

Thailand's Emergence as a Location for Holding and Financing Activities, and Intragroup Services

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Reprinted from *Tax Notes International*, August 5, 2024, p. 807

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In this article, Sheehan and Tiamsuttikarn explain recent developments in the Thai international taxation and transfer pricing regimes and the effect they will have on Thailand as a potential business hub.

This article delves into the international tax and transfer pricing aspects of Thailand as a location for holding, financing, and management activities. We discuss Thailand's holding company regime, the taxation of disposal gains, the Thai International Business Centre (IBC) and treasury incentives, the taxation of intragroup management services and financing activities, transfer pricing rules, antiabuse rules, and recent developments regarding the OECD base erosion and profit-shifting project and pillar 2 global anti-base-erosion (GLOBE) model rules.

Thai Holding Company Regime

Thailand has a worldwide taxation basis for Thai registered companies. It has a dividend participation exemption that exempts dividends received by a Thai company from a Thai or a foreign company, subject to certain conditions (see Figure 1).

Inbound Dividends

Dividend income received by a Thai company will be exempt from withholding tax and corporate income tax if:¹

- the dividend recipient holds at least 25 percent of voting shares in the dividend-paying company;
- the dividend-paying company does not hold any shares in the company receiving the dividends, either directly or indirectly; and
- the company receiving the dividends has owned the shares of the entity paying the dividends for at least three months before the date of the dividend distribution declaration and continues to hold the shares for at least three months after the date of the dividend distribution.

Dividend income received from a Thai entity that does not qualify for the above exemption is subject to tax at the corporate tax rate of 10 percent.²

Dividend income received by a Thai entity from a foreign entity will be exempt from corporate tax if:³

- the Thai dividend recipient holds at least 25 percent of voting shares in the foreign entity paying the dividend for at least six months before receiving the dividends; and
- the dividends are distributed from profits that have been subject to tax at a statutory rate of 15 percent or more.

Dividend income that does not qualify for the above exemption is subject to tax at the standard corporate rate of 20 percent.

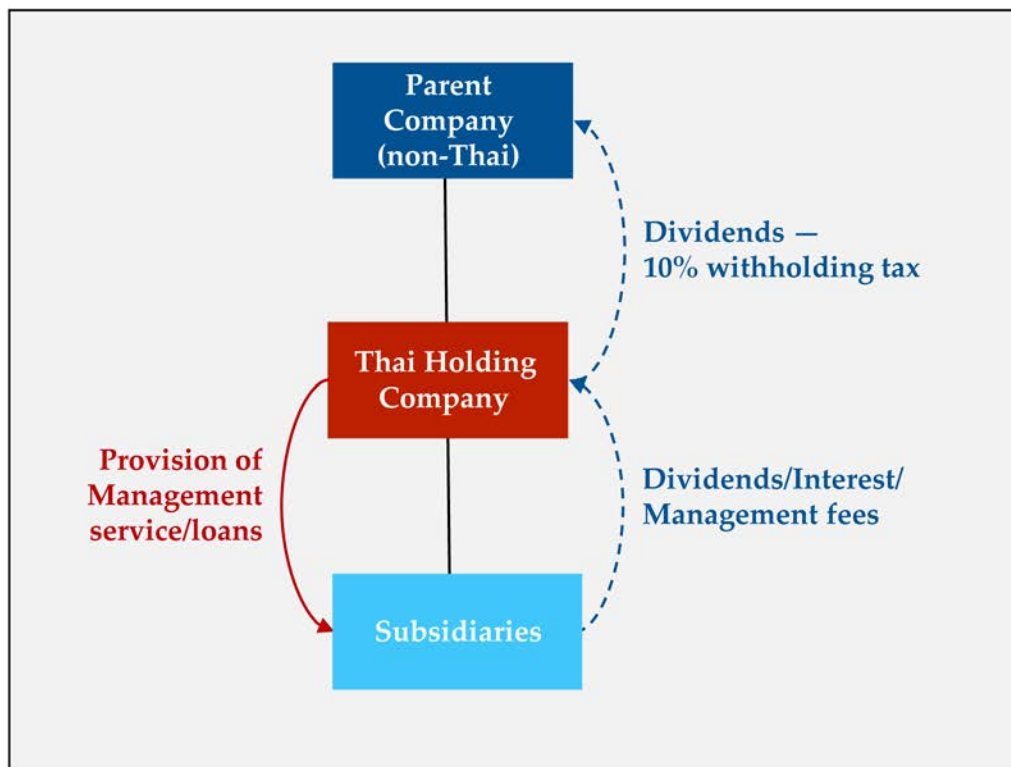
Thailand has a tax treaty network covering 61 jurisdictions, including the United States, major Asian countries, and several European countries.

