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

Rattasapa Chureemas

Abstract

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

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

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

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

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

*Mr. Rattasapa Chureemas obtains a Master Degree in Taxation Law (International Program) fromGraduate School of Law, Assumption University. Currently he is working as a Lecturer in School of Law, Assumption University, Thailand. He is a Doctor of Laws (Candidate) in Graduate School of Law, Rangsit University, Thailand.

Keywords: Unilateral, Bilateral Tax relief, Tax credits, Tax exemption

INTRODUCTION

In practice, Thailand adheres to a dualism between international law and national law. Dualism or dualists emphasize the difference between national and international law. Without translation international law does not exist as law. If a state accepts a treaty, but does not adapt its national laws in order to conform to the treaty or does not create a national law explicitly incorporating the treaty, then it violates international law. The jurisdiction to impose taxes is based on two principles; the Source Principle and the Residence Principle. Under the "Source Principle", a country claims to tax income based on the country's relationship to that income. For example, a country would invoke the source principle to tax income derived from the extraction of mineral deposits located within its territorial boundaries. Under the "Residence Principle", a country's claim to tax income based on its relationship to the person deriving that income. For example, a country would invoke the residence principle to tax wages earned by a resident of that country without reference to the place where the wages were paid. The Residence Principle is used mainly to impose taxes on the worldwide income of a country's residents or citizens. Thereby, a tax burden arises when income or profit has incurred on the relationship of the income to the taxing country or the relationship of the taxpayers to the taxing country based on residence or citizenship. So, when both the source country and country of residence have authority to tax the same income or profit, it means the income will be taxed at two or more times, once by the source country and additional time by the country of residence. Whether it be the income or profit, in either case it results in an injustice to the taxpayer.

The Double Taxation Agreement (DTA) was created for the purpose of resolving this problem. Where a single earned income is being taxed two or more times, the DTA created a method for solving this problem by using a method to reduce the double taxation or eliminate one of the taxes. However, in a globalized economy, we have a double tax burden in two categories: Economic Double Taxations and Jurisdictional Double Taxation.

The Double Taxation Agreement (DTA) attempts to find a way to eliminate double taxation by using various relief methods, for example; tax deductions, tax credits, tax exemptions, or tax sparing. However, it does not provide a perfect way to resolve all double tax burdens, it depends on the situation, traditions, or circumstances found in each country which attempts to use a particular method in terms of whether that method is appropriate and mostly beneficial to that country. Nevertheless, the Double Taxation Agreement (DTA) is one measure to eliminate or provide relief to double taxation by acceding the agreement on tax treaties with the contacted countries that will decide the methods of relief for the double taxation which is incurred in both countries or more, which is also known as a measure of bilateral relief. The second one is unilateral relief, which is the policy of one country to help their residents to eliminate the payment of double taxation or being taxed in the source country.

Thailand is using both, unilateral and bilateral relief measures. Unilateral relief is stipulated in Royal Decree No.300 B.E.2539 for the elimination of double taxation on income that was already taxed in another foreign country or Section 3 of Royal Decree No.442 B.E.2548 to exempt dividend income that was taxed in another foreign country to be expensed again under the Revenue Code to provide a measure for relief from double taxation. Studies have revealed that several issues and loopholes remained in the use of bilateral relief in connection with unilateral relief, particularly, when it came to control of limits on tax credit when a taxpayer uses the unilateral method and there are no restrictions 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.

Although, Thailand has these two measures that relieve the burden of double taxation, both have some confusing to understand regulations and may provide some conflict between using them for tax burden relief in terms of practical application. Even though, Royal decree No.300 B.E.2539 and Royal Decree No. 442 B.E.2548 are both domestic regulatory policies that introduced unilateral tax relief, there are no restrictions that determine the position of a taxpayer who has first used the bilateral method and then attempts to use the unilateral method, as well, to gain even more benefits. The international tax relief rule should apply only to one method, either unilateral or bilateral, for each case. Especially, it should have a limitation to control the using of unilateral tax relief measures so that domestic policies can be easier to determine rather than made as part of the negotiation process in bilateral agreements.

For example, a Thai resident is operating a business in Thailand under the Thai Civil and Commercial Code. The company runs businesses in Vietnam, which has also signed a DTA with Thailand. When this company in Vietnam earns income, the company has to pay taxes in Vietnam under the Source Principle and receives a tax certificate. Consequently, this Thai company attempts to claim a tax credit under Section 47 bis of the Revenue Code. Thailand and Vietnam have a DTA to eliminate the income earned in Vietnam, therefore, the income already taxed in Vietnam and claimed by the taxpayer for a tax credit under the DTA. However, this Thai company can still be taxed by using Royal Decree No. 300. In this situation, it illustrates that Thai regulations still have some gaps or loopholes that may confuse when determining the tax relief method between bilateral reliefs under a DTA and unilateral reliefs under domestic policy.

