

Tax Avoidance in Thailand

Arranged by
SNP Training
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Tax evasion and tax avoidance

Tax evasion is illegal.

It is illegal to cheat tax payment in Thailand when any company generates a lot of profits but fails to pay tax in Thailand.

Tax avoidance is legal and makes use of tax benefits.

Aggressive tax avoidance draws a fine line between tax avoidance and tax evasion and is disliked by tax authority.

Aggressive tax avoidance might be considered to be in line with tax law and might face public outcry.

Tax planning is invented as nice wording for tax avoidance.

Form and substance

Legal form is generally applicable in taxation law.

Substance measure are increasingly taken to combat aggressive tax avoidance.

Legal entity vs economic substance

Legal entity faces anti-avoidance measures and economic substance is applied to defeat aggressive tax avoidance.

Investment in East Economic Corridor or EEC in Thailand

10 targeted Industries in the EEC are promoted by the Office of the Board of Investment of Thailand or the Office of the BOI.

100% tax exemption for 10 years and 50% reduction of corporate income tax are given to any company investing in the aviation promotion zone, and the Innovation or Digital Park Thailand in the EEC.

100% tax exemption for 8 years and 50% reduction of corporate income tax are given to any company investing in any of 10 targeted industries in the EEC.

10 targeted industries in the EEC zone can be divided into 2 segments as follows:

1. Developing existing industrial sectors by adding value through advanced technologies for five industries
 - a. Next-generation cars
 - b. Smart electronics
 - c. Affluent medical and wellness tourism
 - d. Agriculture and biotechnology

- e. Food innovation
- 2. Growth engines to accelerate Thailand's future growth
 - a. Automation and Robotics
 - b. Aerospace
 - c. Bio-energy and bio-chemicals
 - d. Digital Services
 - e. Medical and health care.

BOI business and non-BOI business

Tax issues on BOI Business and non-BOI business exist.

Doing business with Thailand or in Thailand

Thailand is in the Civil Law Legal System.

Concept of trust including a settlor, trustee and a beneficial owner is well known and used in common law jurisdictions.

Worldwide tax and territorial tax are a basic difference of international taxation

Exemption system and credit system provide different result.

Tax evasion in Thailand are seen in a lot of small and medium-sized companies.

Multinational corporations applies complicated tax structures which are some time challenged by the Revenue Department of Thailand.

A loophole on an amount of share capital of SME companies are closed by use of a maximum revenue of Baht 30 million.

Land transferred from an individual to a new company is at present required to be prior used for business operation.

Tax ID of payer and Tax ID of Payee are adopted in Thailand to prevent tax evasion.

Shopping tax exemption and tourist tax exemption are used to lure companies into the tax system in Thailand.

Many companies are applied for tax avoidance.

Separation of agreements such as sale of goods and provision of service may be efficient in tax term.

Withholding tax represents an important tool to combat aggressive tax avoidance.

Sale of goods

Sale of goods from a foreign company to a Thai company is still a good way for non payment of tax in Thailand.

A foreign company must nevertheless pay tax in Thailand if a Thai subsidiary of the foreign company sells goods in Thailand or carries on its business in Thailand.

Service

Withholding shall be levied on payment for service rendered by a foreign company to a Thai company unless the foreign company is incorporated under law of a country having DTA with Thailand and has no PE in Thailand.

Tax on payment for use of copyright is undoubtedly accepted.

However, tax on payment for training for software use is always disputable in Thailand because the Revenue Department in Thailand considers it to be payment for royalty which is possibly based on force of attraction principle but a foreign country regards it as service fee.

Foreign companies face tax issues on know-how payment and service fee.

Payment for lease of equipment from a foreign company to a Thai company may constitute either service fee or royalty which depends upon facts and circumstances of each of cases.

Dividend

10% withholding tax on dividend paid by a Thai company to a foreign company may be reduced to 5% which depends upon some of the DTAs which Thailand has with each its counter parties.

Foreign dividend

Unilateral relief in a form of a foreign dividend is provided by the Revenue Department of Thailand.

Foreign dividend paid by a foreign company to a Thai company is exempted from tax in Thailand provided that at least 15% corporate income tax in a foreign country is chargeable on net profits of the foreign company.

Interest

15% withholding tax is chargeable on interest paid from or out of Thailand.

However, 15% withholding tax may be reduced to 10% or exempted under DTA or domestic law of Thailand.

15% WT on interest is reduced to 10% WT of interest if interest is paid from a Thai company to a foreign financial institution.

