

Independent Research Title:	The Problem on Collecting Tax from Residence Rule by Applying the Doctrine of Effective Management
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ABSTRACT

The tax law and practices of the country where a company is established or carries on its business govern its tax residence. It is generally decided by either (i) the place of incorporation or legal seat, or (ii) the location of management or real seat.

The place of effective management is used to decide the tax residence in several countries. It could signify either superior management or day-to-day management. The term “*effective management*” is now defined under the OECD Commentary Update 2003. It is “the place where key management and commercial decisions that are necessary for the conduct of the entity’s business are in substance made.”

Using the place of incorporation only in determining the corporate residence is the loophole of the Thai Revenue Code and it can affect to the Double Tax Treaty between Thailand and other countries also. It is because the interpretation of the resident of the Contracting States under the Double Tax Treaty between Thailand and other countries is according to the law of Thailand, which is the Thai Revenue Code.

The enforcement and interpretation of the term “resident company” of the Thai Revenue Code and the Double Tax Treaty between Thailand and other Countries by considering a place of incorporation only is inefficient. Thai Government can not impose corporate income tax effectively from worldwide income of the company not incorporated in Thailand but having effective management in Thailand because the

company is not resident in Thailand under the interpretation of the term “resident company” of the Thai Revenue Code which considers only the place of incorporation, not including the place of effective management. Besides, it causes tax avoidance.

From the problems, it should be improved by considering a place of effective management together with the place of incorporation because it is more effective than considering a place of incorporation only. The Thai Revenue Department can impose tax more effectively than using only the place of incorporation.

