

PRECISE

This Thesis (the “Thesis”) is of the purpose to study problems and solutions in connection with indistinctness of the definition of permanent establishment pursuant to the Double Taxation Agreement and tax burden. Fundamentally, the author began with a study of the Revenue Code which is basically a prototypical law determining any and all provisions for levying from any foreign juristic person operating its business in Thailand. Articles 66 paragraph 2 and 76 bis will critically apply thereto. Subsequent to understanding of levying provisions of domestic laws, the author then conducted a study included a comparative analysis of drafts of double taxation agreement model of OECD and UN, which are extensively accepted by many countries, including Thailand, so as to learn about permanent establishment (Section 5) and profit of business (Section 7) in accordance with a preliminary version of double taxation agreement.

The taxation principle under the Revenue Code of Thailand determines that a juristic person gaining revenue or profit, including a foreign juristic person operating its business or being deemed as the same in Thailand and gains sum of money therefrom, shall be responsible for a tax payment to the government. It is a result of Articles 66 paragraph 2 and 76 bis of the Revenue Code prescribing that if a foreign juristic person either operating its business within and outside Thailand or not operating a business in Thailand but sending its employee, representative or any person to operate a business in Thailand resulting in gaining sum of revenue or profit in Thailand, said juristic person shall be obliged to pay a tax to government of Thailand.

Nevertheless, in case that such foreign juristic person has its domicile in the country of which has the Double Taxation Agreement countersigned by Thailand, it maybe exempted from a tax payment or entitled to reduction of tax rate pursuant to the Double Taxation Agreement. In consideration of whether the tax collection from business profit (in accordance with Section 5 of the Double Taxation Agreement) will be took place, it is greatly necessary to consider if said foreign juristic person is operating its business through permanent establishment (Section 7 of the Double Taxation Agreement) located in Thailand or not. The definition and existence of the permanent establishment, hence, are conditionally important to be luminously and thoroughly

studied. The permanent establishment is classified into 3 types, namely (1) a permanent establishment as asset, (2) a permanent establishment as activity and (3) a permanent establishment as agent. Each type of permanent establishment has particularly different compositions; for instance, a permanent establishment as asset shall have 3 critical requirements, i.e. (1) having certain office, (2) operating a business through such office and (3) having such office as a fixed place. Although the components of each type are undoubtedly ascribed, there are some practical problems to consider about the existence of a permanent establishment as well as a guideline for examination of said existence. The Thesis then is created not only to categorize above-mentioned problems according to each type but also to propose some solutions thereof. The permanent establishment as asset hardly ever appears problem relating to an examination of existing office for its business operation; yet, there are some problems that if a control over such office and shareholding of foreign juristic person in a Thai company should be also considered components of existence of such office or not. Meanwhile, permanent establishments as activity and agent appear some issues in respect of the examination of existence of its office for business operation. Furthermore, there are other problems concerning tax burden and enforcement for levying from any establishment located outside Thailand as well.