PROBLEMS ON INCOME TAX IN CASE OF DIVIDEND DISTRIBUTION FOCUSING ON THE DISQUALIFIED SHAREHOLDER

BY

WIYADATHAWIN LUENCHAVEE

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE DEGREE OF MASTER OF LAWS (TAXATION LAW)

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Author	:	Ms. Wiyadathawin Luenchavee
Major	:	Master of Laws (Taxation Law)
Advisor	:	Mr. Prapas Kong-ied

Faculty of Law, Assumption University approves this Independent Study as the partial fulfillment of the requirement for the Degree of Master of Laws.

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ABSTRACT

The Independent Study "Problems on Corporate Income Tax in Case of Dividend Distribution Focusing on the Disqualified Shareholders" has no intention to impute and complain tax authorities or related persons on the decision which justified the Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997, but this research paper has the main intention to study and understand the natures, concepts and principles of income tax on dividend focusing the dividend distribution from corporations and also understand the natures, concepts and principles of income tax on dividend in the system of dividend tax under American Legal System. Another intention is to analyze the problem of the income tax on dividend treatment which collected by Thai Revenue Department which is unfair and make the excessive tax burden to the Company which has the disqualified shareholder to be invested in its business, and provide the suitable solutions and recommendation for tax authorities to reconsider in the treatment of income tax on dividend distribution to disqualified shareholders.

After I have study the problem of this case, I have found that the dividends which the company cannot distribute to its shareholders because of the disqualification of the shareholders have to be back to the accumulated profit of the company instead of treated as the assessable income of the company as stated in the Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997. The reason that the Revenue Department has to treat them as accumulated profits of the company because such dividends are not yet distributed to any shareholder so it still belong to the company. Furthermore, such dividends is not the income which derives from business operation or concerning with the business operation of the

company so it cannot be the income of the company and cannot be recalculated to pay Corporate Income Tax according to section 65 of the Revenue Code.

It can be concluded that the undistributed dividends or the accrued dividends have to come back to the accumulated profits of the company in order follow the principle of the Accounting Standard in both Thailand Accounting Standards and International Accounting Standard. Furthermore, it can be avoid the problem of Economic Double Taxation and give fairness to such company.

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Ms. Wiyadathawin Luenchavee

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Chapter 1
Introduction

A. Background and General Statement of problems

The word "Business" was not recognized by the ancient human society because the ancient human had to rely on the natural resources by hunting animals, collecting fresh fruits and having vegetables. When the animals, fresh fruits and vegetables did not satisfy their needs, they leaned to develop their living by exchanging goods in their hand with goods of others which they preferred to consume. Such transactions continually developed as a small business among their communities. When the globalization era arises, human increases their need as fast as the development of technology. Sometime, human cannot produce certain goods by themselves because they may lack of knowledge or machinery, so it is necessary for them to find such goods from others. As a result, "Businesses" have introduced to the human society until today and it is more complicated than before. Now, the businesses are developed from local to international.

In the world of business, all of the enterprises have the same business propose which is to gain the profits. On the other hand, consumers are expected on the quality of the goods and also expected to the cheapest prices. In this regard, the law has been introduced to the society in order to govern and balance the advantages and disadvantages between enterprises and consumers and to give fairness to the society. For example; Partnership and Company law under Civil and Commercial Code, Book Three (CCC), Public Limited Companies Act B.E. 2535 (1992) (PLC) and Consumer Protection Act, B.E. 2522 (1979).

The Government of every country has the same duty to increase economic wealth and also make the stability to society and country. In order to satisfy with such goals, the revenue raising instrument is initially introduced; it is so-called "Taxation System". The government is obliged to manage the country and secure management expenditures; therefore, the taxation shall be the vital vehicle of the government for earning and spending. Thai tax authorities normally collect tax by following principles which specified under the Revenue Code (RC). However, there are plenty of cases which go beyond the scope of the RC because the RC provides only wide meaning of principles; therefore, tax authorities bear a duty to interpret such meaning by issuing tax ruling or tax notification. Mostly, such interpretation will end up with taxpayers pay more tax.

The companies run the business in order to make profits and to convince investors. The firm normally convinces the investors by distributing dividends to the shareholders every year. In order to distribute dividends to its shareholders, the company has to follow rules of law under Civil and Commercial Code (CCC) or Public Limited Company (PLC) (depending on company's type), Thai Accounting Standard and Taxation on dividends distribution under Revenue Code (RC).

In this regard, the problem may occur, if some of shareholders are prohibited to receive the dividends by Thai legislations, articles of association of the company or other reasons, they then cannot receive such dividends which distributed from the company they hold the shares. Whenever the company declares the dividends to the said shareholders, such dividends shall be returned to be income of the company and tax authorities of the Revenue Department (RD) will consider it as the assessable income of the company according to Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997[1].

From the above fact, the dividends have been distributed from the company's accumulated profits. When the company declares the dividends to the shareholders who are the disqualified, due to the prohibition of legislation or the articles of association or the other reasons, as the case may be, this Independent Study shall explain the reason why such dividends cannot be treated as income of the company, the paper also provides the reason to support why it should be returned to the accumulated profits of the company.

Moreover, if the tax authorities of the Revenue Department treat such dividends as company's incomes, it shall not consider as a good taxation according to the Adam Smith's Theories. The good tax should contain fairness or equity, consistency and so

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[1]See Appendix A, *Detail of Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997.*

on. But this tax ruling is unfair to the taxpayer because the taxpayer (the company) has to recalculate such income to pay the corporate income tax again. It shall be the excessive tax burden for the company.

B. Hypothesis of the research

When the company declares the dividends to the shareholders who are disqualified due to the prohibition of legislation or the articles of association or the other reason, such dividends shall not be treated as assessable income of the company according to section 39 of Revenue Code (RC) because it shall be an excessive tax burden for the company. But instead, it shall be returned as the accumulated profits of the company because such dividends are still belonging to the company. Furthermore, once the company declared to distribute the dividends to the shareholders but it has not been distributed as declared, so it shall be deemed that the dividend distribution's transaction still does not exist. In this regard, it means that such dividends has not been paid from the accumulated profit, so such dividends are not the income of the company and cannot be recalculated with other incomes of the company to pay Corporate Income Tax (CIT) according to section 65 of the Revenue Code (RC). The company can treat such accrued dividends as undistributed Accumulated Profits.

C. Objectives of the research

1. To study the natures, concepts and principles of income tax on dividends focusing the dividends distribution from company under Civil and Commercial Code (CCC), Public Limited Company (PLC) and Revenue Code (RC).

2. To study the natures, concepts and principles of income tax on dividends under foreign law and the system of dividends tax of foreign law.

3. To study Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997 which is the problem arising from the dividends treatment, which cannot be distributed to the disqualified shareholders, to be the assessable income of company.

4. To study on the suitable solutions and recommendation for tax authorities to reconsider on income tax on dividends treatment according to Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997.

D. Research Methodology

This research is based on Documentary Research methodology. It is a study of Thai legislations which are Thai Revenue Code, Thai Supreme Court Decision, Tax Ruling of the Revenue Department, Thai Accounting Standard. It is also study of foreign legislation which is United State of America's Tax System and International Accounting Standard.

The legal and account books, articles, internet websites, law journals, court case and etc. are an essential source for this research.

E. Scope of the research

This research shall emphasis on the study of the natures, concepts and principles of income tax on dividends focusing the dividends distribution from the company under Thai law and foreign law. Moreover, it shall be analyzed problems, and provided the solutions and recommendations arising from the dividends treatment by tax authorities to be the assessable income of company according to Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997.

F. Expectation of the research

1. To know and understand the natures, concepts and principles of income tax on dividends focusing the dividends distribution from company under Civil and Commercial Code (CCC), Public Limited Company (PLC) and Revenue Code (RC).

2. To know and understand the natures, concepts and principles of income tax on dividends under foreign law and the system of dividends tax of foreign law.

3. To analyze Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997 which is the problem arising from the dividends treatment, which

cannot be distributed to the disqualified shareholders which collected by Thai tax authorities.

4. To provide the suitable solutions and recommendation for tax authority to reconsider on income tax on dividends treatment according to Revenue Department Tax Ruling Number 0811/14765 dated on 28 October 1997.

Chapter 2

General Principle of the Dividend under Civil and Commercial Code (CCC) and Revenue Code (RC)

A. The Limited Company under Civil and Commercial Code (CCC)

The Limited Company (hereinafter called "the company") is a separate legal entity which at least three individuals subscribe their names to a memorandum of association and otherwise complying with the provisions of the Civil and Commercial Code (CCC) in order to promote and form the company as stated in Section 1097[2] to unite for a common undertaking with a view of sharing profit. The company was formed by the capital investment of the shareholder which divided into equal share, the amount of such shares may not be less than five baht, and the shareholders shall have the liability limited up to the amount to be paid on shares as stated in Section 1096 and Section 1117[3].

The share that the company issue is transferable without any consent of the company. So, it can conclude that the qualification of the shareholder is not essential factor because the shares can be freely transferred.

1. The definition of share under Civil and Commercial Code (CCC)

In order to run business operations of the company, the company must have sufficient capital investment in order to have the company's cash flow. To earn

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[2] Section 1097 under Civil and Commercial Code (CCC), "Any seven person or more persons may, by subscribing their name to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited company."

[3] Section 1096 under Civil and Commercial Code (CCC), "A limited company is that kind of which is formed with the Capital dividend into shares, and the liability of the shareholder is limited to the amount, if any, unpaid on the shares respectively held by them." and Section 1117 under Civil and Commercial Code (CCC), "The amount of the shares may not be less five baht."

such capital, the company shall divide its registered capital into small unit which called "share" and allow the company's investors to buy those shares, once investors bought shares, they become the shareholders of the company. It can be said that shares are the capital of the company which come from the investment of the shareholders.

Moreover, shares represent the right and duty of shareholders in order to vote or receive dividends of the company[4]. Under Civil and Commercial Code (CCC), the shares of the company have to be equally divided and the amount of the shares may not be less five baht.

2. The definition of dividend under Civil and Commercial Code (CCC)

When a company earns profits, that income can be used as two purposes. Firstly, it can either be reinvested in the business which called retained earnings. Secondly, it can be paid to the shareholders as a dividend. Dividends can be distributed in various forms such as ordinary dividends, share dividends and asset dividends. The company declares such dividends from the profits which gain from business operation of the company that have been registered in the objective of the company to its shareholder. This dividend definition is not stated in Civil and Commercial Code (CCC) but it mentioned in the Deka Court Decision Number 2796-2801/2546. Many corporations retain a portion of their earnings and pay the remaining as a dividend because as often as the company pays dividends it shall increase the company's reputation and the company's stability.