In other cases, Thai investors who invest in a foreign country may receive income from that foreign country that is between income "negotiated on a DTA and un-negotiated on a DTA". The calculation method of foreign tax credits is different, because calculation under DTA provides less credit than calculation under Royal Decree No. 300. That difference distorts and can cause a problem for neutrality in taxation.

The Unilateral Relief measure conducted in one way only and can only be carried out by the government. In the case of a source country or residence country, the government should design a domestic law to eliminate double taxation of income which is taxed in other countries, without needing to enter a negotiated agreement (Double Taxation Agreement) with those countries.

This approach is quite successful; however, the confidence of the investors, particularly international investors, and even local investors is low because the domestic law to eliminate double taxation can be canceled at any time depending on the current government's policy preferences. Nevertheless, unilateral relief measures are considered to be a necessity to any country that aims to reduce double taxation for taxpayers of that country. However, a country or taxpayer cannot only looking to eliminating double taxation agreements as a solution; therefore, it requires a process to design an effective long-term agreement that is successful when applicable.

The methods of unilateral relief that are internationally accepted, consist of; 1) providing regulations on **Tax Exemption** for income incurring in another country, 2) regulating domestic laws that refer to being taxed in another country, and turning them into **Foreign Tax Credits** when calculating the taxes in the home country.

Bilateral Relief is a method used through international cooperation between two countries by negotiating a 'Bilateral Treaty' or Double Taxation Agreement (DTAs) between the residence country and the source country. DTAs were created to resolve the problem, where a taxpayer who has earned income from one country, but is being taxed two or more times in different countries for different reasons. DTAs were created as a method for solving this problem by reducing or eliminating the tax burden in the countries where it is taxed.

The Problem of the Study

Although, Thailand has these two measures that relieve the burden of double taxation both are difficult to understand and therefore apply. Even though, Royal decree No.300 B.E. 2539 and Royal Decree No. 442 B.E. 2548 are both domestic regulatory policies that introduced unilateral tax relief, there are no restrictions that determine the position of a taxpayer who uses the bilateral method and then subsequently attempts to use the unilateral method as well in order to gain more benefits. The international tax relief rule should apply to only one method, either unilateral or bilateral, per case. Especially, it should have a limitation to control the using of unilateral tax relief measures so that domestic policies can be more easily determined.

For example, and this case occurred in reality, a Thai resident is operating a business in Thailand under the Thai Civil and Commercial Code. The company runs businesses in Vietnam, which also has signed a DTA with Thailand. When this company in Vietnam earns income, it has to pay taxes in Vietnam under the Source Principle and receive a tax certificate. Consequently, this company attempts to claim a tax credit under Section 47 bis of the Revenue Code. So, Thailand and Vietnam have a DTA to eliminate the income earned in Vietnam, therefore, the income taxed in Vietnam can be claimed by the taxpayer as a tax credit for tax already paid under the DTA. However, in a situation where the Vietnam' Revenue Department's provided certificate stating tax already paid in withholding taxes to Thai company, and the Thai company can still receive a tax privilege by using Royal Decree No.300. In this situation, it is illustrated that our regulation still have some gaps or loopholes that may cause confusion when determining the tax relief method when choosing between bilateral relief under a DTA or unilateral relief under domestic policy.

In other cases, Thai investors who invest in a foreign countries may receive income from those foreign countries that is between income categories "negotiated on a DTA and un-negotiated on a DTA". The calculation method of foreign tax credits is different, because calculation under a DTA provides less credit than calculation under Royal Decree No. 300, which distorts and can cause a problem in terms of neutrality in taxation.

The main objective of unilateral and bilateral relief measures is to eliminate the burden of double taxation that occurs when a taxpayer has been taxed for one income or profit more than one time from more than one country. With this objective in mind, measures to eliminate double taxation should be related to one another, meaning, that the relief of Unilateral and Bilateral measures should be in coexistence with one another, and should not collide in providing tax privileges Additionally, they should be in consistent with each other.

Unilateral and Bilateral relief measures should provide tax privileges that relieve the burden of double taxation. At the same time, a taxpayer can only benefit from such measures if they fall under the conditions of unilateral and bilateral relief measures that allow for such tax privileges.

In principle, tax privileges, by both unilateral and bilateral measures should have equal capacity to elimination the burden of double taxation, if they are not to be used together since they could overlap in the tax privileges that one may be able to obtain which may even be damaging to investment that requires Capital Import Neutrality (CIN) and Capital Export Neutrality (CEN) in international economics.

The Problem of non-parallel Tax Privileges in the Unilateral Reliefs under Royal Decree No.300 B.E. 2539 and Bilateral Relief of DTAs

Royal Decree No. 300 B.E. 3539, has the purpose of eliminating double taxation occurring for Thai investors when doing business in a foreign country, in case where a foreign country is not a signatory to the double taxation agreement (DTAs). Unilateral relief measures that have been adopted are tax credits or tax exemptions for investors in Thai investments.

