

# Doyle's Practice Guide to Thailand Business Law

## 道乐泰国商业投资法律实用指南

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### Chapter 10 第十章

#### What are the Tax Issues Affecting Cross Border Transactions? 影响跨境交易的税务问题有哪些？

This chapter focuses on two big issues concerning cross border transactions involving Thailand companies:

本章重点关注涉及泰国公司跨境交易中的两个大问题：

- i. The use of bilateral Double Tax Avoidance Agreements (“DTAs”) to minimize standard Thailand withholding taxes in common transactions; and  
i. 在常见交易中使用双边避免双重征税协定以最小化泰国标准预扣税；以及
- ii. Thailand’s transfer pricing rules.  
ii. 泰国的转移定价规则

#### DTAs and Withholding Taxes

避免双重征税协定和预扣税

Thailand currently has DTAs with the following 61 countries:

目前，泰国与以下61个国家或地区签署了双重征税协定：

Armenia 亚美尼亚 Australia 澳大利亚 Austria 奥地利 Bahrain 巴林  
Bangladesh 孟加拉国 Belarus 白俄罗斯 Belgium 比利时 Bulgaria 保加利亚  
Cambodia 柬埔寨 Canada 加拿大 Chile 智利 China 中国  
Chinese Taipei 中国台北 Cyprus 塞浦路斯 Czech Republic 捷克共和国  
Denmark 丹麦 Estonia 爱沙尼亚 Finland 芬兰 France 法国  
Germany 德国 Hong Kong 中国香港 Hungary 匈牙利 India 印度  
Indonesia 印度尼西亚 Ireland 爱尔兰 Israel 以色列 Italy 意大利 Japan 日本  
Korea 韩国 Kuwait 科威特 Laos 老挝 Luxembourg 卢森堡  
Malaysia 马来西亚 Mauritius 毛里求斯 Myanmar 缅甸 Nepal 尼泊尔  
Netherlands 荷兰 New Zealand 新西兰 Norway 挪威 Oman 阿曼  
Pakistan 巴基斯坦 Philippines 菲律宾 Poland 波兰 Romania 罗马尼亚  
Russia 俄罗斯 Seychelles 塞舌尔 Singapore 新加坡 Slovenia 斯洛文尼亚  
South Africa 南非 Spain 西班牙 Sri Lanka 斯里兰卡 Sweden 瑞典  
Switzerland 瑞士 Tajikistan 塔吉克斯坦 Turkey 土耳其 Ukraine 乌克兰  
United Arab Emirates 阿拉伯联合酋长国 UK & Northern Ireland 英国及北爱尔兰

Parties to cross-border transactions may utilize to DTAs use to minimize exposure to double taxation associated with cross-border transactions. Thai law attaches withholding taxes on many types of payments made by Thailand parties to parties offshore. This withholding tax is deducted at source and paid to the Revenue Department by the Thailand party making the payment offshore. 跨境交易的各方可以利用避免双重征税协定来减少与跨境交易相关的双重征税风险。泰国法律对泰国各方支付给海外各方的许多类型的款项征收预扣税。这种预扣税在源头扣除，并由泰国支付方支付给税务部门。

Payments to parties offshore that are subject to withholding tax include, for example, royalties, service fees, and dividends, as well as many other types of payments. The main function of DTAs is to mitigate or eliminate the same income being taxed twice.

需预扣税款的海外的款项包括特许权使用费、服务费、股息以及许多其他类型的款项。避免双重征税协定的主要功能是减轻或消除同一笔收入被双重征税的情况。

Below are some of the benefits and requirements generally available under DTAs. As noted above, Thailand has DTAs with many different countries. Although the terms of each of these treaties are distinct, the basic principles used in each are quite similar.

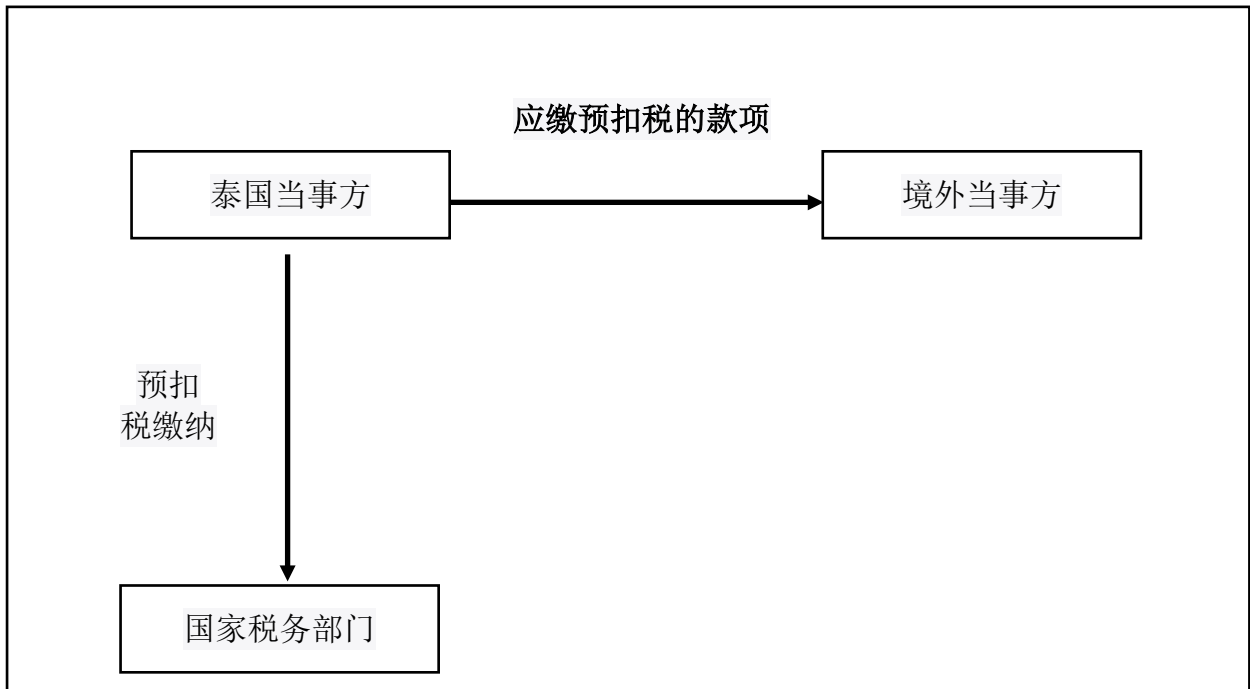
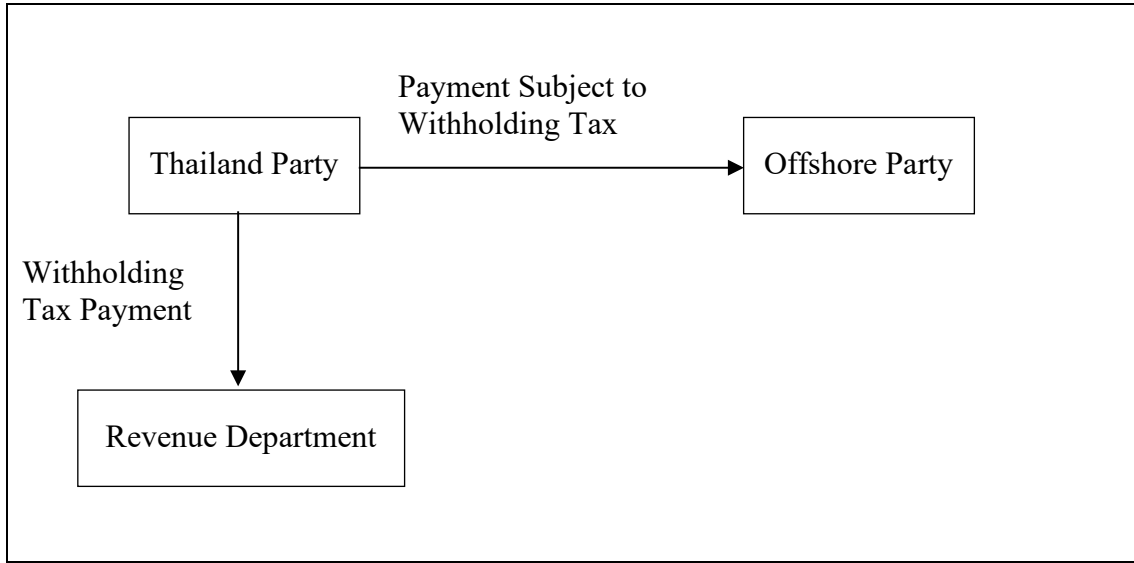
以下是这些税收协定通常提供的一些优惠和要求。如上所述，泰国与许多不同的国家签订了税收协定。尽管这些协定的条款各不相同，但所使用的基本原则都非常相似。

This chapter uses both the Thailand-US DTA (not to be confused with the Thailand-US Treaty of Amity discussed in Chapter 4) and the Thailand-Japan DTA as examples to show how qualifying Thailand parties can minimize withholding taxes and how provisions of tax treaties vary.

本章以《泰国-美国避免双重征税协定》（不要与第四章讨论的《泰国-美国友好条约》混淆）和《泰国-日本避免双重征税协定》为例，展示了符合条件的泰国各方如何最小化预扣税，以及税收协定的条款如何有所不同。

Many issues associated with the use of DTA arise from the remuneration generated from services or activities involving intellectual property or technical knowhow as in certain circumstances it is difficult to definitively determine whether such remuneration is a Business Profit or a Royalty. If it is a Business Profit and the party receiving such remuneration does not have or does not constructively have “Permanent Establishment” in Thailand, such remuneration is not subject to Thai tax. However, if such remuneration falls within the category of “Royalty”, it is subject to a withholding tax, which could vary from 5% up to 15%.

