



Newsletter No. 6 (EN)

**“Cross-Shareholding”
and
Taxation of Dividends
in Thailand**

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I. Introduction

“Cross-shareholding” is a form of a business relation that displays the holding of shares between two or more companies that give each company involved an equity stake in the other. Depending on the size of the stake, there are differences in the taxation of the dividends, mainly based on Section 65 bis (10) of the Revenue Code (“RC”). In the following, this influence shall be displayed.

II. Sample Calculation

In a first step, 5% of the net profit up to a maximum of 10% of the registered capital has to be remitted as capital reserve. The remaining amount, when distributed, is generally subject to a withholding tax of 10%.

III. Section 65 bis (10) RC

1. Holding of less than 25% of the shares

“A limited company organized under Thai law may include as revenue only half of dividends received from limited companies organized under the Thai law (...)”

The company receiving the dividend only has to include 50% of such dividend as income in its annual tax filing. If the receiving company generates a profit, the 10% withholding tax (withheld by the paying company and submitted to the Revenue Department) can be credited against the receiving company’s payable corporate income tax (so-called “tax credit”). If the company does not generate any profit, the withholding tax already paid can be reclaimed, but the process is complex in practice.

2. Holding of more than 25% of the shares

An exemption applies in the following case:

“The following limited companies organized under Thai law are not required to include any part of such dividends or share of profits as revenue:

(a) [...]

(b) [...] any limited company [...] that holds at least 25 percent of the total shares with voting rights in the limited company paying dividends, provided that the limited company paying dividends does not hold any share in the limited company receiving the dividends whether directly or indirectly. [...]”

In summary, the following conditions have to be met:

- The receiving company holds more than 25% of the shares in the company paying the dividend;
- The shares are shares with (any) voting rights¹; and
- The company paying the dividend does not hold any share in the company receiving the dividends.

If these conditions are met, the receiving company does not have to include the dividend as income and no withholding tax applies.

With regards to the last condition (paying company does not hold any shares in the receiving company), the crucial question is what are the consequences if at the date of

¹ Insofar, it does not matter if the voting right per share is reduced, e.g. due to preferential shares.

the dividend distribution, there is no “cross-shareholding” but there was “cross-shareholding” in the same fiscal year during which the dividend distribution occurs.

The Revenue Department normally applies the fiscal year to disqualify the exemption dividend rule if the “cross-shareholding” happens in the same fiscal year as the dividend distribution.

The Supreme Court (Supreme Court Decision No. 5733/2544), however, disagrees with the Revenue Department’s interpretation and rules that the “cross-shareholding” must happen at the date of the dividend distribution date, not only in the same fiscal year as the dividend distribution.

IV. Problem of Cross-Shareholding

If any of the above conditions are not met, the basic case (first sentence of Section 65 bis (10) RC) applies, i.e. the receiving company has to include half of the dividends as income in its annual tax filing.

If both “cross-shareholding” companies have to pay taxes on the received dividends, it will go in circles:

- **A** pays dividends to **B**;
- **B** has to include half of such dividends received from **A** into its taxable income and pay tax on such income;
- Now **B** pays out of its net profit again dividends to **A**;
- **A** has to include half of such dividends received from **B** into its income and pay tax on such income;
- and so on.

V. Tax Exemption for Source Dividends

Normally, the tax exemption rule only applies to dividends received from a company set up under Thai law. The benefit from this rule is not given if the paying company is set up under foreign laws, even if it is carrying on business in Thailand, e.g. via a branch office.

The Revenue Department issued Royal Decree No. 442 in order to provide an exemption on corporate income tax for source dividend to a Thai company that receives dividend income from the foreign company with the following conditions:

- (1) The limited company or a public limited company established under Thai law holds shares of at least 25% of the voting rights in the foreign company.
- (2) The Thai company holds such shares for a period of not less than six months from the date of obtaining such shares until the date of receiving the dividend.

Moreover, the Revenue Department issued the following further conditions regarding the features of dividend that could be exempted from corporate income tax:

- (3) A dividend must derive from net profits that are taxable in the country of the dividend payer, and such tax rate must be not less than 15% of net profit.
- (4) Important: Regardless of whether the country of a dividend payer has any legislation to reduce or exempt the net profit.

The rationale according to Royal Decree No. 442 is to encourage Thai businesses to invest in foreign countries.

Moreover, the rationale behind the 15% tax rate threshold is that the Revenue Department does not want to encourage Thai investors to invest in tax havens or low tax countries.

VI. Result

“Cross-shareholding” may naturally occur in groups of companies, but also provides an interesting approach to minimise restrictions of the Thai Foreign Business Act as follows: Two Thai companies hold 51% of each other’s shares respectively, and the remaining 49% of the shares of both companies are held by the foreign investor. Since the majority of both Thai companies’ shares are

held by Thais, both companies are considered as Thai-owned and thereby do not fall under the Foreign Business Act, although the foreign investor effectively controls both companies.

However, if “cross-shareholding” is given, the abovementioned tax impacts must be taken into consideration.

*We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.*

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