Therefore, unilateral measures under Royal Decree No. 300 should be in coexistence with other measures by eliminating double taxation in the same way that DTAs would indicate they be eliminated. It should take into consideration Thai investors who have been doing business and invested in foreign countries. The terms and conditions should be deliberated between foreign source countries and they should be able to come to an agreement what measures should be used to eliminate the burden of double taxation. Foreign source countries should be receiving the equal benefit of tax privilege for the promotion of eliminating the burden of double taxation by the use of a unilateral relief measure that is stipulated in Royal Decree No. 300 and in the DTAs. At the same time, this should not be opposed to the principle of unilateral and bilateral relief measures.

This might provide an unparalleled tax privilege to investors and may violate capital import neutrality (CIN) and capital export neutrality (CEN), because of the non-neutrality of the calculation of the amount of tax credit. Because the calculation method of foreign tax credit in both types of tax relief measures is different, unilateral relief measures aim to replace DTAs in countries where there is no DTA with Thailand. In principle, unilateral relief measures can only be used on income received in Thailand, not on income from countries where Thailand is a signatory party to a DTA.

The problem with calculating the amount of foreign tax credit available using both Royal Decree No.300 and DTAs has not been undertaken in a parallel fashion. Royal Decree No. 300 has provided a tax credit method using the following formula:

(A × C = Foreign Tax Credit)

Where A is Net Profit and C is the Tax Burden in Thailand (rate of taxation).

The total amount of earned income in that foreign country will be multiplied by the tax rates which will result in the amount of foreign tax credit for that company that will be deductible in Thailand. Foreign tax credit as bilateral relief measures uses a different calculation method.

Bilateral relief measures comply with the OECD model and the UN model depending on the negotiated parties, whether developed or developing country, to preserve an international standard on foreign tax credits. Thailand is more in favor of using the UN model. The following formula is used for the calculation on foreign tax credit when Thailand is negotiating conditions of a DTA with other countries;

($\frac{A}{B} \times C$ = Foreign Tax Credit)

Where A is Net Profit, B is World wide income, and C is the Tax Burden in Thailand.

It calculates the total income amount earned in a foreign country, divide the number with the total amount of income that a company has earned as worldwide income, and multiplies it by the tax rate in Thailand. The final amount will be the foreign tax credit that was earn by that company and is deductible in Thailand.

Even though, the calculation of foreign tax credit under unilateral relief measures (Royal Decree No. 300) and bilateral relief measures (DTA) as we can see, provides different formulas to find the amount of tax credit to be deductible from total income of a Thai company, this method provides the amount of foreign tax credit to Thai investors over the benefit that a DTA may provide. Royal Decree No. 300 does not contain a regulation that divides the worldwide income, as DTAs require.

Assume that there are two Thai investor companies, A and B, which want to invest in foreign countries. Company A has invested in Kazakhstan which has no negotiated tax treaty (DTA) with Thailand. Therefore, in the 2014, tax year, Company A has earned an income from Kazakhstan totaling about 100 million Baht. Because Kazakhstan and Thailand have not concluded a DTA, Company A may have to carry the burden of being taxed twice on income earned in Kazakhstan which is taxed in Kazakhstan (assume Kazakhstan has a corporate income tax rate is 20%) with a total tax liability of about 20 million Baht. After that, Company A has to pay taxes to Thailand based on the worldwide income principle, where in 2014, it earned about 100 million Baht, and therefore, the tax liability in Thailand is approximately (assume Thailand has a corporate income tax rate of 25%) 25 million Baht. Hence, Company A carries a tax burden of 45 million Baht. However, Royal Decree No. 300 provides for foreign tax credit as a unilateral relief measure, Company A is entitled to a tax credit (total income earned from

Kazakhstan × Thai corporate income tax rate = foreign tax credit, 100,000,000 × 0.25 = 25 million Baht). The end result is that Company A has to pay taxes of 5 million Baht (for the reason that a tax was already paid on the income in a foreign and can be converted into a foreign tax credit, depending on the restrictions set for the total tax rate in Thailand, 25 million Thai tax liability – 20 million foreign tax credit = 5 million Baht liability).

In another case, Company B invests in the Republic of Korea (South Korea). A DTA has been negotiating to eliminate the burden of double taxation with Thailand. This has been put into force beginning on June 29, 2007. In the 2014 tax year, Company B has earned an income of about 100 million Baht from South Korea and owes South Korea 20 million Baht in taxes. For Thailand, the tax burden would be 50 million Baht (assume that company B has a worldwide income of 200 million Baht which would make the tax liability = 0.25 X 200 million). The total amount of tax burden for company B would be 70 million Baht. However, Thailand and South Korea have signed a DTA to eliminate double taxation by using the ordinary tax credit method which would be 25 million Baht ((100 income in Korea ÷ 200 worldwide income) × 50 Thai tax liability on worldwide income = tax credit of company B of about 25 million Baht). Then total amount of tax to be paid in Thailand would be 25 million Baht (50 of worldwide income – 25 of tax credit = 25).