与避免双重征税协定相关的许多问题源于因服务或涉及知识产权或技术知识而产生的报酬，因为在某些情况下很难明确确定这类报酬是商业利润还是特许权使用费。如果这笔报酬是商业利润，并且接收此类报酬的一方在泰国没有或不具有“常设机构”，那么这笔报酬就不需要缴纳泰国税。然而，如果这类报酬属于“特许权使用费”类别，它就需要缴纳预扣税，税率可能从5%到15%不等。



## 1. Business Profits

### 1. 商业利润

“Business Profit” is a term used in DTAs but is not defined, except in the DTAs with Japan, the United Kingdom, and the United States of America.

“商业利润”这个术语在避免双重征税协定中被使用，但在与日本、英国和美国的避免双重征税协定中有所定义之外，其他情况下并没有明确定义。

<b>DTA</b> 避免双重征税协定	<b>Definition of “Business Profit”</b> “商业利润”定义
Japan 日本	It is stipulated in paragraph 8 of Article 7 (concerning business profit) that:  “For the purpose of this Article, the term “income or profit” does not include payments of any kind which is received in consideration of the use of, or the right to use, any property (other than immovable property) which is not a property in respect of which the Royalty referred to in paragraph 3 of Article 12 are paid.”  第 7 条第 8 款（关于商业利润）规定如下：  “为了本条款的目的，‘收入或利润’一词不包括因使用或有权使用任何财产（不动产除外）而收到的任何形式的支付，这些支付不属于第 12 条第 3 款所指的特许权使用费支付所涉及的财产。”
UK & North Ireland 英国和北爱尔兰	It is stipulated in paragraph (8) of Article 8 (concerning business profit) that:  “For the purpose of this Article the term “profits” does not include income from the operation of ships.”  第 8 条第（8）款（关于商业利润）规定如下：  “为了本条款的目的，‘利润’一词不包括船舶运营的收入。”
USA 美国	It is stipulated in paragraph 8 of Article 7 (concerning business profit) that:  “For the purposes of the Convention, the term “business profits” means income derived from any trade or business, including profits from the rental of ships, aircraft and containers (including trailers, barges and related equipment for the transport or containers), if such profits are not incidental to income from the operation of ships or aircraft in international traffic.”  第 7 条第 8 款（关于商业利润）规定如下：  “为了本协定的目的，‘商业利润’一词指的是来源于任何贸易或商业的收入，包括来自船舶、航空器和集装箱（包括拖车、驳船及与运输或集装箱相关的设备）的租赁利润，前提是这些利润并非附带于船舶或航空器在国际运输中运营所得的收入。”

Loosely defined, a Business Profit, is income not falling within specific categories stipulated in DTAs. Types of income specifically stipulated in DTAs are, for example, income generated from immovable property, income generated from international transport, dividend, interest, royalty, pension, and income earned by artists, public entertainers and athletes for their performances.

广义上讲，商业利润是指不属于避免双重征税协定中规定的具体类别的收入。避免双重征税协定中特别规定的收入类型包括：例如从不动产获得的收入、从国际运输中获得的

收入、股息、利息、版权费、养老金，以及艺术家、公众娱乐人士和运动员因表演所获得的收入。

A fee payable by a Thai party to a service provider offshore could be considered as a Business Profit if the service provider:

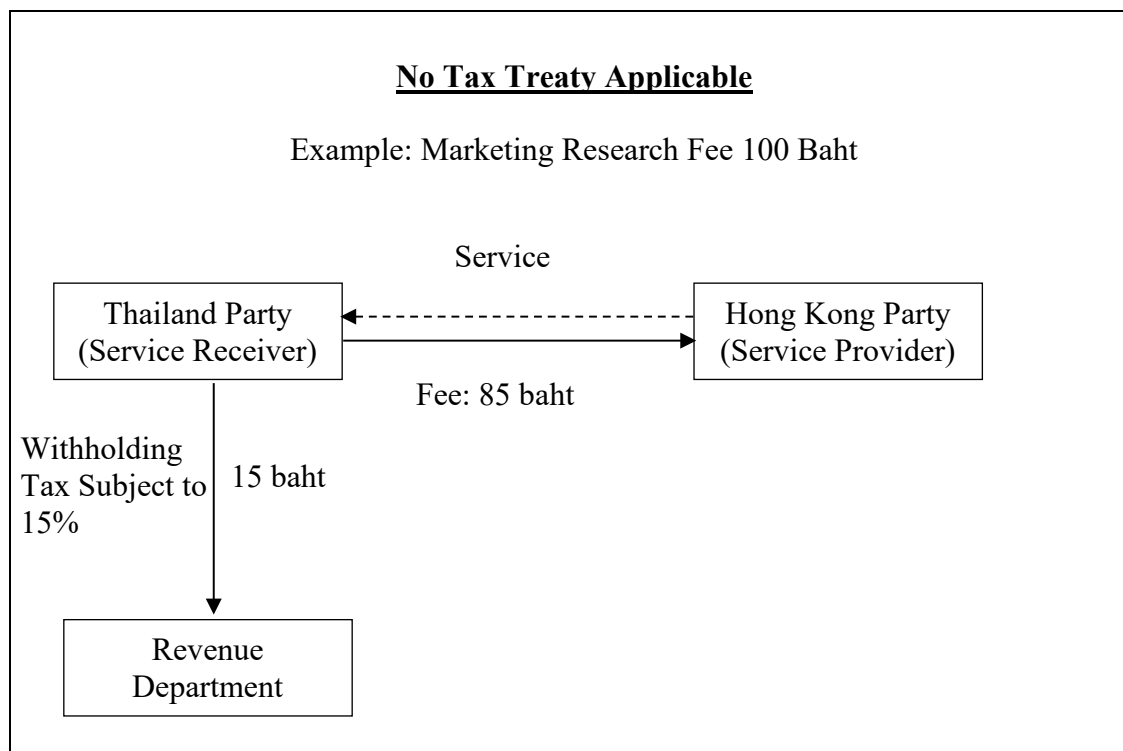
- 1) resides in a country with a tax treaty with Thailand,
- 2) does not have the Permanent Establishment (whether actually or constructively), and
- 3) uses its own resources and know-how to solve the Thai party's problem (no transfer of know-how).

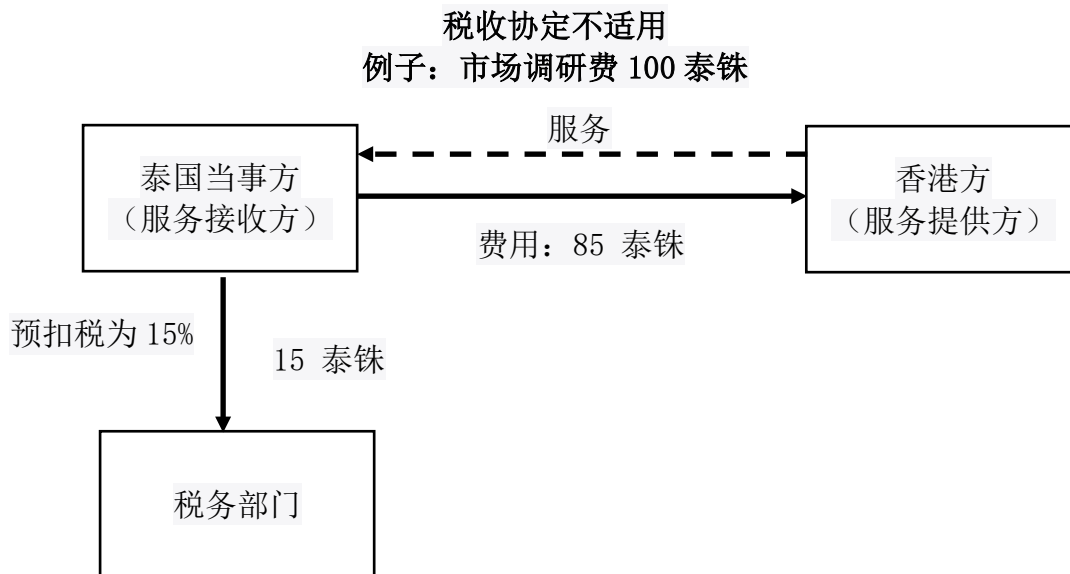
如果泰方支付的服务费用符合以下条件，可以被视为商业利润：

- 1) 服务提供方居住在与泰国有税收协定的国家，
- 2) 服务提供方没有常设机构（无论是实际的还是推定的），
- 3) 服务提供方使用自身的资源和专业知识来解决泰方的问题（没有技术转让）。

The most common example of a service fee payment that may qualify as a business profit is a payment for market research. Ordinarily, the Thai party's payment for this service would be subject to a 15% withholding tax.

