Your off-shore entity's rental income tax

The use of off-shore entities, such as a company incorporated in the British Virgin Islands ("BVI") to own real estate is not uncommon in Thailand. One reason often cited by investors using such entities organized under foreign law for such purpose is that they believe it will result in significant tax savings. Whereas this may be true with regard to any tax applicable to the "sale" of the real estate by way of sale of the off-shore entity itself, it may not be true with regard to other potential tax liabilities. This article will analyse the tax consequences of an off-shore entity renting out real estate it owns in Thailand.

In general, juristic persons "carrying on business in Thailand" are subject to corporate income tax ("CIT") at the basic rate of 30%. CIT is applicable whether these entitles are incorporated under Thai law or some other foreign law. Entities organized under Thai law are subject to CIT on their worldwide income. However, entities organized under a foreign law are only subject to CIT if such income results from "carrying on business in Thailand".

If an entity incorporated under foreign law that is not "carrying on business in Thailand", but receives payment of assessable income from or within Thailand, such payment is subject to a withholding tax ("WHT") at a rate 10% or 15% depending on the type of payment, for example as follows:

INCOME DERIVED FROM:	WHT RATE:
Service	15%
Interest	15%
Royalties	15%

DuensingKippen Attorneys & Arbitrators

Ally Law We get it. We get it done.

Dividends	10%
Rent	15%
Liberal professions	15%

Where the recipient of assessable income is an off-shore party, the Revenue Code of Thailand ("RC") places the liability for filing the applicable WHT return and submitting the tax payment itself on the payer of the assessable income; in our rental income example, the lessee of the real estate owned by the off-shore entity.

Thus, tax liability for such rental income depends on whether or not the off-shore entity is deemed to be "carrying on business in Thailand". The RC does not define "carrying on business in Thailand". Section 66, paragraph 2 of the RC states that juristic companies or partnerships organized under foreign laws and carrying on business in Thailand are subject to the same tax as those organized under Thai law, but only with respect to income arising from or in consequence of the business carried on in Thailand. In addition, Section 76bis of the RC states:

"For a company or juristic partnership incorporated under foreign laws which has an employee, an agent or a go-between for carrying on business in Thailand and as a result receives income or profits in Thailand, such company or juristic partnership shall be deemed to be carrying on business in Thailand and the person who acts as an employee, an agent or a go-between for the business, whether he is an individual or a juristic person, shall be deemed to be representative of the company or juristic partnership incorporated under foreign laws and shall have the duty and liability to file a tax return and tax payment in accordance with the provisions of this Part, with respect to only the above mentioned income or profits."

The practical implication of Section 76bis is obvious. If the real estate owned by a foreign entity is leased out through an on-shore agent, rental pool, etc., such agent or rental pool company could be deemed to be an "employee, an agent or a go-between" of such foreign entity. The result would be that the foreign entity would then be treated like a Thai entity with regard to the income derived from its real estate located in Thailand and its rental income would be subject to the same tax regime. Furthermore, the on-shore liability to file the tax return and pay the applicable tax on behalf of the off-shore entity would be on the said agent or rental-pool company.

DUENSING KIPPEN is an international law firm specializing in business transaction and dispute resolution matters, with offices in Bangkok and Phuket, Thailand and affiliated offices in 45 other countries. Visit them at: **duensingkippen.com**