The Revenue Department, nevertheless, has a tax ruling principle stipulated in the Ministerial Regulation MF 0706/10858 dated December 28th, 2005 which provides the standard regulations, and the methodology for selecting a method to relief for the burden of double taxation as a resident of Thailand. Taxpayers will have to select to either deduct expenses by means of bilateral tax relief measures under the Double Tax Agreement (DTA) or unilateral tax relief based on Royal Decree No. 300 B.E. 2539, in which it is devised to use one method per country, meaning, that a third relief measure cannot be chosen to reduce the burden of double taxation in another country. With this position, several issues occur, from why the amount of foreign tax credits differ in each country, for countries which have entered into a DTA with Thailand and which countries have not signed DTAs with Thailand.

Comparison of formula to calculate tax credit for relief of tax burden between the Unilateral (Royal Decree No. 300) and Bilateral (Ordinary Tax Credit) relief measures

(Unit: Million Baht)

Item	Royal Decree No. 300	Ordinary Tax Credit (DTA)
Foreign Income	100	100
Foreign Taxed *(Assume20%)*	(20)	(20)
Net Profit	100 * *assume has only foreign income*	100 * *From foreign income*
Worldwide Income	- *Not consider to calculate*	100 (TH) 200
Thailand Tax Burden, Before deducting tax credit *(Assume 25% tax credit)*	25	50
Tax Credit	20 *Full tax was paid in foreign country, not more than tax paid in Thailand.*	25 *from calculate with;* $\frac{100}{200} \times 50 = 25$
Tax was Paid to Thailand *(Tax Burden – Tax Credit)*	5 *Based on this calculation: (25 – 20)*	25 *Based on this calculation: (50 – 25)*
Total Tax Burden	25	45

Likewise, the above comparison table reveals that both Thai companies, Company A and Company B, should receive the same amount of tax credit using the unilateral and bilateral relief measures provided to lessen the burden of double taxation. Especially where unilateral relief measures have used when the bilateral measures focus within a foreign source country that has not signed a negotiated agreement on dealing with double taxation. In addition, that makes losses of state's revenue from providing the amount of the tax credit based on Royal Decree No. 300 redundant, compared with the tax privilege provided from a Double Taxation Agreement.

Moreover, international taxation has a concept of neutrality, which is important as well. Neutrality on capital export in relation to taxation shall mean equal treatment for all taxpayers, as well as, not distorting the idea for investors to make investment. Therefore, measures of unilateral and bilateral tax relief are a part of international taxation, which eliminates the tax burden for double taxation. Royal Decree No. 300 provides a higher amount for foreign tax credit when compared to DTA that can be easily and naturally distorted when Thai individuals or companies want to invest in a foreign country, as has been explained in the two examples above. Additionally, the unparalleled level of Royal Decree No.300 on the amount of tax credit and Double Taxation Agreement might obstruct the expansion of Thai investors to invest aboard.

Therefore, it can be seen that there has been inequality in granting tax privileges, particularly the benefits regulated in Royal Decree No.300 that gives more tax credit to tax payers than the DTA does and the government will lose revenue that would have come from collecting excessive taxes because a higher tax credit will mean that the government can collect lower tax revenues.

The Problem of Lacking a Provision Regarding Unilateral Relief in Royal Decree No. 300 B.E. 2539 and Royal Decree No. 442 B.E. 2548

The regulations on unilateral relief measures that have been stipulating the methods in the royal decrees is unclear and can cause confusion in the enforcement process, which seems to create a gap in the tax system. In some cases, this gap may lead to the extent where the excessive use of tax benefits may actually damage investments. Solving this problem would not only conform to the purpose of the taxes, but also eliminate some or all tax liabilities that ought to be paid to the source country. The researcher will separate the two parts of the problems in relation to Royal Decree No. 300 and Royal Decree No. 442.

Royal Decree No. 300 B.E. 2539 and the tax ruling approach introduced by the Revenue Department, MF 0706/10858, dated December 28th, 2005, give taxpayers three channels they can select from to address the issue of double taxation. That would mean that the 3 channels should work well with one another, since they serve the same purpose which is the elimination of double taxation in similar ways. However, MF 0706/10858 rules that only one channel can be used to eliminate the double taxation problem of each country in that tax year.

To begin with, the first loophole that Royal Decree No. 300 contains is that in regard to relief double taxation, there is no clear set of instructions on what the process should look like. Once a taxpayer has received the tax privilege under the Double Taxation Agreement (DTAs) they are prohibited from using Royal Decree No. 300 the next time.