3. The principle of distribution of dividends under Civil and Commercial Code (CCC).

Civil and Commercial Code (CCC) provides the six principles of dividends-distribution as follows; the dividends must be made by a resolution which passed a general meeting, the dividends must be paid from the profit of the company, the dividends must be paid only when company gains profits, the dividends must be

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[4] Decha Siricharoen, Business Law II (Bangkok: Samdee Printing Equipment) 96 (3^{rd} ed. 2550).

allocated to reserve fund, the company must publish the distribution of dividends and the dividends must be made in proportion to the amount paid upon each share.

First principle, the dividends declaration must be made by a resolution which passed in a general meeting. Directors of the company shall present the dividends distribution issue to the general meeting and allow the general meeting decides whether the company should declare dividends to its shareholder or not and how much of them that company should pay. Moreover, the general meeting can consider the dividends distribution issue by themselves without the presentation of company's directors because Civil and Commercial Code (CCC), in the part of dividends, does not specify that the directors are the sole person who is able to present the dividends distribution issue to the general meeting[5]. However, Civil and Commercial Code (CCC) provides the exception to allow the directors to distribute dividends to company's shareholders at any time and as frequently as the sufficiency that the company can make payment to the shareholders which called interim dividends as appeared to the directors to be justified by the profits of the company as stated in section 1201 paragraph 2[6]. The interim dividends[7] means a dividend which is declared and distributed before the company's annual earnings have been calculated; often distributed quarterly.

Second principle, the dividends must be paid from the profit of the company. The company shall distribute the dividends to its shareholder only such dividends paid from the operating profit as stated in section 1201 paragraph 3 which deduct from the company's capital with company's expenses so such profits can be the accumulate profit from previous year.

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[5] Sungkom Horharin, <u>The Explaination of Civil and Commervial Code on the Partnership and Limited Company (LA 2108)</u> (n.p : Assumption University) 186 (n.d).

[6] Section 1201 paragraph 2 under Civil and Commercial Code (CCC), "The directors may from time to time pay to the shareholders such interim dividends as appeared to the directors to be justified by the profits of the company."

[7] Investor Glossary, <u>Interim dividend</u>, available at <u>http://www.investorwords .com/2550/interim_dividend.html</u>. (last visited 2 September 2008).

Third principle, dividends can be distributed only when the company gains profits. Although the company makes profit in present year, the company incurred the accumulate losses from the previous year. When deduct with the profits, the company still losses in such case the company cannot distribute dividends to its shareholder unless such losses have been made good as stated in section 1201 paragraph 3[8].

For example: in 2000-2007, the company had accumulated losses in the amount of three million baht. In 2008, the company gained profits in the amount of two million baht. Even though in year 2008 the company gained profits, the company still cannot distribute the dividends because there are accumulate losses for one million baht.

Forth principle, dividends must allocate appropriately to a reserve fund, at each distribution of dividends. The company has to reserve its profit in the reserve fund in order to protect the company's creditor. If the law does not force the company to reserve those profits, the company may distribute all of its profit as the dividends instead of paying the debt to creditor[9]. The amount of reserve fund is at least one-twentieth of the profits arising from the business of the company, until the reserve fund reaches one-tenth part of the capital of the company or such higher proportion thereof as may be stipulated in the regulations of the company as stated in section 1202 paragraph 1.[10]

Fifth principle, the company must publish the declaration of dividends. The company has two ways to publish the declaration of dividends by notice the

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[8] Section 1201 paragraph 3 under Civil and Commercial Code (CCC), "No dividend shall be paid otherwise than out of profits if the company has incurred losses, no dividend may be paid unless such losses have been made good."

[9] Sungkom Horharin, The Explaination of Civil and Commervial Code on the Partnership and Limited Company (LA 2108), p.188.

[10] Section 1202 paragraph 1 under Civil and Commercial Code (CCC), "The company must appropriate to a reserve fund, at each distribution of dividend, at least one-twentieth of the profits arising from the business of the company, until the reserve fund reaches one-tenth part of the capital of the company or such higher proportion thereof as may be stipulated in the regulations of the company."

distribution of dividends at least twice in a local paper or give by letter to each shareholder whose name appears on the register of shareholders as stated in section 1204[11]. However, this second choice has the exception if such shares certificate to bearer, so company cannot give the letter to each shareholder as stated in section 1134 and section 1135[12].

Sixth principle, the distribution of dividends must be made in proportion to the amount paid upon each share.

For example: The General Meeting declares the dividends for ten percent. The value of shares hold by Mr. A is one hundred baht. Actually, he could receive the dividends for ten baht at the end of the year but he paid only fifty baht, thus, when the dividends were distributed, he would have the right to receive dividends only five baht.

The exception is allowed if the company declares the dividends otherwise decided with regards to preference shares as stated in section 1200[13].

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[11] Section 1204 under Civil and Commercial Code (CCC), "Notice of any dividend that may have been declared shall be either published twice at least in a local paper or given by letter to each shareholder whose name appears on the register of shareholders."

[12] Section 1134 under Civil and Commercial Code (CCC), "Certificates to bearer may be issued only if authorized by the regulations of the company and for shares which are fully paid up. In such case the holder of a name certificate is entitled to receive certificate to bearer on surrendering the name certificate for cancellation." and Section 1135 under Civil and Commercial Code (CCC), "Shares entered in a certificate to bearer are transferred by the mere delivery of certificate."

[13] Section 1200 under Civil and Commercial Code (CCC), "The distribution of dividend must be made in proportion to the amount paid upon each share, unless otherwise decided with regards to preference shares."

B. The Public Limited Company under Public Limited Company (PLC)

The Public Limited Company (hereinafter called "public company") is a company which established for the purpose of offering shares for sale to the public and the shareholders shall have the liability limited up to the amount to be paid on shares. The said purpose shall be indicated in the memorandum of association of the company[14]. The public company was formed by fifteen or more natural persons by preparing a memorandum of association of the company and otherwise complying with the provisions of the Public Limited Company (PLC) as stated in section 16[15]. The capital of the public company shall be divided into equal shares and the amount of such shares may not be less than five baht.

Shares which issue by the public company can be transferred if the transferor's endorsement of the certificate of shares by indicating the name of the transferee and signed by both the transferor and the transferee and upon delivery of the certificate of shares to the transferee. Moreover, the public company shall not make any restriction on the transfer of shares, unless such restrictions are for preserving the rights and benefits to which the company is lawfully entitled or for maintaining the ratio of shareholdings between Thais and foreigners.

1. The principle of distribution of dividends under Public Limited Company (PLC)

The public company is formed by the agreement of fifteen persons to unite for a common undertaking with a view of sharing profit. The profit which gained and

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[14] Department of Business Development, Registration of Public Limited Company According to the "Public Limited Company" Act B.E. 2535. Characteristic of Public Limited Company, available at http://www.dbd.go.th/mainsite/index.php?id=98&L=1. (last visited 16 September 2008).

[15] Section 16 under Public Limited Company (PLC), "Fifteen or more natural persons may form a company by preparing a memorandum of association of the company and otherwise complying with this Act."

retained by the public company shall be treated as the accumulate profits. The accumulate profit is important source of income for the business operation of the public company. If the public company average the accumulate profit equally and distribute to the shareholder, such profits shall be transformed into dividends and be the shareholder assets[16].

Public Limited Company (PLC) has governed the principle of distribution of dividends by divided such principle into four main principles; the dividends must be declared by a resolution passed in the board of directors, the dividends must be paid from the profit of the company, the dividends must be divided into the equal share and the dividends must be allocated to reserve fund[17].

First principle, the dividends must be declared by a resolution which passed in meeting of the board of directors. It shall be made within one month from the date of the resolution of the meeting of shareholders or of the meeting of the board of directors, as the case may be, and the shareholders shall be notified in writing of such payment of dividends, and the notice shall also be published in a newspaper. If there are permissions specified in the articles of association of the company, the board of director may, at any time and as frequently as time to time, pay to the shareholders such interim dividends if the board estimates that the profits of the company justify such payment. After the dividends have been paid, such dividends payment shall be reported to the shareholders at the next meeting of shareholders as stated in section 115 paragraph 3 and paragraph 4[18].

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[16] Decha Siricharoen, Business Law II, pp. 129-130.

[17] Sungkom Horharin, The Explaination of Civil and Commervial Code on the Partnership and Limited Company (LA 2108), pp. 186 – 190.

[18] Section 115 paragraph 3 and paragraph 4 under Public Limited Company (PLC),

"Where permitted by the articles of association of the company, the board of directors may from time to time pay to the shareholders such interim dividends if the board estimates that the profits of the company justify such payment. After the dividends have been paid, such dividend payment shall be reported to the shareholders at the next meeting of shareholders.

Second principle, the dividends must distribute from the profits of the public company as stated in section 115 paragraph 1[19]. The public company shall distribute the dividends to its shareholders only such dividends paid from the operating profits which deduct from the company's capital with the public company's expenses. For example, in the year 2003-2005, the public company lost for one million baht every year, so the public company had the total loss for three million baht. In the year 2006, the public company gained profit for two million baht. However, it still could not declare the dividends to its shareholder because the profits in year 2006 was not covered the total loss of the previous year. If in the year 2007, the company gains profits for three million baht. The profit of year 2007 shall cover all of the loss and the public company shall gain the profit for two million baht. After the company has reserved their fund already, the rest of the profit can be distributed to the shareholder.

Third principle, the dividends must divide into equal shares. The dividends shall be divided equally and paid to the shareholder. The shareholder shall receive the dividends depend on the ratio of the share they hold as stated in section 115 paragraph 2[20]. For example, the public company, by the general meeting, declares dividends for two baht per share. Mr. A holds one million shares, so he is entitled to receive two million baht.

Payment of dividends shall be made within one month as from the date of the resolution of the meeting of shareholders or of the meeting of the board of directors, as the case may be and the shareholders shall be notified in writing of such payment of dividends, and the notice shall also be published in a newspaper."

[19] Section 115 paragraph 1 under Public Limited Company (PLC), "Dividends shall not be paid other than out of profits. In the case where the company still has an accumulated loss, no dividends shall be paid.

[20] Section 115 paragraph 2 under Public Limited Company (PLC), "Unless otherwise provided by the articles of association regarding preference shares, dividends shall be distributed according to the number of shares, with each share receiving an equal amount and payment of dividends shall be approved by the meeting of shareholders."

Forth principle, the dividends must be allocated appropriately to a reserve fund, at each distribution of dividends. The company shall allocate not less than five percent of its annual net profit less the accumulated losses brought forward (if any) to a reserve fund until this fund attains an amount not less than ten percent of the registered capital, unless the articles of association of the company or other laws require a larger amount of reserve fund as stated in section 116[21].

