

Abstract

This thesis focuses on the legislative procedure on the Parliament's ratification of a double tax treaty under Section 190 of the Constitution of Thailand (2007). The characteristics of the double tax treaty demonstrate that it is qualified as an international treaty that requires transformation in the enactment process prior to becoming effective as an internal law. The study of this legislative procedure reveals several major issues which are divided in two main sections.

The first section describes problems on the executing procedure of the double tax treaty on the administrative level, which may be summarized as follows:

Firstly, this thesis studies on issues of the Parliament's ratification of the double tax treaty. Under the Constitution of Thailand, the double tax treaty is considered a contract that must be ratified by the Parliament before the country is formally bound by it. However, so far the administrative has never presented the treaty to the Parliament for ratification, which is in contrary to the principle set forth in the Constitution of Thailand.

Secondly, this thesis addresses an issue on the administrative's misconception that the double tax treaty has already been acknowledged under Thai laws and, therefore, it is not subject to the Parliament's ratification. It shows that the administrative does not have a full understanding about distinction between procedures required for ratification and those required for internally implementation.

Thirdly, this thesis analyzes the effectiveness of the double tax treaty under the law in case that the administrative fails to obtain the formal Parliament's ratification of the treaty, which constitutes to be legally invalid under the Constitution of Thailand.

Fourthly, this thesis addresses an issue on formalities imposed on the execution of a treaty under the current Constitution of Thailand. The present Constitution provides additional types of contracts that are subject to the Parliament's prior ratification as well as additional executing procedures. These bring about difficulties in categorizing the different types of contracts and the legal complication on the statutory procedures imposed, which may ultimately affect the proficiency of the administrative's execution of such contracts. Given the above, the solution proposed in this thesis is to clearly

stipulate in the Constitution of Thailand that the double tax treaty is one of the contracts for which the Parliament's ratification is required prior to its execution. Alternatively, it may be stipulated in the separate Procedures and Requirements for the Execution of the Contract Act B.E. in order to circumvent any issues that may arise from the interpretation of the Constitution. In this regard, the administrative should be required to enact the law on the scope of power of the Government in negotiating any contract with foreign countries and submit the same to the Parliament for prior approval. If a subsequent treaty entered into by the administrative is negotiated in accordance with the scope of power first approved, the Parliament's ratification shall not be required for further negotiation. However, after the completion of such stage, the administrative must submit a draft treaty to the Parliament for ratification prior to its execution so that the legislative body could be informed of the result of such negotiation and verify such treaty before allowing the country to be bound thereunder.

The second section describes issues on the implementation of the double tax treaty domestically, which can be summarized as follows:

Firstly, this thesis addresses an issue on the implementation of the double tax treaty in Thailand. Thailand has so far adopted the Dualism theory. Since the double tax treaty is one of the international treaties, it must be implemented by the transformation process so that it will become effective domestically. However, the administrative has adopted the administrative measures whereby the subordinate law is issued as a tool to implement the treaty. This process does not constitute as the required transformation of the double tax treaty which will make the treaty become domestically effective.

Secondly, this section analyzes an issue on the subsequent statute which is passed in contrary to the double tax treaty currently in force. Once the treaty is properly transformed into a domestic law, it shall become effective and have legal hierarchy in accordance with such treaty. Consequently, in the events that the law implementing such treaty is in contrary to any subsequent domestic law on the same issue, the later law will be applied by the court. In such case, the obligation under the treaty may no longer be enforceable domestically.

These two issues may result in Thailand becoming liable internationally to the other party of the treaty under the *pacta sunt servanda* principle (the agreement must be kept). Therefore, this thesis proposes that the administrative is required to always prepare and submit the draft Act together with the draft treaty, regardless of any domestic law that may previously allow the administrative to enter into such treaty. The act of such is in order to set forth the legal status of the specific implementing law which shall override a domestic law regarding the double tax treaty since the domestic laws in the same matter will be considered as general laws while the law implementing the treaty shall be considered as a special law. By such act, once any case arises, the court shall honor and first apply the specific law to the case and not the latter. This approach will not only ensure that the double tax treaty will be lawfully implemented by and protected from a violation by domestic administrative bodies, but also result in a compliance with a principle of the rule of law by both Thailand's administrative and legislative branches.