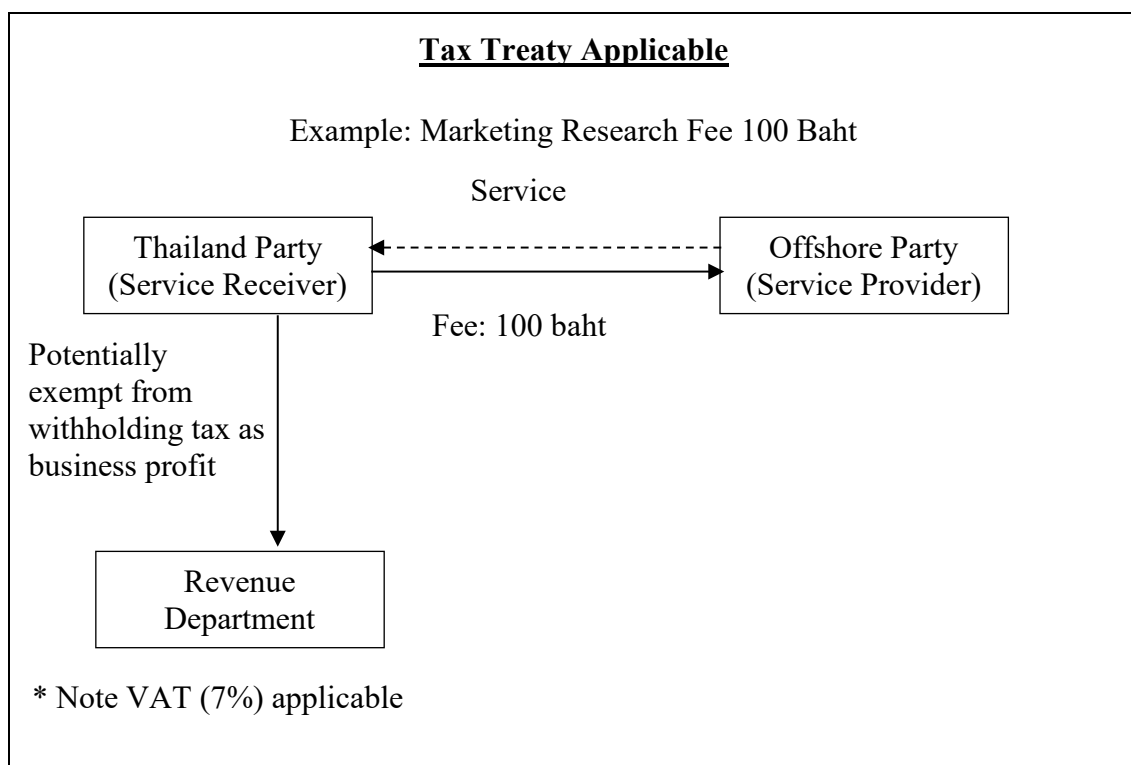
最常见的可能被归类为商业利润的服务费用支付的例子是市场调研费用。通常，泰方为这项服务支付的费用将被征收 15% 的预扣税。

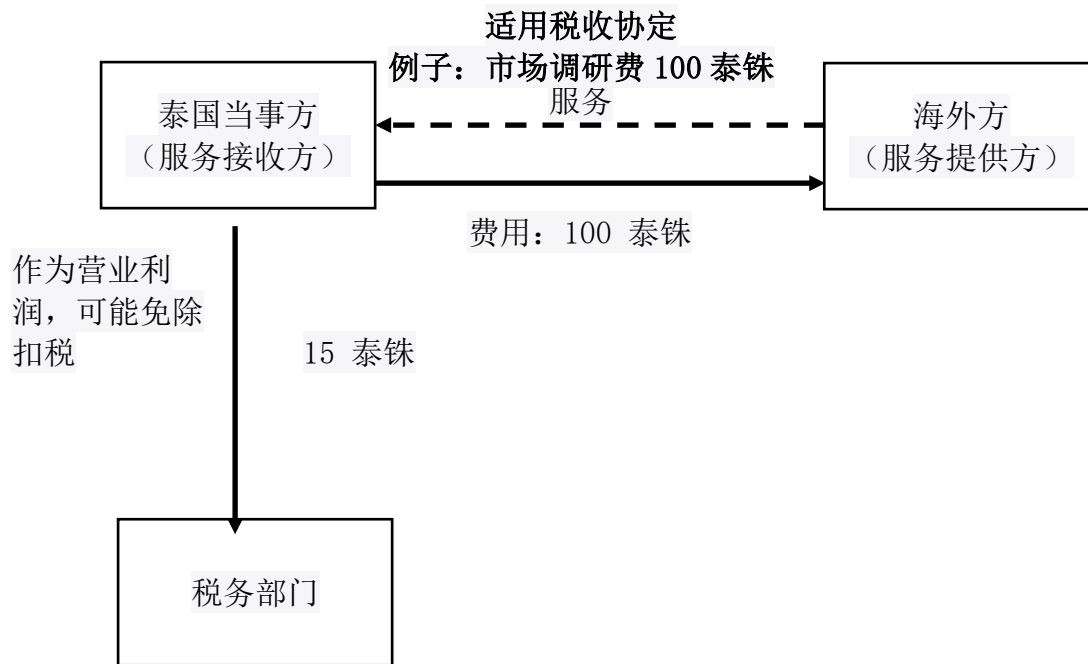




If, however, the service provider in this situation resides in a country with a DTA with Thailand, and qualifies under the DTA, this payment would be exempt from withholding tax as a business profit.

然而，如果在此情况下提供服务的服务提供商居住在与泰国签订税收协定的国家，并且根据协定符合条件，这笔款项将作为商业利润免税，免征预扣税。



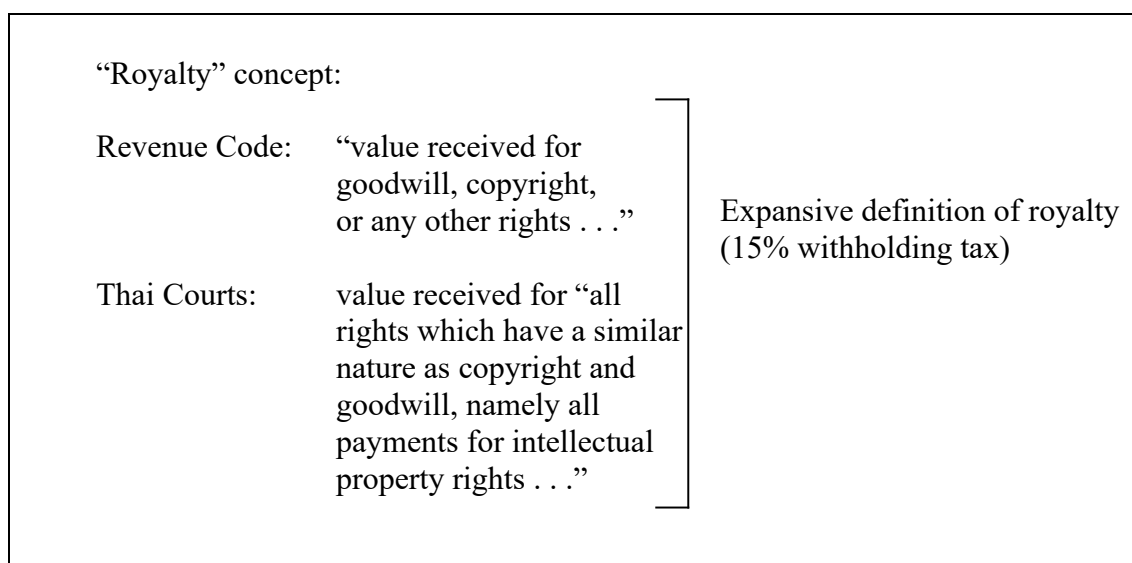


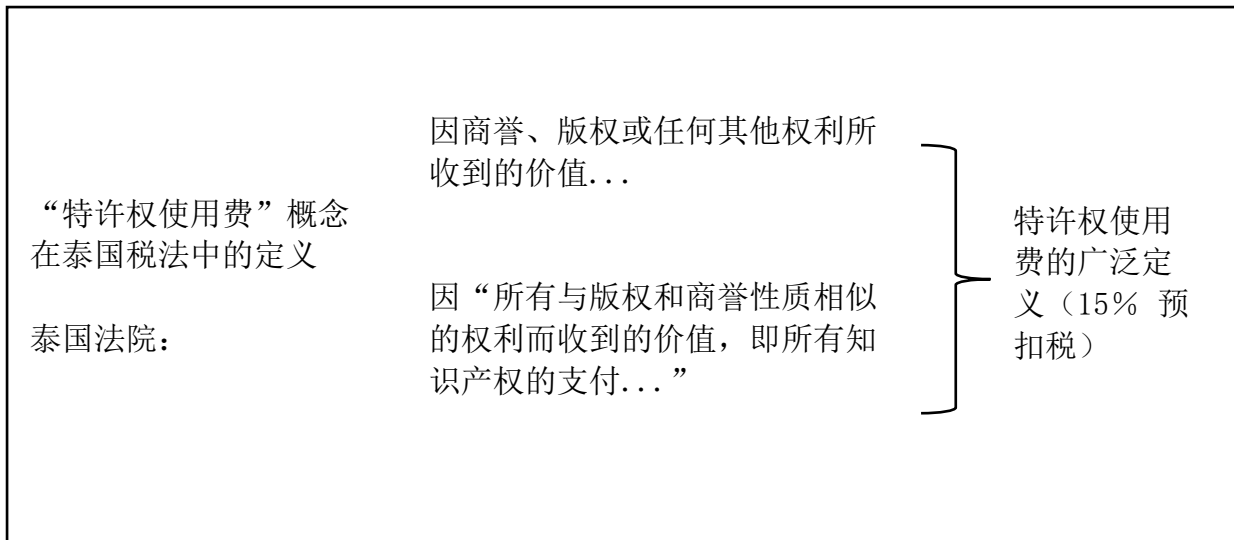
2. R<sub>0</sub> 注：适用增值税（7%）

## 2. 特许权使用费

Another important payment classification stated in all tax treaties is royalty. The Thai Revenue Code defines a royalty as “value received for goodwill, copyright, or any other right ....”. Payments made to overseas entities that fall under the definition of a royalty are subject to a 15% withholding tax.