C. The right to receive dividend of the shareholders

Normally, the shareholders of the company have the right to receive dividends. However, there is a case that the articles of association of the company specified that certain shareholders, subject to the specific condition, shall be prohibited to receive the dividends. They are called disqualified shareholders.

Example one, the foreign investor is a shareholder in the listed company, while the articles of association of such listed company specified that only Thai people can receive its dividends. Actually, the foreign investors may have no intention to receive dividends of such listed company but the main objective of its investment is to make profit from the stock trading. Thereafter, it is appeared that his shares cannot sell before the time that the listed company declares the dividends, so he shall be deemed as the disqualified shareholder and then cannot receive the dividends.

There is also the case that shareholders are prohibited from legislation such as Foreign Business Act, as a result, they cannot be the shareholder of the company and cannot receive any dividend which paid by the company. They are also called disqualified shareholders.

The second example is Mr. A (Thais) holds the shares of company 123 and his name is in the shareholders' registration book. Actually, he has the right to receive the

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[21] Section 116 under Public Limited Company (PLC), "The company shall allocate not less than five percent of its annual net profit less the accumulated losses brought forward (if any) to a reserve fund until this fund attains an amount not less than ten percent of the registered capital, unless the articles of association of the company or other laws require a larger amount of reserve fund."

dividends but he was found to violate the Foreign Business Act by being the nominee of foreign investor, who hires him to hold the shares, in order to have the controlling power in the company. At first, the foreign investor held ten percent of shares of company ABC and later hired Mr. A to hold another forty five percent of shares. When the shares have been counted together, the number of shares held by the foreign investor will be fifty five percent of total shares of the company. In the present time, the foreign investor is the majority shareholder, so the power of control is in his hand. In this regard, Mr. A shall be considered as the disqualified shareholder and cannot receive dividends which paid by ABC Company because it is a prohibition of Thai legislation[22].

D. Thai income tax system under Revenue Code (RC)

Taxation is one method of transferring resources from the private to public sector. The government can impose tax when it is compulsory by law. Taxpayer shall pay tax to the government for which nothing is received directly in return. For Example, Mr. 1 has to pay tax for one million baht. He shall not obtain any benefits from the government in the direct total value of one million baht in return but instead he can use the facilities that the government provides to the public such as road, express way or electricity.

Income tax can be divided into two kinds; the first one is Personal Income Tax (PIT) and the second one is Corporate Income Tax (CIT). These two kinds of taxes have the similar tax structures which are composed of taxpayers or taxable persons, tax base, tax rate and tax payment.

1. Personal Income Tax (PIT) is a direct tax levied on income of a person. A person means an individual, an ordinary partnership, a non-juristic body of person and an undivided estate. In general, a person liable to Personal Income Tax (PIT) has to

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[22] Sophon Rattanakorn, The Explaination of Civil and Commervial Code on the Partnership and Limited Company (Bangkok : Nitibaannakarn) 324 -325 (10th ed. 2005).

compute his tax liability, file tax return and pay tax, accordingly on a calendar year basis.

The first tax structure is taxpayer or taxable person. "Taxpayers are classified into resident and non-resident. The resident means any person residing in Thailand for a period or periods aggregating more than one hundred and eighty days in any tax or calendar year as stated in section 41 paragraph 3[23]. A resident of Thailand is liable to pay tax on income from sources in Thailand as well as on the portion of income from foreign sources that is brought into Thailand as stated in section 41 paragraph 2[24]. A non-resident is, however, subject to tax only on income from sources in Thailand."[25]

The second tax structure is tax base. Tax base for Personal Income Tax (PIT) is any income, both in cash and in kind, that person can earn which call "Assessable income[26]". It also includes any benefit provided by an employer or other persons such as a rent-free house or the amount of tax paid by the employer on behalf of the employee.

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[23] Section 41 paragraph 3 under the Revenue Code, "Any person staying in Thailand for a period or periods aggregating 180 days or more in any tax year shall be deemed a resident of Thailand."

[24] Section 41 paragraph 2 under the Revenue Code, "A resident of Thailand who in the previous tax year derived assessable income under Section 40 from an employment or from business carried on aboard or from a property situated aboard shall, upon bringing such assessable income into Thailand, pay tax in accordance with the provisions of this Part."

[25] Revenue Department, Personal Income Tax, available at http://www.rd.go.th/publish/6045.0.html. (last visited 22 August 2008).

[26] Section 39 under the Revenue Code, "Assessable income" means income that is taxable under this chapter. Such income also includes a property or any other benefit received which may be computed into a monetary value, any amount of tax paid by the payer of income or by any other person on behalf of a taxpayer and tax credit under section 47 Bis."

The third tax structure is tax rate. The Personal Income Tax (PIT) tax rate is imposed at a progressive tax ranging from five percent to thirty seven percent[27]. Every person, resident or non-resident, who derives assessable income from employment or business in Thailand, or has assets located in Thailand, is subject to Personal Income Tax (PIT), whether such income paid in or outside of Thailand as stated in section 41 paragraph 1[28]. The capital gains[29] arising from transfer of assets is taxable income. "In the case where income categories (2) - (8) of section 40 are earned more than sixty thousand baht per annum, taxpayer has to calculate the amount of tax by multiplying zero point five percent to the assessable income and compare with the amount of tax calculated by progressive tax rates. Taxpayer is liable to pay tax at the amount whichever is greater."[30]

The forth tax structure is tax payment. Taxpayer must file annual income tax returns later than the end of the March of the following year. Taxpayer, who derives income categories (5) – (8) of section 40 during the first six months of the taxable year, is also required to file half-yearly return which is rental fees, professional fees, income from construction, income from sale of goods, etc. The half-year income tax return must be files not later than the end of September of the respective tax year[31]. The taxpayers who fail to file their annual tax return are subjected to penalty of twice the amount of the due plus surcharge of one point five

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[27] See Appendix B, Tax rates for Thai Personal Income Tax (PIT), figure 1.

[28] Section 41 paragraph 1 under the Revenue Code, "A taxpayer who in the previous tax year derived assessable income under section 40 from an employment, or from business carried on in Thailand, or from business of an employer residing in Thailand, or from a property situated in Thailand shall pay tax in accordance with the provisions of this Part, whether such income is paid within or outside Thailand.

[29] There is no specific capital gains tax in Thailand so capital gains tax shall be taxed in the same manner as any other income.

[30] Revenue Department, Personal Income Tax, available at http://www.rd.go .th/publish/6045.0.html. (last visited 22 August 2008).

[31] Revenue Department, Personal Income Tax, available at http://www.rd.go .th/publish/6045.0.html. (last visited 22 August 2008).

percent per month of the tax due[32]. In the case of the improperly filed tax return, the taxpayers will have to pay a one-time penalty in the amount of the tax due and a surcharge of one point five percent per month of the tax due[33]. Any withholding tax or half-yearly tax which has been paid to the Revenue Department can be used as a credit against the tax liability at the end of the year[34].

2. Corporate Income Tax (CIT) is a direct tax levied on juristic company or partnership carrying on business in Thailand or not carrying on business in Thailand but deriving certain types of income from Thailand. The term juristic company or partnership means a limited company, a limited partnership or a registered partnership incorporated under Thai law or foreign law as well as an association and a foundation. The term also includes any joint venture and any trading or profit-seeking activity carried on by a foreign government or its agency or by any other juristic body incorporated under a foreign law[35].

The first tax structure is taxpayer or taxable person. Companies and juristic partnerships incorporated under Thai law are subjected to tax on their worldwide income at the end of each accounting period or twelve months, both from Thailand and foreign sources. While companies and juristic partnerships incorporated under foreign laws are subject to tax only on income from sources within Thailand[36].

Generally, a foreign company is treated as carrying on business in Thailand if it has an office, a branch or any other place of business in Thailand or has

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[32] Revenue Department, Personal Income Tax, available at http://www.rd.go .th/publish/6045.0.html. (last visited 22 August 2008).

[33] Revenue Department, Personal Income Tax, available at http://www.rd.go .th/publish/6045.0.html. (last visited 22 August 2008).

[34] Revenue Department, Personal Income Tax, available at http://www.rd.go .th/publish/6045.0.html. (last visited 22 August 2008).

[35] Revenue Department, Corporate Income Tax, available at http://www.rd. go.th/publish/6044.0.html. (last visited 22 August 2008).

[36] Revenue Department, Corporate Income Tax, available at http://www.rd. go.th/publish/6044.0.html. (last visited 22 August 2008).

an employee, agent, representative or go-between for carrying on business in Thailand. A foreign company carrying on business in Thailand is subject to Corporate Income Tax (CIT) only for net profit arising from or in consequence of business carried on in Thailand, at the end of each accounting period as stated in section 65[37]. However, a foreign company engaged in international transport is subject to tax on its gross receipts as stated in section 67[38]. When a foreign company disposes its profit out of Thailand, such profit will be subject to tax on the sum disposed as stated in section 70 Bis[39]. Profit also means any sum set aside out of profits as well as any sum

[37] Section 65 under the Revenue Code, "Taxable income under this Part is net profit which is calculated by deducting income from business or income arising from business carried on in an accounting period with expenses in accordance with conditions prescribed in Section 65 Bis and 65 Ter. An accounting period shall be twelve months except in the following cases where it may be less than twelve months …"

[38] Section 67 under the Revenue Code, "The payment of tax under this Part shall be in accordance with the rates specified in the table of Income Tax rates attached to this Part. Except in the case of a company or juristic partnership under paragraph 2 of the section 66 carrying on international transport business, it shall pay tax on the on the transportation business the following rules;

(1) In case of carriage of passengers, it shall pay tax at the rate of 3% of fares, fees and other benefit chargeable in Thailand before deducting any expense from such carriage of passengers.

(2) In case of carriage of goods, it shall pay tax at the rate of 3% of freight charges, fees and other benefits, whether chargeable in Thailand or not, before deducting any expense from such carriage of goods."

[39] Section 70 Bis under the Revenue Code, "A company or juristic partnership disposing its profits or other type of money that is set aside from profits or is deemed to be profits from Thailand shall pay income tax by deducting from such disposed amount of money in accordance with the corporate income tax rate for the company and juristic partnership and shall remit it to the local Amphur office together with the

which may be regarded as profit. Moreover, a foreign company, not carrying on business in Thailand but deriving certain types of income from Thailand, such as service fees, interests, dividends, rents, professional fees, is subject to corporate income tax on the gross amount received as stated in section 70[40]. It is collected in the form of withholding tax by which the payer of income shall deduct the tax from the income at the rate that the law specified which is ten or fifteen percent depend on type of the income.

