“Effective ‘Tax Risk Management’ in Managing Construction Contracts & Projects”

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Effective Tax Risk Management in Managing Construction Contracts & Projects

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I. **KEY ELEMENTS AND ADVANTAGES OF EFFECTIVE TAX PLANNING**

- Understand basic principles of taxation law of Thailand, its rules and regulations.
- Tax rulings must be followed and examined to learn facts and interpretation of the facts by the tax officials.
- Tax appeal to the tax appeal commission must be filed with the time line.
- Tax litigation can be made at the level of two tax courts of Thailand, the Central Tax Court and the Supreme Court.
- Taxation law of Thailand is applicable in its jurisdiction only.
I. **KEY ELEMENTS AND ADVANTAGES OF EFFECTIVE TAX PLANNING**

- Source of income in Thailand is normally subject to tax of Thailand.
- Any person resident in Thailand is regarded as a resident of Thailand and must pay personal income tax or PIT to Thailand.
- Valued added tax or VAT is chargeable on a sale of goods, provision of service in Thailand, importation of goods and service into Thailand.
- Certain activities including lease of immovable property and employment are exempted from VAT.
- VAT invoices for construction business may not be used for VAT of a company.
I. **KEY ELEMENTS AND ADVANTAGES OF EFFECTIVE TAX PLANNING**

- Transfer of land and/or building is subject to transfer fee, withholding tax, specific business tax or SBT and/or stamp duty.
- Stamp duty must be paid on a number of instruments including lease agreement, hire of work agreement, loan agreement, guarantee agreement, mortgage agreement, pledge agreement, agreement of sale of immovable property, duplicate or counter foil of an instrument.
- Rate of CIT of Thailand is relatively low in comparison with the rate of CIT in other countries.
I. **KEY ELEMENTS AND ADVANTAGES OF EFFECTIVE TAX PLANNING**

• But PIT progressive rates are very high in the context of it neighboring countries of Thailand.
• VAT rate has been reduced from the standard rate for a lot of years and is considered to be very low.
• Thailand has House and Land Tax and local development tax.
• As of 28 August 2015, Thailand has 60 double taxation agreements with its counterparty.
• A Property Tax Bill is still under review by the Ministry of Finance and Thailand has not property tax as such.
• Inheritance tax law of Thailand will be effective on 1 of February 2016.
II. **TAX PLANNING FOR CONSTRUCTION CONTRACTS AND PROJECTS**

- Tax planning for construction contracts and projects depends upon transactions and agreements.
  - Supply Agreement.
  - Assignment agreement.
  - Condominium Unit Sale and Purchase Agreement.
  - Common Facilities Agreement.
  - Construction Agreement.
  - Consultancy and Engineering Agreement.
  - Engineering Agreement.
II. TAX PLANNING FOR CONSTRUCTION CONTRACTS AND PROJECTS

- Engineering and Design Services Agreement.
- Guarantee agreement.
- Loan agreement.
- Licensing Agreement.
- Mortgage agreement.
- Sale and Purchase Agreement.
- Service Agreement.
- Technology Assistance Agreement.
II. TAX PLANNING FOR CONSTRUCTION CONTRACTS AND PROJECTS

Each of agreements has different tax implications depending mainly on facts of each of cases.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

- comparison between joint venture and consortium.
- a joint venture must pay tax on profits generated from a construction project in Thailand.
- distribution of the profits by the joint venture to each of the members of the joint venture is exempted from tax of Thailand.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

- a consortium is not required to pay tax on profits of the consortium generated in Thailand to the tax authority of Thailand.
- but each of members of the consortium must pay tax on a portion of profits of the consortium generated in Thailand to the tax authority of Thailand.
- use more companies in doing business.
- divide into separate agreements.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

- Sale of goods is generally not subject to corporate income tax or CIT while withholding tax is imposed to provision of services.
- Withholding tax rates of services may differ which depends whether a company or a government authority makes payment to a service provider.
- An activity may be regarded as a sale or a service or as a service or use of intellectual property.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

