. As stated earlier, Thailand is often regarded as a higher-tax jurisdiction. Singapore and Hong Kong, on the other hand, maintain their reputation as low-tax jurisdictions. Further, Singapore and Hong Kong's general tax regimes are favorable on their own merits and do not need additional incentives to make them attractive.

Below are a few examples, from a taxation point of view, as to why multinational companies would opt to base their regional headquarters in neighboring countries rather than in Thailand.

1. If a Thai ROH structure was adopted for the sale of a subsidiary, such sale would not be exempt from foreign capital gains and thus would be fully taxable when received in Thailand. Whereas, in jurisdictions like Singapore and Hong Kong, capital gains are not taxed in the first place, be it a ROH or just an ordinary legal entity.

2. Thailand's ROH structure only allows a temporary exemption on certain types of qualifying income, whereas Hong Kong does not tax foreign sourced income from the get go. Singapore, on the other hand, while it imposes tax on foreign sourced income, there are special rules in place which can be used to have the same effect as 0% on certain foreign source income.

3. The Thai ROH scheme is often criticized for being only temporary. After the 10 year period has lapsed any payments made from Thailand will be subject to withholding taxes at the default rates. Hong Kong, on the other hand, does not impose withholding tax on dividends, service fees and interest, but does impose withholding tax on royalties at the rate of 5%.

Other reasons for multinational companies desiring to set-up shop in other countries include the ease of doing business and the ability to overcome language barriers. Singapore and Hong Kong, for example, maintain their reputation as one of the easiest places in the world to conduct business. Further, both Singapore and Hong Kong dominate as a regional hub due to the fact that one of the official languages is English.

It would seem that all the ingredients are there for Thailand to compete with other regional hubs including the introduction of a new Cabinet approved International Headquarters scheme; however, solely having competitive tax incentives may not be enough to encourage more ROHs to be set up. The entire tax regime in general may need to be revised in order to be competitive with other neighboring countries. For now, only time will tell if the new Cabinet approved International Headquarters scheme will provide more competition to Thailand's regional competitors.

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