THE PROBLEMS OF CONFLICT BETWEEN UNILATERAL AND BILATERAL RELIEF UNDER THAI INCOME TAXATION LAW

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Abstract

In practice, Thailand adheres to a dualism between international law and national law in taxation law. For the elimination of double taxations, Thailand is using both unilateral and bilateral relief measures. Unilateral relief therein stipulated in Royal Decree No. 300 B.E. 2539 for the elimination of double taxation on income that was already taxed in another foreign country and Royal Decree No. 442 B.E. 2548 to exempt dividend income that was taxed in another foreign country to be expensed again under the Revenue Code to provide measure for relief double taxation.

This research was conducted based on the concept of the neutrality of tax relief on taxpayers within the theory of capital import neutrality (CIN) and capital export neutrality (CEN). It focuses on analyzing cases using Royal Decree No. 300 B.E. 2539 and Royal Decree No. 442 B.E. 2548 and a comparison with the Double Taxation Agreement (DTA).

Firstly, the problem of the formulation under Royal Decree No. 300 B.E. 2539, that provides tax privileges along with tax credits through formulations based on the DTA, mostly revealed problems of neutrality for Thai investors.

Secondly, Royal Decree No. 442 B.E. 2548 has the problem of providing tax privileges through excessive tax exemptions on dividends due to dividends receiving full tax exemption, and it provides for withholding taxes taxed in a foreign country which can be used as deductible expenses in Thailand.

The study reveals that the use of bilateral relief in connection with unilateral relief maintains several issues and loopholes. These should be limited to control the use of unilateral tax relief, which at the same time, are harmful to the principle of neutrality of the international taxation system.

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