

# Myanmar Tax Planning and Structuring for Thai Investors in Myanmar

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Presented by Jack Sheehan, Regional Partner, Tax Practice Group, DFDL

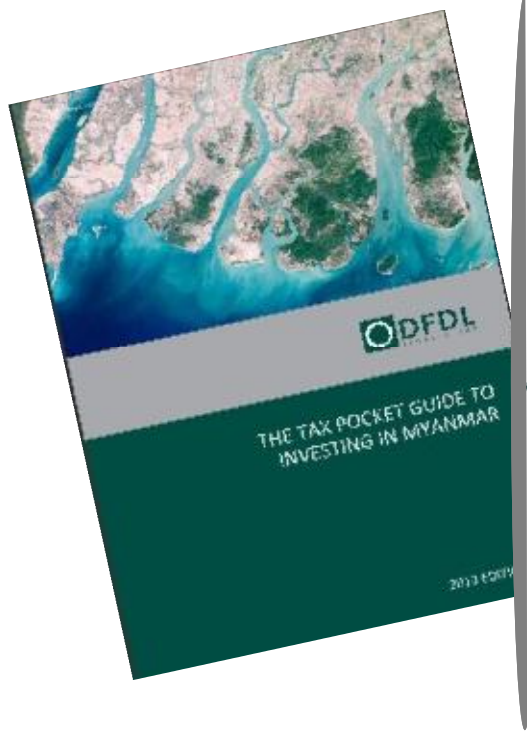


## Regional Partner, Tax Practice Group, DFDL

Jack is the Regional Partner of the Tax Practice Group at DFDL. He has over twelve years' experience in Europe and Asia and previously headed the tax team of a "Big Four" firm managing a team of tax specialists. Jack specializes in providing international tax planning and consulting, cross border tax advisory services, tax due diligence, corporate restructuring and reorganization and compliance advice.

Jack is a regular speaker on current tax issues in the region and his speaking engagements include European Chamber of Commerce, American Chamber of Commerce, Chinese Chamber of Commerce, Australian New Zealand Business Association, Thai Tax Forum, Japan Board of Investment, Lao Stock Exchange (LSX), Cambodian Stock Exchange (CSX) and various DFDL sponsored events throughout the region. Jack is a member of the Association of Chartered Certified Accountants.

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Introducing the 2013 edition of

## **THE TAX POCKET GUIDE TO INVESTING IN MYANMAR**

*Free* to download from our website!

1. Overview of Myanmar Domestic Tax System: Personal Income Tax, Corporate Income Tax, Commercial Tax , Capital Gains Tax, Withholding Tax etc.
2. International Tax Planning and DTAs: Overview of current DTAs, Thai Companies doing business without a legal entity in Myanmar, Holding Company Structures and a comparison of Thailand and Singapore

- Overview of Myanmar Tax

- Personal Income Tax
- Corporate Income Tax
- Commercial Tax
- Capital Gains Tax
- Tax incentives under the Foreign Investment Law (FIL)
- Tax incentives under the Myanmar Special Economic Zones Law and Dawei Special Economic Zones Law (SEZ Laws)
- Withholding Tax
- Customs Duties

- Taxes are administered by the Internal Revenue Department (IRD) and the Customs Department.
- Headed by a Director General reporting to the Minister for Finance and Revenue (MOFR).
- Taxpayers are required to maintain their records for a period of 5 years.
- The Revenue Appellate Tribunal hears and decides tax cases.
- Decisions of the Appellate Tribunal may be appealed to the Supreme Court



- Income Tax

## **Income Tax Law (ITL)**

- Promulgated in 1974
- Supplemented by the Income Tax Rules, the Income Tax Regulations, the State Budget Law and Notifications issued from time to time

