

Savills Investment Management Pte Limited

Real estate investment in Thailand
21 March 2022

Draft
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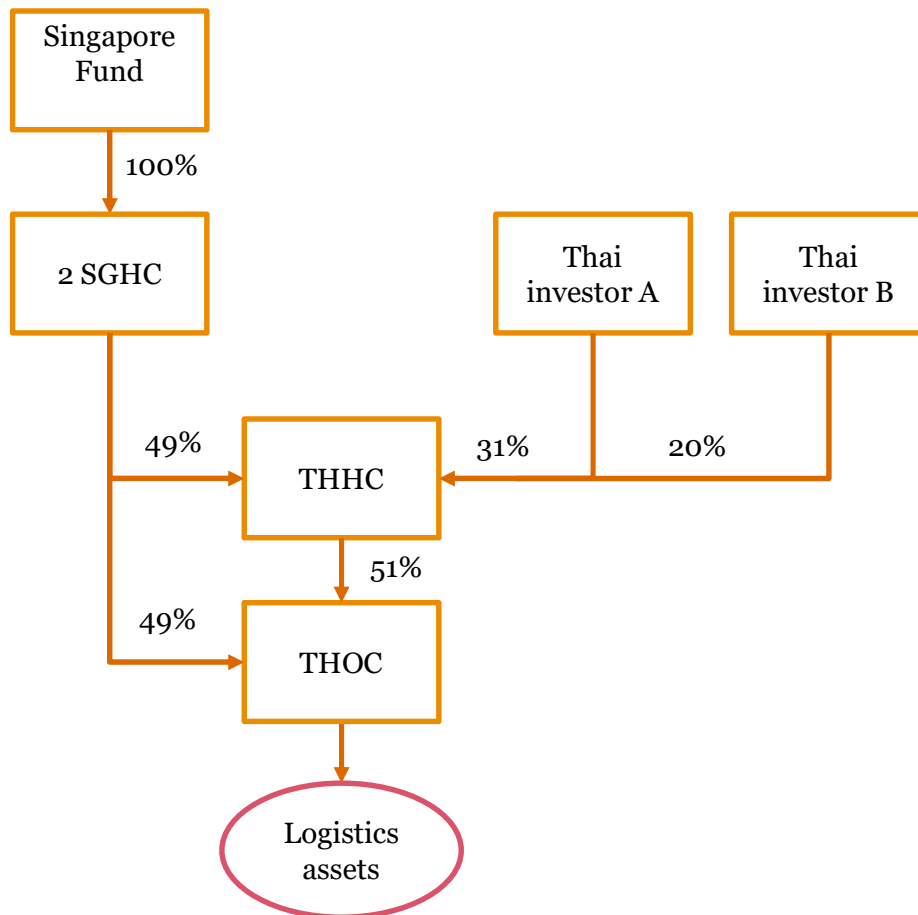
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Background and Assumptions

Proposed structure

Figure 1 : Proposed structure



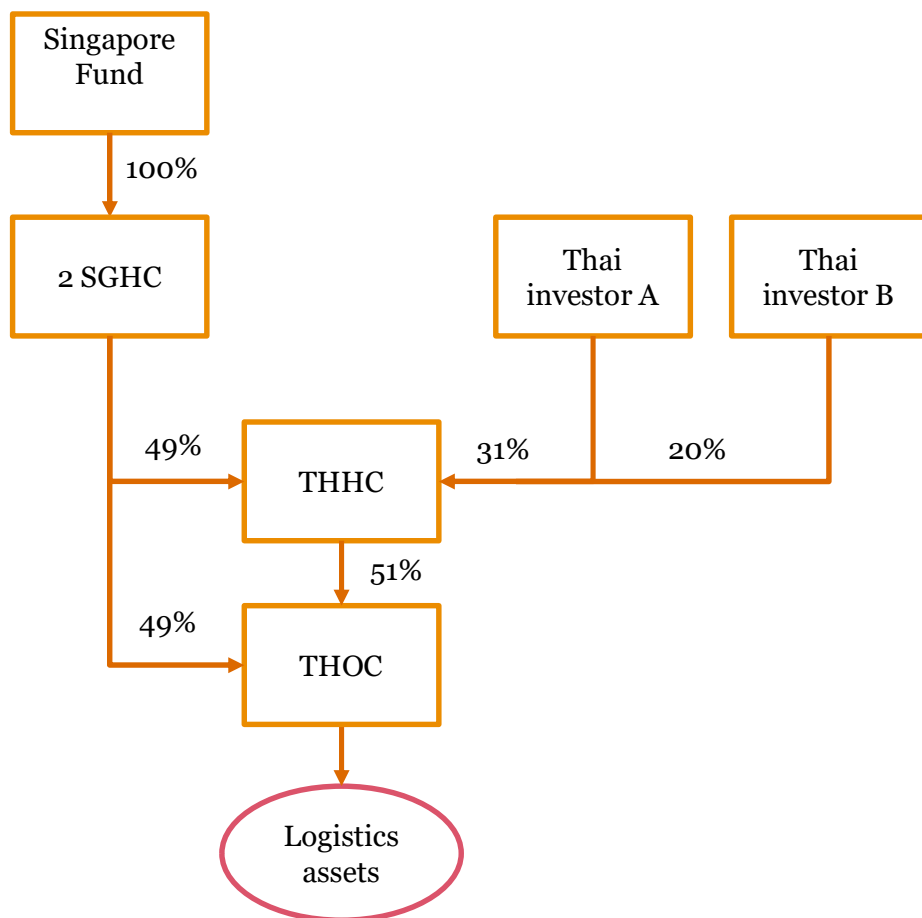
Background

Savills Investment Management LLP (SIM) is in the process of developing the strategy for a fund that will invest in Thai logistics property. It is likely that the investment structure will be a two tier preference share structure (as illustrated opposite).

The working assumption is that the investment into Thailand would come via a Singapore fund (most likely a Singapore limited partnership with a Singapore company as its general partner) (the “Fund”) via a Singapore holding company (SGHC) investing in debt/equity. The Fund and the SGHC(s) will enter into an investment management agreement with Savills Investment Management Pte. Limited (SG FMC) for the provision of investment management services. SG FMC holds a capital markets services (“CMS”) licence under the Securities and Futures Act (Cap. 289) to carry out the regulated activity of fund management in Singapore. For Singapore purposes, the Fund and SGHC(s) are likely to qualify for and apply for income tax exemption under the Enhanced Tier Fund Scheme under section 13U. [Note to client, section 13X has been renumbered to section 13U. There are no changes to its qualifying conditions.]

