In Focus

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DOUBLE TAXATION TREATY BETWEEN THAILAND AND INDIA RENEGOTIATED

On 1 December 2015 it was announced that the existing double taxation treaty ("DTA") between India and Thailand was successfully renegotiated and agreed to by both contracting states. It is anticipated that the new DTA should come into force in Thailand in January 2017, although this has not been officially communicated.

The key highlights include:

- The new DTA includes various updates and clarifications to the permanent establishment ("PE") article. Notably, exceptions to the creation of PEs have now been restricted. Under the existing DTA, no PE would arise where the facilities are used or stock of goods is maintained for the purpose of delivery of such goods. This exception will no longer be available under the new DTA. Further, a PE would now arise where a combination of various activities such as, storage, display of goods, purchasing of goods etc. is not of a preparatory or auxiliary character in relation to the business as a whole.
- Dividend withholding tax (Article 10) has been reduced to 10%, where previously it was 15%/20%, depending on the circumstances. Since Thailand's domestic dividend withholding

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tax rate is only 10%, the reduction in the DTA makes no practical difference.

Interest withholding tax (Article 11) is 10% under the new DTA except where the interest is beneficially owned by the government, a political subdivision, local authority, the Reserve Bank of India, the Export Import Bank of India, the Bank of Thailand, the Export Import Bank of Thailand and any other institution as may be agreed, in which case the rate is 0%. Since Thailand's domestic interest withholding tax rate is 15% in the case of Indian non-financial institutions, the reduction in the DTA will be more favorable.

- Royalties withholding tax (Article 12) has been reduced to 10% from 15%.
- It should be noted that the benefits of the new DTA in respect of interest and royalties will be limited to the "beneficial owner" of such interest or royalties. While the meaning of "beneficial ownership" is not defined in the new DTA or the prevailing Thai tax law, a "beneficial owner" generally means a person who is entitled to the benefit of the income, even though the person may or may not hold the legal title to, or be the recipient of, such income.
- Article 13 has been updated to allow capital gains on the disposal of shares in a property rich company to be taxed in the state in which the property is located. In other words, a capital gain derived by an Indian tax resident from the disposal of shares in a company, the property of which consists directly or indirectly predominantly of immovable property ("property rich") situated in Thailand, will be taxed in Thailand. Currently, under the Thai domestic law, the capital gains tax implications should only arise where the capital gain is remitted from Thailand. Share disposals of companies that are not property rich remain taxable only in India.
- The new DTA has a far more comprehensive exchange of information article giving the contracting states far greater powers to gather information from the other state. Thailand or India, as the case may be, would not be permitted to refuse to supply the information simply because it has no domestic interest in such information or the information is held by a bank, other financial institution, nominee, person acting in an agency or a fiduciary capacity.
- The limitation of benefits article has been introduced that confirms each contracting state's right to apply, without limitations, its domestic law and measures concerning tax avoidance or evasion.

Should you require any specific advice on the changes to the new Thai – Indian DTA, please contact us for assistance.

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