¹Section 65 Bis (10) of the Thai Revenue Code and Department Instruction No. Tor Por 4/2528 (Sept. 26, 1985).

²Section 65 Bis (10) of the Thai Revenue Code provides a 50 percent reduction in corporate tax rate on the dividend income received from a Thai entity that does not qualify for a dividend income tax exemption.

³Royal Decree No. 442 (Nov. 14, 2005).

Figure 1. Thai Holding Company



These tax treaties often provide reduced withholding tax rates on dividends paid from the source jurisdiction, which could benefit the Thai company receiving foreign-source dividend income.

Outbound Dividends

Dividends paid from a Thai entity to a foreign shareholder are subject to a 10 percent withholding tax.⁴ Thailand's tax treaties do not generally offer lower rates on dividends, with limited exceptions (see the tax treaties discussion below). Taiwan and Mauritius are the only

exceptions, with a dividend withholding tax limitation of 5 percent.⁵

Dividends paid from "qualifying income" earned by Thai IBC entities are exempt from withholding tax when paid to an offshore IBC shareholder (further discussion below).

Capital Gains on Share Disposals

Gains derived by a Thai company on the sale of shares in a foreign company are subject to tax in Thailand at the standard corporate rate of 20 percent. Thailand does not have any offshore indirect transfer rules for taxing disposal gains on the sale of shares in offshore entities holding assets in Thailand. Based on current Thai practice,

⁴Thai Revenue Code, section 70.

⁵The Thailand-Taiwan tax treaty provides a dividend withholding tax limitation of 5 percent. The Mauritius-Thailand tax treaty has a most-favored-nation clause, which means that the rates in that treaty are on par with the lowest rates in any other tax treaties signed by Thailand. Under both treaties, there is a condition that the recipient of the dividends must be the beneficial owner of the dividend income to qualify for the reduced rate.

disposal gains on the sale of shares in a Thai company between nonresidents is not subject to Thai tax, either.

A disposal of shares between a Thai and a foreign entity will be subject to tax in Thailand as follows:

- A sale of Thai or a foreign company's shares by a foreign entity to a Thai buyer will be subject to a withholding tax of 15 percent.⁶
- If a Thai entity is disposing of shares in a Thai or foreign company, gains realized from the sale are subject to tax at the standard corporate rate of 20 percent.⁷

Thai Tax Treaty Network

Thailand has a network of tax treaties with 61 countries, including major economies like Australia, China, France, Hong Kong, Singapore, the United Kingdom, and the United States. It has tax treaties with several Asian countries and most Association of Southeast Asian Nations (ASEAN) countries.⁸ Thailand's tax treaties tend to be a mix of both OECD and U.N. model conventions. They can provide a reduction or exemption on withholding tax for certain types of income, such as dividends, interest, royalties, and management and technical fees.

Intragroup Services and Financing

Management fees paid from a Thai entity to a nonresident entity are generally exempt from withholding tax under an applicable tax treaty.

Article 7 of Thailand's treaties on business profits with other countries in Asia follows the OECD and U.N. model convention, exempting management service fees from withholding tax in the source state unless the Thai entity has a permanent establishment there through which business is wholly or partially carried on. Among ASEAN and Asian countries, only the Thailand-Cambodia tax treaty includes a technical services

article that provides for source-state taxation for management service fees.⁹

The table summarizes the withholding tax rates for dividends, interest, and management service fees under tax treaties between Thailand and several other jurisdictions.

