Independent Study Paper Title : The Problems of Conflict between Unilateral and Bilateral Reliefs under Thai Income Taxation Law
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ABSTRACT

The jurisdiction to impose tax is based on two principles to classify one country's authority; 'Source principle' and 'Residence principle'. When a source country and resident country have the authority to tax, this is similar for income and profit, that means income will be taxed at two or more times, once from the source country and another time from the country of residence, may it be the income or profit, both ways it result to injustice to the taxpayer. This is known as 'Double Taxation'.

Double Taxation Agreement (DTA) is one measure to eliminate or relief double taxation by accede agreements on tax treaties with the contacting countries who will be deciding on a solution for double taxation incurring between two or more countries, that is known as a bilateral relief measure. The other measure is Unilateral Relief, which can be a policy of a state country to eliminate double taxation to protect their residence from being taxed more than one time from the in the source country.

Thailand is using both, unilateral and bilateral relief measures. Unilateral relief is stipulated in the Royal Decree No.300 B.E.2539 for elimination of double taxation on income that was already taxed in another foreign country or Section 3 of the Royal Decree No.442 B.E.2548 to exempt on dividend income that was taxed in another foreign country to be expensed again under the Revenue Code to provide measure for relief double taxation. Studies have revealed that the use of bilateral relief in connection with unilateral relief remained several issues and loopholes, particularly, when it came to control among limits on tax credit when taxpayer uses the unilateral method and there are no restriction used for bilateral measures where attempts to use the unilateral relief measures to gain benefits follows. There should be limitations to control the use of unilateral tax relief, which at the same time, are harmful to the principle of neutrality of the international taxation system.

This research focuses on analyzing cases using Royal Decree No. 300 B.E. 2539 and Royal Decree No. 442 B.E. 2548.

Firstly, the problem of the formulation **(A × C = Foreign Tax Credit)** under the Royal Decree No. 300 B.E. 2539, that provides tax privileges along with tax credit through formulation of DTAs, formula ($\frac{A}{B} \times C$ = **Foreign Tax Credit)**, mostly revealed problems on CIN and CEN by Thai investors.

Secondly, the Royal Decree No. 442 B.E. 2548 has found the problem of provides tax privilege excessively of tax exemption about dividend was received from foreign country in case of non-negotiate DTAs with Thailand. Over exemption on dividend was received from receiving full tax exemption, under Tax Ruling of Revenue Department of MF.0706 (KM.04)/883 which regulate on withholding taxes in a foreign country can be used for deductible expenses.

In addition, to specify on unilateral tax relief without restraint, arbitrary or without the axiom of international treats unsuitable. Inevitably, losing on tax revenue of Thailand and claim be harmfully to stability in investment opportunity to Thai investors to have expanded their business to aboard, especially where no negotiating country is party to the Double Taxation Agreement (DTAs) with Thailand, which could increase the chance of expanding new market in the in international economy.