## **Comprises of:**

1. Corporate income tax (CIT)
2. Personal income tax
3. Capital gains tax
4. Withholding tax.

## Sources of Taxable Income

1. Salary
2. Profession
3. Business
4. Property
5. Capital gains
6. Other sources of income
7. Undisclosed income.



- Corporate Income Tax

## Determined by Residency

- A ‘resident company’ is a company formed under:
  - the Myanmar Companies Act, 1914 (“MCA”);
  - State-Owned Economic Enterprise Law, 1989 (“SEEL”);
  - Foreign Investment Law, 1988 (“FIL”); or
  - Any other Myanmar law
- A ‘non-resident’ company is a company not formed under any of the above laws
- Branch offices of foreign companies, which are not registered under the FIL, are deemed to be ‘non-resident’
- No local concept or definition of Permanent Establishments

## Corporate Income Tax

Subsidiary	25%	Worldwide income
Branch (FIL)	25%	Income within Myanmar
Branch (Non-FIL)	35%	Income within Myanmar
Foreign Contractor	WHT	Income within Myanmar

## **Deductible Expenses**

- Expenditures incurred for the purpose of earning that income
- Wholly and exclusively for business purpose “test”
- Depreciation allowance

## **Non-deductible Expenses**

- Capital expenditures
- Personal expenditures
- Expenditure not commensurate with the volume of business
- Payments made to a member of an association of persons other than a company and a cooperative society

## Losses

- Losses from any sources may be set off against taxable income accruing from any other sources in that year, except where the loss results from capital assets
- Unutilized tax losses can be carried forward and set off against future taxable profits up to a maximum of the next three consecutive years
- Any unutilized losses after three years will be lost
- No carry back
- Losses resulting from the sale of capital assets and/or investments cannot be offset with a company's taxable income

## Limitations on Certain Deductions


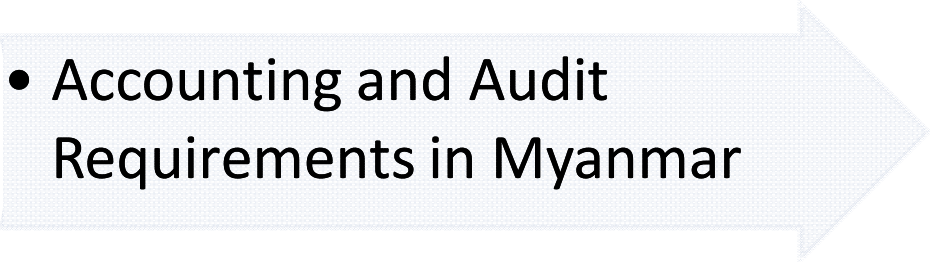
- Interest expenses on onshore loans are deductible up to the interest rate limit set by the Central Bank of Myanmar (CBM) from time to time
- Interest expenses on offshore loans are deductible provided the loans are approved by the MIC and the CBM
- Donations to approved charitable institutions are deductible up to a maximum of 25% of the total taxable income
- Bad or doubtful debts related to taxable income are deductible only when written off

## Fiscal Year

- 1 April to 31 March

## Tax Filing

- Annual return: 3 months after end of tax year
- Quarterly return: 30 days
- Monthly return: 30 days

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- Accounting and Audit Requirements in Myanmar
- 

## Financial statements

- Financial statements must be prepared in accordance with Myanmar Accounting Standards (“MAS”). The MAS are based on the International Financial Reporting Standards and International Accounting Standards issued by the International Accounting Standards Board.

## Audit requirements

- A corporate taxpayer is required to submit its audited financial statements together with its annual tax return. FS must be audited by a Certified Public Accountant licensed by the Myanmar Accountancy Council.



- Personal Income Tax

## Residence

- Resident foreigners - stay at least 183 days
- Non-resident foreigners - stay less than 183 days
- Expatriates working for a foreign invested enterprise under the FIL are deemed tax residents of Myanmar, regardless of their actual period of presence in the country.