15% WT on interest may be reduced to 0% if the interest is beneficially owned by a resident of the other contracting state and is paid with respect to indebtedness arising as a consequence of a sale on credit of any equipment, merchandise or service except where the sale was between persons not dealing with each other at arm's length.

15% WT on interest may be reduced to 0% if interest is paid to any foreign government authority.

Guarantee fee paid by a Thai company to a foreign company is free of withholding tax in Thailand.

Fee and Interest may be a tax issue for some payments in banking and securities transactions.

Royalties

15% withholding tax is imposed on royalty paid from or out of Thailand.

Having said that, 15% withholding tax may be reduced to

- 5% withholding tax on payment for use of copyright;
- 8% withholding tax on payment for use of industrial, commercial or scientific equipment;
- 10% for payment for use of patent, trade mark, design or model, secret formula or process

Tax issues on royalty and services remain vexed and disputed between foreign companies and the Revenue Department of Thailand.

Capital gain

Payment for capital gains on shares of a company in Thailand sold by a foreign company is often exempt from tax in Thailand.

Several layers of foreign companies are applied and shares in a lot of Thai companies are ultimately held a foreign company.

Issues on capital gains are important for investment with or in Thailand.

Permanent Establishment (PE)

Asset PE

- Place of management , a branch, an office , a factory are obviously a PE.

Activity PE

--building site , construction , assembly or installation or supervisory activities in connection therewith lasting for a different period of time from 3 months, 4 months , 6 months or 12 months depending upon each of DTA between Thailand and its counterparties.

- Furnishing of services including consultancy services by an enterprise through its employees lasting for 90 days and 183 days

Agent PE

Agent PE may be an important factor to determine a PE of an foreign e-commerce companies.

The Revenue Department of Thailand, the Bank of Thailand , the Department of Business Development of Thailand and other government authorities of Thailand are jointly and closely coordinated with each other to have a PE of any foreign innovation company generating a huge amount of money out of Thailand without payments of taxes in Thailand.

Be aware of Section 37 Ter of the Revenue Code which is applied to criminalize individual and companies with systematic tax evasion.

Only transfer pricing guidelines exist in Thailand.

Transfer Pricing Law in Thailand is still under consideration.

DTA

Provisions of DTA between Thailand and its counterparties are similar in general but differ in their details.

Issues on double taxation and double non-taxation dominate international tax forum.

International tax loopholes still exists for multinational corporations.

15 BEPS Action Plans intend principally to collect taxes at the place where economic activities are carried on and revenues are generated.

Functions performed, assets used and risks assumed are always emphasized in the Action Plans.

Thailand ranked as 98th member of the Inclusive Framework on BEPS.

BEPS Inclusive Framework covers harmful tax practices, treaty abuse, transfer pricing documentation and dispute resolution.

15 BEPS action plans are in the process of study in Thailand.

Thailand has not joined the tax arbitration agreement.

Financial mismatch issues were raised.

Thin capitalization is not used in Thailand in tax term.

CFC companies are controlled by companies in Thailand.

PE is a vexed issued.

Offshore companies are widely used by multinational corporations.

Harmful tax jurisdictions faces challenges.

Harmful tax practices are difficult to continue.

Exchange of information

- Automatic
- Spontaneous
- On request

Multilateral instrument or MLI is designed to replace some 3,000 DTAs.

However, MLI faces uphill task and may not be globally successful because provisions of one DTA differ to certain extent from provisions of another DTA.

MLI is under study in Thailand.