The second tax structure is tax base. In the calculation of Corporate Income Tax (CIT) of a company carrying on business in Thailand, it is calculated from the company's net profit on the accrual basis. So it means that the tax base for Thai company is net profit as stated in section 65. A company shall take into account all revenue arising from or in consequence of the business carried on in an accounting period and deducting all expenses in accordance with the condition prescribed by the Revenue Code (RC).

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filing of the tax return in the form prescribed by the Director-General within 7 days from the date of disposal ..."

[40] Section 70 under the Revenue Code,

"A company or juristic partnership incorporated under foreign laws and not carrying on business in Thailand but receiving assessable income under Section 40 (2) (3) (4) (5) or (6) which is paid from or in Thailand, shall be liable to pay tax. The payer of income shall deduct corporate income tax from such assessable income at the corporate income tax rate and remit it to the local Amphur office together with the filing of the tax return in the form prescribed by the Director-General within 7 days from the last day of the month in which such income is paid. Section 54 shall also apply mutalis mutandis.

The provisions of paragraph 1 shall not apply in the case where a company or juristic partnership incorporated under foreign laws receives assessable income being interest from the Government or a financial instituted under the specific Thai laws for the purpose of lending to promote agriculture, commerce or industry."

The third tax structure is tax rate. The corporate income tax rate in Thailand is thirty percent on net profit. However, the rates vary depending on types of taxpayers[41].

The forth tax structure is tax payment. "Thai and foreign companies carrying on business in Thailand are required to file their tax returns (Form CIT 50) within one hundred and fifty days from the closing date of their accounting periods as stated in section 68[42]. Tax payment must be submitted together with the tax returns. Any company disposing funds representing profits out of Thailand is also required to pay tax on the sum so disposed within seven days from the disposal date (Form CIT 54)[43].

In addition to the annual tax payment, any company subject to Corporate Income Tax (CIT) on net profits is also required to make tax prepayment (Form CIT 51)[44]. A company is obliged to estimate its annual net profit as well as its tax liability and pay half of the estimated tax amount within two months after the end of the first six months of its accounting period. The prepaid tax is creditable against its annual tax liability[45].

As regards to income paid to foreign company not carrying on business in Thailand, the foreign company is subject to tax at a flat rate in which the payer shall withhold tax at source at the time of payment. The payer must file the return (Form

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[41] See Appendix B, Tax rates for Thai Corporate Income Tax (CIT), figure 2.

[42] Section 68 under the Revenue Code, "Within 150 days from the last day of an accounting period, a company or a juristic partnership shall file a tax return showing items necessary for tax calculation in an accounting period in the form prescribed by the Director-General together with tax payment at the Amphur office."

[43] Revenue Department, Corporate Income Tax, available at http://www.rd.go.th/publish/6044.0.html. (last visited 22 August 2008).

[44] Revenue Department, Corporate Income Tax, available at http://www.rd.go.th/publish/6044.0.html. (last visited 22 August 2008).

[45] Revenue Department, Corporate Income Tax, available at http://www.rd.go.th/publish/6044.0.html. (last visited 22 August 2008).

CIT 54) and make the payment to the Revenue Department within seven days of the following month in which the payment is made."[46]

E. Tax burden from dividend in case of individuals and corporations under Revenue Code (RC)

1. Personal Income Tax (PIT) on Dividends

Taxpayer, who resides in Thailand and receives dividends from a juristic company or a mutual fund which tax has been withheld at source at the rate of ten percent, may choose to exclude such dividends from the assessable income when calculating Personal Income Tax (PIT). However, in doing so, taxpayer will be unable to claim any refund or credit.

2. Tax Credit for dividends

Any taxpayer who domiciles in Thailand and receives dividends from a juristic company or partnership incorporated in Thailand is entitled to a tax credit of 3/7 of the amount of dividends received as stated in section 47 Bis[47]. In computing assessable income, taxpayer shall gross up his dividends by the amount of the tax credit received. The amount of tax credit is creditable against his tax liability.

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[46] Revenue Department, Corporate Income Tax, available at http://www.rd.go.th/publish/6044.0.html. (last visited 22 August 2008).

[47] Section 47 Bis under the Revenue Code, "A taxpayer deriving income under section 40 (4) (b) from a company or juristic partnership established under the Thai law shall receive a tax credit. The amount of tax credit is calculated by multiplying dividend or share of profit received with the income tax rate which is divided by the difference between 100 and the said income tax rate of the paying company or juristic partnership. In the case where the paying company or juristic partnership is subjected to many income tax rates, it shall clearly specify the income tax rate of the business from which the payment is made in the certificate of withholding tax deducting …"

3. Corporate Income Tax (CIT) on Dividends

As for dividends income, one-half of the dividends received by Thai companies from any other Thai companies may be excluded from the taxable income. However, the full amount may be excluded from taxable income if the recipient is a company listed in the Stock Exchange of Thailand or the recipient owns at least twenty five percent of the distributing company's capital interest, provided that the distributing company does not own a direct or indirect capital interest in the recipient company. The exclusion of dividends is applied only if the shares are acquired not less than three months before receiving the dividends and are not disposed of within three months after receiving the dividends as stated in section 65 Bis (10).

When the distributions of dividends arise, the company has a duty to withhold tax every time that the dividends have been paid. For the shareholder who resides in Thailand, the rate of withholding tax is ten percent of the amount of dividends received. On the other hand, if the company declares dividends to shareholder who resides outside Thailand, the rate of withholding tax shall be fifteen percent of the amount of dividends received according to section 50 and return such tax within seven days from the date of dividends payment[48].

F. Accounting Standards focus on Income Recognition.

Accounting Standard pronouncements are issued by the Institute of Certified Accountants and Auditors of Thailand (hereinafter called "ICAAT"). These pronouncements must be followed in the preparation of the financial statements and correlate very closely to International Accounting Standards and the United States Generally Accepted Accounting Principles (hereinafter called "GAAP").

1. Accounting Framework

Accounting Framework is not the accounting standard but it is just only the framework or general idea to prepare and present the clear financial statement and

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[48] Revenue Department, Corporate Income Tax, available at http://www.rd.go.th/publish/6044.0.html. (last visited 22 August 2008).

provide understanding to all of the accounting officer and relevant persons to practice in the same way.

In general, companies must use the accrual method of accounting and historical-cost convention for preparing financial statements. Fundamental concepts of Thai accounting include consistency, prudence, matching and going concern. Any departure from these fundamental concepts must be disclosed in clearly written footnotes[49].

a. The objectives of the financial statement

The financial statement provides the financial information such as the financial status of the company, the business operation outcome of the company, etc. The financial statement is composed of three accounting statements which are Balance Sheet, Income Statement and Statement of Cash Flows. Statement of Cash Flows mean the statement in the Annual Accounts that indicates, for the financial period, the sources of all cash, both from operations and from external sources of finance, and how this has been used for trading, capital preservation, investment and taxation purposes[50]. This may include the remark of the financial, the financial details and any other information which is the part of the financial statement. The administration of the company shall have a duty to make and present the financial statement of the company to public.

The information which presents in the financial statement must contain the economic benefit for the investor who decides to invest in the company such as such stockholders, suppliers, banks, government agencies, owners, and other stakeholders. Accounting framework does not provide the benefit only for the specific groups of the decision makers but it also provide to satisfy all of the investors. However, the financial statement cannot cover all information because such some

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49 Trading Registration Department, Accounting Principle, available at http://www.jarataccountingandlaw.com/index.php?lay=show&ac=article&Id=333786&Ntype=5. (last visited 30 August 2008).

50 Aumnart Rattanasuwaan & Autthaphol Tritanont, The Principle of Accounting (Easy to Understand) (Bangkok: Pimpunn) 2 (2nd ed. 2007).

factors are effect to financial statement from previous time but they are not necessary to present because it is not the financial information.

In order to satisfy the objective of financial statement, accounting framework provides two hypotheses which are accrual basis and going concern concept.

The first hypothesis is accrual basis. It is a method of accounting in which expenses and income are accounted for as if they are earned or incurred regardless of when actual payments are received or made.

The second hypothesis is going concern concept. The financial statement presents the business operation of company and such company shall continue its business operation in the future. The company has assets for the operating proposes, not for sale, so the asset of the company shall appear in the balance sheet as the capital of the company. For example, the company bought land, which the company located, three years ago at the amount of one million baht. At present, the value of land is five million baht. The balance sheet of the present year has to recognize the value of land at the year the company brought. However, the going concern concept cannot apply when the company is going to stop the business operation or sell the company. In such case the asset shall present in the balance sheet with the current market value which is five million baht.

b. The recognition of the financial statement

The elements of the financial statement recognition are composes of two elements. The first element is such recognition revenue probable has future economic benefits which flow to the entity. [51] The Possibility Principle shall apply in the consideration of the financial recording. The second element is such benefits can be measured reliably. The estimating principle shall apply in the consideration of the financial recording. [52]

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[51] Trading Registration Department, How to Make a Correct Financial Accounting according to Accounting Standard, available at http://www.geocities.com/s_264960502075_1/index111.html. (last visited 25 July 2008).

[52] Trading Registration Department, How to Make a Correct Financial Accounting according to Accounting Standard, available at http://www.geocities.com/s_264960502075

In case of the financial items in the financial statement have not satisfied with the two elements above, they should not recognize in the financial statement but instead they should be disclose in the commentary of the financial statement if such financial items is relevant to the investor decision.

2. Dividends and Accounting Principle

Dividend means profit which distribute to the shareholders up to the amount that they invest in the company according to the Thai Accounting Standard Number 37 (hereinafter called TAS 37).

a. The income recognition of dividend

The dividends, that the company received, are the income of the investment in other company and it shall be recognized when it satisfies with the two elements. The first one is the probable that future economic benefits will flow to the entity and the second element is these benefits can be measured reliably. And it shall recognize when the company has right to receive dividends. The right to receive shall occur when the general meeting of the shareholders approves the declaration of the company[53].

b. Accounting Recognition of Dividend Distribution

When the company announces to distribute dividends to its shareholder, the company shall debit the accumulate profit and credit with the accrued dividends. The words "accrued dividends" mean remuneration owed by a company to its shareholders. Forms of accrued dividends can be either cash or additional shares of stock. From the declaration date, accrued dividends are recorded on the company's balance sheet as a liability, where the accrued dividends remain until the payment date. Between declaration and record dates, should the company engage in a merger or a refunding of preferred issues, the accrued dividends remain a liability and the shareholder becomes a higher ranking creditor than other similarly situated

_1/index111.html. (last visited 25 July 2008).

