L&P

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Tax Residency in Germany, China, Hong Kong and Thailand

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I. Introduction

The concept of tax residency is central in national and international tax law. Its definition varies considerably from jurisdiction to jurisdiction. In the following newsletter we would like to inform you about tax residency in Germany, China, Hong Kong and Thailand.

II. Countries

1. Germany

a) Individuals

In Germany, an individual's tax residency is determined according to § 1 German Income Tax Law (*Einkommensteuergesetz*)[1] and §§ 8, 9 German Fiscal Code (*Abgabenordnung*)[2]. According to § 1 (1) German Income Tax Law, individuals are considered tax residents if they have

- a place of residence; **or**
- a habitual residence in Germany.

The German legislation generally distinguishes between:

- domicile and residency under civil law
- residency under public law
- (habitual) residency under tax law

aa) Domicile and Residency under Civil and Public Law

Domicile under civil law means a place that is suitable for living. Residency under civil law is the geographical centre of one's life, i.e. the place where a person permanently settles (§ 7 German Civil Code (*Bürgerliches Gesetzbuch*)[3]).

Residency under public law, however, refers to the legal duty of officially registering one's residence as stipulated in § 11 (1) and (2) Framework Registration Act (*Melderechtsrahmengesetz*)[4]:

- "*Any person who moves in to an abode has to register with the authorities.*"
- "*Any person who moves out of an abode has to de-register with the authorities.*"

If a person has more than one domicile in Germany, one of them is the main domicile, usually the predominantly used domicile, which in doubt is the one where the person has its centre of personal interests (§ 12 (1) Framework Registration Act).

The registration requirement is relevant for a person's legal domicile, i.e. the place of jurisdiction. The court at a person's legal domicile is generally competent for all legal actions against that person (§§ 12, 13 German Civil Procedure Code (*Zivilprozessordnung*)[5]). The residency is further important for the voting right in municipal elections, the registration of motor vehicles and for residual detection by the police.

1 German Income Tax Law in the version promulgated on 8 October 2009 (Federal Law Gazette I p. 3366, 3862), last amended by Article 234 of the Regulation of 31 August 2015 (Federal Law Gazette I p. 1474).

2 German Fiscal Code in the version promulgated on 1 October 2002 (Federal Law Gazette I p. 3866; 2003 I p. 61), last amended by Article 3 of the Law of 28 July 2015 (Federal Law Gazette I p. 1400).

3 German Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette I p. 42, 2909; 2003 I p. 738), last amended by Article 16 of the Act of 29 June 2015 (Federal Law Gazette I p. 1042).

4 Framework Registration Act in the version of the announcement of 19 April 2002 (Federal Law Gazette I p. 1342), last amended by Article 2 of the Act of 28 August 2013 (Federal Law Gazette I p. 3458).

5 German Code of Civil Procedure as promulgated on 5 December 2005 (Federal Law Gazette I page 3202; 2006 I p. 431; 2007 I p. 1781), last amended by Article 145 of the Ordinance dated 31 August 2015 (Federal Law Gazette I p. 1474).

bb) (Habitual) Residency under Tax Law

However, residency in German tax law is determined differently:

Under tax law, the term "*residence*" is to be interpreted broadly and means a secluded premise that is objectively suitable for living. According to § 8 German Fiscal Code, a person

> "[…] *shall be resident at the place at which they maintain a dwelling under circumstances from which it may be inferred that they will maintain and use such dwelling.*"

According to the Federal Fiscal Court, the criterion of *permanence* is crucial, disregarding the taxpayer's intention or (*the omission of*) a registration with the authorities.[6] Furthermore, the individual must have the ability to freely dispose of the abode, which e.g. is not the case with regular hotel guests.[7]

According to § 9 German Fiscal Code, a person has its habitual residence (*also referred to as habitual abode*)

> "[…] *at the place at which they are present under circumstances indicating that their stay at that place or in that area is not merely temporary. An uninterrupted stay of not less than six months' duration shall be invariably and from the beginning of such stay regarded as an habitual abode in the territory of application of this Code; brief interruptions shall be excepted.*" [Emphasis added]

b) Legal Entities

According to § 1 (1) German Corporate Income Tax Law (*Körperschaftsteuergesetz*)[8], entities that have either their actual business management **or** registered office within Germany are liable to corporate income tax.

