NEWSLETTER

M&A Taxation in Thailand (2)

Asia Newsletter

June 25, 2025

Authors:
Yasutaka Nishikori
y.nishikori@nishimura.com
Pairaya Yangpaksi
p.yangpaksi@nishimura.com
Areeya Ananworaraks
a.ananworaraks@nishimura.com

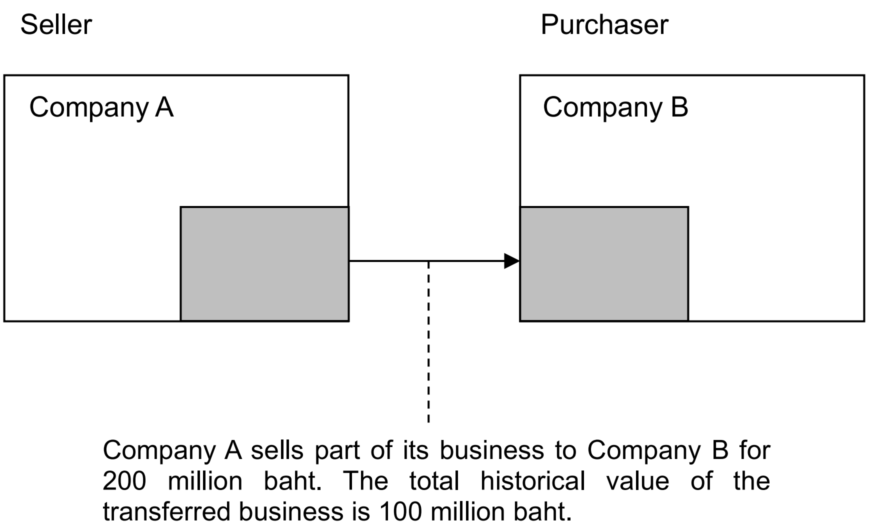
1. Tax treatment of stock deal M&A and asset deal M&A transactions

To follow up on our first newsletter in this series (issued on August 30, 2024), which discussed Thai tax rules for stock deal M&A transactions, this newsletter will discuss the basic tax rules in Thailand that apply to asset deal M&A transactions. Since a business transfer from one company to another should be regarded as an elementary form of asset deal M&A, this newsletter focuses on the tax treatment of a transfer of part of the business of a transferor company.

2. Basic tax rules applicable to asset deal M&A transactions

(1) Corporate income tax

The following chart illustrates a typical business transfer, in which a seller (transferor) company in Thailand (Company A) transfers part of its business to a purchaser (transferee) company also located in Thailand (Company B).



As in many other jurisdictions, Thai income tax rules generally require Company A (the seller) to treat the amount of the sale price received that exceeds the total historical value of the transferred business as taxable income, which then is subject to Thai corporate income tax at the rate of 20%. Therefore, in this hypothetical situation, Company A will earn taxable income of 100 million baht and will be subject to incremental corporate income tax of 20 million baht.

Thai tax rules require the sales price of a business to be equal to the “Market Price.” While the term “Market Price” is not defined in Thai tax law, the guidelines released by the Thai Revenue Department refer to “Market Price” as a sales price that each independent party (i.e., the seller and the purchaser) sets in a fair manner, based on business practices, as consideration for the transferred assets and liabilities as of the date of the relevant transfer (Revenue Department Instruction No. Paw. 113/2545). Therefore, if the sales price to which a seller and a purchaser agree is the product of good faith negotiations between non-affiliated parties, the Revenue Department generally will respect it. However, as a matter of practice, sellers and/or purchasers often retain financial advisors to help support the sales price by performing an assessment of the fair value of the transferred business, through the use of well-developed valuation methods, for purposes of establishing the fairness of the sales price. This practice is especially prevalent with respect to business transfers between affiliated parties.