Thailand as a Regional Headquarters

Under the Thai IBC regime, the country offers tax incentives for entities that are established there as a regional headquarters and provide management services (see Figure 2).¹⁰

IBC incentives include:

- reduced corporate tax rates of 3 percent, 5 percent, and 8 percent, depending on the annual domestic expenses of the IBC;¹¹
- an exemption from corporate tax for dividend income received from Thai or foreign affiliated companies;
- a withholding tax exemption for dividends distributed from IBC income to its foreign shareholders;
- a withholding tax exemption for interest on loans taken out by the IBC for the purpose of relending to its affiliated companies and subsidiaries; and
- a reduced personal income tax rate of 15 percent on income earned from the IBC for all qualified full-time IBC foreign employees.

Financing Activities

Thailand does not have thin capitalization rules, but there are limits on the debt-to-equity ratio for certain types of companies. For companies that have obtained Thai Board of Investment (BOI) certificates, the ratio is limited to 3:1, while foreign companies that operate under

⁶Thai Revenue Code, section 70.

⁷*Id.* at section 65 and section 40(4)(b).

⁸ASEAN is the association of 10 Southeast Asian nations. Thailand has tax treaties with eight of the ASEAN countries: Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Vietnam, and Singapore. Brunei is the only ASEAN nation with which Thailand does not have a tax treaty. Thailand also has treaties with several leading Asian economies, including China, Japan, India, South Korea, and Hong Kong.

⁹Article 13 of the Cambodia-Thailand tax treaty includes a "Fees for Technical Services" clause, which refers to "any payment of any kind in consideration for the rendering of any managerial, technical or consultancy services, including the provision by the enterprise of the services of technical or other personnel."

¹⁰Royal Decree No. 674, "Tax exemption and reduction" (Dec. 25, 2018).

¹¹The corporate tax rate is 8 percent if a Thai entity has domestic expenditure of at least THB 60 million (about \$1.6 million), 5 percent if a Thai entity has domestic expenditure of at least THB 300 million, and 3 percent if a Thai entity has domestic expenditure of at least THB 600 million.

Withholding Tax Rates

Withholding Tax	Dividends	Interest	Management Service Fees
Nontreaty countries	10%	15%	15%
Thailand-Indonesia	15% / 20%	10% / 15% / 25%	Exempt if there is no PE through which the income is derived
Thailand-Vietnam	15%	10% / 15%	
Thailand-U.K.	15% / 20%	10% / 25%	
Thailand-U.S.	10% / 15%	10% / 15%	
Thailand-Australia	15% / 20%	10% / 25%	
Thailand-Hong Kong	10%	10% / 15%	
Thailand-Singapore	10%	10% / 15%	
Thailand-Japan	15% / 20%	10% / 25%	
Thailand-China	15% / 20%	10%	
Thailand-France	15% / 20%	3% / 10%	
Thailand-Germany	15% / 20%	10% / 25%	
Thailand-Canada	15% / 20%	10% / 15% / 25%	
Thailand-Cambodia	10%	10% / 15%	10%

the Foreign Business Act are limited to a ratio of 7:1.

Thailand offers tax incentives and benefits to qualifying entities for certain financing activities.¹² These tax privileges are similar to those provided under an IBC, with the corporate rate on interest income derived by a Thai entity reduced to 3 percent, 5 percent, or 8 percent, depending on the total annual domestic expenses of the entity.¹³

A Thai entity can be granted the following tax benefits on loans to associated enterprises:¹⁴

- an exemption from withholding tax on interest on loans by the entity for the purposes of relending to its associated enterprises;

- reduced corporate rates of 3 percent, 5 percent, or 8 percent on interest income from loans made to associated enterprises; and
- an exemption from specific business tax on interest income derived from loans provided to associated enterprises.

If a non-IBC company receives interest on loans from related parties, the interest is subject to the normal corporate rate of 20 percent, with a tax credit available for withholding tax deducted on the interest when paid by a company located in a foreign country. Also, if a Thai entity pays interest to a nonresident entity, the interest is subject to a withholding tax of 15 percent. This rate can be reduced under an applicable tax treaty.