- According to § 10 German Fiscal Code, business management shall mean the centre of commercial executive management (*i.e. the place of the actual decision making*).
- According to § 11 German Fiscal Code, the registered office is the place determined by law, articles of association, bylaws or similar regulations. The determination of the registered address poses no further difficulties, since it solely depends on the legal facts.

Non-resident companies may be required to pay tax on income derived from German sources.

2. China

a) Individuals

According to Art. 1 of the Individual Income Tax Law of the People's Republic of China ("**IITL**")[9], tax residency is assumed when individuals are

- domiciled within the borders of China; or
- not domiciled in China, but live in China for more than 183 days.

According to Art. 2 of the Regulations for Implementation of the Individual Income Tax Law of the People's Republic of China ("**Regulations**")[10], individuals have a "*domicile in China*" within the meaning of Art. 1 IITL by reason of their

- permanent registered address
- family
- economic involvements or
- habitual residence in China.

6 BFH, decision dated 19 May 1993, I R 80/92, BStBl. II 1993, 655.

7 BFH, decision dated 19 March 1997, I R 69/96, BStBl. II 1997, 447.

8 German Income Tax Law of Civil Procedure as promulgated on 5 December 2005 (Federal Law Gazette I page 3202; 2006 I p. 431; 2007 I p. 1781), last amended by Article 145 of the Ordinance dated 31 August 2015 (Federal Law Gazette I p. 1474).

9 Individual Income Tax Law of the People's Republic of China (Revised Version of 2011), originally passed at the 3rd session of the 5th National People's Congress of the People's Republic of China on 10 September 1980, latest amendments came into force on 1 September 2011.

10 Regulations for Implementing Regulations of the Individual Income Tax Law of the People's Republic of China (Decree of the State Council, No. 142, 28 January 1994, last amended on 19 July 2011).

The term "*habitual residence*" includes individuals who reside outside of China for reasons of education (e.g. studying), work, visiting relatives or pursuit of tourism, as long as they return to China after these reasons seize to exist.

The term "*have resided for more than 183 days in China*" means to have resided within China for cumulatively 183 days in a tax year.

b) Legal Entities

The Corporate Income Tax Law of the People's Republic of China ("**CITL**")[11] distinguishes between *resident* and *non-resident enterprises.*

According to Art. 2 CITL, a resident enterprise is an enterprise that

- is established in China under the laws of China or
- is established under the laws of a foreign country but whose place of effective management is located in China.

According to Art. 4 of the Implementation Rules for the Corporate Income Tax Law ("**Implementation Rules**")[12], the place of effective management within the meaning of Art. 2 CITL

> "[…] *refers to an establishment that exercises substantive and overall management and control over the production and business operations, personnel, financial functions, properties, etc. of an enterprise.*"

A non-resident enterprise is

- an enterprise that is established under the laws of a foreign country with the place of its effective management located outside China,
- but which has an establishment or place of business in China, or
- which does not have an establishment or place of business in China but derives income from sources within China.

3. Hong Kong

Hong Kong's tax system is *territorially based.* Tax is not levied on the basis of an individual's residence. Therefore, the Inland Revenue Ordinance ("**IRO**")[13] does not include a legal definition of the term "*residency*". But direct or primary taxation in Hong Kong is levied under Chapter 112 of the IRO. There are three distinct and separate headings under which tax is levied:

- salaries tax,
- profits tax, and
- property tax.

The IRO's scope is limited to Hong Kong's territory and by and large only income with a Hong Kong source is subject to tax.

a) Salaries Tax

According to Sec. 8(1) IRO, individuals have to pay salary tax on any income arising in or derived within Hong Kong which has been obtained from

- any office or employment or
- any pension.

According to Sec. 8(1A) IRO, this also includes all income derived from services rendered in Hong Kong, including leave pay attributable to such service. However, income derived from services rendered outside of Hong Kong is not subject to income tax if the person is not a government employee.

Sec. 8(1B) IRO stipulates that even though services may be rendered in Hong Kong, an employee may not be subject to salaries tax if such services are rendered during his Hong Kong visit which does not exceed a

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[11] The Corporate Income Tax Law of the People's Republic of China, passed at the 5th session of the 10th National People's Congress of the People's Republic of China on 16 March 2007, entered into force on 01 January 2008.

[12] The Implementation Rules for the Corporate Income Tax Law of the People's Republic of China, passed at the 197th executive meeting of the State Council on 28 November 2007, entered into force on 01 January 2008.