[53] Trading Registration Department, How to Make a Correct Financial Accounting according to Accounting Standard, available at http://www.geocities.com/s_264960502075_1/index111.html. (last visited 25 July 2008).

shareholders who are not the shareholders of record. The timing of accrued dividends payments is normally a few weeks. However, there are currently no accounting rules or securities laws specifying a time frame when an accrued dividend must be paid[54].

When the company has reserved its profit to the reserving fund according to the law, which is at least five percent[55] of the company's net profit and has to continue reserve such fund until such reserving fund reach ten percent of the register capital of the company as stated in section 1202 paragraph 1, the company has to debit the accumulate profit and credit with lawful reserving fund.

When the company has declared the dividends, the company has to debit accrued dividends and credit with cash.

Although the accounting taxation recognized the income follow the principle which specified in TAS 37 before pay tax on such income, it has to be adjusted and follow the principle which specified in section 65 Bis and section 65 Ter under the Revenue Code (RC)[56].

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[54] Investor Glossary, Accrued Dividend, available at http://www.investorGlossary.com/accrued-dividend.htm. (last visited 2 September 2008).

[55] Trading Registration Department, Accounting Principle, available at http://www.jarataccountingandlaw.com/index.php?lay=show&ac=article&Id=333786&Ntype=5. (last visited 30 August 2008).

[56] See Appendix D, *Thailand Accounting Standard (TAS 37),* The adjustment of the accounting net profits to be taxable net profits.

Chapter 3
Tax and Other Related Regulations of Dividend under Foreign Laws

A. Adam Smith's theories

Adam Smith is the economist who lived in the 1700s[57]. He is still known and revered today for his work on free-market economics, including taxation[58]. If Thai tax authorities follow Smith's policy prescriptions, more economic wealth would be created[59]. Tax, according to Smith's theories, should be levied only to support a limited government and should satisfy four maxims: equity, transparency, convenience, and efficiency in order to manage tax legal system and tax implication to be fair to the society.

1. The four tax maxims of Adam Smith's theories

Equity is the first of Smith's tax maxims. It reflects the wealthiest benefit most from government and can most afford to pay. "The subject of every state ought to contribute towards the support of government, as nearly as possible, in proportion to their respective abilities in the proportion to the revenue which they respectively enjoy under the protection of the state[60]." For example, the rich should contribute to

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[57] Microsoft Encarta Online Encyclopedia 2008, Adam Smith, available at http://encarta.msn.com/encyclopedia_761556047/Adam_Smith.html. (last visited 22 August 2008).

[58] Tom Walton, Adam Smith on Taxes, available at http://www.heartland.org/Article.cfm?artId=13530. (last visited 22 August 2008).

[59] Tom Walton, Adam Smith on Taxes, available at http://www.heartland.org/Article.cfm?artId=13530. (last visited 22 August 2008).

[60] *The Wealth of Nations, Book Five, Chapter Two, Part two.*cited in Panit Therababwong, International Business Taxation (Bangkok:Winwuchoon) 25 (2nd ed. 2007).

the public expense not only in proportion to their revenue but something more than in that proportion. This theory can reflect in the progressive taxation system.

Transparency is the second of Smith's tax maxim. Tax must "transparent to everyone which is the tax that each individual is bound to pay ought to be certain, not arbitrary, [clear and plain] [61]". Tax transparency shall prevent the unscrupulous or tax gatherers from undermining trust in the system. International economists view the creation of transparent rules for taxation as one of the most significant economic policy objectives for emerging economies.

Convenience or simplicity is the third of Smith's tax maxim. "Every tax ought to be levied at the time, or in the manner, in which it is most convenient for the contributor to pay it[62]."

Efficiency is the forth of Smith's tax maxim. "Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of a state[63]." This requires keeping administrative costs and economic distortions to a minimum. Economic distortions might "obstruct the industry" of business people and thereby prevent them from giving "employment to great multitudes" of people. The most efficient tax, according to Smith, would leave "the annual produce of the land and labor of society, the real wealth and revenue [of a nation] the same as before."

B. Declaration of dividends under United States law

The procedures of dividends declaration shall be specified and governed by the articles of association of each company. Dividends are the net profit which distributed from the accumulate profits of company's business after corporation tax and paid such amount of profits to the company's shareholders. The decision to declare a dividend is normally recommended by the board of directors and must be approved by shareholders, usually by the ordinary resolution at a general meeting which is stated in

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[61] Panit Therababwong, International Business Taxation, p.25.

[62] Ibid.

[63] Ibid.

the articles of association. In practice, small limited company directors are often the shareholders and provided they agree the rate of dividends it is not necessary to hold a special meeting[64]. When a dividend is declared by the board meeting at which the shareholders attend or a general meeting of shareholders the minutes should state the amount of dividends declared. The dividends also have to be entered into the company financial accounts and a dividend voucher raised for each shareholder entitled to receive the profits distribution.

The model set of articles of association, the interim dividends may be declared by the limited company. This rule allows the company to distribute dividends to shareholders at any time and as frequently as approved by the shareholders subject to the company have sufficient funds to make the payment. One essential requirement is that the total dividends payment is less than the net taxable profit earned by the company after deduction of all expenses and corporation tax.

The first detail is a simple statement required stating that the minutes of the board meeting of the full company name and address where the meeting was held and the date of the meeting. List the directors present at the meeting followed by the dividends statement.

For example, it was resolved that the company pay a dividends of xxx dollars per one dollars ordinary share for the company yearend date to shareholders registered at the effective date by which the shareholders were registered as members.

The second detail is the dividends voucher which is raised by the company and issued to the shareholders should state the name and address of the company, name and address of the shareholder, number and class of shares held, the dividends to be paid for the company yearend date and also stating the date at which the shareholder had to be a registered holder of the shares. The dividends voucher should be dated and signed by the director and also contain a statement of the dividends tax credit.

The third detail is the dividends tax credit should state the number of shares, amount of the dividends payment and the amount of dividends tax credit. The

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[64] Terry Cartwright, How to Declare a Dividend and Produce the Dividend Voucher, available at http://www.articlesbase.com/finance-articles/how-to-declare-a-dividend-and-produce-the-dividend-voucher-517592.html. (last visited 7 September 2008).

dividends tax credit being calculated by dividing the net dividends payment by 0.90. By dividing the dividends paid by 0.90 when the dividends paid is added to the dividends tax credit the resultant total is the dividends income of which the dividends tax credit represents ten percent[65].

C. General principle of United States of America's Internal Revenue Code

1. The United States resident company

The United States resident company (United States Corporation) is taxed on its worldwide income and capital gains. A company is a domestic corporation if it is incorporated under the laws of any state in the United States. All other corporations are treated as foreign corporations. The place of management and control is irrelevant. The United States Corporations are liable to corporation tax on all income including capital gains, whether arising, during their accounting period.

The tax rate of tax applicable is generally set for the calendar year beginning on the first of January and ending on the thirty first of December. Profits arising in a company's accounting period ending other than on thirty first of December are generally apportioned on a time basis in order to determine the applicable rate. However, legislation changing the tax rate may specifically prescribe a different method of calculating the applicable rate.

a. Corporate Tax Rates of the United States Company

The amount of the tax imposed for each taxable year on the taxable income of every companies shall be the sum of fifteen percent of so much of the taxable income as does not exceed fifty thousand dollar, twenty five percent of so much of the taxable income as exceeds fifty thousand dollar but does not exceed seventy five thousand dollar, thirty four percent of so much of the taxable income as

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65 Terry Cartwright, How to Declare a Dividend and Produce the Dividend Voucher, available at http://www.articlesbase.com/finance-articles/how-to-declare-a-dividend-and-produce-the-dividend-voucher-517592.html. (last visited 7 September 2008).

exceeds seventy five thousand dollar but does not exceed ten million dollar and thirty five percent of so much of the taxable income as exceeds ten million dollar.

The Payment date, the corporation tax is normally due for payment in full on or before 15th day of the third month following the end of company's accounting year. The United States Corporation must make quarterly advance estimated tax payments during the year. Where payment of the tax is overdue, interest is charged at an annual rate. This interest rate is subjected to adjustment four times during a calendar year. The rate is tied to the yield on the certain United States government obligations.

b. Dividend distribution

Dividends, under United States law, can be divided as two main kinds. The first one is Ordinary Dividends and the second one is the Qualified Dividends.[66]

Ordinary Dividends are the most common type of distribution from a company. They are paid out of the earnings and profits of a corporation. These kinds of dividends are not capital gains. Another kind of dividends is Qualified Dividends. The qualified dividends are the ordinary dividends that are subject to the same five percent or fifteen percent maximum tax rate that applies to net capital gain[67]. Qualified dividends are subject to the fifteen percent rate if the regular tax rate that would apply is twenty five percent or higher. If the regular tax rate that would apply is lower than twenty five percent, qualified dividends are subject to the five percent rate[68].

To qualify for the five percent or fifteen percent maximum rate, all of the following three requirements must be met. The first requirement is the

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[66] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

[67] Internal Revenue Service, Dividends and Other Corporate Distributions, available at http://www.irs.gov/publications/p17/ch08.html#publink100032725. (last visited 15 September 2008).

[68] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

dividends must have been paid by a U.S. corporation or a qualified foreign corporation. The second requirement is the dividends are not of the type listed which is the dividends that are not qualified dividends. And the last requirement is such dividends have to meet the holding period. The holding period to be the qualified dividends shall be the stock which held for more than sixty days during the one hundred and twenty one day period that begins sixty days before the ex-dividend date. The ex-dividend date is the first date following the declaration of a dividend on which the buyer of a stock will not receive the next dividends payment. Instead, the seller will get the dividends. When counting the number of days of holding the stock, include the day of dispose of the stock, but do not include the date of stock acquirement.

(1) Dividend received from the United States Corporation

If the United States Corporation receives dividends from other United States Corporation are generally permitted a seventy percent[69], eighty percent[70] or one hundred percent[71] dividends deduction based upon the payer and type of dividends[72].

The seventy percent deduction, the dividends receive from United States Corporations which are less than twenty percent owned by the recipient are permitted a special deduction equal to seventy percent of the dividends received. This is limited to seventy percent of taxable income. The eighty percent deduction, the dividends receive from United States Corporations which are more than twenty percent but less than eighty percent owned by the recipient are generally permitted a special deduction equal to eighty percent of the dividends received. This

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[69] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

[70] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

[71] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

[72] Internal Revenue Service, Corporation, available at http://www.irs.gov/pub /irs-pdf/p542.pdf. (last visited 15 September 2008).

is limited to eighty percent of taxable income (calculated without any net operating loss deduction and without any special deduction for dividends received). The hundred percent deductions, the dividends paid between members of a United States affiliated group are tax free within the group because the offsetting income and expense are recorded and reported on the tax return simultaneously.