## Tax basis

- “Salary” includes salary, wages, annuity, pension, gratuity, and any fees, commissions or perquisites received in lieu of or in addition to any salary and wages.
- Benefits are included in the definition of taxable salary. No clear description of what constitutes a taxable benefit in this regard.
- In practice, Income Tax borne by the employer is also regarded as a taxable benefit in itself.
- Residents: Worldwide income
- Non-residents: Myanmar-sourced income

## Tax Rates

Salary of Residents (including resident foreigners)	1% to 20%
Income of residents from profession, business, property, other income	2% to 30%
Undisclosed income of residents	30%
Non-resident foreigners	35%
Non-resident foreigners working in a State project	20%
Expatriates working for a foreign invested enterprise under the FIL	1% to 20% 2% to 30%

# PIT Salary Bands and Rates



Annual taxable income net of allowances* (MMK)		Tax Rate (%)
From	To	
1	500,000	1
500,001	1,000,000	2
1,000,001	1,500,000	3
1,500,001	2,000,000	4
2,000,001	3,000,000	5
3,000,001	4,000,000	6
4,000,001	6,000,000	7
6,000,001	8,000,000	9
8,000,001	10,000,000	11
10,000,001	15,000,000	13
15,000,001	20,000,000	15
> 20,000,001		20

## Tax returns and Tax Payments

- Employers must apply a withholding for the income tax on salary on a monthly basis
- Also provide an annual finalization statement of salaries paid to employees
- Employees generally not required to file annual return
- If the income is paid in foreign currency, the tax must be paid in local currency by residents and foreign currency by non-residents

## Allowances

Salary not subject to PIT	Ks1,440,000
Personal Allowance	20% up to Ks10,000,000
Spouse Allowance	Ks300,000
Children Allowance (each)	Ks200,000

- **Compulsory system of social security contributions**

- Only employers with 5 or more employees are within the scope of the system.

- **Calculation of contribution**

- Employees                      1.5% of the total salary (including benefits)
- Employers                        2.5% of the total salary (including benefits)

- **Maximum monthly contribution**

- Employees                      USD 3
- Employers                        USD 5

- **Paying contribution in practice**

- The employer must deduct the contribution from the employee's salary and remit the amount to the authorities.



- **Withholding Taxes**

## Withholding taxes (Residents)

Dividend	0%
Interest	0%
Royalty	15%
Services	2%
Goods purchase	2%

## Withholding taxes (Non-Residents)

Dividend	0%
Interest	15%
Royalty	20%
Services	3.5%
Goods purchase	3.5%

- “Under a contract, agreement or other form”
- WHT deducted from payment made to residents (not final tax)
- WHT deducted from payment made to non-residents (final tax)
- It is not relevant whether the services were performed in Myanmar or abroad, provided they are performed under a contract with a Myanmar resident principal.
- The tax liability for the WHT is triggered by payment of the fee.
- Payment within 7 days

## Capital gains tax

Resident companies	10%	Taxable gain
Non-resident companies	40%	Taxable gain
Capital gains in oil and gas sector		
“ Up to USD 100 Million	40%	Taxable gain
“ USD 100 Million to 150 Million	45%	
“ Above USD 150 Million	50%	

- Tax payment is based on transaction currency
- CGT return: within 1 month following disposal



- **Commercial Tax**

- The levy of commercial tax authorized by the Commercial Tax Law which enacted in March 1990 replacing the former Commodities and Services Tax Law.
- The commercial tax is a form of general sales tax, which is collected at each stage of point in the production and distribution process.

## Rates

Goods or Services	CT Rate
Goods in Schedule 1 (Generally, agricultural products)	Not subject
Goods manufactured and sold in Myanmar (Schedules 2-5)	5%
Goods in Schedule 6 (Generally, luxury products and fuel)	8-100%
Services (Schedule 7 includes 14 types of services)	5%
Exported goods except those below	Not subject
Exported petroleum (5%), natural gas (8%), jade and precious stones (30%); teak logs, and hardwood logs (50%)	
Imported goods	Based on relevant rate

## 14 Services:

- Railways, waterway, airways, road transportation; Entertainment; Hotel, lodging; Establishment selling food and drinks; Trading; Tourism services; Motor vehicle maintenance including materials; Insurance other than life; Beautifying business, fitness, hairdressing; Printing, computer word processing and computer design; Broking services; Landscaping and renovation and building design services; Advertising and filming services; Legal and auditing services.
- **Compliance:** CT is reported on the 10<sup>th</sup> day of every month and an annual return is also filed 3 months after year-end

- The Commercial Tax Rule (Notification № 104-2012 dated 15 March 2012) states that offsetting of previously paid CT may now be made (similar to the VAT system in other jurisdictions)
- CT tax credits are available to a limited extent as qualified below:
  - Notification 104-2012 provides the rule that credits for CT paid may be creditable.
  - However, the Ministry of Finance and Revenue (MFR) reserves the right to define which commodities will be allowed CT Credit.
  - In this regard, Notification 116/2012 states that CT on goods in Schedule 6 cannot be creditable.
  - Notification 323-2012 provides that CT on gasoline and diesel which are in Schedule 6 may now be creditable.

