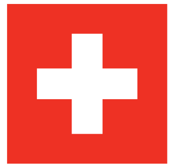
Swiss Thai

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TAXATION OF SWISS BUSINESS INTEREST IN THAILAND

Thailand has emerged as one of the economic powers in the ASEAN region. It has adopted one of the most open investment policies in ASEAN and this has resulted in its rapid industrialization and the growth of its middle class and domestic consumption levels.

While Thailand's growth has somewhat tapered off in recent years, there is no doubt that it will benefit from the further integration of the ASEAN economies under the ASEAN Economic Community 2015. It also benefits from the rapid growth and opening up of its neighbors – Cambodia, Laos and Myanmar. It is often touted to become both an industrial and financial hub for investments in these frontier economies.

Thailand has internalized its role as a regional hub and has instituted preferential investment and tax policies that seek to capture the business of firms with interests or operations in various ASEAN economies. Thailand clearly wants to challenge the dominance of established investment hubs such as Hong Kong and Singapore and is implementing rules that mimic some of the tax advantages that these countries provide to regional headquarters. It is therefore not surprising that the country attracts a lot of attention from European businesses (including Swiss companies) planning on establishing a foothold in the ASEAN market.

This short note focuses on the tax rules that apply to income generated by Swiss interests in Thailand. The first section looks at the general tax rules applied to revenue generated by Swiss firms doing business in Thailand and those transmitted by Swiss businesses in Thailand to their respective parent entities. The second briefly discusses the taxation of Thai Regional Operating Headquarters which are able to access greater tax incentives.

I. Taxation of Swiss Businesses in Thailand

Thai Corporation Income Tax

The large Thai domestic market attracts foreign companies into opening permanent operations in the country either through the incorporation of subsidiaries or through the registration of branches. These subsidiaries and branches of Swiss companies in Thailand are subjected to the general corporate tax regime of the country. Thailand-incorporated entities are taxed on their worldwide income, but branches of foreign companies are only taxed on income from Thai sources.

Since January 2013, the corporate income tax rate on net profits has been reduced significantly to 20% from the former 23%. Smaller companies incorporated under Thai laws enjoy progressive rates from 0% to 20%. These lower rates generally apply to companies with paid-up capital not exceeding THB 5 million.

To sustain its advantage as a regional operating hub, Thailand provides special tax rates to companies engaged in the international transport business. They are taxed at a rate of 3% of gross receipts instead of on net profits.

Thai subsidiaries of Swiss entities who receive dividends from other Thai companies are generally able to exclude half of these dividends from taxation. These are exempt if distributed by companies listed in the country's stock exchange or if the recipient of the dividends own at least 25% of the shares of the Thai company distributing the dividends.

If the Swiss entity's Thai subsidiary is used as an investment

vehicle for foreign investments, dividends from these foreign companies will also be exempt if (1) the aforementioned Thai subsidiary owns at least 25% of the foreign entity; (2) the shares have been held for at least 6 months prior to the dividend distribution; and (3) the profit from which the dividends were declared was subject to tax at a rate of at least 15%.

Thai Taxation of Thai Profits of Revenue by Swiss Companies

Revenue earned directly by Swiss companies from their Thai investments or commercial activities in Thailand are subject to withholding taxes in Thailand. Thailand generally imposes the following withholding taxes:

- Dividends or branch profit remittance: 10%
- Royalties: 15%
- Interest: 15%
- Business income of non-residents: 15%
- Capital Gains of non-residents: 15%

Switzerland has a double tax treaty with Thailand and provides some relief from the above withholding tax rates.

Dividends withholding tax is not reduced since the lowest treaty rate is already set at 10%. Interest income withholding tax may be reduced if the Swiss recipient of this income is a financial institution. In this case, the rate is dropped to 10%. The 15% rate still applies to interest received by non-financial institutions.

Royalty withholding tax rates are reduced to (1) 5% of the gross amount of the royalties if they are made as a consideration for the alienation or the use of, or the right to use any copyright, artistic or scientific work, excluding cinematograph films or films or tapes used for radio or television broadcasting; and (2) 10% of the gross amount of the royalties if they are made as a consideration for the alienation of any patent, trademark, design or model, plan, secret formula or process. The default rate of 15% applies to other types of royalty income.

The business profits of Swiss companies that have no permanent establishment in Thailand are not taxable in Thailand.
With respect to capital gains, the treaty allows Thailand to levy its general tax on capital gains if these were derived by a resident of a Contracting State from the alienation of immovables located in Thailand or of shares or comparable rights in a company, the assets of which consist wholly or principally of immovable property in Thailand. The capital gains tax from the alienation of shares in a Thai company whose assets do NOT consist wholly or principally of immovable property in Thailand is reduced by 50% if the Swiss shareholder owns at least 20 per cent of the capital of the Thai company.

II. The Thai ROH

The Thai Regional Operating Headquarters is a special entity that is granted incentives when it contributes to the country's overall strategy of becoming a foremost investment and operating hub. Generally, it must:

- be a company incorporated under Thai law;
- have paid up capital of at least 10 million Baht
- provide qualifying services to its affiliates / associated enterprises or branches in at least 3 countries other than Thailand
- derive 50% of its income from providing qualifying services to foreign associated enterprises and/or from royalties received from foreign enterprises. (This requirement is initially reduced to 33% for the first three accounting periods of operation following its registration as an ROH.)

A subsidiary of a Swiss entity that is registered as a Thai ROH is taxed at a lower corporate income tax rate of 10% on its income from:

- the provision of qualifying services to associated enterprises or foreign branches
- interest income from lending to associated enterprises or foreign branches
- royalty income derived from

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associated enterprises or foreign branches for the use of intellectual property derived from the research and development activities of the Thai ROH.

More significantly, dividends arising from profits of the Thai ROH on qualifying services will not be subject to withholding tax when distributed to its Swiss shareholder. These qualifying services are as follows:

- management and administrative services
- procurement of raw materials and parts
- research and development
- supporting technical assistance
- marketing strategy planning and sale promotion
- human resource management and training
- financial advisory services
- economic and investment analysis and research
- credit control and management
- any other activities prescribed by the Director General of the Thai Revenue Department.

Its general industrial and economic circumstances make Thailand a great destination for Swiss companies wishing to expand or establish a foothold in the region. Through its tax policies, the Thai government has clearly set about making things easier for foreign companies to contribute in the expansion of the economic influence of Thailand in ASEAN and in the Indochina growth region.

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