

## ABSTRACT

For developing countries, establishing the joint venture is regarded as the most significant form of investment in terms of economic development. Due to the lack of advanced technology, as well as fund resources, available to local businesses, the form of joint venture, which brings together any capable foreign enterprises with the strong local partners, makes the dream of completing mega projects come into reality.

According to different legal personalities, the joint venture can be formed into two types, i.e. equity joint venture, the newly formed legal person separated from its partners, and non-equity joint venture, the newly formed business concluded by the agreement between parties. A number of countries recognized both forms of joint venture by their tax statutes. In Thailand, however, the latter is only form of joint venture formally recognized by the Revenue Code.

It can be said that Section 39 of the Revenue Code provides the definition of joint venture in the narrow sense, by referring the form of non-equity joint venture. On the other hand, the form of equity joint ventures are recognized as 'any corporations or partnerships incorporated under the Thai law', not the joint venture. This leads to the beginning of this thesis to ask the question of whether or not there are different tax treatments on these two types of joint venture in Thailand.

According to our studies, it is obvious that the form of equity joint venture would face the problem of double taxation on the return of joint venture's after-taxed profit to its foreign partners who are carrying on business in Thailand. When this situation compares with that of the non-equity joint venture, its foreign partners who are carrying on business in Thailand would rather enjoy tax exemption on its remittance in accordance with the Royal Decree (No. 10). This becomes major obstacle in terms of non-neutrality, and thus leave foreign partners of equity joint venture in doubt why Thai laws treat them so differently.

The problem becomes more complicated when the matters of double tax treaty get involved. It is very hard to indicate the state of residence amongst treaty partners for the joint venture. This is because the non-equity has no status of legal person under the company law, or under the Revenue Code. The key issue is whether Thailand can impose tax on the joint venture's foreign-source of incomes as well as domestic-source of income. If so, it is unclear in which country should give tax relief. The question is thus far from easy.

The last concern is the loophole of laws and policy-making in respect of the joint venture in the Revenue Code. The joint venture is generally established for specific projects in certain period and expects to close down when projects done. At present, and surprisingly, there is no restriction by any Thai laws in regulating jointed activities' period operated in Thailand by the joint venture. This means foreign enterprises can easily use tax privileges offered by the Revenue Code, by setting up a long-term trade joint venture.

The thesis therefore recommends that it is not necessary to amend Section 39 of the Code. Instead, the Revenue Department should reconsider to the amendment of Section 65 bis (10) of the Code, by giving tax exemption to dividends paid by the joint venture to its foreign partners who are carrying on business in Thailand. This will lead to the achievement of tax neutrality for both types of joint venture. Moreover, the Revenue Departmental Instruction No. Paw should be issued as the guideline for both tax authorities and taxpayers, in order to shed light differences between the terms of 'joint venture' and 'consortium'.

With respect of the international level, the principle of world-wide taxation should be applied to the joint venture in Thailand and the Royal Decree No. 300 should be amended in order to eliminate double taxation caused by the tax paid in foreign countries. Lastly, the thesis suggests the new form of tax credit, which is in theory similar to the tax sparing credit, for Thailand to renegotiate with any treaty partners. This type of tax credit would benefit the establishment of joint venture in Thailand, and so far make

the form of joint venture becomes more attractive for any potential partners outside Thailand.