(2) Dividends paid by United States Corporation

Dividends paid by a United States Corporation to a foreign recipient may be subject to withholding tax. Additionally, dividends paid by a foreign corporation out of its United States branch profits may be withholding tax. Under long arm tax provisions the foreign corporation becomes the withholding agent for United States tax. A non-resident is generally subject to withholding tax at a rate of thirty percent. This withholding tax rate may be reduced or eliminated by treaty. On the other hand, the United States residents are not subject to withholding tax unless the certain conditions exist. If withholding tax is required, the rate of twenty eight percent for payment after 31 December 2002 up to 31 December 2010 and qualifying dividends received after 31 December 2002 are subject to a maximum tax rate of fifteen percent[73].

2. The United States non-resident company

A non-resident corporation[74] is liable to United States tax on its United States source income and on its income which is effectively connected with a United States trade and business[75].

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[73] Internal Revenue Service, Corporation, available at http://www.irs.gov/pub/irs-pdf/p542.pdf. (last visited 15 September 2008).

[74] The non-resident corporation will usually not be doing business unless it enters into sales contracts, acquires rental property, manufactures or performs services in the US.

[75] Internal Revenue Service, Tax Information for Visitors to the United States available at http://www.irs.gov/pub/irs-pdf/p513.pdf. (last visited 15 September 2008).

Dividends distribution from the United States Corporation which paid to non-resident Corporation shall be deducted at source on gross income at thirty percent withholding tax.

3. The United States individual resident

Residents are subjected to United States tax on their worldwide income. A foreign tax credit is allowed on net foreign sourced income. Generally, individuals are assessed on the cash basis method of accounting. Thus, income is generally subject to tax when received, rather than when the income accrues.

Tax rates for United States resident taxpayers depend upon a taxpayer's tax status. The four tax status grouping are for single taxpayers[76], married taxpayers filling a joint return and surviving spouses[77], married taxpayers filing separate return[78], and heads of households[79]. Individual are required to file an annual income tax return on or before 15 April of the year following the close of the calendar year. Penalties and interest are charged for late filing of returns. An automatic extension of time to file a return with be granted, but generally will not exceed six months. Returns are required to be filed with the Internal Revenue Service Center (hereinafter called "IRSC") for the district in which the taxpayer resides. United States Citizen and long-term residents living outside the United States must file their return with the Internal Revenue Service Center in Philadelphia[80].

a. Dividend Income

Investment and passive income are generally subject to United States tax at the same graduated rates as figure 1-4 in Appendix 3. Dividends incomes are treated as investment income. Qualified dividends income for residents is taxed at capital gains rates which net capital gain is determined without regard to qualified

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[76] See Appendix C, Tax rates for United States resident taxpayers, figure 1.

[77] See Appendix C, Tax rates for United States resident taxpayers, figure 2.

[78] See Appendix C, Tax rates for United States resident taxpayers, figure 3.

[79] See Appendix C, Tax rates for United States resident taxpayers, figure 4.

[80] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

dividends, and then added to the net capital gain and taxed at the application rate under the Internal Revenue Code (IRC)[81]. Qualified dividends generally include dividends received from United States and qualified foreign corporations. Qualified foreign corporations generally include those which are paying the dividends in question on stock that is readily tradable on a United States securities market, or those which are organized in certain countries with which the United States has a satisfactory income tax treaty. All other dividends are taxed at the ordinary income tax rates.

4. The individual non-resident of the United States

Non-residents are subject to tax on United States sourced[82] income. Non-business income sourced in the United States is generally subject to flat a flat thirty percent tax. Non residents who carry on a trade or business in the United States are subject to United States tax on taxable income that is effectively connected with a United States trade or business. Taxable income is income net of allowable deductions. The United States tax on effectively connected income is imposed at the same graduated rates as applying to residents.

Income effectively connected with a United States trade or business (including wages, salary and other remuneration received by non-residents for work done while present in the United States) is subject to the United States tax. However, non-resident cannot file as a head of household. As they generally cannot file joint returns, married non residents use the married filing separately rates; unmarried non-residents use the single rates[83].

[81] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

[82] Dividends paid by United States Corporations are United States Sourced income while the dividends paid by foreign corporations are foreign sourced of income.

[83] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

Remuneration for work performed in the United States by a non-resident who is physically present in the United States for ninety days or less during the calendar year, and who earns no more than three thousand United States dollars, will be exempt from United States tax if the work is done for another non-resident individual, a foreign company that has no business operations in the United States or the foreign office of a United States company[84].

United States sourced investment income, such as dividends, interest, and rents are generally subject to thirty percent flat tax. The thirty percent tax is a withholding tax applied at source. Income that received during the year which is effectively connected with a United States trade or business is taxed at the same graduated rate applicable to United States residents. A non-resident's income which is not effectively connected with a United States trade or business is taxed at thirty percent flat rate or a treaty rate if applicable. The thirty percent tax is imposed as withholding at source.

Non-resident aliens living in the United States usually must file a tax return before 15 April of the year following the close of the calendar year. Non-resident aliens who do not receive wages subject to withholding have until 15 June to file their returns. Non-resident filed their return with Internal Revenue Service Center, Philadelphia. An extension of time of up to six months will generally be granted[85].

a. Dividend Income

United States source investment income, like dividends, is generally subject to United States tax at a thirty percent flat rate. The tax on investment income of non-residents is withheld at source. United States sources dividends income of non-resident is generally subject to thirty percent withholding tax.

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[84] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

[85] Internal Revenue Service, Your Federal Income Tax for Individuals, available at http://www.irs.gov/pub/irs-pdf/p17.pdf. (last visited 15 September 2008).

D. Accounting Standard

For the United States Corporation, the taxable income must be calculated using the method of accounting regularly used in keeping the corporation's books and records. In all cases the method must clearly reflect income. The following adjustments are required with regard to specific deductions. The US applied for International Accounting Standard (hereinafter called "IAS") and for revenue recognition is in IAS 18.

1. Objective of IAS 18

The objective of IAS 18 is to prescribe the accounting treatment for revenue arising from certain types of transactions and events. Revenue is the gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of an enterprise (such as sales of goods, sales of services, interest, royalties, and dividends)[86]

The primary issue in accounting for revenue is determining when to recognize revenue. Revenue is recognized when it is probable that future economic benefits will flow to the entity and these benefits can be measured reliably[87]. This Standard identifies the circumstances in which these criteria will be met and, therefore, revenue will be recognized. It also provides practical guidance on the application of these criteria[88].

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[86] Deliotte Touche Tohmatsu, IAS 18 Revenue, available at http://www.ias plus.com/standard/ias18.htm. (last visited 10 September 2008).

[87] Accounting Standards Board (ASB), Standard of Generally Recognized Accounting Practice, available at http://www.asb.co.za/download/ED_26_Revenue_ from_non-exchange_transactions_final.pdf. (last visited 10 September 2008).

[88] Deliotte Touche Tohmatsu, IAS 18 Revenue, available at http://www.ias plus.com/standard/ias18.htm. (last visited 10 September 2008).

2. Measurement of Revenue

Revenue should be measured at the fair value of the consideration receivable. An exchange for goods or services of a similar nature and value is not regarded as a transaction that generates revenue. However, exchanges for dissimilar items are regarded as generating revenue.

Revenue is the gross inflow of economic benefits during the period arising in the course of the ordinary activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants[89].

This Standard shall be applied in accounting for revenue arising from the following transactions and events:

a. The sale of goods;
b. The rendering of services; and
c. The use by others of entity assets yielding interest, royalties and dividends.

The recognition criteria in this Standard are usually applied separately to each transaction. However, in certain circumstances, it is necessary to apply the recognition criteria to the separately identifiable components of a single transaction in order to reflect the substance of the transaction. For example, when the selling price of a product includes an identifiable amount for subsequent servicing, that amount is deferred and recognized as revenue over the period during which the service is performed. Conversely, the recognition criteria are applied to two or more transactions together when they are linked in such a way that the commercial effect cannot be understood without reference to the series of transactions as a whole. For example, an entity may sell goods and, at the same time, enter into a separate agreement to repurchase the goods at a later date, thus negating the substantive effect of the transaction; in such a case, the two transactions are dealt with together.

Revenue shall be measured at the fair value of the consideration received or receivable. Fair value is the amount for which an asset could be exchanged, or a

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[89] Deliotte Touche Tohmatsu, IAS 18 Revenue, available at http://www.ias plus.com/standard/ias18.htm. (last visited 10 September 2008).

liability settled, between knowledgeable, willing parties in an arm's length transaction.

The amount of revenue arising on a transaction is usually determined by agreement between the entity and the buyer or user of the asset. It is measured at the fair value of the consideration received or receivable taking into account the amount of any trade discounts and volume rebates allowed by the entity.

The first transaction is sale of goods. Revenue from the sale of goods shall be recognized when all the following conditions have been satisfied:

a. The entity has transferred to the buyer the significant risks and rewards of ownership of the goods;
b. The entity retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
c. The amount of revenue can be measured reliably;
d. It is probable that the economic benefits associated with the transaction will flow to the entity; and
e. The costs incurred or to be incurred in respect of the transaction can be measured reliably.

The second transaction is rendering of services. When the outcome of a transaction involving the rendering of services can be estimated reliably, revenue associated with the transaction shall be recognized by reference to the stage of completion of the transaction at the balance sheet date. The outcome of a transaction can be estimated reliably when all the following conditions are satisfied:

a. The amount of revenue can be measured reliably;
b. It is probable that the economic benefits associated with the transaction will flow to the entity;
c. The stage of completion of the transaction at the balance sheet date can be measured reliably; and
d. The costs incurred for the transaction and the costs to complete the transaction can be measured reliably.

The recognition of revenue by reference to the stage of completion of a transaction is often referred to as the percentage of completion method. Under this method, revenue is recognized in the accounting periods in which the services are rendered. The recognition of revenue on this basis provides useful information on the extent of service activity and performance during a period.

When the outcome of the transaction involving the rendering of services cannot be estimated reliably, revenue shall be recognized only to the extent of the expenses recognized that are recoverable.

The third transactions are Interest, royalties and dividends. Revenue shall be recognized on the following bases:

a. Interest shall be recognized using the effective interest method as set out in IAS 39, paragraphs 9;
b. Royalties shall be recognized on an accrual basis in accordance with the substance of the relevant agreement and;
c. Dividends shall be recognized when the shareholder's right to receive payment is established.