所有税收协定中提到的另一个重要的款项分类是特许权使用费。泰国税法将特许权使用费定义为“因商誉、版权或任何其他权利所收到的价值...”。符合特许权使用费定义的支持款项应缴纳 15% 的预扣税。





Royalties are most commonly licensing fees and other fees paid by the Thai party for the use of patents, designs, trademarks, formulas, and other intellectual property rights.

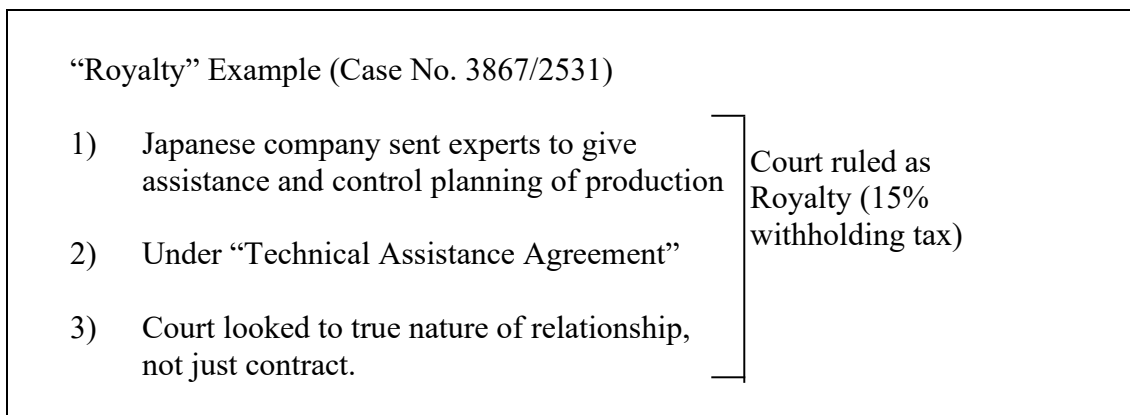
特许权使用费通常是指泰国一方为使用专利、设计、商标、配方和其他知识产权而支付的许可费和其他费用。

Thai courts, however, do not limit their definition of royalties to licensing fees only. In a number of cases, Thai courts have ruled that specific types of service fees associated with the transfer of know-how also fall under the definition of a royalty. This is very significant because it means that services, which might otherwise qualify for exemption as a business profit, are specifically included under the definition of a royalty and therefore subject to 15% withholding tax.

然而，泰国法院对特许权使用费的定义并不限于许可费。在许多案例中，泰国法院裁定，与知识转移相关的特定类型的服务费也属于特许权使用费的定义范畴。这非常重要，因为这意味着某些可能符合商业利润免税条件的服务，现在被明确纳入特许权使用费的定义范畴，因此需要缴纳 15% 的预扣税。

One such case involved a Thai party that paid service fees to a Japanese company to send experts to Thailand to give assistance and to control the planning of the production process in a paper factory.

其中一起案件涉及一家泰国公司向一家日本公司支付服务费用，以请专家前往泰国提供帮助，并控制造纸厂的生产过程规划。





“特许权使用费”案例（案号 3867/2531）

- 1) 日本公司派遣专家提供协助和控制生产规划。
- 2) 根据“技术援助协议”。
- 3) 法院审查了双方关系的真实本质，而不仅仅是合同条款。

法院裁定该费用属于特许权使用费（15%预扣税）。

These payments were made by the Thai company pursuant to a “Technical Assistance Agreement.” The Court ruled that the payments were really for the transfer of know-how and therefore, were royalties subject to withholding tax. In its decision, the Court looked to the true nature of the relationship of the two parties and not merely to how the parties classified payment in their contract.

这些款项是由泰国公司根据“技术援助协议”支付的。法院裁定，泰国公司支付的费用实际上是为了转让技术知识，因此属于特许权使用费范畴，需要缴纳预扣税。在其判决中，法院审视了双方关系的真实本质，而不仅仅是双方在合同中对付款的分类。

Whether a service fee falls under the definition of a royalty or qualifies as a business profit is not an exact science. The following are some of the factors Thai courts have used when making a determination:

服务费是否构成特许权使用费或作为商业利润，并没有一个绝对的标准。泰国法院在做出判定时，会考虑以下几个因素：

- i. Type of Knowledge Transferred – if the knowledge to be transferred is more general in nature, it tends to be a business profit: but if the knowledge is confidential, it tends to be a royalty.  
i. 知识转移类型 - 如果要转让的知识具有普遍性，那么它往往被视为商业利润。如果知识是保密的，那么它往往被视为特许权使用费。
- ii. Imparting Principle – if the purpose of the service being performed is for the offshore party to impart knowledge to the Thai party, so that the Thai party can perform the service themselves next time, the service fee tends to be a royalty: if the exchange is for the service provider to use its own resources and know-how to solve the Thai party’s problem, it tends to be a business profit.  
ii. 授予原则 - 如果提供服务的目的是为了海外方向泰国方传授知识，以便泰国方下次能够自行提供服务，那么服务费往往被视为特许权使用费。如果服务的交换是为了服务提供商利用自己的资源和专业知识来解决泰国方的问题，那么服务费往往被视为商业利润。
- iii. Substance over Form – the court will look at the real relationship between the parties to determine whether the payment is a royalty or business profit: they will not merely rely on the way the parties characterize the relationship in the contract.  
iii. 实质优先原则 - 泰国法院会审查当事方之间的真实关系来确定支付的款项是否为特许权使用费或商业利润，而不仅仅依赖双方在合同中对关系的定义。

## Common Transactions

### 常见交易

Two common types of fee arrangements between Thailand parties and parties offshore are licensing agreements and technical service agreements. In both of these situations the business profit and royalty principles explained above will be important.

泰国与海外方之间的两种常见费用安排是许可协议和技术服务协议。在这两种情况下，上述解释的商业利润和特许权使用费原则将非常重要。

Keep in mind that even though the basic framework of all of Thailand's tax treaties with different countries is the same, specific terms and definitions could be different; as you will see when we apply first, the Thailand-US DTA, then the Thailand-Japan DTA, to the same set of facts.

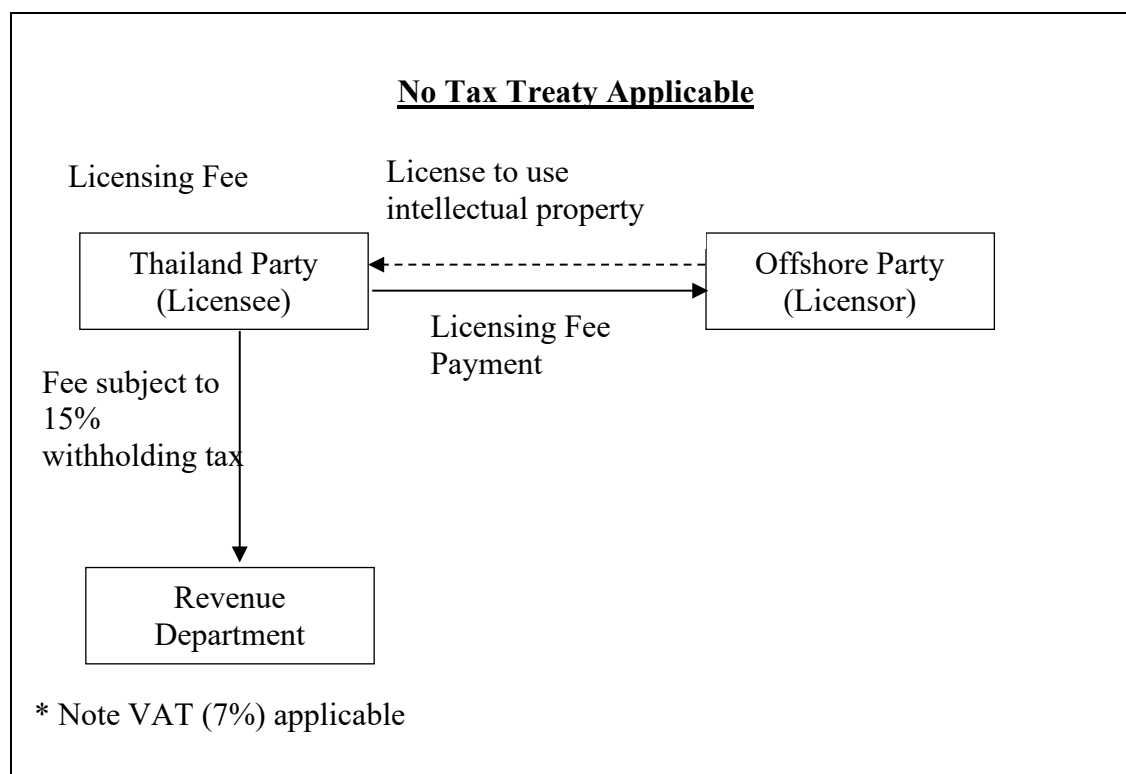
请记住，尽管泰国与不同国家的税收协定基本框架相同，但具体的条款和定义可能有所不同；正如我们在应用泰国-美国避免双重征税协定和泰国-日本避免双重征税协定时，针对同一组事实进行比较时所看到的那样。