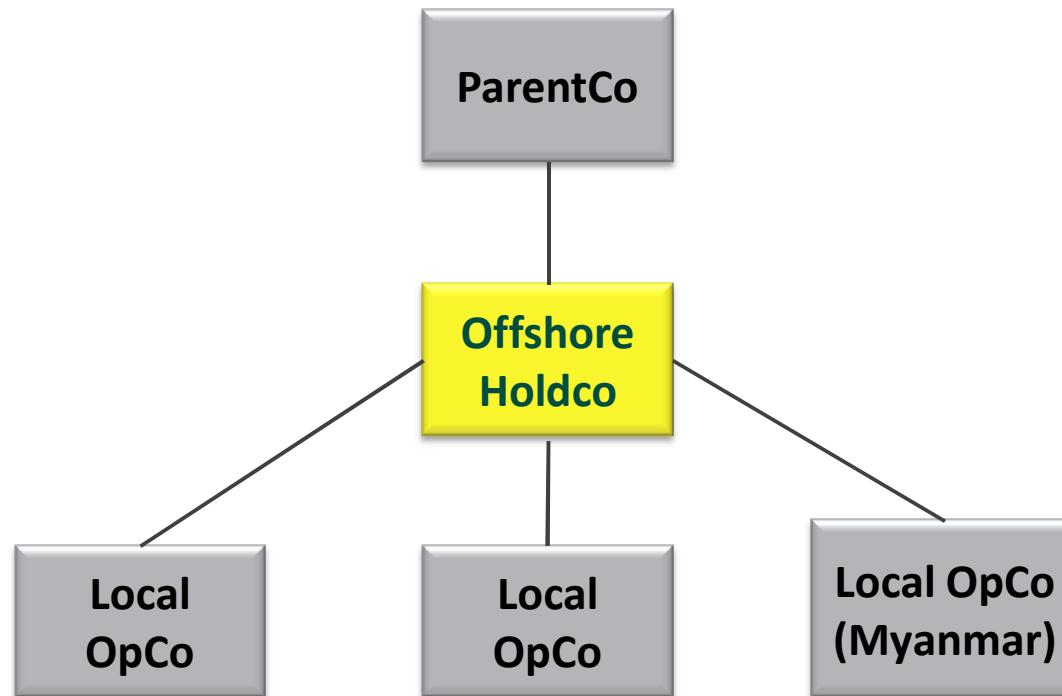
- Caveats:
  - Three copies of receipts must be issued for every CT-able transaction: one for buyer; one for seller and one to the tax office. In practice, the receipts must breakdown price and CT.
  - Note that practice of issuance of receipts in the country remains inconsistent at best.

- Rates from 0% to 40%
- Customs duties and CT are levied at the point of entry for imported goods
- Customs draw back for re-export (6 months)
- Exemption from customs duties under bond
- For oil and gas sector, Myanmar Oil & Gas Enterprise (MOGE) can facilitate customs duties/CT temporary imports or free import
- Myanmar is a signatory to AFTA



- **Cross Border Tax Planning and DTAs**

Multinational companies often interpose a HoldCo to hold shares in their various local companies as in the simple example below:



Myanmar has DTAs with the countries listed in the following DTA withholding tax rates table:

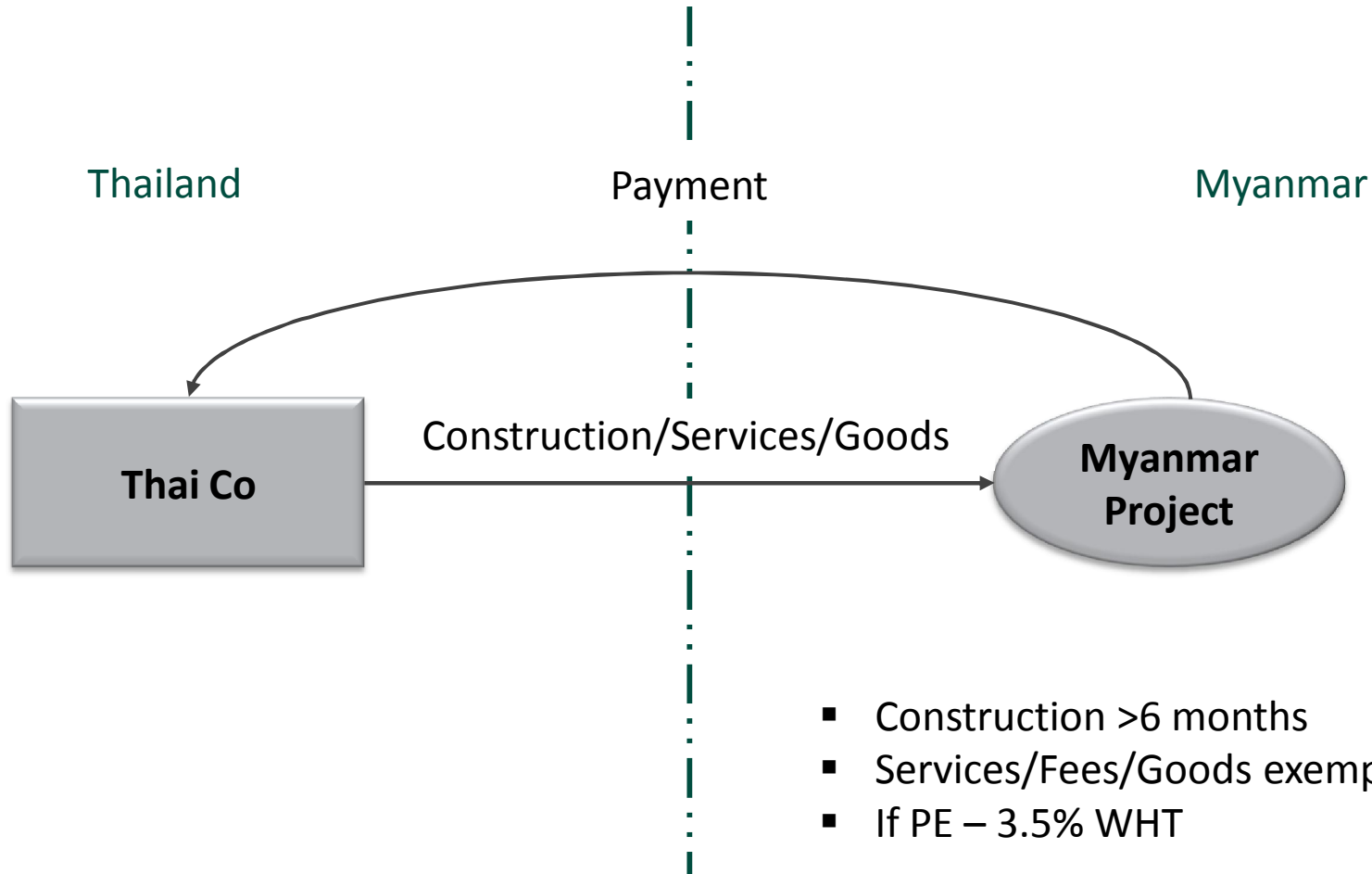
	Remittance to:	Dividends	Interest	Royalties
1	Non-treaty country	Not subject	15%	20%
2	India	5%	10%	10%
3	Korea (South)	10%	10%	10-15%
4	Malaysia	10%	10%	10%
5	Singapore	10%	8-10%	10-15%
6	Thailand	10%	10%	5, 10, or 15%
7	United Kingdom	0%	No provision	Exempt
8	Vietnam	10%	10%	10%

