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# Business Tax Alert
## Stay informed of new developments

Greetings from your tax team at Deloitte Singapore. We are pleased to update you on the following Singapore tax developments:

### Revision of Singapore-Thailand tax treaty

Thailand is currently Singapore's ninth largest trading partner[1] and is one of Singapore's earliest tax treaty partner within the Association of Southeast Asian Nations (ASEAN). The existing Avoidance of Double Taxation Agreement (DTA) between the two countries; which has been in force for more than thirty years, recently received an update with the signing of a revised DTA on 11 June 2015.

Once ratified, the proposed updates to the Singapore-Thailand DTA makes it generally more favourable than Thailand's tax treaties with the rest of the ASEAN member states.

[1] Total trade amounting to S$30.2 billion in 2014, according to International Enterprise Singapore

## Highlights of the revised treaty include:

### Article 5 – Permanent Establishment (PE)

The revised treaty extends the time test for a “construction PE” to 12 months, up from six months in the existing treaty. This is the longest such period ever agreed by Thailand and is notable because Thailand’s three largest trading partners currently; namely China (6 months), Japan (3 months) and the United States (120 days) – do not enjoy this privilege.

The revised treaty also incorporates the United Nations Model Convention’s “service PE” article which specifies a time test of 183 days within any twelve-month period. In general, the furnishing of services in Thailand by employees or other personnel engaged by the Singapore resident enterprise (or vice versa as the case applies) in excess of the time test would prima facie constitute a PE of that enterprise in Thailand; which may give rise to tax exposure therein.

As there is no bright-line test to determine when the presence of employees exhibits a certain degree of permanency to be regarded as a PE; the incorporation of a “service PE” article should provide more certainty for residents of both countries.

### Article 8 – Shipping and Air Transport

### Article 11 – Interest

The new treaty sees Thailand granting Singapore "most favoured nation" status for interest income and income or profits from the operation of ships in international traffic. The status ensures that the new treaty remains competitive in the event that subsequent treaties concluded by Thailand contain more favourable provisions on the aforementioned types of income.

### Article 10 – Dividends

### Article 10A – Branch remittance (new article)

In the revised treaty, the dividend withholding tax rates of 10% for both payment of dividends and the profit remittance of branches are now in-line with Thailand’s domestic withholding tax rates (Singapore does not levy withholding tax on dividends and the repatriation of branch profits).

Both Singapore and Hong Kong are popular jurisdictions from which to hold investments in the Asia-Pacific region. In this regard, it is notable that Hong Kong's treaty with Thailand allows Hong Kong residents to remit profits from their branches in Thailand free from Thailand's withholding taxes.

### Article 12 - Royalties

The revised treaty provides significantly improved treatment for the taxation of royalty income. The maximum withholding tax rate on royalties is capped at 10% (compared to 15% in the existing treaty), with further reductions available for:

- 5% of the gross amount of the royalties if they are made as consideration for the use or the right to use any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting; and
- 8% for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment.

Whilst the proposed royalty withholding tax rates are more beneficial than the current royalty withholding tax rates on an overall basis, the revised treaty expands the definition of "royalty" to include the "use of, or the right to use, industrial, commercial, or scientific equipment". As such, companies engaging in leasing-related businesses should be aware that income previously designated as 'business profits' are likely to be categorised as 'royalty' going forward, and subject to source country taxation even in the absence of a PE.

### Article 13 – Capital gains

Presently, the Singapore-Thailand tax treaty exempts capital gains from tax, with the exception of gains derived from the sale of immovable property.

The revised treaty inserts an anti-avoidance "land-rich[2]" clause to the capital gains article, wherein a 15% withholding tax is imposed on any capital gains derived from the sale of shares in a land-rich entity.

[2] Defined in the treaty as shares in an entity which derives at least three-quarters of their value directly or indirectly from immovable property (except shares traded on a recognised Stock Exchange)

### Article 22 – Elimination of double taxation

Under the revised treaty, Singapore will no longer grant tax sparing relief to income derived from Thailand. Removing tax sparing relief should generally not result in significant adverse implications for Singapore residents as Singapore has, subject to meeting certain conditions, exempted from tax foreign-sourced dividends and branch profits since 2003.

### Article 24 – Mutual Agreement Procedure (MAP)

Another noteworthy change in the revised treaty is the inclusion of a three-year time limit for presenting MAP cases to the competent authority. As Thailand is not an OECD country and has not explicitly stated its position on this article, there was a lot of confusion in the past as most treaties that Thailand has concluded with other countries did not include a time limit on MAP cases. The inclusion of this clause should help expedite MAP cases between Thailand and Singapore.

### Others

The revised treaty omits the limitation of relief article contained in the current treaty. Accordingly, any exemption from tax or reduced tax rate in Thailand under the provisions of the revised treaty should apply regardless of the amount remitted to or received in Singapore (and hence subject to tax in Singapore) by Singapore tax residents.

### Comments

Although the revised treaty merely brings withholding taxes on dividends and interest in-line[3] with domestic rates in both Singapore and Thailand; it does, on an overall basis, offer improved terms with regards to royalties, especially those derived from Thailand.

Historically, Thailand's treaties with certain western nations (e.g. the United States, the United Kingdom, Germany, France, etc.) provided more beneficial treaty terms with regards to royalties. Once ratified and subject to commercial considerations, the revised treaty opens up the possibility of using Singapore, which has strong Intellectual Property (IP) protection laws and research capabilities, as a base for royalty-related transactions involving Thailand.

[3] The domestic withholding tax rate on interest in both Thailand and Singapore is 15%. The interest article in the new treaty does not provide further reductions, except in limited circumstances where the rate may be reduced to 10%.

The inclusion of a time limit on MAP cases and the removal of the limitation of relief article should also offer more certainty to taxpayers in the application of the Singapore-Thailand DTA.

Furthermore, the proposed changes to the Singapore-Thailand DTA comes at an opportune time as Thailand recently introduced its new International Headquarters / International Trading Company incentive regimes that could; with careful planning, complement both the proposed changes to the Singapore-Thailand DTA as well as Singapore's existing incentives regimes.

On the other hand, companies (especially leasing-related businesses and those investing indirectly in immovable property) should be advised that activities that previously may not be subject to taxes under the current treaty will become taxable if the proposed changes to the treaty are ratified. In such a case, companies may need to re-evaluate their transactions and business activities in order to manage the tax risks involved.

## Find out more

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