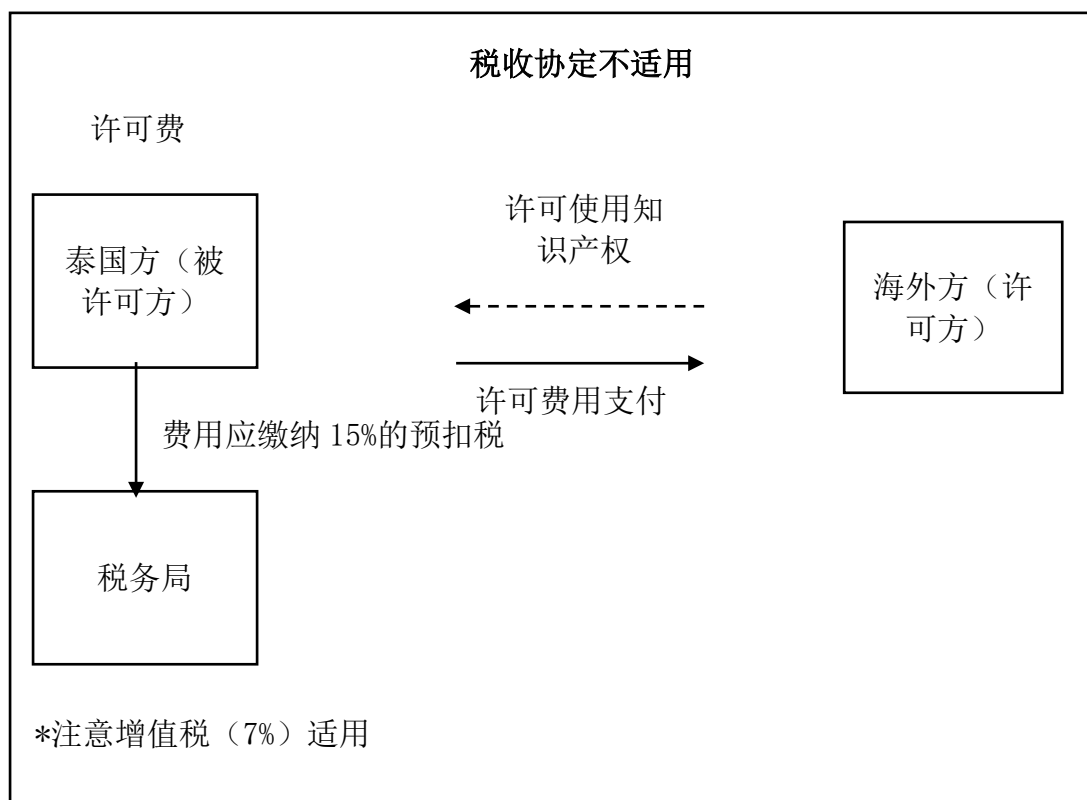
### 1. Licensing Agreements

#### 1. 许可协议

The most common way in which multinationals transfer intellectual property rights and technology to Thailand is through licensing agreements.

跨国公司向泰国转让知识产权和技术的最常见方式是通过许可协议。





In the above example, the offshore party licenses the use of intellectual property rights to a Thai party, and the Thai party then pays a fee to the offshore licensor for the use of these rights. As a licensing agreement is by definition a transfer of know-how, the Thai party's payment would fall under the definition of a royalty and therefore, be subject to a 15% withholding tax.

在上面的例子中，海外方授权知识产权使用权给泰国方，随后泰国方支付一定费用给海外许可方以使用这些权利。由于许可协议的定义是一种技术转让，泰国方的支付将被视为特许权使用费的一种形式，因此应缴纳 15%的预扣税。

#### a. Thailand-US DTA

##### a. 泰国-美国避免双重征税协定

Suppose the above offshore party resides in the US. The Thailand-US DTA divides royalties into three categories: A, B, and C.

假设上述的海外方居住在美国。泰国-美国双重征税协定将特许权使用费分为A、B、C三个类别。

Thai-US DTA Royalties Categories:

- 1) Category A → 5% Withholding Tax
- 2) Category B → 8% Withholding Tax
- 3) Category C → 15% Withholding Tax

泰国-美国避免双重征税协定将特许权使用费分为三类。

- 1) 类型A -----5%预扣税
- 2) 类型B -----8%预扣税
- 3) 类型C -----15%预扣税

Royalties falling under category A are subject to only 5 % withholding.  
“A类特许权使用费”仅需缴纳5%的预扣税款。

Category A Royalties

“ The use or the right to use any copyright of literary, artistic or scientific work, including software, motion pictures and works on film, tape or other means of reproduction for use in connection with radio and TV broadcasting”

5% withholding tax applicable

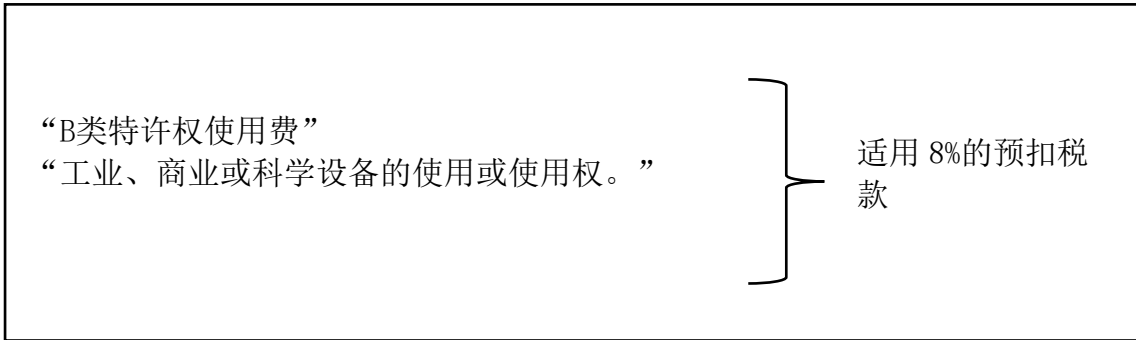
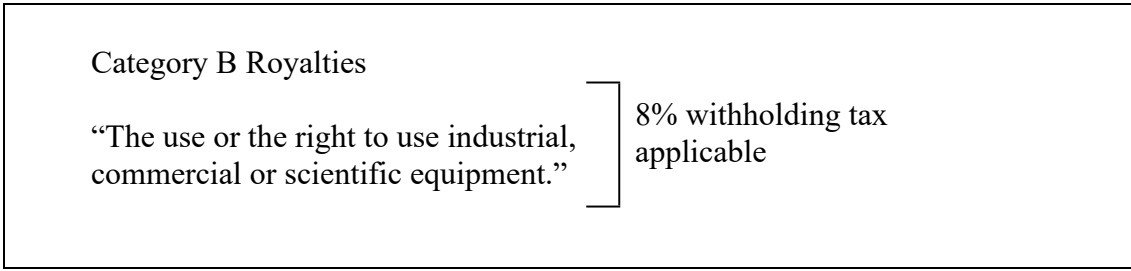
“A类特许权使用费”

“任何文学、艺术或科学作品的版权使用或使用权，包括软件和电影、磁带或其他复制媒介上的作品，供电台和电视台广播使用”

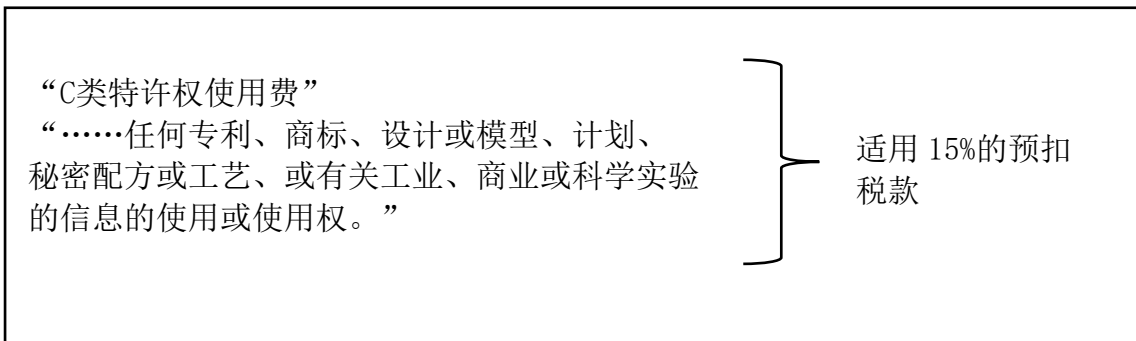
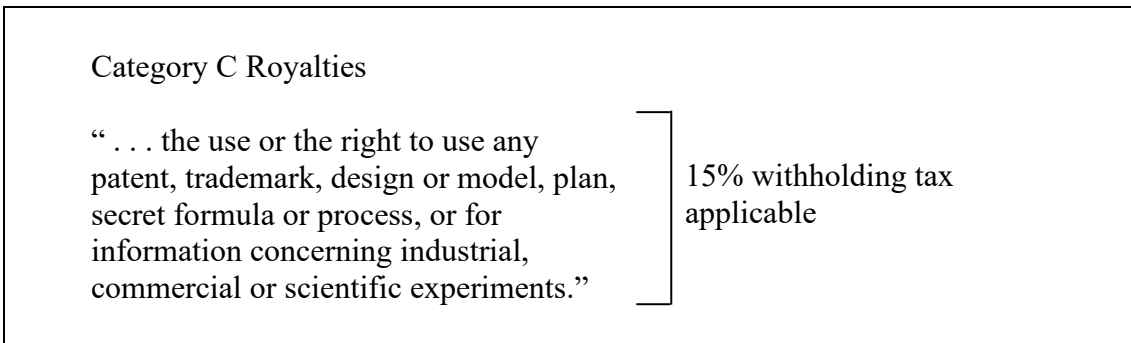
适用 5%的预扣税款

Royalties falling under Category B are subject to only 8% withholding. This includes equipment rentals.