- DTAs with a few important trade partners including India, Indonesia, Korea, Lao PDR, Malaysia, Singapore, Thailand, Vietnam, UK and Bangladesh
- Indonesia and Bangladesh DTAs are not yet in force. Lao PDR?
- Taxpayers need to apply administrative procedures for claiming a tax exemption based on a DTA within the Companies Circle Tax Office (CCTO) of the Internal Revenue Department (IRD).
- In practice, Myanmar tax authorities and MFR need to be consulted by the payer of the fee on a case-by-case basis in order to obtain tax treaty relief. The authorities will examine the contracts and the facts of the case before rendering its decision.

Country	Construction PE	Service PE
India	270 days	No period defined
Malaysia	6 months	No period defined
South Korea	6 months	6 months
Singapore	6 months	6 months
Thailand	6 months	No period defined
UK	No period defined	No period defined
Vietnam	6 months	6 months

Country	Interest
No treaty	15%
India	10%
Malaysia	10%
South Korea	10%
Singapore	8% if received by any bank or financial institution; 10% in all other cases.
Thailand	10%
UK	No provision
Vietnam	10

# Thai Co doing business with no Legal Entity in MMR



- Construction >6 months
- Services/Fees/Goods exempt if no PE
- If PE – 3.5% WHT

## Capital Gains from disposition of capital assets including shares

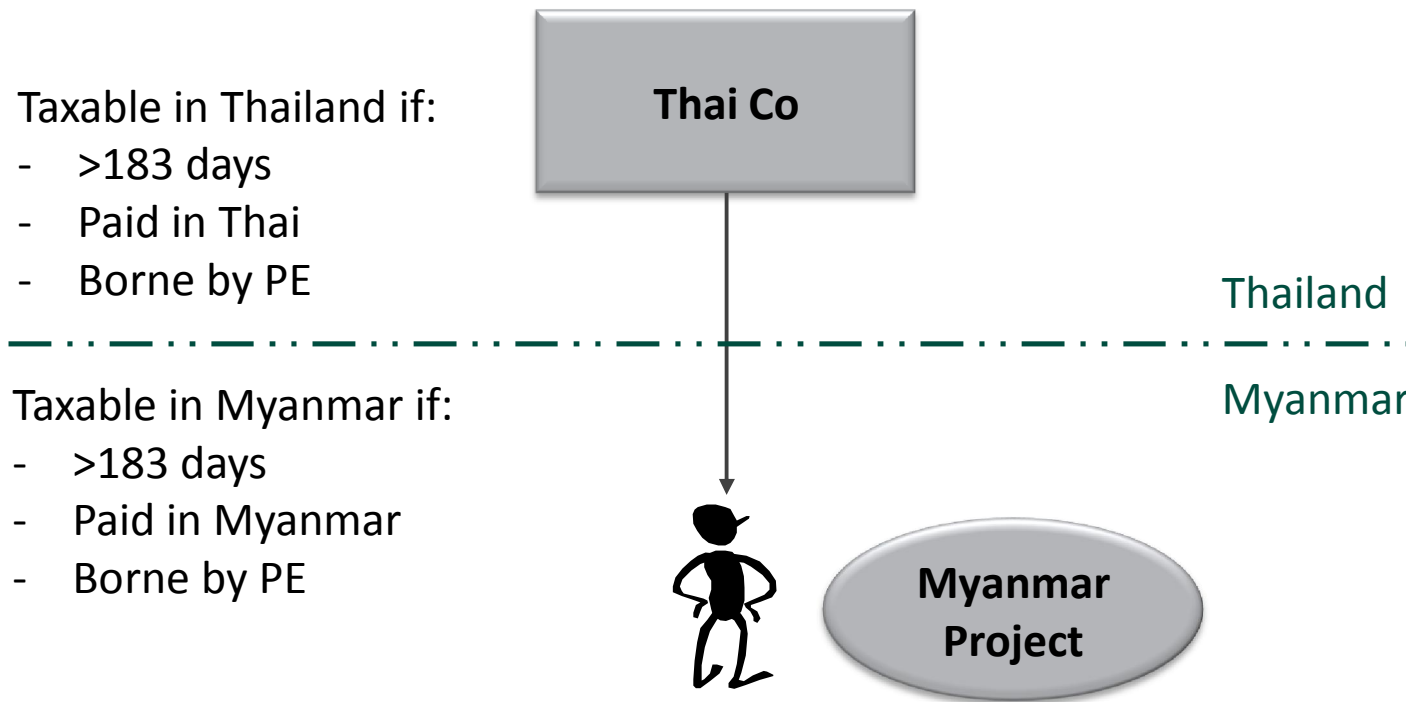
Local law  
10% for residents  
40% for non-residents