Thai Transfer Pricing Rules

Transfer pricing is a significant tax issue for multinational enterprises operating in Thailand, and the Thai Revenue Department (TRD) has increased its scrutiny and enforcement of transfer pricing rules.

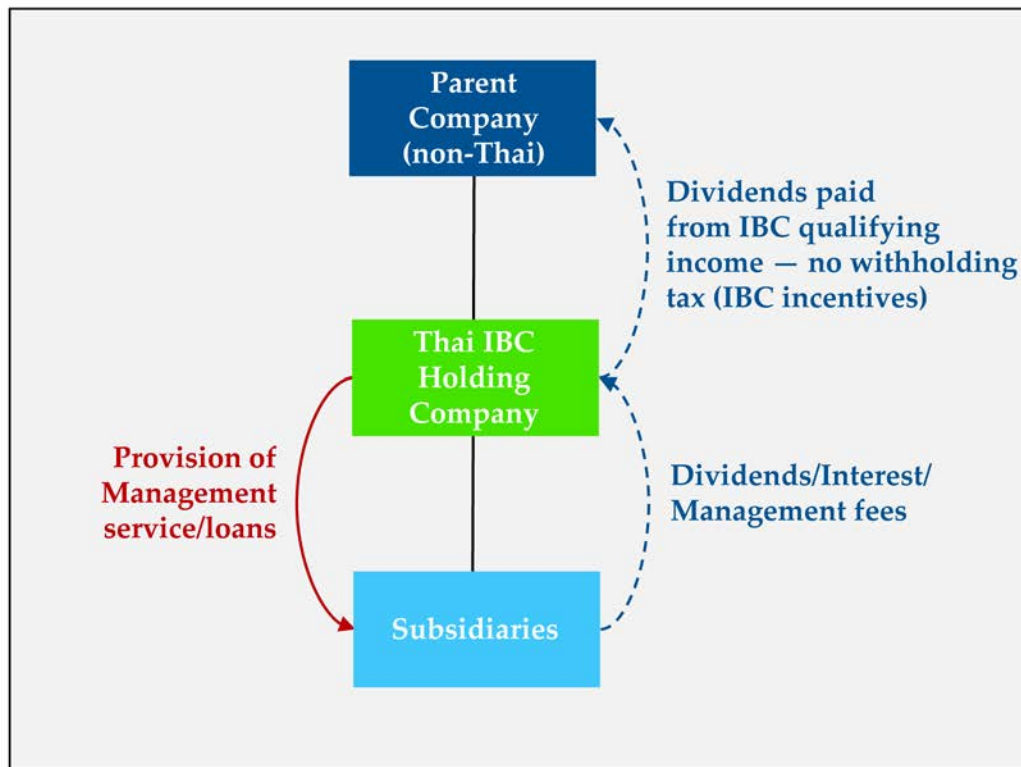
In 2018 Thailand introduced specific transfer pricing provisions into its income tax law. These

¹²Royal Decree No. 674.

¹³*Id.*

¹⁴Affiliate enterprises include (1) a company directly or indirectly holding at least 25 percent of the shares in the IBC; (2) a company in which the IBC holds at least 25 percent of the shares directly or indirectly; (3) a company in which a company falling under (1) holds at least 25 percent of the shares directly or indirectly; (4) a company that has the power to control or supervise the IBC; (5) a company in which the IBC has controlling or supervisory power; and (6) a company that a company falling under (4) has power to control or supervise.

Figure 2. Thai IBC Holding Company



provisions apply to tax years that began on or after January 1, 2019. Thailand's transfer pricing rules broadly follow the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.¹⁵

Thailand's transfer pricing provisions follow the arm's-length principle. The provisions also require taxpayers to prepare and submit transfer pricing documentation to the TRD.¹⁶ Companies must submit required transfer pricing documentation within 150 days from the last day of the accounting period or upon request by the TRD.