[13] Inland Revenue Ordinance to impose a Tax on Property, Earnings and Profits, originally 20 of 1947 (Cap 112 1950), amended 265 of 1969 s. 2; 17 of 1989 s. 2).

total of 60 days during the year of assessment.

b) Profits Tax
Profits tax is levied in accordance with part 4 IRO. According to Sec. 14(1) IRO, all individuals, corporations, partnerships and all unincorporated business ventures

> "[…] *carrying on a trade, profession or business in Hong Kong in respect of* [their] *assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets)* […]"

are subject to profits tax. Profits derived from Hong Kong in circumstances where the taxpayer does not carry on a business in the territory are therefore not taxable.

4. Thailand

In Thailand tax residency is governed by the Thai Revenue Code ("**RC**").

a) Individuals
According to Sec. 41(3) RC, an individual is deemed to be resident in Thailand only if he stays in Thailand for an aggregate period of not less than 180 days within a calendar year. There are no other criteria for the determination of tax residency.

The 180-day period is counted separately in each calendar year (i.e. between 01 January and 31 December of any given year). The Thai Revenue Department usually considers the dates indicated by the entry and departure stamps in the passport.

b) Legal Entities
The RC distinguishes between *resident* and *non-resident companies*:

- Resident companies are all companies incorporated in Thailand.
- Non-resident companies are foreign companies that are not incorporated in Thailand. These companies must register a permanent establishment in Thailand if they are doing business in Thailand.

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III. Double Taxation Agreements ("DTA")

DTAs aim at avoiding situations of actual double taxation. The concept of residency in DTAs is important for determining a DTA's personal scope of application. The OECD Model Tax Convention on Income and on Capital - which is the basis for most DTAs - lays out this requirement in its Art. 1 as follows:

> "*This Convention shall apply to persons who are residents of one or both of the Contracting States.*"[14] [Emphasis added]

[14] Model Convention with respect to Taxes on Income and on Capital, Condensed Version 2014: <http://www.oecd.org/ctp/treaties/2014-model-tax-convention-articles.pdf> (last retrieved: 03 February 2022).

1. Tie-Breaker Rule

Almost all local tax laws include residency rules. All DTAs include provisions governing residency. Most DTAs provide for so-called *tie-breaker* rules. The *tie-breaker* rule is only considered where the individual is a resident of both of the contracting states. The *tie-breaker* rule consists of a series of tests to be applied successively until residency for the purposes of the respective DTA is allocated to one contracting state or the other:

a) Permanent Home
An individual is a resident of the state in which they have a permanent home available to them (*not necessarily owned by them*). If a permanent home is available in both states, it is necessary to carry out the next test:

b) Centre of Vital Interest
An individual is a resident of the state to which their "*personal and economic relations*" are closer. If it is impossible to determine this, or no permanent home is available in either state, then it is necessary to look at the next test:

c) Habitual Abode
An individual is a resident of the state in which they have their habitual abode. If they have a habitual abode in both states or in neither, then the final test is performed:

d) Nationality
An individual is a resident of the state of which they are a national.

e) Mutual Agreement by Authorities
Finally, since all these tests may - in theory - be inconclusive (*even the last, since a person may have dual nationality or may be a national of neither state*), DTAs include a provision for the two competent authorities to decide the position by negotiation.

2. Double Taxation Agreement Hong Kong-China ("DTA HK-China")

The new DTA between Hong Kong and China came into force on 08 December 2006, replacing the old agreement from 1998. Since 2006 a 2nd and a 3rd protocol came into force and a 4th protocol was signed on 01 April 2015, which has been in force since 29 December 2015.[15]

a) Residency
Art. 4 DTA HK-China defines residency as follows:

aa) Mainland China
According to Art. 4 No. 1 (1) DTA HK-China, the term "*resident of One Side*" with regards to Mainland China refers to

> "[…] *any person who, under the laws of the Mainland of China, is liable to tax therein by reason of his domicile, residence, place of head office, place of effective management or any other criterion of a similar nature.* […]" [Emphasis added]

The requirements according to Chinese law have been laid out above (*II. 2.*).

bb) Hong Kong
With regards to Hong Kong, the OECD Model clause was not adapted, since Hong Kong follows a *territoriality concept of taxation*, where tax is - in principle - only imposed upon income derived from Hong Kong (*see above II. 3.*).[16] Therefore, the provisions dealing with residency with regards to Hong

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15 The most important amendment provide further tax exemptions for Hong Kong tax residents and Hong Kong resident investment funds from disposal of shares listed in a recognized Chinese stock exchange if certain criteria are met, furthermore some amendments to improve Hong Kong's position as a hub for aircraft leasing and international asset management.