One example where it has become an issue is when a Thai company invested in Vietnam with one permanent establishment and they had earned income on service fees from Vietnam. The Revenue Department of Vietnam has taxed using withholding taxes from that Thai company of about 15% and provides a withholding tax certificate in Vietnam to Thai companies. Therefore, the Thai company remitted the withholding tax certificate from Vietnam to the Thai Revenue Department in order to receive foreign tax credit under Royal Decree No. 300 B.E. 2539. The tax was paid in a foreign country, 15% withholding tax has already been paid to Vietnam; the Thai Revenue Department provides a foreign tax credit under Royal Decree No. 300 of 15 % to this Thai company. However, Thailand and Vietnam have signed a negotiated Double Taxation Agreement (DTA) between The Kingdom of Thailand and The Socialist Republic of Vietnam for Avoidance of Double Taxation, and Article 7 of the DTA, regulates that the service fee is deemed as Business Profit in paragraph 1 and is not subject to tax liability in Vietnam, so this Thai company used this clause to claim to the Vietnam Revenue Department that it has not been authorized to tax those service fees.

In this situation, Thailand has lost income from taxes that have derived from a source country, which happens due to negligence and lack of understanding of the process in Royal Decree No. 300. This has caused tremendous damages to the Thai tax system. The loopholes also provide double tax privileges from unilateral and bilateral relief measures. It is crucial to consider amending the regulations on unilateral tax relief, as it has been distinct issue, and has systematically damaged the income cash flow of Thailand from taxable income to an extreme and excessive degree.

The second loophole is found in Royal Decree No. 442, the elimination method for double tax burden on dividends to Thai residents who have received dividends from foreign countries in cases of unsigned DTAs with Thailand, by using the tax exemption method on dividends which were taxed in a foreign country, for not remitting dividend income which was received from a foreign country and taken into account to calculate the net profit for the purpose of determining the tax to be paid to the Thai government.

An analysis of the regulations of Royal Decree No. 442 and according to the Tax Ruling of Revenue Department of MF.0706 (KM.04)/883, which provides tax privilege to Thai investors using a double step process to claim the privileges. Step number one, Royal Decree No. 442 has a rule on tax exemption on dividends received from foreign countries under its regulations. Step number two, taxpayers who receive dividends from foreign countries, in cases where they have been taxed with a withholding tax of 15 percent of the total dividend income, paid to the foreign country. Ruling MF.0706 (KM.04)/883 provides 15 percent of withholding tax for foreign countries that cannot be exempted under Royal Decree No. 442. However, the Ruling provides that deductible expenses under Section 65 bis of the Revenue Code section 65 bis not be prohibited in Section 65 ter. Royal Decree No. 442 describes the exemption methods for eliminating double taxation by unilateral relief measures. This method prevents claiming privileges for more than would be claimed using the tax credit method under Royal Decree No. 300 where just some part of the tax burden will be eliminated, however, the exemption does not cover the tax burden related to dividends that have not been calculated in existing Thai tax law. Consequently, the question of why does the Revenue Department provides more privileges, namely, 15 percent on withholding taxes that have been taxed in foreign countries to certain kind of positions, where deductible expenses of net profit can be taxable. Therefore, providing tax exemption under Royal Decree No. 442, that has sufficient tax privileges using the tax exemption method, to prevent withholding taxes from being considered as deductible expenses. Considering them as deductible expenses would be excessive privileges to tax by the elimination method, under Royal Decree No. 442 and according to the Ruling of Revenue Department of MF.0706 (KM.04) / 883, which states that it is inappropriate to provide double benefit to full eliminate a tax burden that was received by thetax exemption method.

This clearly illustrates that there is a loophole in the taxation system that creates redundancy to the tax privileges from exemption on the income and providing deductible expenses on withholding taxes. Surely, the principle of fairness, equity, and neutrality for Thai investors is crucial when adopting a DTA and the unilateral relief measures that could completely affect the taxation system.

CONCLUSION

The Conflicting Issues between Unilateral and Bilateral Relief methods under the Thailand Taxation Law' focus on the analysis of eliminating the double taxation burden when the income of the companies or entities has been derived from both cross-border source jurisdictions and residence jurisdictions. This research studied international taxation between two or more countries, which is part of public international law, in order to study the statuses and connections between the states. The research concluded that according to international taxation law, there are three types of methodologies that can eliminate a double tax burden, namely; unilateral tax relief, bilateral tax relief, and multilateral tax relief. This research considers the popularity of tax reliefs and what is being used in Thailand, which is both unilateral and bilateral tax relief. Each tax relief method, whether it is unilateral or bilateral should be working in accordance with the principles of a coexisting network, equity, and neutrality while also focusing on Thai taxpayers who directly receive the tax privileges to eliminate double taxation.

The study further revealed that there is some ambiguity in the principles and methodologies regarding unilateral tax relief, not only were they complex to be use but they also caused legal gaps. This also led to loss of revenue for the government from taxes. Further, it led to the problem of loss of equity in taxation and caused non-neutrality in economy and investment in Thailand. In this research, the researcher focused on the problems created by the confusion resulting from trying to use both Royal Decree No. 300 B.E. 2539, and Royal Decree No. 442 B.E. 2548 simultaneously.