“B类特许权使用费”，包括设备租赁费用在内，仅需缴纳8%的预扣税款。



Royalties falling under Category C are subject to the withholding tax rate of 15%.  
 “C类特许权使用费”需缴纳 15%的预扣税款。



The language in Category C includes, “secret formula or process, or for information concerning industrial, commercial, or scientific experiments.” This is significant, particularly in a technology transfer situation, as this language makes this the “catch-all” category.

“C类特许权使用费”包括“秘密配方或工艺，或有关工业、商业或科学实验的信息”，这一点尤其重要，特别是在技术转让的情况下，因为这种表述使其成为了“万能类别”。

Many kinds of licensing fees paid by Thai parties to US licensors fall under Category C and so are subject to the full 15% withholding tax. For simplicity’s sake these categories are referred to as Category 5(%), Category 8(%) and Category 15(%).

许多由泰国方支付给美国许可方的各种许可费都属于“C类特许权使用费”，因此需要缴纳15%的预扣税款。为了简化起见，这些类别被称为5%类别、8%类别和15%类别。

When US parties plan to license the use of intellectual property rights or technology to a Thai company it is very important for both parties to be conscious of the language used in the agreement setting forth the arrangement. Many Thai companies make mistakes in this area by using language in the agreement that makes it seem as though the transaction belongs in Category 15 when it really falls under Category 5.

当美国方计划将知识产权或技术的使用许可给泰国公司时，双方在协议中使用的语言非常重要。许多泰国公司在这方面犯了错误，他们在协议中使用的语言使交易似乎属于15%类别，而实际上它应该属于5%类别。

**EXAMPLE:** Suppose a US party is licensing the use of software to the Thai party. The software contains graphics developed by the US company. Because “the right to use software” is specifically included in Category 5 the payment should be subject to only 5% withholding.

**示例：**假设美国方正授权泰国方使用软件。该软件包含由美国公司开发的图形。由于“使用软件的权利”明确包含在5%类别中，因此支付应该仅受到5%的预扣税款的影响。

Example: License to Use Graphics Software

- 1) Should fall under Category A (5% withholding)
- 2) However, referred to in contract as “business process materials”
- 3) Characterization misleading, so Revenue Department may argue belongs in Category C (15% withholding).

示例：图形软件的许可使用

- 1) 应该属于A类（5%预扣税款）
- 2) 然而，在合同中被称为“业务流程材料”
- 3) 这个描述可能会误导，所以税务部门可能会认为它属于C类（15%预扣税款）。

In the contract, the parties refer to the software as “Business Process Materials.” If the Thai party is later audited, the Revenue Department may argue that the royalty should have been classified under Category 15 (as “secret formula or process”), rather than Category 5 (“right to use software”), because the term “Business Process Material,” on the surface, makes it seem as though the payment falls under Category 15. To avoid mistakes like this, always make sure that your attorney refers to the language in the applicable treaty before drafting the licensing agreement.

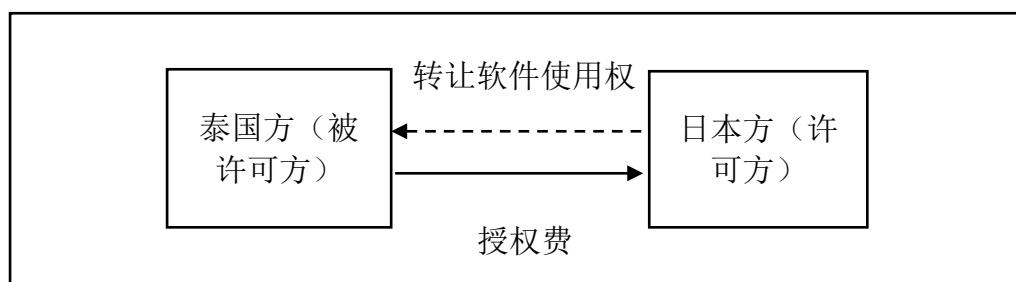
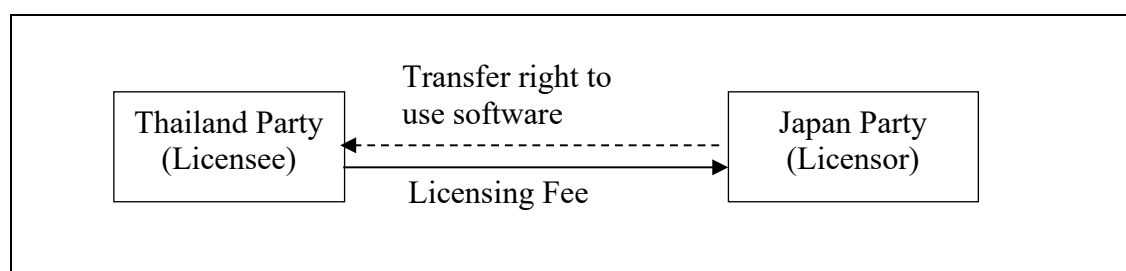
在合同中，双方将软件称为“商业工艺材料”。如果泰国方后来接受审计，税务部门可能会认为，应将该特许权使用费归类为 15%类别（作为“秘密配方或工艺”），而不是 5%类别（“使用软件的权利”），因为表面上，“商业工艺材料”这个术语使得支付似乎属于 15%类别。为了避免这样的错误，应确保您的律师在起草许可协议之前参考适用条约中的语言。

## b. Thailand-Japan DTA

### b. 泰国-日本避免双重征税协定

The situation in the previous example is changed to make the party licensing the software a Japan party rather than a US party.

我们将之前的例子中的软件许可方从美国方更改为日本方。



Unlike the US DTA, the Japan DTA places all royalties under the same category and effectively makes all payments of royalties made by a Thailand party subject to 15% withholding.

与美国的避免双重征税协定不同，日本协定将所有特许权使用费归为同一类别，并有效地规定所有由泰国方面支付的特许权使用费都需缴纳 15%的预扣税。

In our example the Thai-Japan DTA is not helpful to the Thailand party because the tax rate set forth for royalties in the treaty (15% of the amount of the royalty) is the same rate applicable even if no tax treaty was utilized.

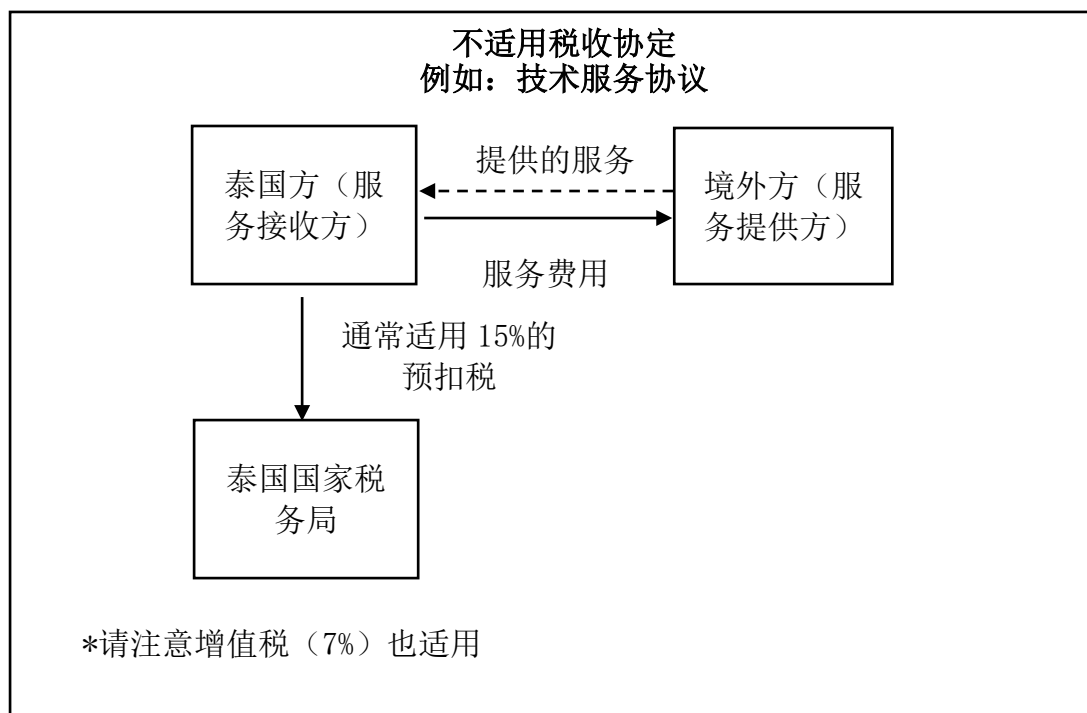
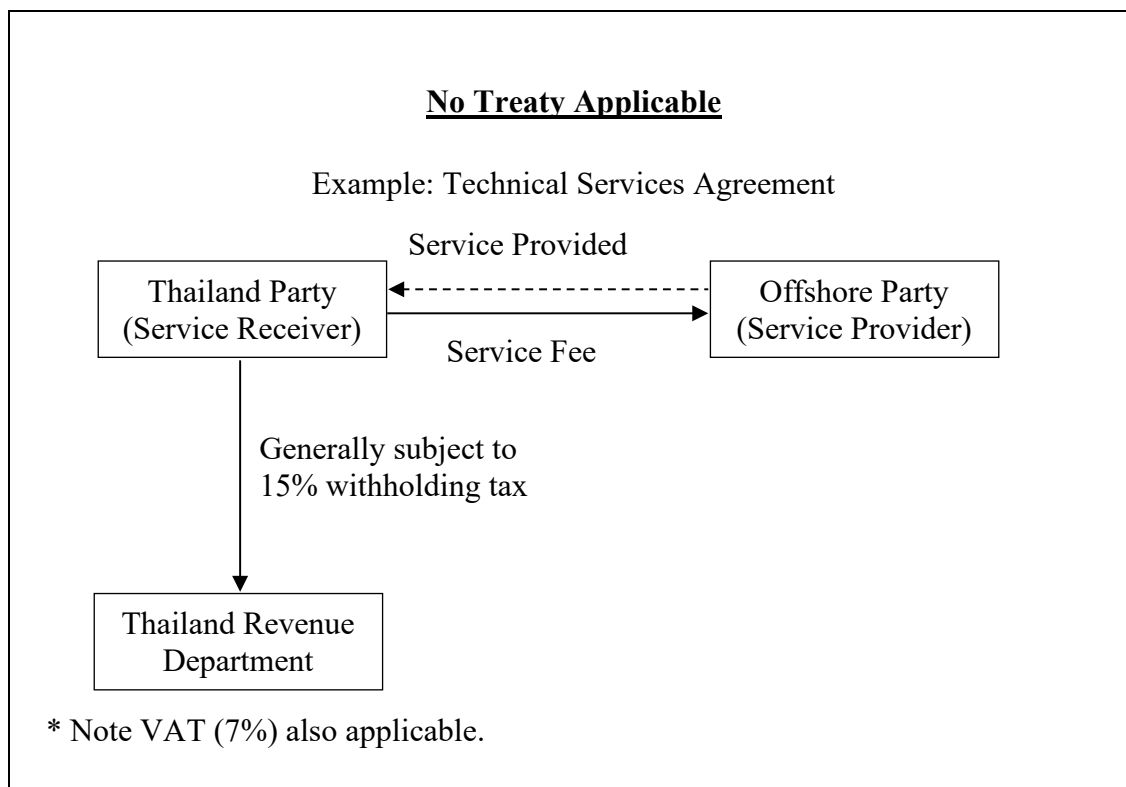
在我们的例子中，泰国-日本避免双重征税协定对泰国方并不有利，因为条约中规定的特许权使用费税率（特许权使用费金额的 15%），即使没有利用税收协定，适用的税率也是相同的。