Case study

Chart on Sale and Marketing

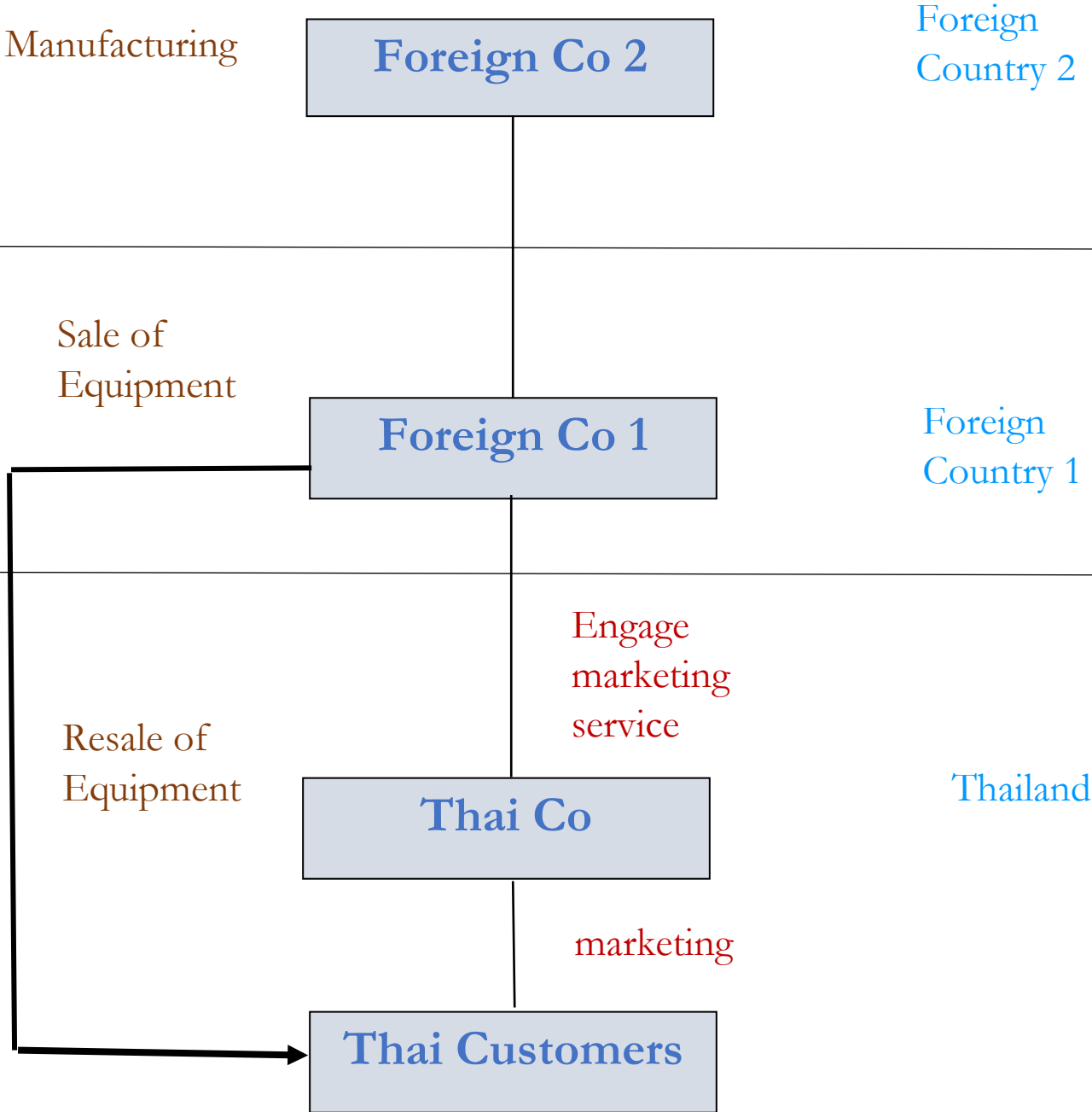


Chart on loan, deposit and service