Proposed structure

Figure 1 : Proposed structure



Proposed structure

The fund will establish two Singapore holding companies (SGHC). The SGHC will hold a combined 49% (likely split is 48%/1%) in a Thai holding company (THHC). SGHC will also hold a combined 49% in a Thai operating company (THOC). The remaining shares in THOC will be held by THHC.

The balance of the shares in THHC will be held by two Thai investors. Thai investor A will hold 31% of THHC in the form of preference shares (with limited voting and dividend rights). Thai investor B (likely an insurance company) will hold 20% of THHC as ordinary shares.

Scope and assumptions

This report covers the following:

Thailand

Investment/holding structure

- Taxes on establishing the structure.
- Advice on the Thai taxation implications of the financing structure, including identifying any limitations on funding (such as thin capitalization rules) and taxes on remitting income.
- Advice on the tax implications upon repatriation of surplus after corporate income tax cash through distribution of dividends, return of capital and liquidation.
- Taxes on exit through sale of the property assets or sale of the investment.

Property company

- Taxes on revenue/income/assets including corporate income tax, VAT, withholding taxes and property taxes.

Singapore

Fund and SGHC

- Advice on Singapore tax implications of income/gains to SGHC, dividend payments/unrealised and realised gains to the Fund and distributions made to the Fund's investors. For this purpose, we assume SGHC and the Fund will qualify for and be approved for tax exemption under section 13U.
- Capital structure of the SGHC and its impact on profit repatriation.
- High-level comments on the GST implications for the Fund and SGHC.

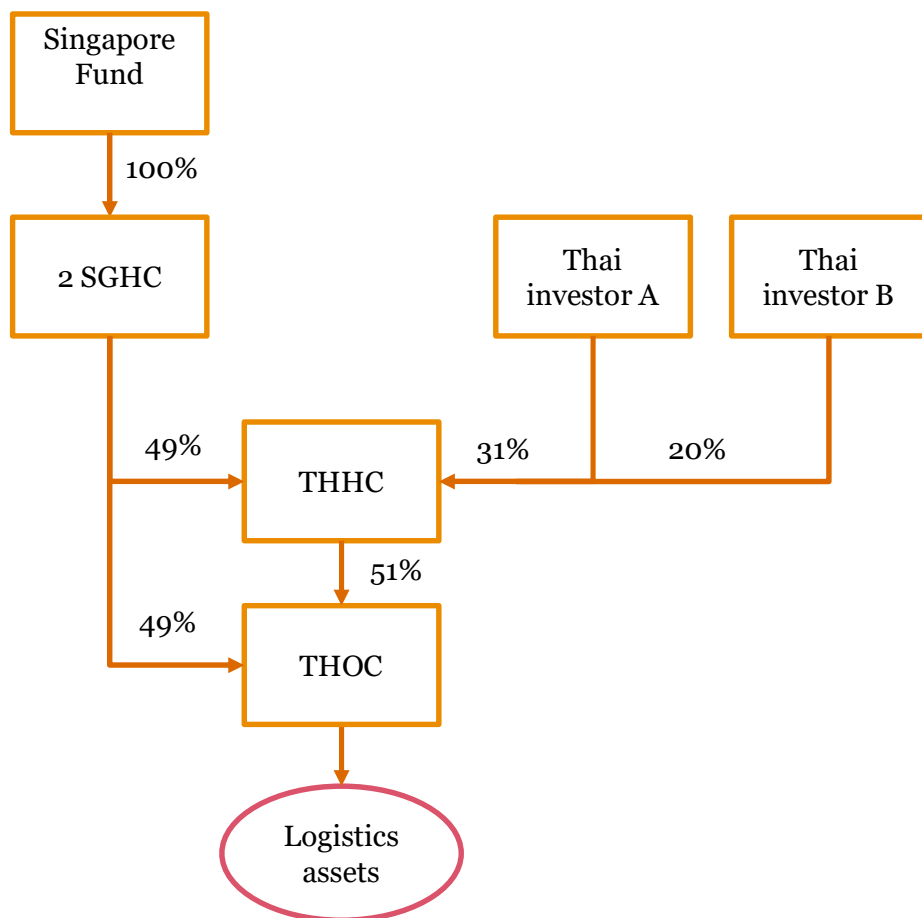
Assumptions

- THOC will acquire/lease land and construct assets.
- THOC will lease the assets to an operator (i.e. it will not itself operate the assets).

Tax implications

Tax on establishing structure

Figure 1 : Proposed structure



Steps

Fund establishes SGHC.

SGHC and Thai investors establish THHC.

SGHC and THHC establish THOC.

Tax implications

Thailand

Taxes on establishing THHC and THOC should be limited to Stamp Duty (SD) of THB 5 for each share certificate issued by the companies. Any number of shares can be entered into a share certificate, so the structure requires a minimum of 7 certificates.

Singapore

There should be no taxes in Singapore on establishing the Fund, or SGHC or for SGHC to subscribe to shares in THHC and THOC.

Other considerations

There may be other registration fees payable on forming THHC and THOC (to be confirmed by legal counsel).

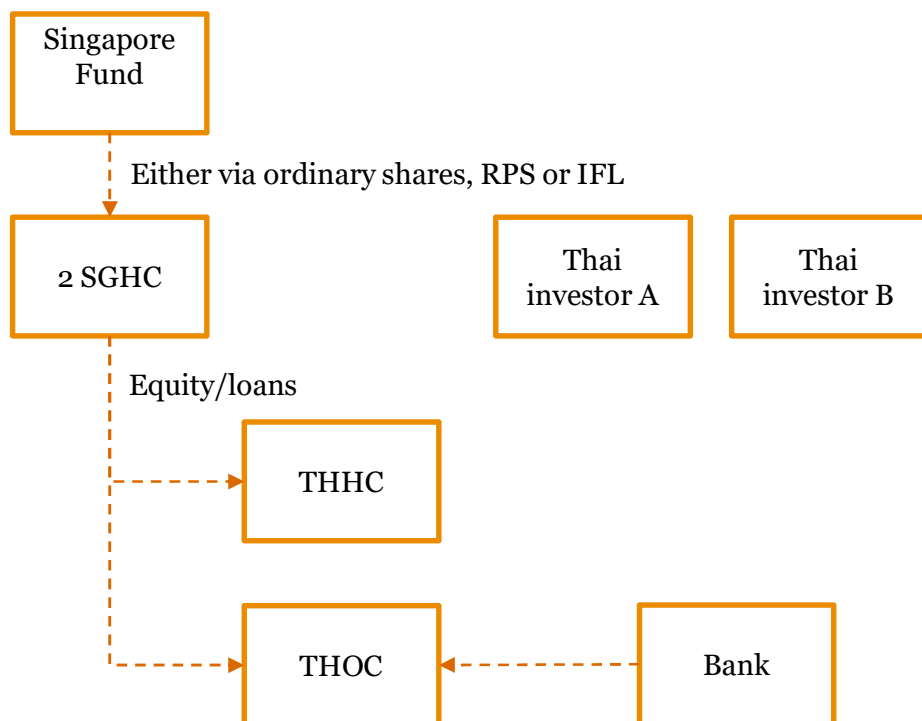
If Thai investor B holds shares in THHC then THHC must hold ordinary shares in THOP in order to provide investor B with the returns from THOC. This results in 51% of the economic value of THOC being held by THHC. This could affect Thai tax outcomes, particularly on exit.