• prefer services than use of intellectual property.
• For cross border transactions, Service Agreement may be exempted from Thai tax but Licensing agreement is subject to withholding tax of Thailand.
• payment for use of equipment or machinery may be regarded as royalty.
• use of stepping stones measures.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

• apply tax exemption or reduction available by taxation law of Thailand and DTA.
• avoid having Permanent establishment or PE in Thailand to the extent of possibility.
• asset PE including a place of management, a branch, an office, a factory or a mine.
• activity PE including installation or a plant, equipment or machinery in Thailand generally for a period or periods of more than 6 months in a calendar year or in a period of 12 months.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

• agent PE being a person having and habitually exercising an authority to conclude any agreement.

• however, maintenance of a stock of goods or merchandise for the purpose of storage, display, delivery, processing by another enterprise, or maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collection of information for the enterprise is not regarded as having a PE.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

Payment for dependent personal services performed by a foreigner to a company in Thailand may not be taxed in Thailand if conditions have been complied with.

Each of 12 foreigners worked for a construction project in Thailand and stayed in Thailand for 5 to 10 days and had not resided in Thailand for more than 6 months per person or 6 months of a calendar year or within a period of 12 months. But the whole and aggregated period is more than 6 months. The payment made by the Thai company to the foreign company must be subject to tax of Thailand.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

Assignment of receivable from a contractor under the construction agreement is not regarded as service and no VAT on payment of assignment is required.

However, assignment of receivable from a sub-contractor under the sub-construction agreement is considered to be service and VAT on payment of assignment by the sub-contractor is required.

Any sale of cars from the distribution office of a building is subject to VAT. Rental for use of a building is exempted from VAT.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

Payment by a government authority to a Thai company for construction of a development and training centre may be exempted from tax of Thailand if the Thai government receives a grant aid loan from a foreign government.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

**Interest**

Interest on construction of building may be regarded as capital expenditure or operating expenses.

- Before completion of a factory, interest paid is regarded as capital expenditure.
- At or after completion of a factory, interest paid is regarded as operating expenses.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

Interest on purchase of machinery may be regarded as capital expenditure or operating expenses.

• Before operation of the machinery, interest paid is regarded as capital expenditure.
• At or after operation of the machinery, interest paid is regarded as operating expenses.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

Interest on loan to be deducted as expenses for computation of net profits of CIT must satisfy the following:

1. Interest shall be directly contacted to the business operation;
2. Interest shall be directly contacted to income generating assets such as rentals and royalties; and
3. Interest shall not constitute capital expenditure.
III. EFFECTIVELY MANAGING TAX PLANNING STRATEGIES

**Import of goods**

A company as an importer of goods shall pay VAT on the importation of the goods.

**Export of goods**

A company shall recognize income at the time of the issuance of an export invoice for export of goods under the accrual basis.
IV. AVOIDING TAX RISKS AND TAX PITFALLS

- Tax implications on a construction project cannot be generalized.
- Each tax liability must be considered on each of factors on a case by case basis.
- An agreement is entered into in Thailand.
- Performance of obligations under an agreement is completed in Thailand.
- Payment to any foreign individual is made by a Thai company or is borne by the Thailand.
IV. AVOIDING TAX RISKS AND TAX PITFALLS

• Agreement for sale of goods is made in Thailand.
• Price of sale and purchase of the goods is lower than the market price.
• Provision of service is rendered in Thailand.
• Payment received from building a bridge in Thailand next to a neighboring country for more than 6 months must be included for computation for CIT.
IV. AVOIDING TAX RISKS AND TAX PITFALLS

- no fee is chargeable for service rendered in Thailand.
- payment of service fees and expenses by a Thai company to a foreign individual.
- a foreigner works as an employee of a company in Thailand.
- a foreigner works as a director of a company in Thailand.
- PE is created in Thailand.
Purchase and Engineering

Co. 1

Supply Agreement

Co. 3

Co. 2

Engineering Agreement

Co. 4
Construction Project

Foreign Company

Thai Company

sale of goods

J.V.

Thai Counterparty

Foreign Company

sale of goods

sale of goods
Thank you very much for your kind attention.