16 Cypher 20 DIPN No. 44: "*Since Hong Kong adopts a territoriality concept of taxation, tax is only imposed upon income derived from Hong Kong. No one is liable to tax in Hong Kong merely because of his resident status. As such, Hong Kong is not in a position to adopt the definition provided in the OECD Model Tax Convention. Instead, a detailed definition of "resident of Hong Kong" has been included in the Comprehensive Arrangement to enable taxpayers to ascertain whether they are entitled to the benefits of the Comprehensive Arrangement.*"

Kong in the DTA HK-China are rather complex.

According to Art. 4 No. 1 (2) DTA HK-China, a "*resident of One Side*" with regards to Hong Kong means:

(i) "[…] *any individual who ordinarily resides in the Hong Kong Special Administrative Region.*" [Emphasis added]
According to cypher 22 of the Departmental Interpretation and Practice Note No. 44 ("**DIPN No. 44**")[17],
"[…] *an individual "ordinarily resides" in Hong Kong if he has a permanent home in Hong Kong where he or his family lives. Other relevant factors include the duration of his stay in Hong Kong, whether he has a permanent place of residence in Hong Kong, whether he owns any property overseas for residential purposes, and whether he is primarily resident in Hong Kong or overseas.*"

(ii) "[…] *an individual who stays in Hong Kong for more than 180 days during the relevant year of assessment or for more than 300 days in 2 consecutive years.*"
According to cypher 23 DIPN No. 44,
"[…] *in calculating the 180 or 300 days of stay in Hong Kong, an individual will be considered to be a Hong Kong resident if he stays in Hong Kong for a period or a number of periods amounting to more than 180 days in the relevant year of assessment, or for a period or periods amounting to more than 300 days in two consecutive years of assessment (one of which is the relevant year of assessment). However, where the individual concerned is also a permanent resident of a third State and makes investment or carries on business in the Mainland, it is known that the Mainland will apply any treaty signed between China and the State of which that individual is a permanent resident. If there is no such treaty, the Mainland would consider to apply its relevant domestic laws.*"

(iii) "[…] *a company incorporated in the Hong Kong Special Administrative Region, or if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region.*" [Emphasis added]
A company incorporated in Hong Kong (or companies incorporated outside Hong Kong such as British Virgin Islands, Cayman Islands, etc.) includes companies incorporated as legal entities in accordance with the Companies Ordinance (Cap. 32) of Hong Kong. According to cypher 27 DIPN No. 44,
"[…] *if the business of the company is normally managed or controlled in Hong Kong, including the management of its daily business operations,* ***or*** *the implementation of the decisions made by top management,* ***or*** *the making of top-level policies, in Hong Kong, the company will be considered to be a resident of Hong Kong.*"[Emphasis added]

(iv) "[…] *any other person constituted under the laws of the Hong Kong Special Administrative Region, or if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region.*"

b) Individual Resident of both Sides

Where an individual is a resident of both sides, his status will be determined in accordance with the order of priority set out in Art. 4 No. 2 DTA HK-China:

- Centre of Vital Interests
- Habitual Abode
- Mutual Agreement by the Authorities

[17] Departmental Interpretation and Practice Notes - No. 44 (revised) – Arrangement between Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes and Income.

Unlike, the model *tie breaker*-clause, the DTA HK-China does not include "*nationality*" as a tie breaking criterion, since there is no Hong Kong citizenship.[18]

c) Non-Individual Resident of both Sides

If a person other than an individual is a resident of both sides, then - according to Art. 4 No. 3 DTA HK-China -

> "[…] *it shall be deemed to be a resident only of the Side in which its place of effective management is situated.*" [Emphasis added]

3. Double Tax Agreement Germany-China ("DTA Germany-China")

China and Germany signed a new DTA on 28 March 2014 (effective since 1 January 2017), which supersedes the DTA of 10 June 1985.

a) Tax Residency

According to Art. 4 No. 1 DTA Germany-China, it is necessary to assess the term "*resident of a Contracting State*", which is

> "*any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of effective management or any other criterion of a similar nature, and also includes that State or its local authorities.*" [Emphasis added]

The respective requirements according to German and Chinese law have been laid out above under *II. 1.* and *2.*

b) "*Tie Breaker*"-Rule

Provisions for determining the residency if a person is resident of both sides can also be found in Art. 4 No. 2 DTA Germany-China, following the model *tie breaker*-clause:

- Permanent Home and Centre of Vital Interests
- Habitual Abode
- Nationality
- Mutual Agreement by the Authorities

c) Non-Individual Resident of both Sides

If a person other than an individual is a resident of both states, the place of effective management shall be decisive (Art. 4 No. 3 DTA Germany-China).