If investor B holds shares in THOC, then THHC could hold (lower value) preference shares in THOC.

If shares are issued at a premium, the premium is credited to a separate share premium account. The share premium account cannot be distributed to shareholders other than on liquidation.

Funding considerations

Figure 2 : Funding structure



Steps

The Fund may fund SGHC using ordinary shares, redeemable preference shares (RPS) and interest free loans (IFLs).

SGHC may lend funds to both THHC (to acquire shares in THOC) and THOC.

THOC obtains funds from a bank.

Tax implications

Thailand

Thailand currently has no thin capitalisation rules or other tax rules which limit debt funding. Typical market LTV are in the range of 75%-90%. A debt to equity ratio of 7:1 to 9:1 should fall within market norms for secured lending.

Interest rates charged by related parties must be at arm's length.

During the operations phase, interest charged at arm's length rates is deductible against operating profits.

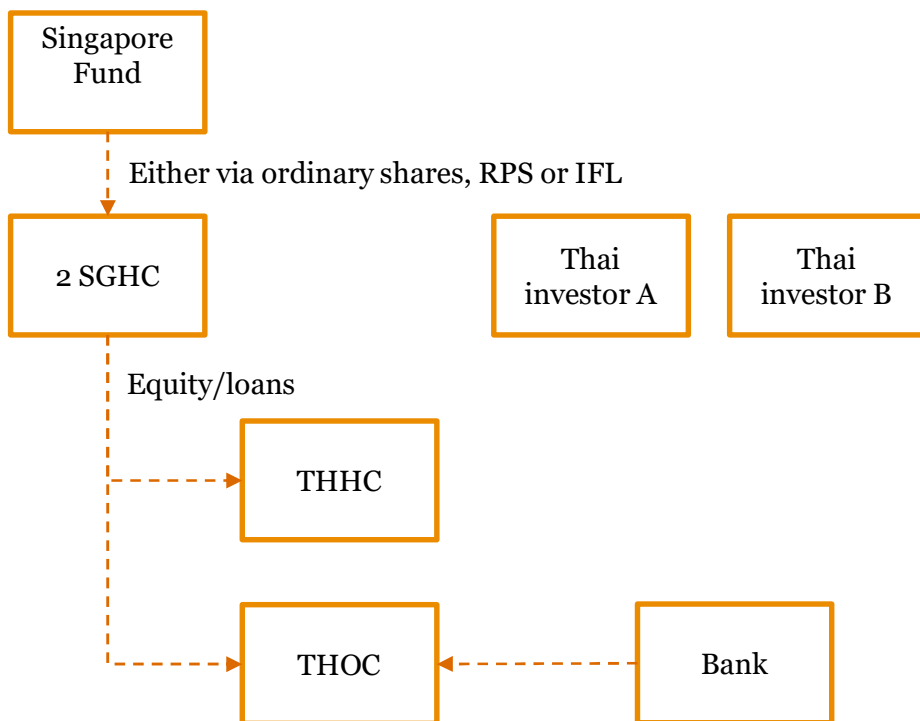
The amount and timing of interest deductions should be in accordance with the terms of the loan agreement. For example, interest on a negative amortizing loan should be deductible as it accrues (however see comment on compounding of interest below).

Withholding Tax (WHT) of 10% on interest paid to lenders resident in Singapore (see Appendix 1).

Loan documents are subject to SD of 0.1% of the loan value, subject to a SD cap of THB 10,000.

Funding considerations

Figure 2 : Funding structure



Singapore

There are no specific tax regulations as to funding as Singapore does not have any thin capitalisation rules. The capital structure adopted by SGHC should therefore be commercially justifiable.

From a corporate law perspective, dividend payments are subject to the availability of profits so the use of RPS and IFLs provides for the ease of cash repatriation. Please refer to Appendix 1 for a tax discussion of the capital structure of SGHC.

Related party loans should be on an arm's length basis. Loans between Singapore parties may be interest free under domestic transfer pricing rules.

Interest on loans to THHC and THOC should generally be considered foreign sourced income if regarded as passive income and therefore, taxed on remittance basis at 17%. A Singapore tax resident company may claim a foreign tax credit for the Thai tax paid on the interest if the interest is brought to tax in Singapore. Credit is limited to lower of applicable Singapore taxes or foreign tax paid. Interest on the loans should be tax exempted under section 13U if the qualifying conditions are met for the relevant year.

No GST applies on the interest income.

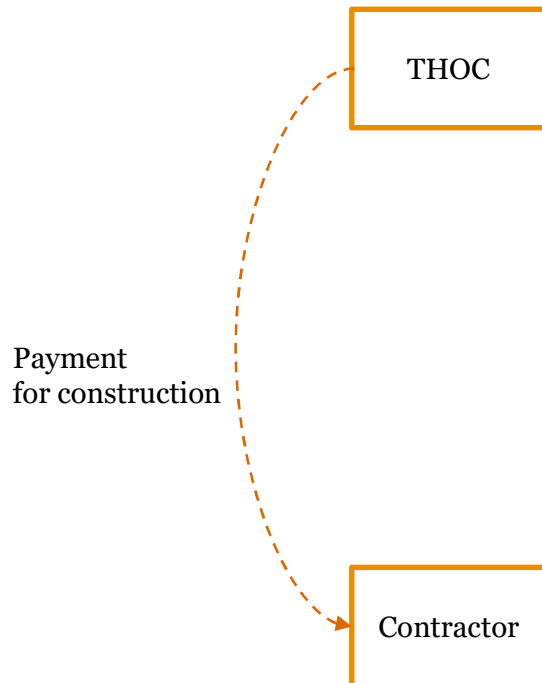
Other considerations

The maximum rate of interest which may be charged by a non-bank is limited by law to 15%.

Thai law does not permit the compounding of interest. However, interest unpaid for 12 months or more may be added to the loan principal and can then bear interest. This would be treated as a deemed payment for WHT.