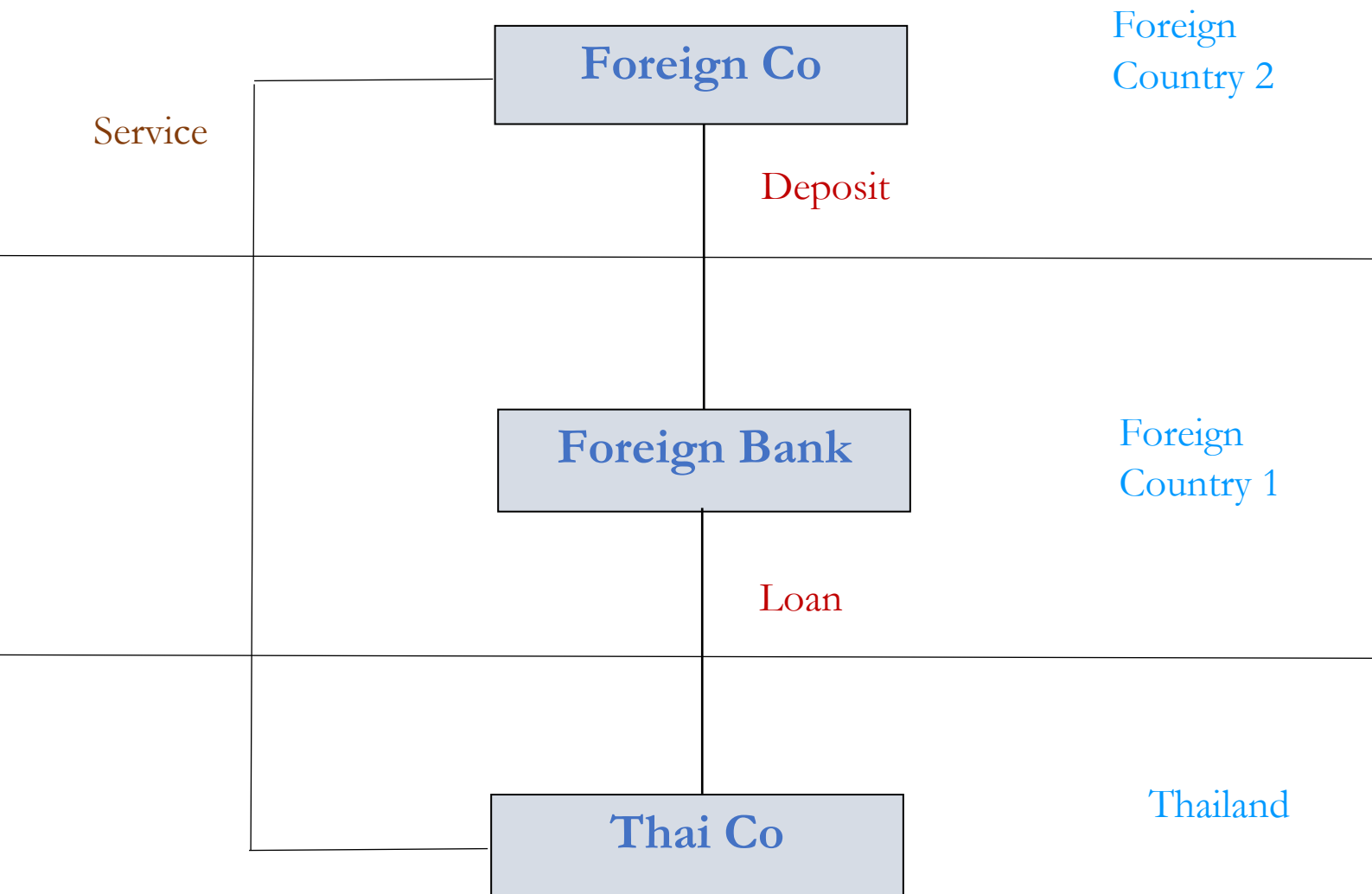


Chart on Sale and Service

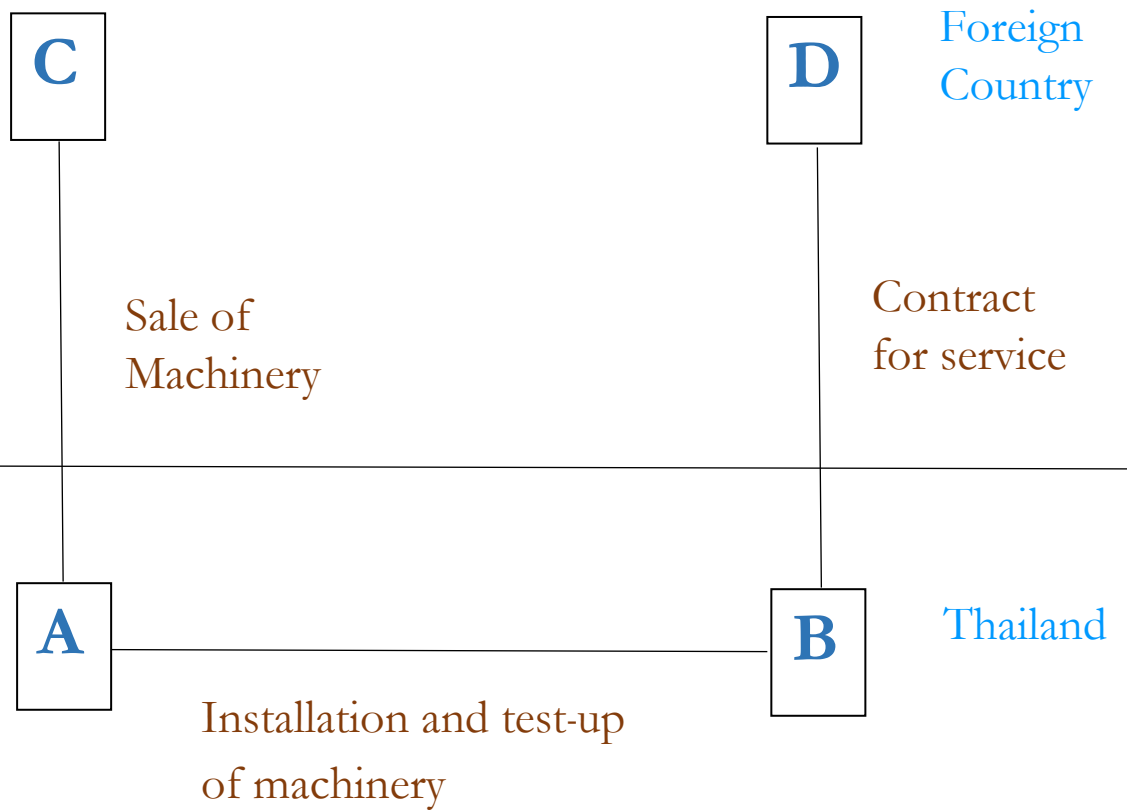