Chapter 4
Analysis of Problems on Corporate Income Tax in Case of Dividend Distribution Focusing on Disqualified Shareholders

A. Nature of dividends distribution

When the company operates business and gains profits, the company shall deduct such profits with the company's expenses which specified under section 65 Bis and Ter. The remaining profits are called net profits and shall be subject to Corporate Income Tax (CIT) as a worldwide income at the end of each accounting period or twelve months. Such remaining profits can be used to reinvest in order to expand the company's business or declare as dividends to the company's shareholders, depending on the company's policy, reputation and stability. If the company declares such dividends to its shareholders, at each distribution of dividends, the company must allocate appropriately to a reserve fund. It is provided by law that the company has to reserve its profit in the reserve fund in order to protect the company's creditors to get their debt. If the law does not provide the company to reserve those profits, the company may distribute all of its profits to be the dividends instead of paying the debt to creditor[90]. The amount of reserve fund is at least one-twentieth of the profits arising from the business of the company, until the reserve fund reaches one-tenth part of the capital of the company or such higher proportion thereof as may be stipulated in the article of associations of the company which specified in section 1202 paragraph 1 under Civil and Commercial Code (CCC).

When the company declares the dividends to the shareholders, such dividends shall belong to shareholders since the time that shareholders have the right to receive such dividends. The right to receive dividends shall occur once the company declares

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[90] Sungkom Horharin, The Explaination of Civil and Commervial Code on the Partnership and Limited Company (LA 2108), pp.186 – 190.

such dividends. After receive dividends, the shareholders have to pay Personal Income Tax (PIT) which specified under section 40(4)(b) and can claim for dividends tax credit [Corporate Income Tax (CIT) rate divided with the result of one hundred minus CIT rate which is equal to thirty divided with the result of one hundred minus thirty. It shall be equal to 3/7 and then multiply with the amount of dividends received] as specified in section 47 bis.

B. Problem of unfair tax treatment

The problem shall occur if the company declares dividends to its shareholders who are disqualified due to the prohibition of legislation or the articles of association or the other reasons. For example, the foreign investor is a shareholder in the Thai listed company, while the articles of association of such company provided that only Thai individual can receive dividends. Actually, the foreign investor in such listed company ~~with~~ has no intention to receive dividends from the company. The objective of the foreign investor is to make profit from the stock trading. Accidentally, foreign investor cannot sell such shares before the time that the Thai listed company declares dividends. He shall be considered as the disqualified shareholder because it is against the articles of association of the company and then cannot receive the dividends. The other example is Mr. A (Thais) holds the shares of company 123 and his name is in the shareholders' registration book. Actually, he has the right to receive the dividends but he was found to violate the Foreign Business Act by being the nominee of foreign investor, who hires him to hold the shares, in order to have the controlling power in the company. At first, the foreign investor held ten percent of shares of company ABC and later hired Mr. A to hold another forty five percent of shares. When the shares have been counted together, the number of shares held by the foreign investor will be fifty five percent of total shares of the company. In the present time, the foreign investor is the majority shareholder, so the power of control is in his hand. In this regard, Mr. A shall be considered as the disqualified shareholder and cannot receive dividends which paid by ABC Company because it is a prohibition of Thai legislation[91].

The dividends income shall be recognized when the company declares to the eligible shareholders, then the dividend's ownership shall be immediately transferred to such shareholders. On the other hand, if the company declares dividends but those dividends are not yet distributed to the shareholder due to the disqualification of the shareholders so that dividends are still belonging to the company and the company has no duty to pay dividends to such shareholder. Such accrued dividends are still belonging to the company and the company is required to record it in the company balance sheet as a liability of the company until the payment date; but in this case, there is no payment date because the company has no duty to pay. Therefore, such dividends shall not be treated as assessable income that the company acquires from the company's business operation as specified in Revenue Department Tax Ruling Number 0811/14765, dated on 28 October 1997, this is because such income has been paid from the company's accumulate profits which have been once subjected to Corporate Income Tax (CIT) according to section 65 of Revenue Code. If the Revenue Department considers such accrued dividends as the assessable income of the company, it shall be an excessive tax burden of the company to pay Corporate Income Tax (CIT) twice on the same type incomes.

It is an obligation of the government to manage tax legal system and tax implication in order to provide the fairness to the taxpayers. In this regard, taxes should be levied only to support a limited government and should satisfy four tax maxims according to Smith's theories which are equity, transparency, convenience, and efficiency.

The first of Smith's tax maxims is equity. It specifies that every taxpayer has to pay tax equal to other. The word equal does not mean the same amount of tax which paid in each time but instead it means the tax rate of each tax system has to be the same such as Corporate Income Tax and Personal Income Tax. Corporate Income Tax imposes on every juristic company, which specified under section 39 of Revenue

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[91] Sophon Rattanakorn, The Explaination of Civil and Commervial Code on the Partnership and Limited Company, pp.324 -325.

Code, at the same flat rate which is thirty percent. On the other hand, Personal Income Tax imposes on every natural person, which specified under section 39 of the Revenue Code, at the same progressive rate from five percent to thirty seven percent depending on each amount of income received.

For example; Company A earns income equal to ten million Baht per year. Company B, in contrast, earns income only one million Baht per year. Although incomes of both companies are different, the Corporate Income Tax Rate is the same which is 30 percent. However, this Revenue Department tax ruling is very conflict to this Adam Smith's tax maxim because it is unfair to the taxpayers who already pay tax once before distributing the dividends. After that, even such dividend have not yet distributed to the disqualified shareholders, the Authorities of the Revenue Department treated such accrued dividends as assessable income of the company which this company has to calculate such incomes to pay the Corporate Income Tax again.

The second of Smith's tax maxim is transparency. Tax must transparent to everyone. Each individual is bound to pay ought to be certain, not arbitrary, [clear and plain] on tax system[92]. Tax transparency shall prevent the unscrupulous or tax gatherers from undermining trust in the system. International economists view the creation of transparent rules for taxation as one of the most significant economic policy objectives for emerging economies.

The third of Smith's tax maxim is convenience or simplicity. "Every tax ought to be levied at the time, or in the manner, in which it is most convenient for the contributor to pay it[93]." Such time may be once a year or in the specified limit of time. In the Corporate Income Tax (CIT), the taxpayers must file tax return and pay such tax to the Revenue Department once a year which is in the ending of accounting period or twelve months period. On VAT system, the entrepreneur has duty to file tax return within the date of fifteenth in the following month. Other than the clearly date of tax payment, the revenue department also has the convenience e-tax registration system. For example, the entrepreneur can register themselves into VAT system via

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[92] Panit Therababwong, International Business Taxation, p.25.

[93] Ibid.

the internet. This e-tax registration facilitates the VAT taxpayer by reducing the time to wait the government process which normally takes long time.

Efficiency is the forth of Smith's tax maxim. "Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of a state[94]." This requires keeping administrative costs and economic distortions to a minimum. Economic distortions might obstruct the industry of business people and thereby prevent them from giving employment to great multitudes of people. The most efficient tax, according to Smith, would leave "the annual produce of the land and labor of society, the real wealth and revenue [of a nation] the same as before."

As mentioned earlier, regarding the declaration of the dividends, the dividends which are not yet distributed to the shareholder will still belong to the company and the disqualified shareholders will have no right to receive such dividends, thus, the said dividends still own by the company. When the company has the accrued dividends, the Revenue Department should rather consider such income as the accumulated profits of the company than as the assessable income of the company. In this prospect, the Accounting Standard's principle shall be applied to analyze this case.

C. Accounting Analysis

The accounting standard, which is a worldwide acceptable, has no specific accounting standard to recognized accrued dividends which is paid to the disqualified shareholders. The principle that applies in this case is the reflection of the truth. The dividends are distributed from the accumulated profits so when the company has no duty to pay such dividends to the disqualified shareholders. Such accrued dividends shall be returned to the source that it came from which is called "Accumulated Profits". When the disqualified shareholder cannot receive such dividends, it shall not be considered as a liability of the company. The said dividends are still belonging to the company. Although, the company has once announced to pay dividends to the

[94] Panit Therababwong, International Business Taxation, p.25.

disqualified shareholder, the company shall recognize such dividends as the undistributed accumulate profit.

In this sense, if section 65 of the Revenue Code (RC) is taken into the consideration, the income which shall be calculated to pay Corporate Income Tax (CIT) is the profits of the company. Such profits have to be the profits from the company's operating business or income arising out of the business carried on in an accounting period. In this regard, the accrued dividends are not the profits from the company's operating business or income arising from business, so such dividends cannot be treated as the income of the company and it is needless to recalculate Corporate Income Tax (CIT) with other income. But, such accrued dividends are merely the benefit arising from the Company Investment Contract which the company has to pay to the shareholders. Furthermore, The Revenue Department cannot treat such accrued dividend as income of the company because such dividends, by nature, cannot be deducted as expense of the company and that is definitely the cause of the double taxation.

D. Problem of Economic Double Taxation

It is unfair for taxpayers if the same incomes have to pay tax twice. However, this problem may occur, which is called Economic Double Taxation (EDT). The principles of Economic Double Taxation (EDT) are one or more persons have to pay tax more than one time with the same income. If this Economic Double Taxation (EDT) arises, the Revenue Tax authorities from the Revenue Department have to find any solution to fix it.

For Example, the company is responsible to pay Corporate Income Tax (CIT) on their net profits (pay tax in the first time) and then when the company declares dividends to the shareholders; such dividends income (the same income that has been taxed) shall belong to shareholders since shareholders have the right to receive the said dividends. After receiving dividends, the shareholders is obliged to pay Personal Income Tax (PIT) which specified under section 40(4) (b). It can be seen that the same income has to pay tax twice, so the Economic Double Taxation (EDT) occurs in this point.

The Revenue Tax authorities from the Revenue Department provided the solution to fix this problem by allowing an individual taxpayer to claim for dividends tax credit as specified in section 47 Bis. As has been seen, the Revenue Tax authorities from the Revenue Department provided the best solution to individual taxpayers who receive dividends which paid from the company; however, in the Tax Ruling Number 0811/14765, the authorities from the Revenue Department failed to consider the problem regarding Economic Double Taxation (EDT) and that is the cause of confuse occurred among the taxpayers.

Chapter 5
Conclusion and Recommendation

A. Conclusion

In the present time, the investment has spread into every part of the global. The goal of the investor is to gain the profit as high as he can. The company, which is divided into the Limited Company and the Public Company, is one form of investment vehicle which can be seen the most in every kind of business. The company consists of various parts such as the board of directors, shareholders and staffs. The paper shall focus on "the shareholders" who carry the vital roles in the company since the shareholders are the person who invests their money with the expectation to see the growth of the company.