Development phase

Figure 3 : Development phase



Steps

THOC acquires/leases land.

THOC constructs building.

Tax implications

Direct costs of construction are capitalised into the cost of the building and depreciated once the building is ready for use.

Interest incurred on borrowing related to construction of the building is capitalised during the construction phase, until the building is ready for use.

Interest incurred on borrowing for the acquisition of land is capitalised until the land is ready for use (i.e. once construction of the building is complete).

Once the land is ready for use, interest incurred on borrowing for the land acquisition is not tax deductible. However, under a special provision (Royal Decree 375) THOC may claim exemption from tax on an amount of profits equal to the interest payable.

Operating costs are deductible as incurred. If the costs result in tax losses, these may be carried forward for up to 5 years. There is no limit on the amount of losses which may be offset against profits in a subsequent year.

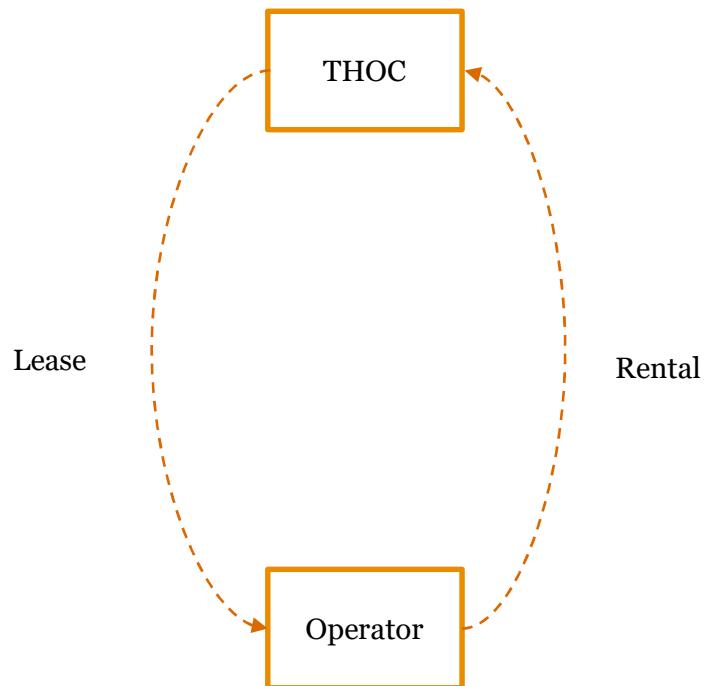
Payments for construction are subject to Value Added Tax (VAT) of 7%. As OpCo will conduct a non-VAT business (rental of property) it is not able to recover VAT, which should be capitalised as part of the cost of construction.

Other considerations

None.

Tax on operations

Figure 4 : Operations phase



Steps

THOC leases the property to an operator.

Operators pays rentals to THOC.

Tax implications

THOC subject to 20% Corporate Income Tax (CIT) on net profits.

Revenue recognised over term of lease

The cost of land cannot be depreciated.

Building depreciated over minimum of 20 years (5%)

PPE depreciated over minimum of 5 years (20%).

No VAT on rental from lease of land/building.

VAT of 7% on rental of PPE (if leased separately).

SD of 0.1% on rentals payable for lease of land/building.

Operator deducts 5% WHT from rental payments. WHT is creditable by THOC against its annual CIT liability.

THOC is subject to annual property tax based on the Land Department valuation of the property (see Appendix 2).

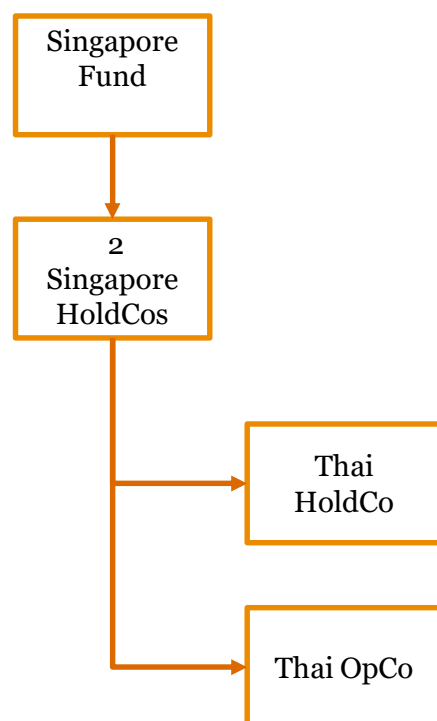
Tax losses may be carried forward for up to 5 years. There is no limit on the amount of losses which may be offset against profits in a subsequent year.

Other considerations

Lease registration fee of 1% of rentals. All leases over 3 years duration must be registered.

Tax during holding period

Figure 5 : Holding period



Certain Singapore tax considerations

Fair value gains under FRS 109.

Where the Fund or SGHC's investments in THHC/THOC are "fair value through profit and loss assets" (FVTPL) for FRS 109 accounting purposes, SGHC may be subject to tax on fair value gains (at 17% net of deductible expenses) unless the gains are held on a capital basis.

The Singapore Income Tax Act does not define what constitutes "capital" or "revenue". Whether the gain is regarded as revenue or capital in nature depends on the facts and circumstances of the acquisition, holding and disposal, typically analysed by applying the "badges of trade" test established from case law.

The fair value gains under FRS 109 should be exempt to the Fund/SGHC if the qualifying conditions under Section 13U are met for the relevant year.

GST for SGHC/Fund

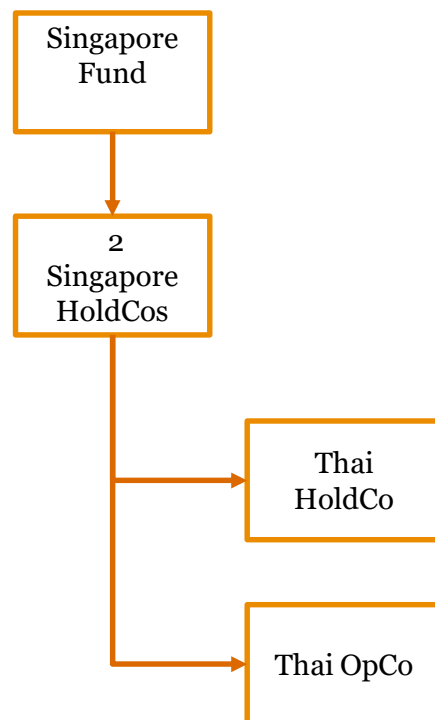
SGHC and the Fund, as passive investment holding entities deriving interest or dividends and fair value gains/losses on investments, are generally not expected to have a GST registration obligation. They should assess whether GST registration is required under the new reverse charge regime.