Chart on BOI and Non BOI Business

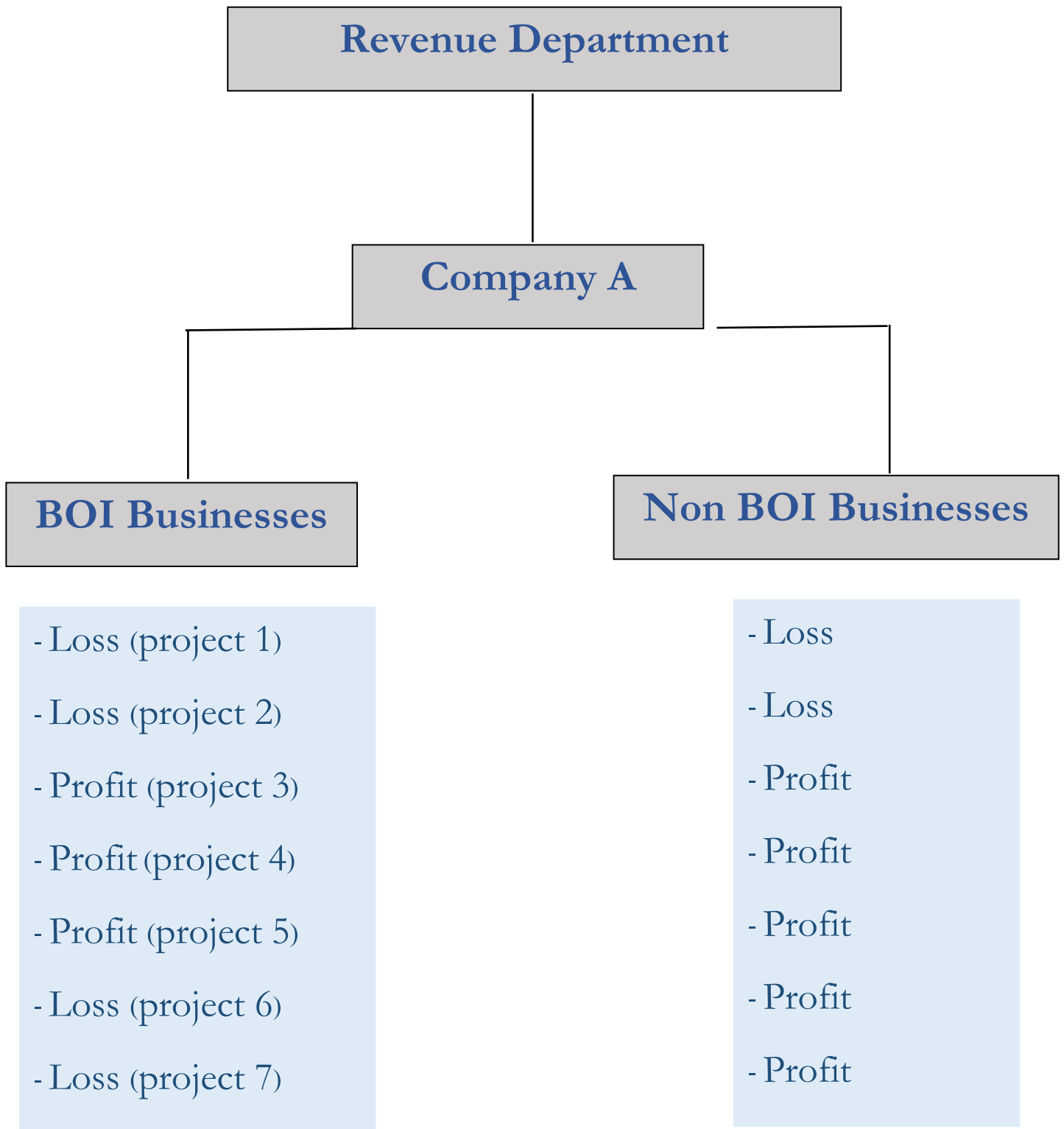
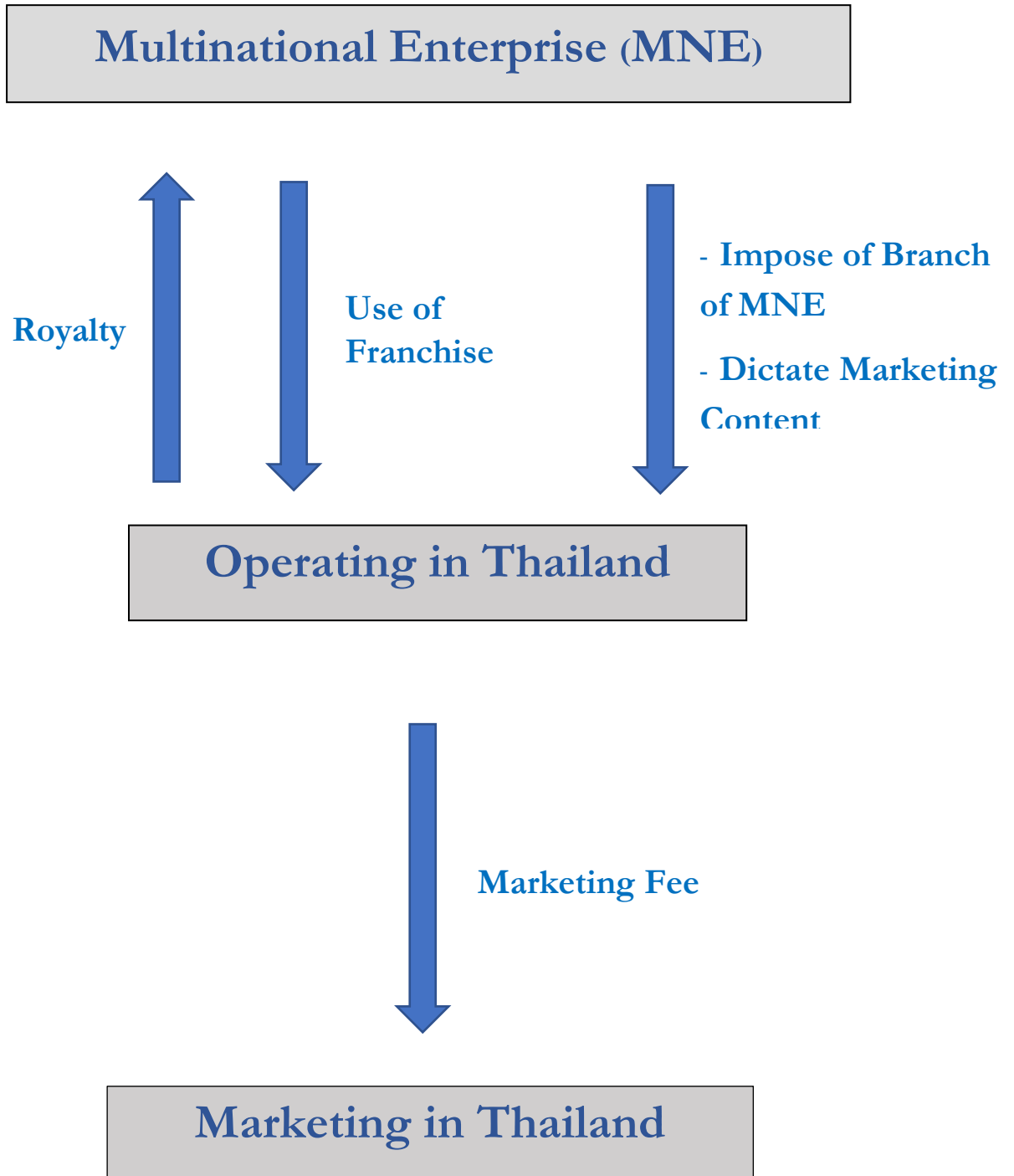


Chart on Marketing Fee and Royalty



Thank you very much
for your kind attention

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