Firstly, Royal Decree No. 300 B.E. 2539, would have to certify the foreign tax credit method in the formula **(A × C = Foreign Tax Credit)**, calculated from (total amount income earned in foreign country (×) Thai tax rate =

foreign tax credit), while looking at the foreign tax credit method of DTAs which use the formula of **($\frac{A}{B} \times C$ = Foreign Tax Credit)**, which was calculated by using the total amount of income earned in a foreign country (÷) the total amount of worldwide income (×) amount of Thai tax = foreign tax credit. Therefore, Royal Decree No.300, that mainly focuses on the elimination of double taxation, on income where there was not signed DTAs with Thailand, should not provide tax privileges more than foreign tax credits under the formula for calculation under the DTAs method. This has led to the belief that this difference in calculation has caused a distortion to investors who invest in a country where a DTA is present, as compared to a country where no DTA has been made. These differences have wiped out neutrality.

Secondly, the study on Royal Decree No. 442 B.E. 2548 has revealed the problem of providing excessive tax privileges by the use of tax exemptions related to dividends which were received from foreign countries in the case of countries with no DTAs with Thailand. Over-exemption on dividends was received from receiving full tax exemption, under the Tax Ruling of Revenue Department of MF.0706 (KM.04)/883 which regulates withholding taxes a foreign country takes from a company that can be used for deductible expenses under Revenue Code section 65 bis, that are not prohibited in section 65 ter. This calculates the net loss and profit for taxes paid to Thailand, and allows an excessive measure of tax exemptions, which lowers the tax liability owed to Thailand after using the exemption method.

Nevertheless, whether it is unilateral tax relief under Royal Decree No. 300 B.E. 2539, Royal Decree No. 442 B.E. 2548, or any other act, there should be specification on appropriate measures to prevent them from being arbitrarily used. Considering specific unilateral tax relief without connecting it to bilateral relief should be in accordance to the principals of capital import neutrality (CIN) and capital export neutrality (CEN).

In addition, to specify unilateral tax relief without restraint, arbitrariness, or without the axiom of international treaties is unsuitable. Inevitably, losing tax revenue can become harmful to the stability of investment opportunities made available to Thai investors who have expanded their business to foreign countries, especially where there has been no negotiated Double Taxation Agreement (DTA) with Thailand. Such agreements could lead to further opportunities to expand into new markets and move steadily toward international economic prosperity.

Looking forward to the AEC (ASEAN Economic Community), if Thailand has not resolved the problems associated with unilateral tax relief to comply with international standards, it may affect international investment in terms of both imports and exports. Related to tax privileges of unilateral double taxation relief, it may mostly affect investment coming into Thailand. However, if Thailand has resolved the problems by raising the level of foreign tax credit, filling loopholes of excessive tax privilege, amending provisions related to tax privileges on exempt dividends, and made the provisions more clear, inevitably, Thai investors shall gain a sense of neutrality related to the tax system that could also strengthen the Thai economics system.

RECOMMENDATIONS

As the research focuses on analyzing unilateral tax relief in Thailand that aims to eliminate double taxation and compares it with bilateral tax relief and international tax law, the following three problems were identified:

1. The problem of the lack of parallel systems in Royal Decree No. 300 B.E. 2539 and the bilateral tax relief measures in DTAs, which produces different levels for the calculation on foreign tax credits. For this case, the researcher proposes to amend the regulations regarding the calculation of foreign tax credits so that it is equal to what is provided for in a double taxation agreement (DTAs) with the formula of **($\frac{A}{B} \times C$ = Foreign Tax Credit)**. This would be more suitable than the present formula of Royal Decree No. 300 B.E. 2539, as it would create fairness between taxpayers those benefits derive from a DTA and those that derive from Royal Decree No 300. Moreover, the use of the same formula in DTAs and Royal Decree No. 300 will profit the government in not losing revenue from uncollected taxes, as can be seen in cases where the formula used was in accordance with the Royal Decree and resulted in excessive exemption of taxable income.

2. The provisions regarding unilateral tax relief measures in the case of Royal Decree No. 300 B.E. 2539 and Royal Decree No. 442 B.E. 2548 and the inappropriate result of providing excessive tax privileges, the researcher recommends the following 2 proposals:

1) In the case of Royal Decree No. 300 B.E.2539, there should be a clearer regulation on granting tax privilege. In the case of taxpayers who are subjected to the elimination of double taxation under DTAs negotiated by Thailand, they should be prohibited from using the elimination method of foreign tax credit under Royal Decree No. 300 B.E.2539 which is a separate tax privilege.