SGHC and the Fund may enjoy GST remission claim on its input tax claims as approved entities under Section 13U.

Under the reverse charge regime, a GST-registered entity that is partially exempt and/or not able to fully recover GST incurred as input tax may be required to account for reverse charge GST when it procures services from overseas service providers.

Tax during holding period

Figure 5 : Holding period

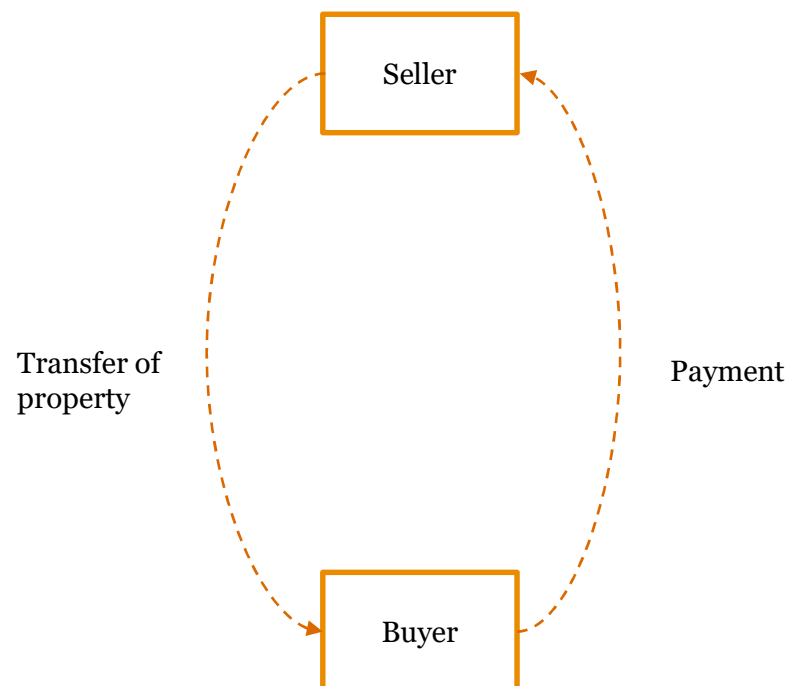


GST for SGHC/Fund

A non-GST registered entity in Singapore will have to register for GST if it is partially exempt and/or not able to fully recover its GST incurred as input tax and the value of imported services exceeds S\$1 million in a year. Once registered for GST under the reverse charge regime, the entity may be required to account for reverse charge when it procures services from overseas service providers.

Tax on acquisition/disposal of property

Figure 6 : Disposal of property



Steps

Seller transfers property to buyer.

Buyer pays for property.

Tax implications

CIT of 20% of gain on sale.

Unexpired tax losses may be offset against the gain on sale in calculating the amount subject to tax.

Specific Business Tax (SBT) of 3.3% of gross sales proceeds.

SD of 0.5% of Land Department valuation (SD does not apply where SBT is payable).

Buyer deducts WHT of 1% from gross sales proceeds. The WHT is creditable by the Seller.

See illustrative calculation in Appendix 3.

Other considerations

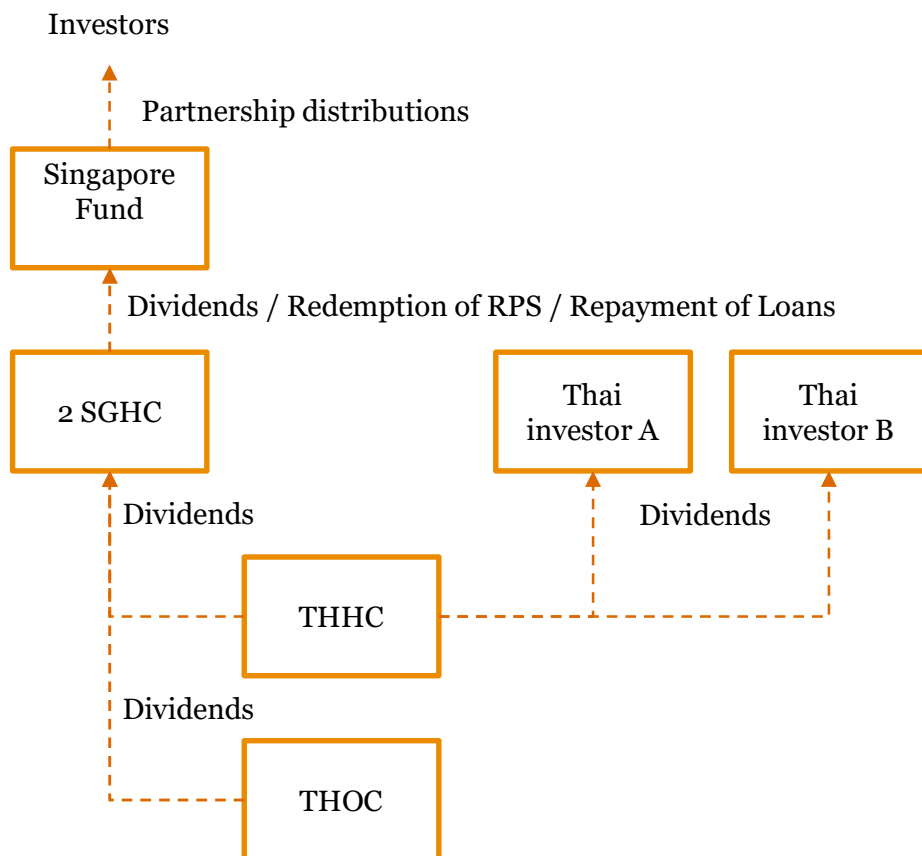
Registration fee of 2% of Land Department valuation.

Unless otherwise agreed between the parties, the registration fee is split 50/50 between the buyer and seller.

SBT, registration fee and WHT are payable at the Land Department when the change in ownership of the property is registered.

Tax on remittance of income

Figure 7 : Remittance of income



Steps

THOC pays dividends to THHC and SGHC.

THHC pays dividends to SCHC and Thai investors.

SGHC distribute dividends to the Fund.

The Fund makes distributions to the investors.

Tax implications

Thailand

WHT of 10% (domestic rate) on dividends paid by THOC to SGHC.

No WHT on dividends paid by THOC to THHC.

Dividends received by THHC should be exempt from CIT (see Appendix 4).

WHT of 10% on dividends paid by THHC to SGHC.