4. Double Taxation Agreement Germany-Thailand ("DTA Germany-Thailand")

The DTA Germany-Thailand was concluded on 10 July 1967 and came into force on 04 December 1968. Under the DTA Germany-Thailand, an individual is considered to be a resident of a country if he is liable to tax therein by reason of domicile, residence, registration, incorporation, seat, place of management or any other criterion of a similar nature (Art. 4(1) DTA Germany-Thailand). If residency is given in both states, the "*tie-breaker*" rule - as laid out above - applies (Art. 4(2) DTA Germany-Thailand). In case of non-individuals that are residents of both states the competent authorities shall determine the tax residency (Art. 4(3) DTA Germany-Thailand).

5. Double Taxation Agreement Hong Kong-Thailand ("DTA HK-Thailand")

The DTA HK-Thailand became effective on 07 December 2005. As is the case in the DTA HK-China, the DTA HK-Thailand stipulates the same complex process in determining the residency as laid out above (*III. 2. a) bb)*), which is due to Hong Kong's *territoriality concept of taxation*. With regards to Thailand any person is a resident if he is liable to tax therein by reason of domicile, residence, place of incorporation, place of management or any similar criterion. However, this does not apply to persons who are liable to tax in Thailand in respect only of income with sources in Thailand (Art. 4 No. 1 (b) DTA HK-Thailand).

[18] Hong Kong is a Special Administrative Region of the People's Republic of China.

If residency for individuals is given in both states, a slightly modified "*tie-breaker*" rule applies (Art. 4 No. 2 DTA HK-Thailand):

- Permanent Home and
  Centre of Vital Interests
- Habitual Abode
- Nationality/Right to Abode
- Mutual Agreement by the Authorities

If residency for legal entities is given in both states, the competent authorities shall determine residency by mutual agreement (Art. 4 No. 3 DTA HK-Thailand).

6. Double Taxation Agreement China-Thailand ("DTA China-Thailand")

Under the DTA China-Thailand an individual is considered to be a resident of a country if he is liable to tax therein by reason of domicile, residence, head office, place of incorporation, or any similar criterion of a similar nature (Art. 4 No. 1 DTA China-Thailand). In case of non-individuals that are residents of both states, residency is determined by the model *tie breaker*-clause (Art. 4 No. 2 DTA China-Thailand). According to Art. 4 No. 3 DTA China-Thailand, with regards to juristic persons the competent authorities shall determine residency by mutual agreement.

IV. Example

The U.S. American citizen "A" owns a flat in Germany which he regularly visits and uses. He lives with his family in Hong Kong. He works there as the CEO of a subsidiary of a Spanish clothing manufacturer. He also owes a villa in Thailand where he and his family usually spend three to four weeks per year. "A" has shares in a Thai public listed company, the "B Bank". "A" is entitled to dividends from this Thai company.

Question: How is the dividend taxed?
The usual local Thai dividend withholding tax is 10% (Sec. 50(2)(e) RC), but according to various DTAs the maximum rate could be less.

Question: Which DTA is applicable in our case? This mainly depends on "A's" tax residency.

1. Tax Residency

Where is "A" tax resident?

1. According to German tax law, "A" is considered a tax resident in Germany, since he has a residence there which he can use and freely dispose of (see above under *II. 1. a) bb)*). - *He is therefore in principal taxable in Germany on his worldwide income.*
2. According to Hong Kong's *territorially based tax system*, he is only liable to pay taxes on his income he received from Hong Kong sources (see above under *II. 3*). However, according to the DTA HK-Thailand he is considered a resident of Hong Kong Art. 4(1)(a)(i) because he ordinarily resides with his family in Hong Kong.
3. According to U.S. tax law, "A" is considered a U.S. tax resident because the U.S.A. consider their citizens as U.S. tax residents, regardless of where they actually live and regardless of where the income (including dividends) is derived from.
4. According to Thai tax law, he is not considered a Thai tax resident, since he does not stay in Thailand for 180 days per year. However, according to Sec. 50(2)(e) RC he is obliged to pay 10% withholding tax on the dividend as a non-resident in Thailand.

