

Part 2 Tax on Foreign Non-Resident Company

by

Dr. Suvarn Valaisathien

www.saverclub.org

All Rights Reserved

In Part I on tax of Foreign Resident Company, we learn that a foreign company doing business in Thailand either directly such as setting up a branch or having employee working in Thailand, or indirectly by appointing an agent or go-between, whether such person is a Thai or alien, whether it is an individual or corporate and whether the appointment is for temporary or permanent, such foreign company is doing business in Thailand and liable to tax according to the principle of source of income.

Nevertheless, due to trade globalization and introduction of modern telecommunication media which enable a foreign company to do business in Thailand without having a branch nor agent in this country, such non-resident foreign company could be subject to Thai tax if it receives certain types of income.

Section 70 of the Revenue Code requires a foreign non-resident company receiving income either from or in Thailand to pay Thai tax where the payer, whether an individual or corporate, shall deduct withholding tax and remit it to the Revenue Department within seven days of the following month.

Income subject to withholding tax under Section 70 is as follows:

1. Income under Section 40 (2) which is fee for work done such as consultation fee. The Revenue Department ruled that the foreign non-resident company shall not have incurred substantial amount of expenses in the provision of services, such as the service is rendered through its employees at home office. If the service provider incurs substantial expenses, then the income falls under 40 (8) which is not subject to withholding tax under Section 70.

2. Income under Section 40 (3) involving royalty whether it is copyright such as computer software, songs or movies, royalty for the use of secret formula or fee for trademark or servicemark.

3. Income under Section 40 (4) which is principally interest from lending to Thai borrower or investment in debt instruments such as promissory notes or debentures. Dividend and capital gain from investment in equity is also subject to withholding tax.

4. Income under Section 40 (5) which is principally rental for machinery, equipment or other property.

5. Income under Section 40 (6) which is fee from the practice of liberal professions in the fields of law, engineering, architecture, accounting and medicine.

The payer in Thailand shall deduct withholding tax at 15% except for dividend where the rate is reduced to 10%.

If payment is for other type of income such as income under Section 40 (7) involving construction or 40 (8) which is revenue from industrial, commercial, transportation or insurance activities, the payer does not have to deduct withholding tax.

Nevertheless, Thailand entered into Double Tax Agreements with about 53 countries and companies registered in those countries can take advantage of the exemption under the treaties. If this is the case, then there is no withholding tax because the treaties overwrite the Thai Revenue Code.

Normally, a foreign non-resident company does not have to pay value added tax (VAT) because it is imposed on business activities in Thailand. Foreign company not doing business in Thailand could still be liable to VAT although it is the payer of income who has to remit the tax under Section 83/6. Where the foreign company has an agent, then the agent would have to pay VAT directly.

Other Taxes

Besides corporate income tax, withholding tax, VAT and specific business tax, a foreign company shall be liable to other taxes in Thailand as well:

1. Personal Income Tax of Its Employees

If the foreign company has an employee or agent working in Thailand who receives salary, wages, bonus or other compensation, then he

shall file his own tax. The foreign company that has no office in this country does not have to deduct withholding tax.

2. Stamp Duty

A foreign company executing documents or instruments in Thailand or where the original is brought into Thailand could be subject to stamp duty if instrument is prescribed as one of the 28 categories in the Stamp Duty Schedule attached to the Revenue Code.

Tax Planning

Thai law allows tax planning if you follow the rules and procedures.

1. Take advantage of a Double Tax Agreement (DTA) because we adopt the principle on “tax on source of income”. If the foreign company works outside Thailand including outside the territorial seas and continental shelf, income received could be tax exempt especially when the receiver is a national of a tax treaty country. Please check the list of DTA as attached.

2. Regardless of its nationality, if the foreign non-resident company receives income under Section 40 (8) which is very broad covering revenue from industrial, commercial, transportation or insurance activities, then there is neither tax nor withholding tax. For example, foreign supplier selling directly to a Thai buyer without going through an agent or go-between and the buyer clears the goods from customs house.

3. Even though the corporate tax as well as remittance tax could be payable, these are computed on profit. Therefore, if the company does not report any profit, then no income tax could be levied. Especially a tax treaty company can claim worldwide expenses to minimize its profit although those expenses shall not have already been deducted in the home country to prevent double deduction. Allocation of expenses shall be equitably done and certified by the auditor.

Your tax advisor can give you valuable suggestion on tax liabilities. Therefore, consult them.

Dr. Suvarn Valaisathien