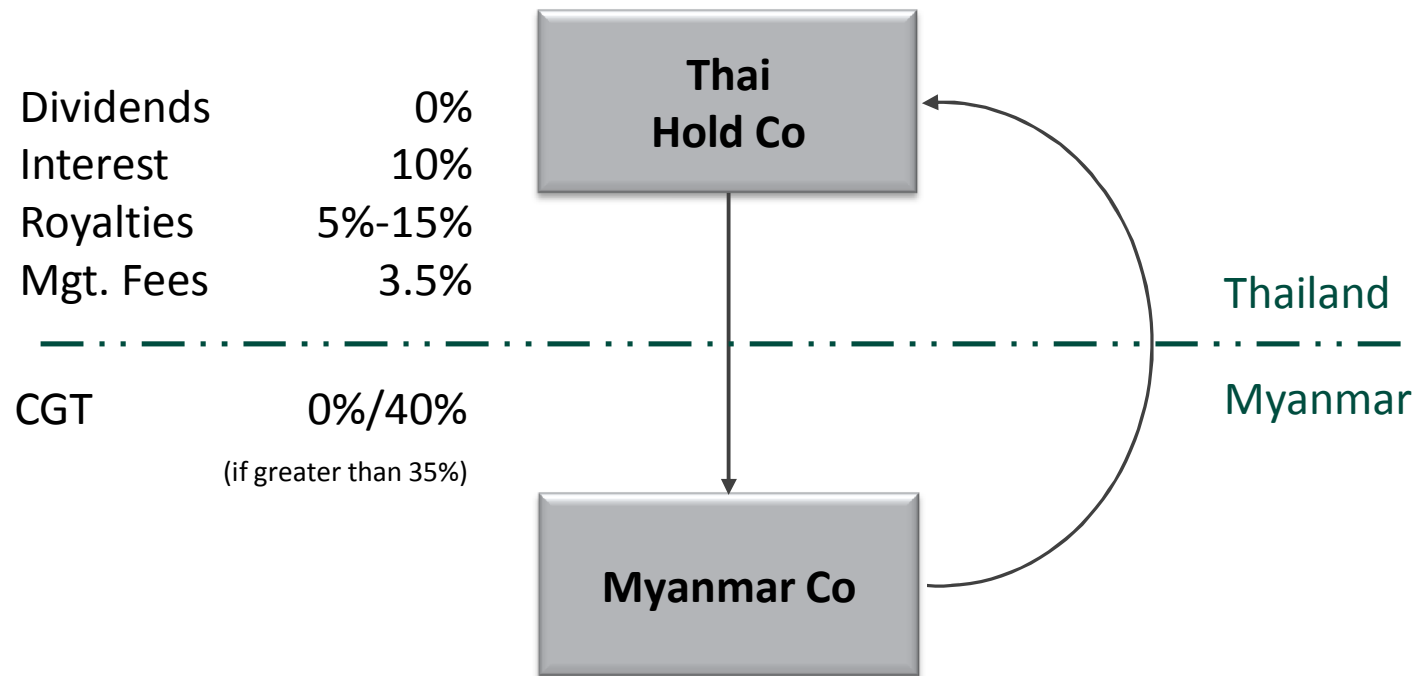
TH-MM DTA  
Taxable if:  
“ Property consists directly or indirectly principally of immovable property situated in Myanmar may be taxed in Myanmar  
“ Participation by TH resident is 35% or more

