



Newsletter No. 70 (EN)

**“Carrying on Business”
and
“Having a (taxable) Permanent Establishment”
in Thailand**

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I. Background

The terms “carrying on business in Thailand” and “having a permanent establishment in Thailand” are important to foreign companies with regard to taxation. It might depend on these two terms whether or not income or profit tax has to be paid in Thailand.

In general, a foreign company is responsible to pay corporate income tax if it carries on business in Thailand.

In case the foreign company has its headquarters registered in a country that has entered into a Double Tax Agreement (“DTA”) with Thailand, such company is liable to pay corporate income tax only if it has a permanent establishment in Thailand (“PE”).

II. “Carrying on Business in Thailand”

1. In General

A foreign company will be treated as carrying on business if it has a registered branch or its agent or employees conduct business in the Kingdom of Thailand.

a) Registered Branch

Whenever a foreign company has a branch in Thailand, the Revenue Department of Thailand usually states that the foreign company has to pay corporate income tax.¹

¹ Exception: Representative Office and Regional Office. Please refer to our Newsletter No. 43 as well as and in particular our Brochure No. 1 for further details in regards to setting up a company in Thailand and its advantages for corporate income tax.

b) Agents or Employees

The foreign company is treated as carrying on business if

- i. It has agents and employees in Thailand **and**
- ii. the actions of the agents or employees are an important factor to the foreign company in deriving income in Thailand. An important factor is usually given if:
 - The agent or employee comes to sign a sales contract (even if just one time) on behalf of the foreign company with a Thai company in Thailand, or
 - The agent or employee just helps securing orders on behalf of a foreign company with a Thai company in Thailand.

The legal practice of the Supreme Court is to view technical assistance or consultancy services just as assistance and therefore not as an important factor.

On the other hand, an important factor can be assumed if employees or representatives come to provide services on behalf of a foreign company in Thailand and the nature of the services provided is related to the installation of machines or the construction of buildings for the benefit of customers in Thailand.

III. “Having a Permanent Establishment (PE) in Thailand”

In general, “PE” is understood as a fixed place where the business of the enterprise is done. However, the term “PE” can be divided into three categories:

1. “Asset PE”

According to the DTA, an “Asset PE” is given if it matches the following specifications:

- a place of management
- a branch
- an office
- a factory
- a workshop
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources
- a farm or plantation
- a warehouse in relation to a person providing storage facilities for others.

The Revenue Department of Thailand furthermore treats the following as “PE”:

- rented offices
- space provided free of charge for at least 6 months

However, the term “PE” shall be deemed **not** to include:

- the use of facilities solely as storage or display of goods or merchandise belonging to the enterprise
- the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display
- the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise
- the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or collecting information, for the enterprise
- the maintenance of a fixed place of business solely for the purpose of advertisement, providing information, science researching, carrying on, for the enterprise, any other activity of a preparatory or auxiliary character

2. “Activity PE”

In general, DTAs state that a foreign company is treated as having an “Activity PE” in Thailand if it supports a building site, construction, installation or an assembly project and such specific activities exist for more than 6 months in Thailand.

Especially for German companies, it should be mentioned that under the DTA between Thailand and Germany, supervisory activities are not part of an “Activity PE”. Consequently, German companies can send employees to Thailand to perform advisory services for more than six months without being treated as having an “Activity PE”.

3. “Agent PE”

An Agent PE is:

- a person that habitually has the authority to negotiate and conclude sales contracts on behalf of the foreign company in Thailand;
- a person that does not have such authority, but habitually maintains a stock of goods or merchandise from which he regularly fills orders or makes deliveries on behalf of the foreign company;
- a person habitually securing orders in Thailand wholly or almost wholly for the foreign company or other enterprises which are controlled by it or have a controlling interest in it.

However, a foreign company is not deemed to have an “Agent PE” in Thailand if business is done through a broker, general commission agent or any other agent of an independent status.

Whenever a definition of independent agent is given by the DTA, it is also used by the Revenue Department. However, if the definition of independent agent is not given by the DTA, the independent agent status is determined by looking if such agent is controlled by a foreign company. The depend-

ence of the agent can usually be assumed if the commission fee that the agent receives

from the foreign company exceeds 75 percent of all commission fees.

Table 1 **Types of activities of foreign company / PE in Thailand**

Types of activities of foreign company in Thailand	Asset PE	Activity PE	Agent PE	No PE
Having office, factory or workshop in Thailand	X			
Having employees to do service activities in Thailand		X		X In case the activity is not indicated in DTA
Having person who usually exercises authority to conclude contracts in Thailand			X	
Having person who usually secures orders in Thailand			X	
Setting up subsidiary in Thailand to perform the work				X <u>Except</u> if a subsidiary acts as agent of the foreign company
Having independent agent in Thailand to help securing orders or signing sale contracts in Thailand				X
Fixed place in Thailand for sole purpose of a stock of goods				X

Table 2: Tax liability of foreign company in Thailand

Status of foreign company	Residents of DTA countries	Residents of non-DTA countries
Required conditions for foreign company to be subject to tax in Thailand	Must have a PE in Thailand	Needs only to carry on trade or business in Thailand
Tax base and tax rate	20% on net profits	20% on net profits
Withholding tax This withholding tax rate applies when the income paid to foreign company is service fee.	5%, 3%, 1% if having PE in Thailand* 0% if no PE in Thailand	5%, 3%, 1% if carrying on business in Thailand* 15% if not carrying on business in Thailand

*

- a) 1% if paid by the Thai government, governmental organization etc.²
- b) 3% if paid to foreign juristic company or partnership carrying on business in Thailand with a permanent office³
A “permanent office” (not to be confused with “permanent establishment”) exists if the foreign juristic company or partnership:
 - o Is the owner of an office in Thailand; or
 - o Is carrying on other business in Thailand besides engaging in contractual works⁴, i.e. legally performing business on a permanent basis, e.g. trading business; or
 - o Has a provident fund set up for its employees in Thailand in accordance with Sec. 65 ter Revenue Code.
- c) 5% if paid to foreign juristic company or partnership carrying on business in Thailand without a permanent office⁵

*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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² Sec. 69 bis Revenue Code.

³ Departmental Regulation No. Tow. Paw. 4/2528 Sec. 8(3) and No. Paw. 8/2528 Sec. 1.

⁴ “contractual works“ = works under contract with limited period, e.g. hire of work, hire of service, project work.

⁵ Departmental Regulation No. Tow. Paw. 4/ 2528 Sec. 12.