The transfer pricing provisions give the TRD the power to adjust a taxpayer's taxable income if the actual price of the related-party transaction

deviates from the determined arm's-length price. The TRD can also impose penalties and interest on any underpaid tax. These provisions extend the statute of limitations for transfer pricing audits from five to seven years.

It is important for taxpayers in Thailand to implement proper transfer pricing policies and practices to ensure that related-party transactions are established in compliance with the arm's-length principle. They should also maintain proper documentation, in line with Thai transfer pricing rules and regulations. It is also important to maintain other documentation (for example, intercompany agreements, transfer pricing policy documents, etc.) that can be produced to support the implemented transfer prices and defend the pricing against a potential TRD challenge.

Transfer Pricing for Intragroup Management Services

MNE groups often provide intragroup services to their members, including

¹⁵ OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration (2022).

¹⁶ Notification of Director-General of Revenue Department No. 407, "Prescribing the Documents or Evidence Showing Information Necessary for Transfer Pricing Analysis of the Terms and Transactions Between Related Companies or Juristic Partnerships" (Sept. 30, 2021).

administrative, technical, financial, and commercial. In Asia, the costs of providing intragroup services are usually borne initially by a parent or a regional holding company, such as a Thai IBC.

The most common transfer pricing method for intragroup services in Thailand is the cost-plus basis. According to the OECD transfer pricing guidelines, an obligation to pay for intragroup services only arises when the benefits test is satisfied.¹⁷ This means that the intragroup services must provide the group member with economic or commercial value to enhance or maintain its commercial position.¹⁸

Intragroup management services are often scrutinized by tax authorities in Asia, and Thailand is no exception, whether the Thai entity is the service provider or the service recipient.

From the perspective of the service provider, such as the IBC when it provides services to various related parties, the TRD expects that all costs incurred in the provision of services are charged to the service recipients. An accurate cost allocation study should be maintained to carefully identify the costs that are for the benefit of the service recipients. There are often grey areas in which certain services (for example, finance) may be considered to be shareholder in nature. While costs that are typically shareholder in nature are not charged to service recipients, the responsibility lies with the IBC to document that these costs should continue to reside in and be deductible in Thailand.

In addition, the TRD expects that the markup is appropriate, with a higher markup being applied for value-added services. With higher markups, it is strongly recommended to conduct benchmarking studies, because the tax authorities in the locations of the service recipients may argue that these markups are excessive. It should be noted that some Asian countries, such as China and Vietnam, are taking an aggressive stance on denying charges for management services.¹⁹

Similar issues arise when the TRD reviews a Thai company that pays for management fees to an overseas entity. The areas of focus in this case are:

- Do the services benefit the Thai entity? The TRD expects taxpayers to demonstrate this by showing practical evidence (for example, interaction between the Thai service recipient and the overseas service provider).
- Is the cost that is being charged reasonable for the type of services provided and the financial strength of the Thai business? In other words, if the management fee significantly reduces the profits of the Thai business, it is likely to receive additional scrutiny from the TRD.
- Is the markup reasonable for the nature of the services provided? Building on the comments above, the key question here is whether the services are value-added or relatively routine, warranting a lower markup.

Considering the burden often associated with transfer pricing audits, Thailand, like many other countries, has introduced an advance pricing agreement program that allows related parties to negotiate with the TRD and agree on prices in advance of actual transactions. This provides certainty that the prices will not be adjusted and that the taxpayer will not be subject to a transfer pricing audit for a certain number of tax years. APAs facilitate the taxpayer and the TRD to agree on the pricing method that the taxpayer will apply to its related-company transactions. To help taxpayers that may want to enter an APA, the TRD has issued guidelines on the APA process.²⁰ APAs in Thailand are normally applicable for a period of three to five tax years.²¹

Antiabuse Rules

Thailand does not have a general antiavoidance rule, controlled foreign company rules, or thin capitalization (denial of interest deduction) rules in place. However, the TRD does have the authority to recharacterize any transaction or arrangement that is done for the

¹⁷ OECD Transfer Pricing Guidelines, Chapter XII, at paras. 7.6 and 7.54 (2022).