## 2. Technical Service Agreements

### 2. 技术服务协议

In a technical service agreement, the Thai party is outsourcing specific services to a party offshore. In return for the service, the Thai party pays a fee. Normally, such a fee would be subject to withholding tax.

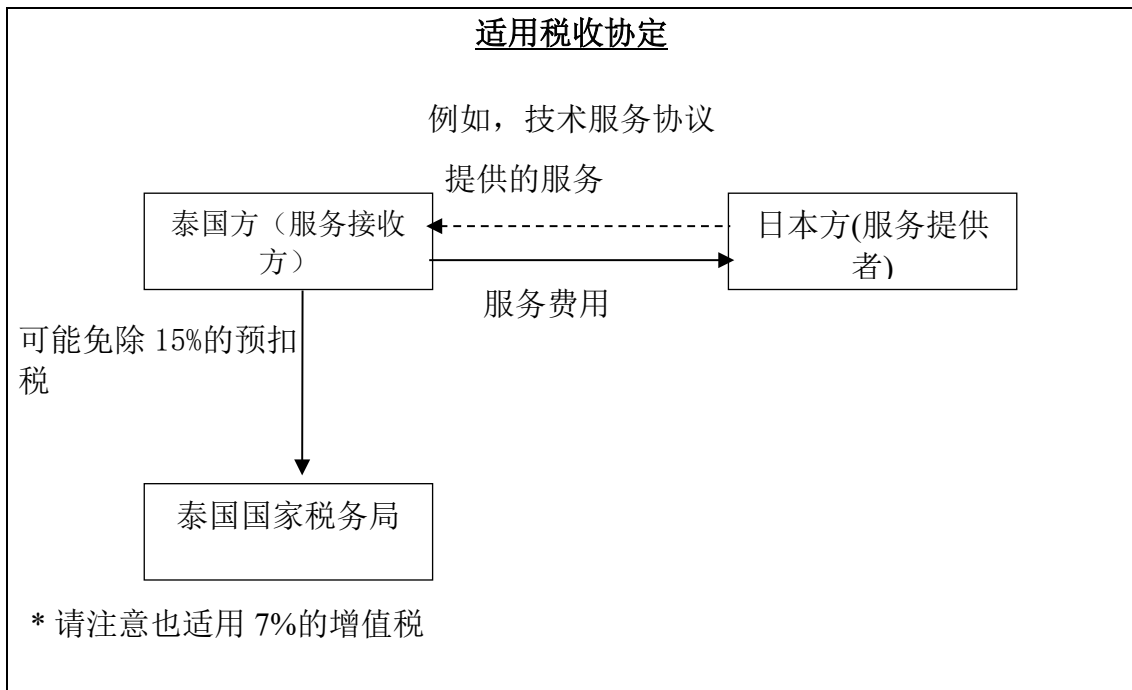
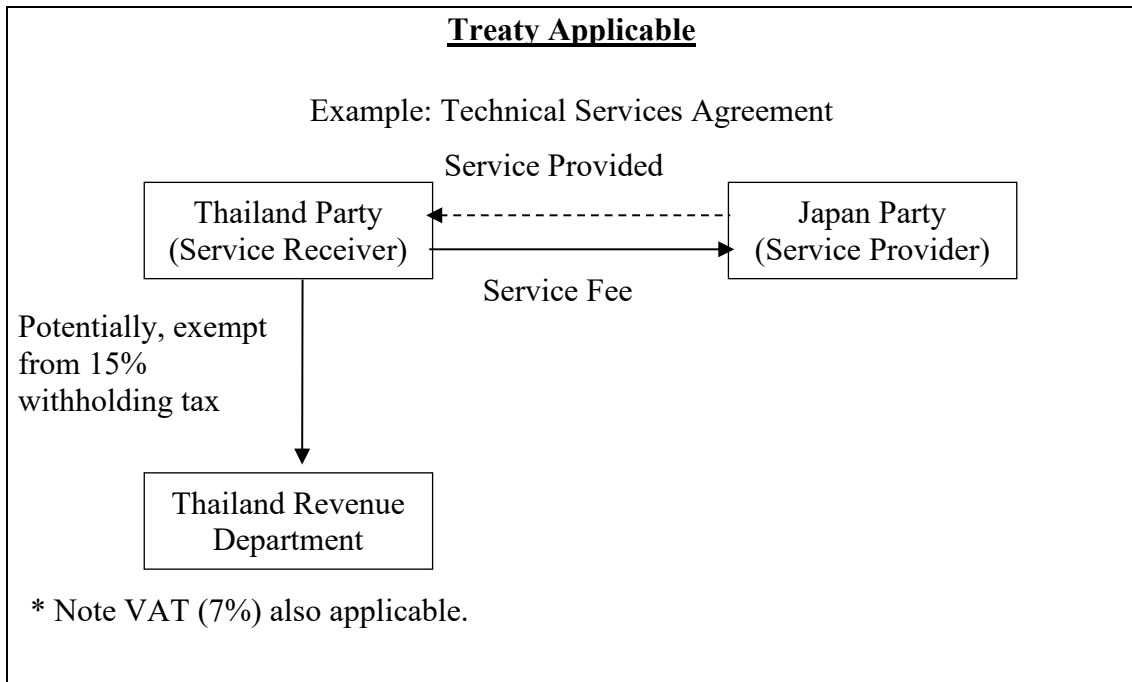
在技术服务协议中，泰国方将特定服务外包给海外方。作为对服务的回报，泰国方支付一定的费用。通常，此类费用需要缴纳预扣税。



However, if the service provider, resides in a country with a tax treaty with Thailand, has permanent establishment in Thailand, and the service fee otherwise qualifies as a business profit, the payment may qualify for exemption from withholding tax.

然而，如果服务提供商所在国家与泰国签订了税收协定，且在泰国设有常设机构，并且服务费原本符合营业利润的条件，则该笔款项可能符合免征预扣税的要求。





**EXAMPLE:** A Thailand company engages a US company to source raw materials for use in its factory in Thailand. The purpose of this transaction is not for the US company to teach the Thai company how to do anything. Instead, the US company would use its own knowledge and resources to solve the Thai company’s problem: finding raw materials. The income generated from this transaction would qualify as a business profit, making it exempt from withholding tax. If we changed the facts in the example to make the service provider sourcing raw materials a Japan

party rather than a US party, the outcome would be the same. Under both treaties the transaction would qualify for exemption as a business profit.