Since Germany and the U.S.A. will levy taxes on "A's" world income (*Hong Kong only on income generated out of Hong Kong itself, therefore not in our case*) and Thailand levies taxes on the income sourced in Thailand, "A" may be exposed to multiple taxation:

- In Germany, because he is considered a German tax resident. Germany taxes its tax residents' worldwide income.
- In the U.S.A., because he is a U.S. citizen and taxable there with his worldwide income.

- And in Thailand, because the income is generated from local (Thai) sources.

However, each of the aforementioned countries concluded DTAs in order to avoid double taxation (*and to locate the right to levy taxes on a person*). Therefore, we must check which DTA is applicable in our case:

2. Applicability of DTAs

Which DTA is applicable?
A variety of DTAs could be applicable to the above case, among others:
- DTA Germany-Thailand
- DTA U.S.A.-Thailand
- DTA Hong Kong-Thailand
- DTA Germany-U.S.A.

The applicability of the DTAs is to be determined by their *personal* and *material scope*.

a) Which DTA is applicable?
Since "A" is considered a tax resident in Germany and in the U.S.A., we must check the DTA Germany-U.S.A. to see which country prevails and in order to assess which DTA applies with regards to the Thai dividend (*since Hong Kong does not levy any taxes on foreign dividends, the DTA Hong Kong-Thailand can be disregarded in this case*).

According to the DTA Germany-U.S.A.'s *tie breaker* rule, "A" would be considered a resident of Germany, since he has a "*permanent home*" available in Germany (Art. 4 No. 2(a)). Therefore, with regards to the taxation right and the maximum amount of withholding tax for his dividend we would have to check the DTA Germany-Thailand.

b) Personal Scope of DTA Germany-Thailand
Since "A" is a tax resident in Germany, the DTA Germany-Thailand is applicable (Art 1 and Art. 4(1) DTA Germany-Thailand).

c) Material Scope of DTA Germany-Thailand
According to Art. 10(4)(a) DTA Germany-Thailand, the dividend paid by the Thai company falls under the meaning of the term "*dividend*". According to 10(1) DTA Germany-Thailand, the dividend may be taxed in Germany. However, according to Art. 10(2)(a) No. 1 Thailand may tax the dividend with up to 20%.

3. Result

Based on the above, the dividend may and will be taxed in Thailand at the (*local*) tax rate of 10%.

From its profit the bank in Thailand must first pay a local corporate tax and from the amount remaining and distributed to the shareholders an amount of 10% will be paid to the Revenue Department on behalf of the foreign shareholders. "A" will therefore receive on his bank account 90% of the dividend in cash and 10% in form of a withholding tax certificate.

A different question is where he has to pay tax on his dividend. Since Germany and Hong Kong have not concluded a DTA, it remains that he is taxed with his worldwide income, including foreign dividends, in Germany at a flat withholding tax rate of 25% ("*Abgeltungsteuer*"). Additionally, since he is a U.S. citizen, the U.S.A. taxes him as well, but since the German tax is higher than the applicable U.S. tax, he will even get a tax credit in the U.S.A. which can be offset against future American tax liabilities. The withholding tax paid in Thailand will be recognized in Germany by calculating his personal income tax.

V. Conclusion

Tax residency is determined by the national laws and legislation. One of the main factors is an individual's physical presence over a certain period of time or a legal person's place of incorporation or management. In other cases, where a *territorial concept of taxation* has been adopted, like in Hong Kong, the national tax legislation does not lay out the respective requirements for tax residency.

In cases of double taxation, a DTA will look at the national legislation to determine tax residency. In case that residency is established in both states, a *tie-breaker* rule (*which may be adapted to the geographical and/or political needs of the corresponding contracting states*) applies.

Given the clear and transparent rules with regards to tax residency, individuals and legal entities may plan their respective tax exposure in advance, e.g. by transferring their residence in order to exploit beneficial tax rules in the respective jurisdictions as efficiently as possible.

We believe that the information provided was helpful for you.
If you have any further questions, please do not hesitate to contact:

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