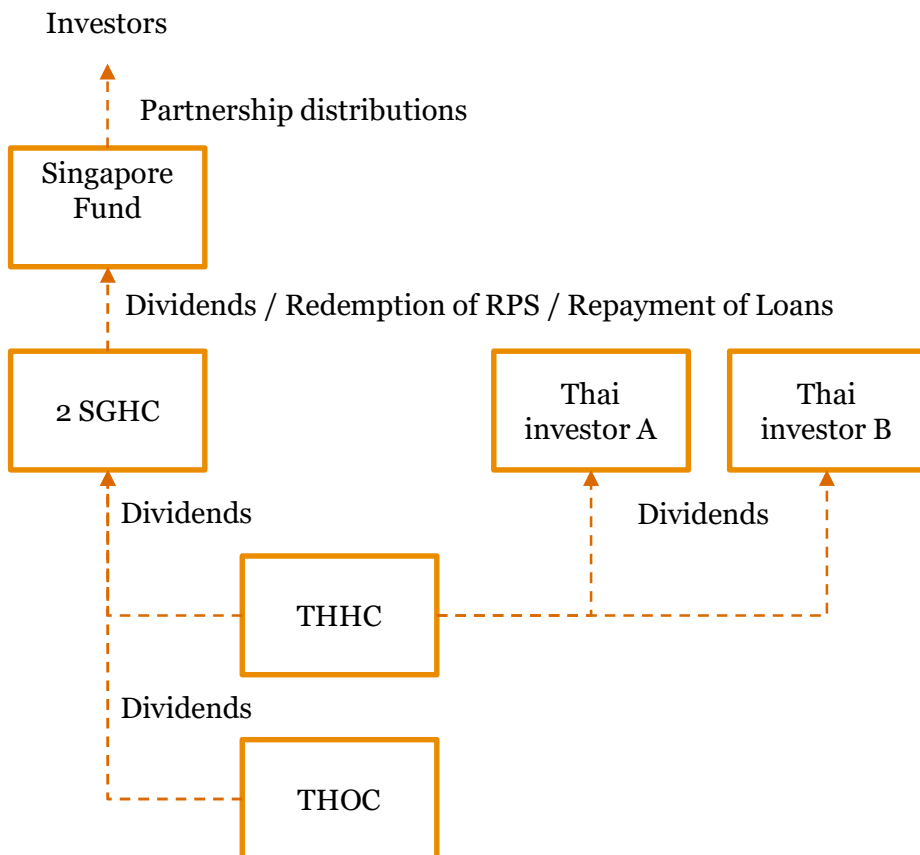
WHT of 10% also applies to liquidation gains and may apply to the proceeds of a capital reduction (see Appendix 4).

Singapore: SGHC

Dividends paid by THOC and THHC (being foreign resident companies) should be foreign sourced income and taxed on remittance basis at 17%. SGHC dividends received in Singapore may be tax exempt under section 13(8) or section 13U if the relevant conditions are met.

Tax on remittance of income

Figure 7 : Remittance of income



The conditions for tax exemption under section 13(8) are :

- The income from which the dividend is paid is subject to tax in Thailand;
- The headline tax rate in Thailand is at least 15%; and
- The IRAS is satisfied that the tax exemption would be beneficial to the SGHC.

Dividends paid by SGHC (being a Singapore tax resident company) to the Fund are tax exempt. No withholding tax applies on the dividends paid.

Singapore: Fund

Dividend income from SGHC (Singapore tax resident company) is exempt.

Redemption gains from redeeming RPS are exempt under section 13U if the conditions are met.

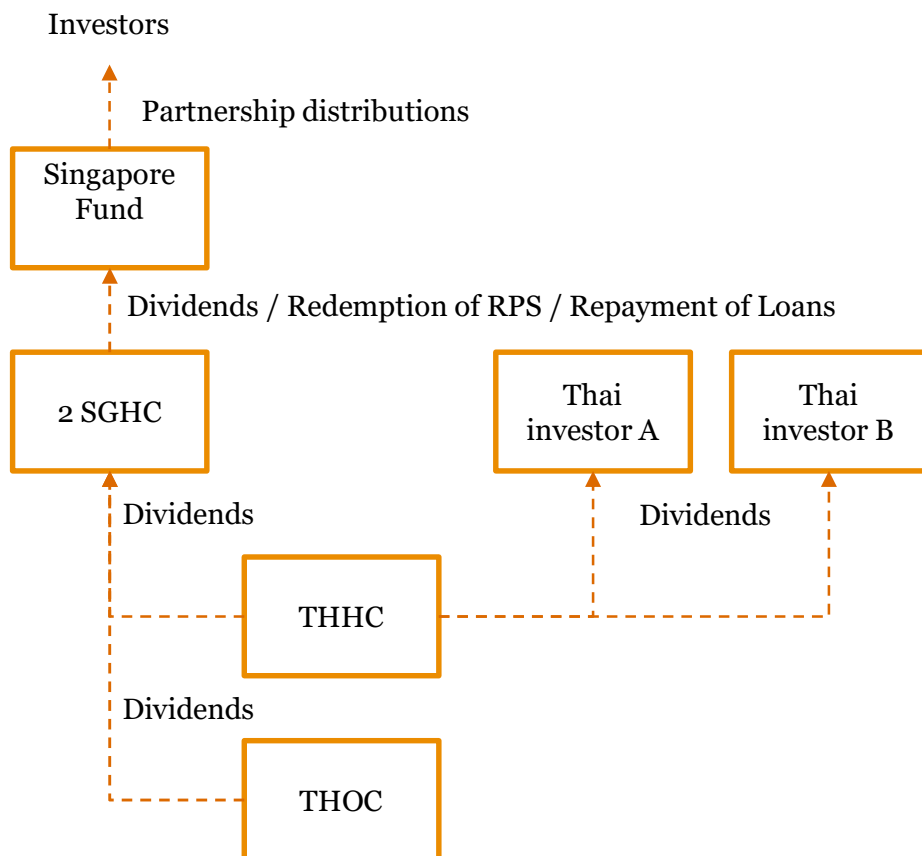
No tax implications arise on repayment of interest free loan principal.

The Fund being Singapore limited partnership is tax transparent. Each limited partner should enjoy tax exemption on its share of profits from the Fund where the profits/income qualify for tax exemption under section 13U.

No GST applies on the dividends or redemption gains.