2) Royal Decree No. 442 B.E. 2548 gives taxpayers a privilege to exempt income from dividends that are earned in foreign countries. Moreover, taxpayers can claim the withholding tax, which has already been paid in a foreign country as deductible expenses within Thailand. Therefore, in order to prevent double privileges to taxpayers, there should be the amendment to this regulation that sets conditions for the use of tax privileges according to Royal Decree 442. The amendment should prohibit income received in the form of dividends that are exempted from tax in Thailand and the withholding taxes that have been paid abroad from being incorporated as an expense item in the tax accounting report and therefore deductible from the tax liability in Thailand. This change will prevent taxpayers from taking advantage of the tax system and not paying taxes on income that they should pay taxes on.

REFERENCES

Alexander Rust (2011). *Double Taxation within the European Union*. Kluwer Law International.

Alina Kaczorowska (2010). *Public International Law*. Fourth edition. New York: Routledge.

Andrea Amatucci, Eusebio Gonzalez, Christoph Trzaskalik (2006). *International Tax Law*. The Netherlands: Kluwer Law International.

Asa Johansson, Christopher Heady, Jens Arnold, Bert Brys and Laura Vartia

(2008). *Tax and Economic Growth* Economics Department Working Paper *No.620*. Organisation for Economic Co-operation and Development: n.p., At http://www.oecd.org/tax/taxpolicy/41000 592.pdf (last visited 12 august 2014).

Boris I. Bittker and Lawrence Lokken (1997). *Fundamentals of International Taxation*. USA: Warren, Gorham & Lamont.

Business Dictionary. http://www.businessdictionary.com/definition/worldwide-income.html. (last visited 17 February 2015).

Chaiyasit Trachutham (2004). The Eliminate or Relief on International Double Taxation. *Dulrapaha Journal* 52, 1. n.p. (January - April 2004).

Chaiyasith Trachutham (2010). *Tax Planning*. Bangkok: T.Training Center.

Chaiyasith Trachutham (2007). *Taxation Law*. Ninth edition. Kungsiam publishes, n.d.

Christiana HJI Panayi. (2007) *Double Taxation, Tax Treaties, Treaty Shopping and the European Community*. Netherlands: Kluwer Law International.

Dennis M.P. McCarthy (1994). *International Business History*. United State of America: Greenwood Publishing Group, Inc.

E.g., Ruth Mason (2009). *Tax Expenditures and Global Labor Mobility*. 84 N.Y.U. L. Rev. 1540, 1569-71. Cited in Knoll Michael S., *Reconsidering International Tax Neutrality* (2011). Faculty Scholarship.Penn Law: Legal Scholarship Repository. University of Pennsylvania Law School. At http://scholarship.law.upenn.edu/faculty scholarship/268. (last visited 19 March 2015).

Edwin van der Bruggen, Paul Thirakhupt and Tithiphan Chuerboonchai (2003). *Thailand's Double Taxation Agreement*. Bangkok: Nititham, n.d.

Fabian Barthel, Matthias Busse and Eric Neumayer (2010). The Impact of Double Taxation Treatise on Foreign Direct Investment: Evidence from Large Dyadic Panel Data. *Contemporary Economic Policy*. vol. 28 (July 2010). At http://personal.lse.ac.uk/barthel/docs/dtt_fdi.pdf. (last visited 9 May 2014).

Financial Dictionary. At http://financial-dictionary.thefreedictionary.com/Territorial+Tax+ System. (last visited 17 February 2015).

Gloria Teixeira, David Williams (1995). The Impact of the Unilateral Tax Credit in the Us. UK and other Tax System. *Kluwer Law International* 23 Intertax, Issue 11.

Inland Revenue Board Malaysia (2011).. Bilateral Credit and Unilateral Credit. *Public Ruling* No. 11/2011. n.p.

Investopedia (2015). At http://www.investopedia.com/terms/d/double_taxation.asp. (Last Visited 7 June 2015).

Peter Malanczuk (1997). Modern Introduction to International Law. 7th ed. Harper Collins, London.

Jutarthong Jarrumirinnon (2005). The Corporate Income Tax System on Dividend. *Revenue Journal* 51, 1. n.p. (January).

Klaus Vogel (1986). Double Tax Treaties and Their Interpretation. *Berkeley Journal of International Law* art.1 vol.4. (Spring). At http://scholarship .law. berkeley.edu/

bjil/vol4/iss1/1. (last visited 16 July 2014).

Krerkkiat Piputserithum (2003). *The Financial Matters for Allocate and Disseminate*. 8th ed. Bangkok: Thammasat University,.

Lea Brilmayer & Isasias Yemane Tesfalidet (2011). *Treaty Denunciation and "Withdrawal" from Customary International Law: An Erroneous Analogy with Dangerous Conse-quences. The YALE Law Journal Online*. vol. 120:217. (5 January 2011). At http://yalelaw journal.org/2011/1/5/brilmayer-tes falidet.html. (last visited 7 March 2014).