¹⁸ *Id.*

¹⁹ See DFDL, "Tax and Transfer Pricing Aspects of Providing Intragroup Management Services in Vietnam," Mar. 12, 2024.

²⁰ See Guideline on APA Process.

²¹ *Id.*

intention of tax avoidance or tax evasion and impose tax accordingly.

As discussed above, Thailand does have transfer pricing rules, which require companies to determine the market price of transactions with related parties and adjust taxable income accordingly.

BEPS and Pillar 2 GLOBE Model Rules

Thailand deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting with the OECD on March 31, 2022. The MLI entered into force in Thailand on July 1, 2022, and began to be applied from January 1, 2023. At the time of this writing, the MLI has modified 43 of Thailand's tax treaties and implemented Thailand's compliance with BEPS action 6.

As part of the minimum BEPS standards, Thailand has chosen to adopt the principal purpose test (PPT) in its modified tax treaties. The PPT allows the TRD to disallow treaty benefits if the application of those benefits was one of the principal purposes of an arrangement or transaction. It is important for companies relying on tax treaty benefits to demonstrate the business substance behind any arrangement or transaction in case of a TRD challenge. The MLI does not specify what evidence is needed to pass the test, and the TRD has not yet issued official guidance on PPT application.

In March the TRD launched a public consultation on the pillar 2 draft legislation. The draft legislation sets out a framework for a minimum tax rate for MNEs, allowing the collection of additional taxes under GLOBE rules.

The TRD released the first draft of the Top-Up Tax Collection Act (expected to be effective sometime in 2025) for public consultation from March 1 to 15. The draft includes:

- a domestic top-up tax applicable if Thailand is considered to be an MNE low-tax jurisdiction, a constituent entity in Thailand that is a part of the MNE's group would be liable to pay top-up tax in Thailand;
- an income inclusion rule providing that an ultimate parent entity, an intermediate parent entity, or a partially owned parent entity in Thailand would be liable to pay a

top-up tax if it has direct or indirect ownership in a foreign company that is located in a low-tax jurisdiction;

- an undertaxed payment rule applicable if there is an outstanding top-up tax in a low-tax jurisdiction, either under a domestic top-up tax or income inclusion rule, rendering constituent entities in Thailand liable to pay the allocated top-up tax; and
- an obligation for constituent entities in Thailand to submit (1) a GLOBE information return, (2) an MNE information notification, and (3) top-up tax returns and payment within 15 months from the end of the fiscal year.

The BOI separately issued a notification²² providing that qualified BOI-promoted companies²³ that have received corporate tax exemptions can choose to take a 50 percent reduction of corporate income tax for a period equal to twice the entity's remaining incentive period, with a maximum limit of 10 years, instead of the current tax exemption. This option is designed to reduce the effect of a top-up tax and assist companies managing their effective tax rates in Thailand.

As of the time of writing, the Thai cabinet has not provided any measures for pillar 1.

Concluding Remarks

While Singapore and Hong Kong have traditionally been popular choices for holding, financing, and regional intragroup services in Asia, Thailand is emerging as a promising location for MNEs seeking to establish regional headquarters in Asia.

Thailand has a good tax treaty network covering many countries in Asia and most ASEAN countries. It also has treaties with major economies including the United States, Germany, the United Kingdom, China, and Japan. When the benefits under Thailand's tax treaties are combined with the IBC incentive and the dividend participation exemption, Thailand can be a tax-efficient location for holding, financing,

²² BOI Notification No. 1/2566 (May 16, 2023).

²³ A BOI-promoted company with consolidated group revenue of not less than THB 28 billion.

and management activities. Companies in Thailand are required to price all transactions between related parties at arm's length and be appropriately documented in accordance with Thailand's transfer pricing rules.

Thailand has ratified the MLI for BEPS minimum standards, and legislation implemented for pillar 2 is expected to be enacted from 2025. Taxpayers should follow these international tax developments in Thailand as well as other countries in Asia given the potential significant effect on the tax planning strategies of MNE groups. ■

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