For purposes of calculating taxable income, the total historical value of a transferred business generally can be regarded as equal to the net asset value of the business, calculated on a book-value basis. However, for purposes of calculating the other taxes discussed below, the seller (Company A) must identify the Market Price and the historical cost of each asset included in the transferred business. The purchaser (Company B) must record each asset that is transferred to Company B in the transferee’s accounting records at its Market Price, and must record each liability at its notional amount. These recorded amounts will serve as the tax basis for future transfers by Company B (subject to depreciation and amortization, if applicable). If the purchase price for the transferred business exceeds the total sum of the Market Price of each transferred asset minus the amount of total liabilities, the excess can be recorded as goodwill for financial accounting purposes. However, for income tax purposes, goodwill may not be amortized and, therefore, will not reduce the purchaser’s income tax burden.

(2) Other taxes

In addition to corporate income tax, parties to business transfers are subject to (i) withholding income tax on transfers of immovable property, (ii) value-added tax, and (iii) specific business taxes applicable to the relevant business or transaction.

If the assets transferred via a business transfer include immovable property, such as land and buildings, the seller will be subject to withholding income tax at the rate of 1% of the gross sales price (which should be the Market Price). The purchaser must withhold this amount from the sales price paid to the seller and pay the tax to the Land Office at the time of making an application for registration of the transfer of immovable property. The Land Office is the competent governmental authority for registration of transfers of immovable property and acts as a collection agent for the Revenue Department for this purpose. This withholding tax is a kind of income tax assessed against the seller, and the seller is entitled to tax credits against its income tax in an equivalent amount.

Transfers of immovable property also are subject to specific business tax, even when made in the course of business transfers. The tax rate of specific business tax is 3.3% of the gross sales price. The seller must pay the specific business tax at the Land Office at the time of making an application for registration of the transfer of immovable property. This specific business tax is different from income tax, and no tax credits are available.

By contrast, if the assets transferred via a business transfer include movable property, the transfer of movable property is not subject to the withholding income tax or specific business tax discussed above; instead, it is subject to Thai consumption tax, in the form of value-added tax. Transfers of movable property that occur in the course of a business transfer are considered “Sales of Goods,” and therefore are subject to value-added tax at the rate of 7% of the sale price. The seller should charge that value-added tax to the purchaser by issuing the relevant tax invoice to the purchaser, which is necessary for the purchaser to claim input tax credits.

3. Sale of Thai branch operations by foreign (non-Thai) company

If a non-Thai company transfers part or all of the business of its Thai branch to a purchaser (transferee), the income or gains derived from the sale is regarded as being sourced in Thailand, and the non-Thai company will be subject to taxes identical to those applicable to a Thai company that sells part of its business (as discussed in section 2 above). Specifically, the non-Thai company will be subject to 20% Thai corporate income tax on the excess of the sales price (which must be equal to the Market Price) over the total historical value of the transferred business. The non-Thai company also will be subject to withholding income tax (if it transfers immovable property), specific business tax (if it transfers immovable property), and value-added tax, as occurs in a transfer between Thai companies. If all of the business of the Thai branch is transferred, the branch in Thailand is required to file the relevant tax returns on behalf of the non-Thai company, acting as the representative of the non-Thai company.

In addition, when a Thai branch remits the profits earned from its business to its headquarters in a foreign country, the Thai branch is required to deduct withholding tax at the source, at the rate of 10%. This 10% withholding tax is appliable to the profits earned on a business transfer. Since this 10% withholding tax is not a tax payable on dividends but a tax payable on a remittance of funds between a branch and its headquarters, the Thai tax authority takes the position that the provisions of double tax treaties governing dividend payments by a Thai company do not apply to this funds remittance tax.

4. Introduction of tax-qualified transactions

As discussed above, business transfers, which should be viewed as a prototypical form of asset deal M&A, generally are taxable transactions, on which the relevant parties are subject to corporate income tax, withholding income tax, specific business tax, and value-added tax. However, tax-exempt or tax-deferred treatment is available for certain types of asset deal M&A transactions, if they meet the criteria set forth in Thai tax law. We will discuss those tax-exempt and tax-deferred structures in the next newsletter.

Public Relations Section, Nishimura & Asahi newsletter@nishimura.com