Tax on remittance of income

Figure 7 : Remittance of income



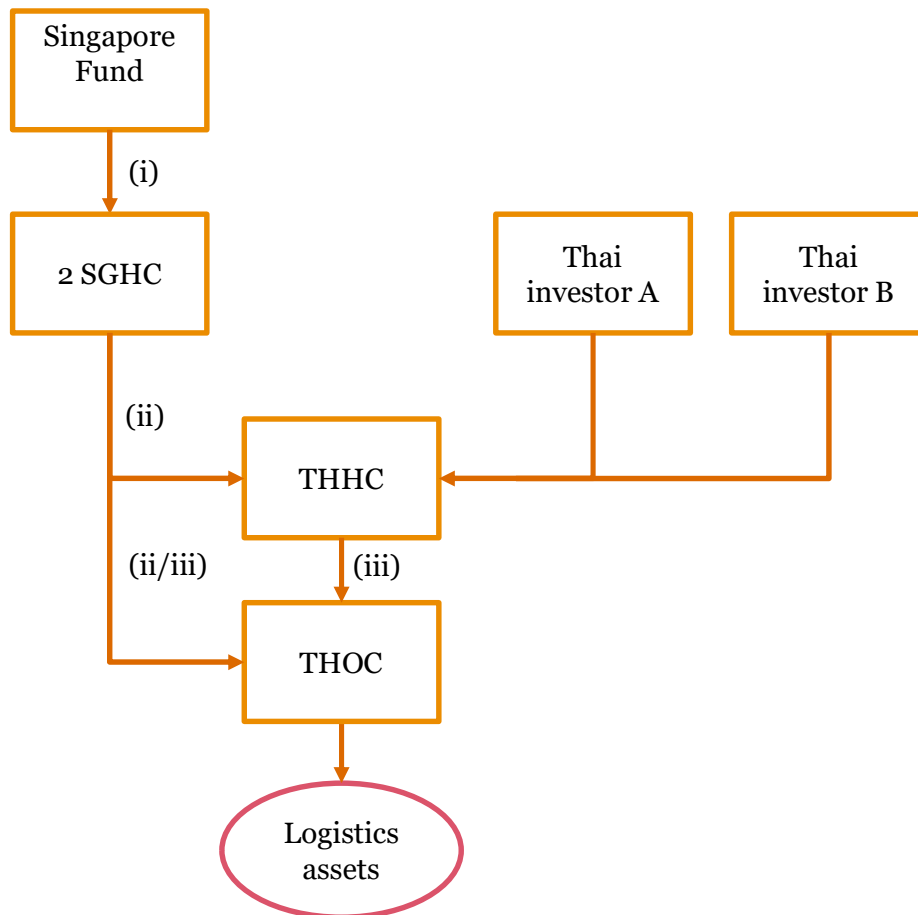
Other considerations

THHC/THOC may only pay dividends out of positive retained earnings. Any deficit of earnings must be eliminated before a dividend may be paid.

Each time a dividend is paid, THHC/THOC must credit 5% of the dividend amount to a “legal reserve” until such reserve equals 10% of registered capital.

Tax on disposal of investment

Figure 8 : Disposal of investment



Steps

Possible exit points:

- (i) Fund sells SGHC
- (ii) SGHC sells THHC and THOC
- (iii) SGHC and THHC sell THOC

Sale may be to (a) a buyer resident in Thailand or (b) to a non-resident.

Tax implications

Thailand

(i)(a) Gain on sale subject to 15% WHT.

(i)(b) No WHT on gain.

(ii)(a) Gain on sale subject to 15% WHT.

(ii)(b) No WHT on gain

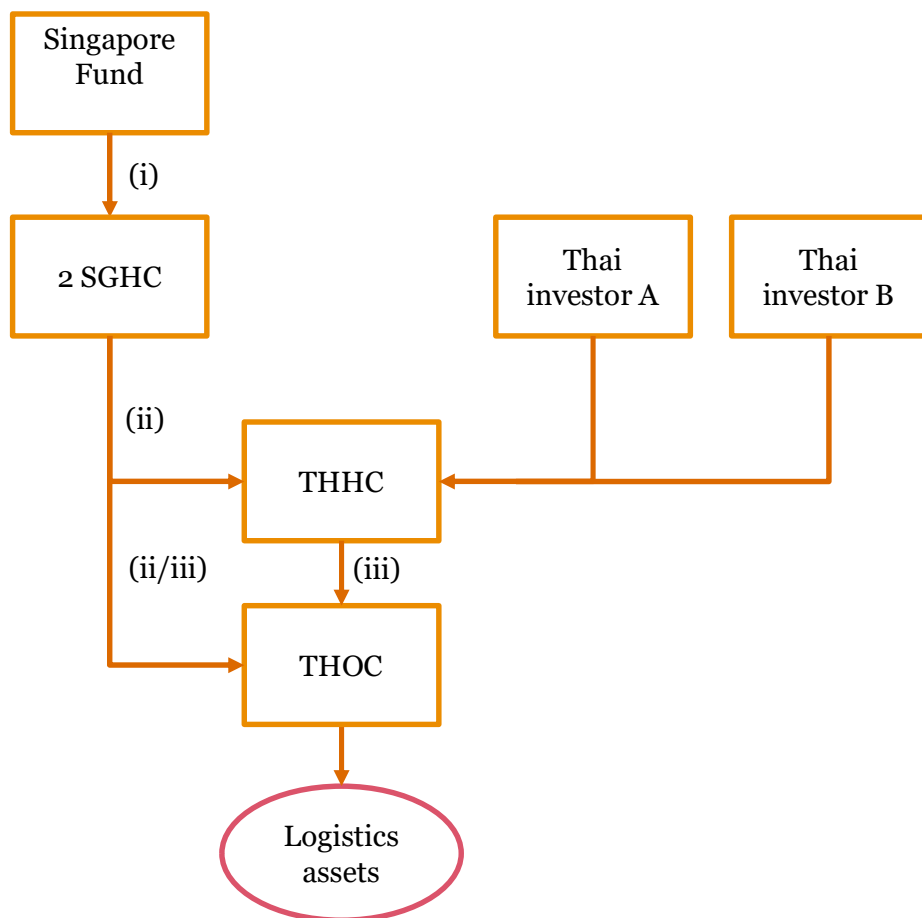
(iii)(a) SGHC gain on sale subject to 15% WHT/THHC gain on sale subject to 20% CIT.

(iii)(b) No WHT on SGHC gain on sale/THHC gain on sale subject to 20% CIT.

SD of 0.1% is payable on a document for the transfer of shares in a Thai company. The SD applies on the higher of the proceeds of sale or the paid-up value of the shares. SD is payable by the seller.

Tax on disposal of investment

Figure 8 : Disposal of investment



Singapore

(i) Gains from sale of SGHC by the Fund should be tax exempted under section 13U if qualifying conditions are met for the particular year.

The transfer instrument in respect of sale of shares in SGHC is subject to SD of 0.2% on the higher of the consideration paid or the fair market value. Usually paid by the buyer unless otherwise agreed.

(ii) / (iii) Gains from sale of THHC or THOC should be tax exempted under section 13U if qualifying conditions are met for the particular year.