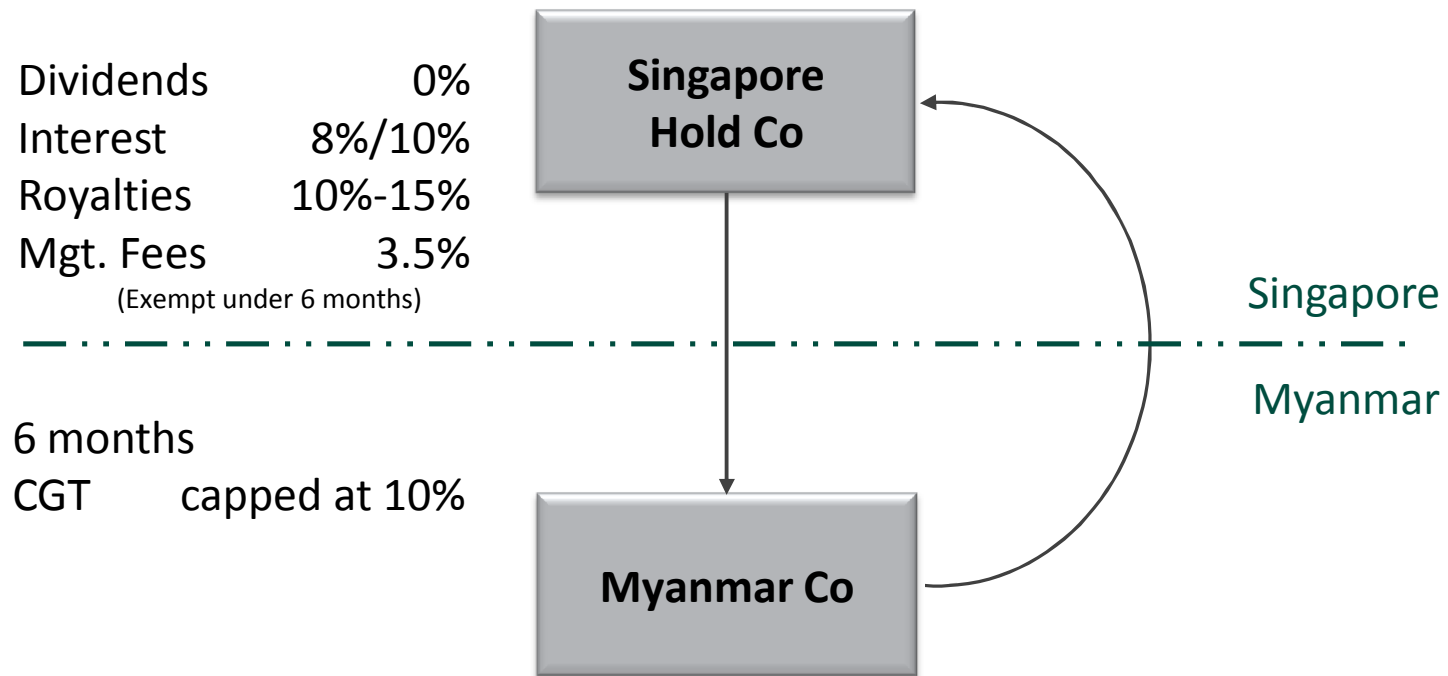
SG-MM DTA  
Taxable if:  
“ Property consists directly or indirectly principally of immovable property situated in Myanmar may be taxed in Myanmar.  
“ Participation by SG resident is 35% or more and total shares alienated during the fiscal year amounts to at least 20% of the aggregate of his holding in the share capital of such company.  
“ CGT is capped at 10%

Independent personal services	Taxable in Myanmar if the individual “ Stays in Myanmar for 183 days or more OR “ Is paid by a Myanmar resident or by PE of the Thai entity in Myanmar and the income exceeds USD 7,000/year
Dependent personal services	Exempt in Myanmar if the individual: “ Stays in Myanmar for less than 183 days “ Salary is not paid by or on behalf of a resident of Myanmar AND “ The remuneration is not borne by a resident of Myanmar or a PE which the employer has in Myanmar

# Short Term Assignments in Myanmar







Thank you



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