It is definitely that the shareholders invest their money and expect to receive certain benefits in return. Such benefits of the shareholders are declared in the form of "dividends" of their shares.

Normally, the shareholders shall receive the dividends once a year. Before the declaration of dividends, the company has to pay tax at thirty percent from the net profit of the company. After the declaration, the ownership of such dividends shall be transferred from the company to shareholders of the company. At this stage, the dividends shall be deemed as the personal income of the shareholders in which they must calculate such amount of dividends with other incomes in order to pay Personal Income Tax (PIT) at the ratio of five to thirty seven percent in accordance with Section 40 (4) (b) of the Revenue Code (RC).

It can be apparently seen that such amount of dividends are subject to double tax since this amount of dividends is firstly taxed in the form of Corporate Income Tax (CIT) as the net profit of the company, and then the same amount of dividends is secondly taxed in the form of Personal Income Tax (PIT) as income of the shareholders. In other words, it can be concluded that the same income has been taxed twice.

The problem of this paper is regarding the dividends' declaration of the company to the disqualified shareholders, as stated in Revenue Department Tax Ruling Number 0811/14765. It is the tax ruling that decide to let the company to pay excessive tax burden. When the company declares the dividends to the shareholders who are disqualified from the prohibition of legislation or the articles of association or the other reasons, such dividends shall not be treated as assessable income of the company according to section 39 of Revenue Code (RC), but instead, it shall be returned to the company's accumulated profits because such dividends are still own by the company and the ownership of such shares still has not transferred to the disqualified shareholder; therefore, such dividends shall not be recalculated with other income of the company in order to pay Corporate Income Tax (CIT) again according to section 65 of the Revenue Code.

The Accounting Standards, such as TAS 37 or IAS 18, provided the same principle which aims to reflect the facts occurred from in the company. It shall be illustrated in the financial statement of the company whether which incomes shall recognize as the income of the company. This Ruling is also being a reflection of fact so it supposes to reflect the truth. Therefore, when the company has the accrued dividends, which are no longer being a company's liability, it should return to be the accumulated profits of the company. As long as the company still has the duty to pay dividends to the shareholders, the accrued dividends will be considered as the company liability. In contrast, in this case, the company has no duty to pay such dividends, so such dividends will belong to the company and it has to be returned to the accumulated profit as undistributed accumulated profit.

The Revenue Tax authorities from the Revenue Department treated accrued dividends as assessable income of the company instead of accumulates profits of the company. This tax ruling fails to comply with the good tax principles according to Adam Smith's theories. Therefore, the Revenue Department's tax authorities should find applicable solutions to fix this excessive tax burden in order to remove the unfairness occurred to the company.

B. Recommendation

With my respect to the honor of The Revenue Department, I would like to suggest the solution that I considered it is the best and applicable solution to fix this problem. The Revenue Department should take the Accounting Standard into the consideration, particularly TAS and IAS, in order to make this tax ruling to satisfy tax maxims from Adam Smith's theories. Therefore, the Revenue Tax Authority from the Revenue Department should treat such accrued dividends as the accumulated profits of the company rather than consider as assessable income of the company; this is because the accrued dividends are distributed from the accumulated profits of the company. When the disqualified shareholders cannot receive such dividends, the company then has no duty to pay dividends to such shareholders. In this sense, the company still owned such dividends and it is no longer to be a liability of the company to declare dividends. Such dividends should be returned to the accumulated profits as undistributed accumulated profit in order to avoid the Economic Double Taxation (EDT). Thereafter, such dividends shall not be recalculated with other sources of incomes from the company's business in order to pay Corporate Income Tax (CIT).

Appendices

Appendix A

Appendix A
Revenue Department Tax Ruling Number 0811/14765, Dated on 28 October 1997

Tax Ruling 0811/14765

Date: October 28, 1997

Issue: Corporate Income Tax in Transferring of Accrued Dividend

Fact: The Company has declared dividends to its shareholders by distributing from the company's net profits. The Company already recognized and recorded such dividends declaration according to accrual basis. There are some company's shareholders who are disqualified to receive dividends so the accrued dividends shall be shown in the company's account because the company is not bound to pay such dividends to disqualified shareholders. The company understood that the accrued dividends, which paid from the company's net profit, cannot pay due to the shareholders are disqualified to receive dividends. The company has the right to transfer such amount of money from the accrued dividends to the undistributed accumulate profits, subject to the approval of the general meeting of shareholders. The general meeting agreed to consider such amount of money as the company's accumulate profits which have been once subjected to Corporate Income Tax from the net profit of the company; therefore, the company is not necessary to recalculate such amount of money to pay Corporate Income Tax as the second time. The company would like to ask whether the company is necessary to calculate such amount of money with other net profits of the company to pay the Corporate Income Tax according to section 65 of Revenue Code or not?

Tax Ruling: In case that the company transferred the accrued dividends due to the company cannot pay dividends to the shareholders who are disqualified to receive dividends to the undistributed accumulate profits from the above fact. The said dividends must be treated as income from business operations, so the company is required to calculate such amount of money with other company's net profits to pay Corporate Income Tax according to section 65 of the Revenue Code.

Appendix B

Appendix B

Tax Rates for Thai Personal Income Tax (PIT)

Figure 1: Personal Income Tax Rate

Taxable Income (Baht)	Marginal Taxable Income (Baht)	Tax Rate (%)
0 -150,000	150,000	exempt
150,001 -500,000	350,000	10
500,001 - 1,000,000	500,000	20
1,000,001 - 4,000,000	3,000,000	30
4,000,001 and over		37

Tax Rate for Thai Corporate Income Tax (CIT)

Figure 2: Corporate Income Tax Rate

Taxpayer	Tax Base	Tax Rate (%)
1. Small company	Net profit not exceeding one million baht	15
1. Small company	Net profit over one million baht but not exceeding three million baht	25
1. Small company	Net profit exceeding three million baht	30
2. Companies listed in Stock Exchange of Thailand (SET)	Net profit for first three hundred million baht	25
2. Companies listed in Stock Exchange of Thailand (SET)	Net profit for the amount exceeding three hundred million baht	30
3. Companies newly listed in Stock Exchange of Thailand (SET)	Net Profit	25
4. Company newly listed in Market for Alternative Investment (MAI)	Net Profit for first five accounting	20
4. Company newly listed in Market for Alternative Investment (MAI)	Net Profit after first five accounting periods	30
5. Bank deriving profits from International Banking Facilities (IBF)	Net Profit	10
6. Foreign company engaging in international transportation	Gross receipts	3
7. Foreign company not carrying on business in Thailand receiving dividends from Thailand	Gross receipts	10

Taxpayer	Tax Base	Tax Rate (%)
8. Foreign company not carrying on business in Thailand receiving other types of income4 apart from dividend from Thailand.	Gross receipts	15
9. Foreign company disposing profit out of Thailand.	Amount disposed.	10
10. Profitable association and foundation.	Gross receipts	2 or 10

Appendix C

Appendix C

Tax rates for United States resident taxpayers

Figure 1: Tax rate for single taxpayer's tax status

If taxable income is over--	But not over--	The tax is:
$0	$7,825	ten percent of the amount over $0
$7,825	$31,850	$782.50 plus fifteen percent of the amount over 7,825
$31,850	$77,100	$4,386.25 plus twenty five percent of the amount over 31,850
$77,100	$160,850	$15,698.75 plus twenty eight percent of the amount over 77,100
$160,850	$349,700	$39,148.75 plus thirty three percent of the amount over 160,850
$349,700	no limit	$101,469.25 plus thirty five percent of the amount over 349,700

Figure 2: Married Taxpayers Filling a Joint Return and Surviving Spouses

If taxable income is over--	But not over--	The tax is:
$0	$15,650	ten percent of the amount over $0
$15,650	$63,700	$1,565.00 plus fifteen percent of the amount over 15,650
$63,700	$128,500	$8,772.50 plus twenty five percent of the amount over 63,700
$128,500	$195,850	$24,972.50 plus twenty eight percent of the amount over 128,500
$195,850	$349,700	$43,830.50 plus thirty three percent of the amount over 195,850
$349,700	no limit	$94,601.00 plus thirty five percent of the amount over 349,700

Figure 3: Married Filing Separately

If taxable income is over-	But not over--	The tax is:
$0	$7,825	ten percent of the amount over $0
$7,825	$31,850	$782.50 plus fifteen percent of the amount over 7,825
$31,850	$64,250	$4,386.25 plus twenty five percent of the amount over 31,850
$64,250	$97,925	$12,486.25 plus twenty eight percent of the amount over 64,250
$97,925	$174,850	$21,915.25 plus thirty three percent of the amount over 97,925
$174,850	no limit	$47,300.50 plus thirty five percent of the amount over 174,850

Figure 4: Head of Household

If taxable income is over--	But not over--	The tax is:
$0	$11,200	ten percent of the amount over $0
$11,200	$42,650	$1,120.00 plus fifteen percent of the amount over 11,200
$42,650	$110,100	$5,837.50 plus twenty five percent of the amount over 42,650
$110,100	$178,350	$22,700.00 plus twenty eight percent of the amount over 110,100
$178,350	$349,700	$41,810.00 plus thirty three percent of the amount over 178,350
$349,700	no limit	$98,355.50 plus thirty five percent of the amount over 349,700

Appendix D

Appendix D

Thailand Accounting Standard (TAS 37)

The adjustment the accounting net profits to be taxable net profits

Case	Accounting net profits more or less than Taxable net profits	Deducting or Adding items in PND 50
1. Investment in other company which no power of control in such company - Receive Dividends	Equal to taxation net profit but have to consider the Section 65 bis (10) Conditions of section 65 bis (10) 1. no exemption to dividends received 2. half of exemption to dividends received 3. full exemption to dividends received	Equal to accounting net profit Deducting or Adding item shall depend on the section 65 bis (10) Conditions of section 65 bis (10) 1. no adjustment 2. half deduct 3. full deduct

Case	Accounting net profits more or less than Taxable net profits	Deducting or Adding items in PND 50
2. Investment in other company and have power of control in such company		
- when the invested company has net profits	Accounting net profits are higher than Taxable net profits	It has to fully deduct according to Section 65 bis (3)
- When the invested company declares the dividends	Accounting net profits are less than Taxable net profits. It is not recognize as the dividend incomes in accounting methods because it is the decreasing of investment account. Then, it shall consider the conditions in Section 65 bis (10)	It is the adding items and shall take the received dividends to calculate taxable net profits. The conditions of section 65 bis (10) shall take into the consideration
3. Investment in other company which is promoted by Board Of Investment	Accounting net profits are less than Taxable net profits	It has to fully deduct

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