Maneerat Sungvorawongphana (2009). "Legal Problems on The Relief of International Double Taxation under The Revenue Code of A Company Incorporated under Thai Law." LL.M. Thesis, Graduate School, Chulalongkorn University.

Michael Lang and Florian Brugger (2008). The Role of The OECD Commentary in Tax Treaty Interpretation. 23 *Australian Tax Forum*. (3 April).

Michel Lennard (2009). The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Point of Difference and Recent Developments. Asia-Pacific Tax Bulletin, (Volume 49), No. 08

Molenaar D. (2006). *Taxation of International Performing Artistes: the problems with Article 17 OECD and how to correct them.* Erasmus University Rotterdam: n.p.

N Vimala Devi (2012). Relief from Double Taxation and The Pooling of Foreign Tax Credit. *BLS Bulletin*. Issue 1. BLS Tax Services Pte Ltd.

Nick Fiore (2002). Guiding Principles of Good Tax Policy. *Journal of Accountancy*, (February).

Nicoleta Barbuta-Misu (2009). Florin Tudor. The International Double Taxation – Causes and Avoidance. Bucharest: *Economica* Vol 5.

OECD Committee on Fiscal Affairs (2003). *Model Tax Convention on Income and Capital*. Paris: OECD.

Organization for Economic Co-Operation and Development (1992). *Model Tax Convention on Income and on Capital*. Paris: OECD.

Paichitr Rojanavanich, Chumporn Cheanchyai, Saroj Thongpakhum (2010). *Tax Revenue No.1*. Bangkok: Samcharenpanit.

Panit Dhrirapharbwongse (2009). *International Business Taxation*. Bangkok: Winyuchon.

Revenue Department. At http://www.rd.go.th/publish/766.0.html. (last visited 18 June 2015).

Revenue Department. At http://www.rd.go.th/publish/765.0.html. (last visited 15 July 2015).

Revenue Department. Thailand tax treaties compilation.At http://www.rd.go. th/publish/765.0.html. (last visited 18 August 2014).

Revenue Department. The Manual of Tax Exemption under Revenue Code to the Person under Double Taxation Agreement. (Bangkok, February 2556).http://download.rd.go.th/filea dmin/download/insight_pasi/DTA_BOOK.pdf. (last visited 29 August 2015).

Rodrigo (2012). The History of International Business Taxation and the Effect of International Tax Competition.

(November 29 2012). At http://writepass.com/journal/2012/11/the-history-of-international busi ness-taxation-and-the-effect-of-international-tax-competition/. (last visited 5 June 2015).

Sirichai Pengkham (2008). "The Issue of Unilateral Relief of Double Taxation for Outer Space Commercial Activities". LL.M. Thesis, Graduate School, Thamasat University.

Steven Huddart (2005). *International Taxation*. Taxation and Management Decision: ACCTG 550: Pennsylvania State University.

Sumate Sirikhunchokt (2011). *International Taxation Law*. Bangkok: Faculty of Law, Thammasat University.

Suwan Walaisathian (2003). *Eliminate Agreement Double Taxation THAI - US TAX TREATY*. Bangkok: Nititham Ltd. Co..

Suwinai Wattanakorn (2012). "Transfer Pricing for Intra - group Service." LL.M. Taxation law Thesis, Graduate School, Thamasat University.

Thanapol Keawsatit. *International Taxation and Principle of Double Taxation Agreement (DTAs)*. Bangkok: Choun print 50.

The Law Dictionary. *Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Edition*. At http://thelawdictionary.org/neautral-tax. (last Visited 27 April 2015).

United Nation Conference on Trade and Development (2000). *Taxation*. New York and Geneva: United Nations.

United Nations, Department of Economic and Social Affairs. *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Counties*. United Nation: New York, 2003. At http://unpa1.un.org/intra doc/groups/public/documents/un/unpan 00857 (last visited 21 June 2014).

USLEGAL, At http://definitions.uslegal.com / i/international-taxation/ (last visited 8 March 2015).

Uthai Peanrat (1994). *The Elimination of International Double Tax of Thailand.* LL.M. Thesis, Graduate School, Thammasat University.

Vern Krishna (2012). Income Tax Law. 2nd ed. Canada: Irwin Law Inc. At http://www.irwinlaw.com/cold/ eco nomic double_taxation. (last visited 17 August 2014).

Wolfe D Goodman (1978). *International Double Taxation of Estates and Inheritances*. the University of Michigan: Butterworths.

Laws

Notification of the Director-General of Revenue Department on Income Tax (No.65) in the issues of The Regulation of Foreign Tax Credit Method under Royal Decree 300 B.E. 2539.

Revenue Code B.E.2481

Revenue Department. Statement of the Revenue Department in the issues of exemption on income of corporate or public corporate under establishment of Thai law for the assessable dividend income, was received from corporate or partnership under establishment of foreign law. 2548.

Royal Decree No.300 B.E.2539

Royal Decree No.422 B.E.2548