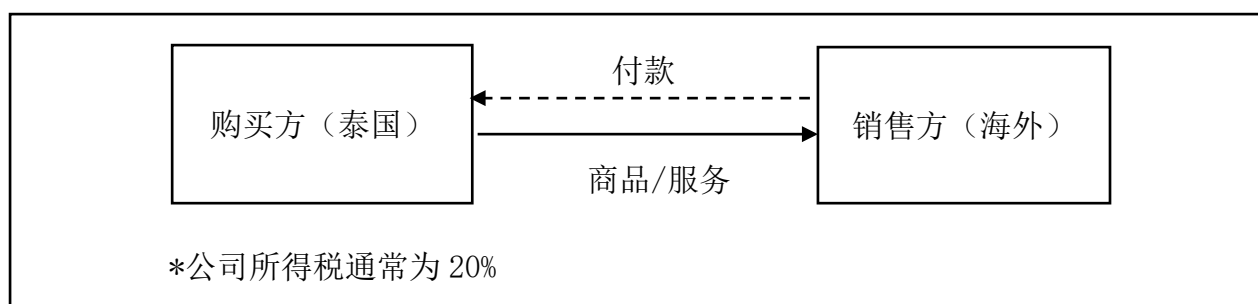
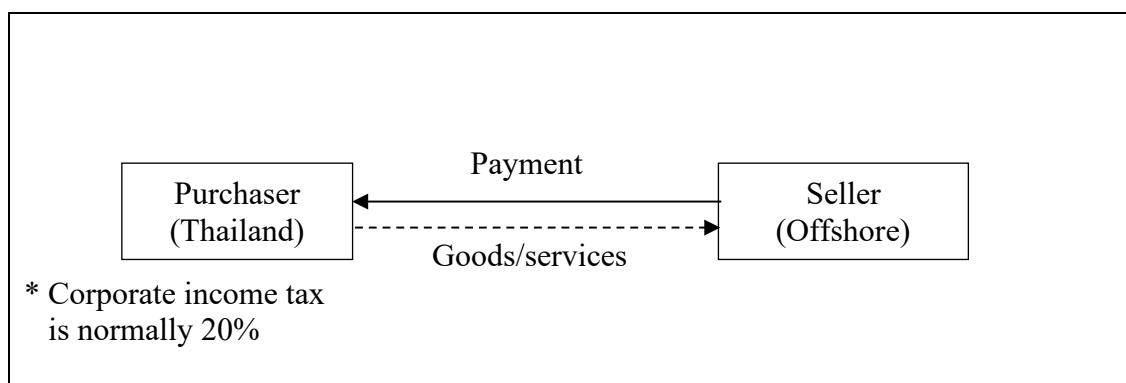
示例：一家泰国公司聘请一家美国公司为其寻找原材料，供其在泰国的工厂中使用。此交易的目的是不是让美国公司教泰国公司如何做任何事情。相反，美国公司将利用自己的知识和资源来解决泰国公司的问题，即寻找原材料。这项交易属于商业利润，因此免征预扣税。如果我们改变示例中的事实，使服务提供商寻找原材料的当事方变成日本而不是美国，结果将是相同的。根据两个协定，该交易将符合商业利润免预扣税的条件。

## Transfer Pricing

### 转移定价

The term “transfer pricing” refers to the way the stated price of goods or services, in a given transaction impacts the parties’ respective tax exposure.

转移定价是指在特定交易中，商品或服务的申报价格影响各方各自税收负担的方式。



The issue here is that the Thailand Revenue Department wants to prevent multinationals from manipulating the price of goods and services in intergroup transactions as a way to evade tax in Thailand.

这里的问题在于泰国税务局希望防止跨国公司在集团内部交易中操纵商品和服务价格以逃避在泰国的税收。

## 1. Applicable Rules

### 1. 适用规定

Transfer pricing rules determine whether the value placed on a transaction is adequate for corporate income tax purposes.

转移定价规则确定交易定价是否符合企业所得税目的的要求。

**EXAMPLE:** Suppose a Thai manufacturer sells finished products to a distributor in Hong Kong for 40% of the product's final sale price. Is this purchase price sufficient for the purpose of calculating corporate income tax payable in Thailand? The answer: It depends.

**示例:** 假设一家泰国制造商以产品最终销售价格的 40% 的价格将成品销售给香港的经销商。这个购买价格对于计算泰国应缴纳的企业所得税足够吗？答案是：视情况而定。

The standard the Revenue Department uses to examine the value placed on transactions is “market price.” The theory is that the Thai firm should receive a sum for the transaction equal to its market price in order to pay the appropriate amount of tax with regard to the transaction.

税务局用于审查交易定价的标准是“市场价格”。理论上，泰国公司应该收到与其市场价格相等的交易款项，以便就该交易支付适当的税款。

If the Revenue Department determines that the value assigned to a transaction is lower than the market value, the assessment officer has the power to assess the transaction. If the department determines that the value assigned by the parties is higher than the market value, the assessment officer also has the power to assess the transaction.

如果税务局确定所分配交易的价格低于市场价格，评估官员有权对该交易进行评估。如果税务局确定交易的价格高于市场价格，评估官员同样有权对该交易进行评估。

A major issue presented by Thailand's transfer pricing rules concerns the definition of market price. The market price for a transaction depends upon many real world business factors, including market information, business functions, risks, macro-economic circumstances, and environmental considerations.

泰国转移定价规则存在的一个重要问题涉及市场价格的定义。交易的市场价格取决于许多实际商业因素，包括市场信息、业务功能、风险、宏观经济情况和环境考虑等。

The determination of market price is often a source of debate between the Revenue Department and taxpayers. Market price is defined as “a price, service fee, or interest that would be agreed in good faith between independent parties when transferring property, performing services, or lending money commercially...”

市场价格的确定常常是税务局和纳税人之间争论的焦点。市场价格的定义是“在转让财产、提供服务或商业性借贷金钱时，独立当事人基于善意协商所同意的价格、服务费或利息...”

The term “independent parties” is defined as “parties without any direct or indirect relationship in terms of management, control, or capital contribution.” From the definitions of “market price” and “independent parties” we can infer that the Revenue Department may:

“独立当事人”一词的定义是“在管理、控制或资本投入方面没有任何直接或间接关系的当事人。”从“市场价格”和“独立当事人”的定义中，我们可以推断出税务局可能会：

- i. Investigate whether the parties to a transaction are independent parties as defined by the above rules; and
- i. 调查交易各方是否符合以上规定所定义的独立当事人；
- ii. If the transaction is not between independent parties, ascertain whether or not the parties assigned the value to the transaction as if they had been independent parties.
- ii. 如果交易不是在独立当事人之间进行的，则确定各方是否按独立当事人的方式分配了交易的价值。

Many times companies enter into transactions with related organizations. This may mean that one of the parties to the transaction is a shareholder or director of the other party, or that the companies have some other direct or indirect relationship. These transactions are commonly referred to as inter-group transactions.

很多时候，公司与相关组织进行交易。这可能意味着交易的一方是另一方的股东或董事，或者这些公司存在其他直接或间接的关系。这些交易通常被称为集团内交易。

The definitions of “market price” and “independent parties” allow the Revenue Department to scrutinize the values parties assign in inter-group transactions more closely than they would if the transaction was between independent parties.

“市场价格”和“独立当事人”的定义使得税务局可以更严格地审查交易各方在集团内交易中分配的价值，比在独立当事人之间进行交易时更为严格。

**EXAMPLE:** Using the previous example, suppose that the Hong Kong distributor to which the Thai company sells the finished goods also owns a single share of the Thai company. The Thai company is later assessed by the department, and the transaction is examined.

示例：使用之前的例子，假设香港经销商买入了泰国公司生产的成品，并同时持有泰国公司的一股股份。泰国公司之后会被税务局进行评估，这笔交易也会受到审查。

According to the above rules, because the Hong Kong distributor holds one share of the Thai company, the two parties do not qualify as independent parties. Since they do not qualify as such, the Revenue Department may more meticulously examine their transaction than it would otherwise.

根据以上规定，由于香港经销商持有泰国公司的一股股份，这两个交易方不符合独立当事人的定义。因为它们不符合独立当事人的定义，税务局可能会比在其他情况下更仔细地审查它们的交易。

Many multinationals engage accounting firms to help substantiate their market price strategy by providing average prices applicable for particular goods and services in a sector. This is normally a good investment as it gives the taxpayer a means of defending the transfer pricing strategy used, in case he is later audited. Even then, however, the market price of goods or services traded on an inter-group level is difficult to establish clearly.

许多跨国公司聘请会计师事务所来协助证明他们的市场价格策略，提供适用于特定行业商品和服务的平均价格。这通常是一个不错的投资，因为它为纳税人提供了一种捍卫转移定价策略的手段，以防他日后接受审计。即便如此，集团内部交易的货物或服务的市场价格仍然难以明确确定。

## 2. Accepted Valuation Methods

### 2. 可接受的估值方法

Thailand’s transfer pricing rules include three valuation methods designated by the Revenue Department to assist parties in knowing what valuation methods are considered sufficient by the Revenue Department in a given situation. They are: Comparable Uncontrolled Price, Resale Price, Cost Plus; however, if these three methods cannot be applied for service fees or interest, other methods that are internationally accepted, and are commercially appropriate to the situation with respect to the transfer may also be applied.

泰国的转移定价规则包括由税务局指定三种估值方法，以帮助各方了解在特定情况下税务局认为哪些估值方法是充足的。它们是：可比非受控制价格法、转售价格法、成本加

成法；然而，如果这三种方法无法应用于服务费或利息，可以适用其他国际公认的、并且在转让情况下商业上适当的方法。。

Appendix A presents the guidelines the Revenue Department has set forth with regard to the calculation of market price, using each of these methods.

附录 A 介绍了税务局关于使用每种方法计算市场价格的指导方针。

Also, taxpayers may submit their transfer pricing strategy to the Revenue Department for approval in advance. This allows the Revenue Department to raise issues or objections it may have associated with the company's transfer pricing strategy before implementation.

此外，纳税人可以事先向税务局提交他们的转移定价策略以获得批准。这使得税务局能够在实施之前提出与公司的转移定价策略相关的问题或异议。

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