In the event that the requisite conditions under section 13U are not met for the particular year, gains on disposal may be exempt from tax subject to conditions set out under section 13W (e.g. applicable only to ordinary shares and must hold at least 20% ordinary shares for at least 24 months continuously, etc.) or should the gains to be regarded as capital in nature based on the “badges of trade” test.

Please refer to our earlier comments on tax impact on repatriation of the income through the fund structure.

Other considerations

None.

Sensitivity analysis

The analysis provided in this report and the conclusions reached are sensitive to a number of factors including the following

Issues	Impact	Recommendations
Changes in law or regulations or their interpretation.	A change in law or its applications in any of the relevant jurisdictions may affect the outcome of the structure.	The structure should be reviewed periodically and adjusted if required.
Assumption that THOC will lease assets to an operator.	The tax outcomes if THOC acts as operator could be different. In particular THOC could be required to charge VAT on revenue and could be entitled to recover VAT on the construction of buildings.	Client to confirm.

Appendices

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Funding considerations

Funding of Singapore entities

Ordinary shares

A Singapore company capitalised by way of ordinary shares can make dividend distributions to its shareholders, subject to the availability of retained earnings. This may lead to a situation where the Singapore company may have sufficient cash balances, but is unable to make a dividend distribution due to the lack of revenue reserves (commonly known as a “cash trap”). In this regard, a capital structure with reduced ordinary shares could mitigate the cash trap issue.

From a tax perspective, dividends distributed from the Singapore company should not be subject to any Singapore WHT. There should be no Singapore tax implications on the reduction of ordinary share capital or buy-back of shares as long as it relates to the capital invested (in other words, the capital returned to the shareholder will be equal to or less than the capital invested).

The tax treatment of redemption payment or share buybacks in excess of the contributed capital (including any premium) depends on the nature of the payment. If the payments are regarded as capital in nature or sourced outside of Singapore they should not be taxable to the shareholder.

Redeemable preference shares (“RPS”)

If RPS are used, it is important that you confirm with your lawyers and accounting advisors that they are considered equity for legal and accounting purposes.

Provided that the RPS are considered equity for tax purposes, the Singapore tax treatment on (i) the dividends distributed from the RPS and (ii) the redemption / buyback of RPS should be similar to those of ordinary shares mentioned above.

Loans

Loans may offer the most flexibility from a corporate law point of view. If you decide to fund the Singapore company partly via loans, please note the following:

- Related party transactions are required to be conducted on an arm’s length basis (i.e. loan terms such as interest rate reflect those used between unrelated parties under similar circumstances).
- Otherwise the Singapore tax authorities can put through TP adjustments and apply a 5% surcharge and subject the company to penalties for non-compliance accordingly. Where conditions for TP documentation are met, contemporaneous TP documentation should be maintained otherwise a penalty of up to S\$10,000 applies.
- There is an exemption for Singapore domestic loan transactions for a Singapore lender that is not in the business of lending/borrowing monies.

Funding considerations

Withholding tax on interest paid to Singapore

Except in limited circumstances (payment to a financial institution or purchase of goods on credit), the Double Taxation Agreement (DTA) between Singapore and Thailand does not reduce the WHT rate below the 15% applicable under domestic law.

However, a protocol to the DTA between Singapore and Thailand contains the following Most Favoured Nation (MFN) provision:

“With reference to Article 11 (Interest):

It is understood that if under any Convention, Agreement or Protocol concluded between Thailand and another state after the signing of this Agreement, Thailand limits its taxation rates at source on interest to a rate or rates lower than that provided for in paragraphs 2(a), (b) and (c) of Article 11 of this Agreement, the same rate as provided for in any category or sub- category of interest in that Convention, Agreement or Protocol with that other state shall apply to the similar category or sub – category of interest under the respective paragraphs of Article 11 of this Agreement with effect from the date of entry into force of that Convention, Agreement or Protocol with that other state, or this Agreement whichever is the later”

As at the date of this report, Thailand has entered into one DTA which reduces the WHT rate on interest below the domestic law rate of 15%. This DTA is with India. The relevant provisions are paragraphs 1 and 2 of Article 11:

“1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.”

The DTA between India and Thailand provides that tax rate imposed on interest payments should not exceed 10%, provided that the beneficial owner of the income is a resident of Thailand/India (as the case may be).

In view of the lower rate of WHT available under the DTA between India and Thailand, WHT on interest paid from Thailand to a resident of Singapore should be reduced to 10% under the relevant MFN provision.

Tax on operations

Property tax

Property tax applies to land and buildings. The tax base is the value of the property as determined by the Land Department. The tax is payable in April of each year.

The law provides a maximum rate of 1.2% for land/buildings in commercial use. Actual rates may be varied annually.

The rates for 2022 are:

Property value (THB)	Rate
<50m	0.3%
>50m-200m	0.4%
>200m-1,000m	0.5%
>1,000m-5,000m	0.6%
>5,000m	0.7%

Depreciation

Maximum depreciation rates for different categories of property are set by law. Maximum rates are as follows:

- Land – 0%
- Buildings – 5%
- PPE – 20%

If, in the financial statements of a company, property is depreciated at a rate lower than the maximum, the lower rate used for the financial statements also applies for tax.

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Illustrative calculation of CIT on operating income

CIT on operations		
Rental income		1,000.00
Depreciation		(200.00)
Operating expenses		(100.00)
Property tax		(5.00)
Finance costs		(50.00)
Taxable profit		645.00
CIT @20%		129.00
WHT credit		(50.00)
Net tax payable		79.00

Tax on disposal of real property

Tax on capital gains

Thailand does not have a separate capital gains tax regime. Gains from the disposal of property are included in the calculation of profits subject to CIT. Operating tax losses may be offset against capital gains without limit.

Illustrative calculation of CIT on disposal of real property.

CIT on sale		
Proceeds of sale		1,000.00
Depreciated cost		(500.00)
Gain		500.00
SBT		(33.00)
Registration fee		(10.00)
Taxable profit		457.00
CIT@20%		91.40
Cashflow		
Proceeds of sale		1,000.00
SBT		(33.00)
Registration fee		(10.00)
CIT		(91.40)
Net cashflow		865.60

Tax on remittance of income

Dividends paid to a resident company

Dividends received by one Thai company from another are exempt from CIT if the recipient is:

- a listed company; or
- an unlisted company which holds at least 25% of the voting shares of the paying company (and the paying company does not directly or indirectly hold shares in the recipient company).

Recipients who are not entitled to full exemption are subject to CIT on 50% of the dividends received (effective tax rate of 10%).

To qualify for full or partial exemption, the shares must be held by the recipient for 3 months before and after the dividend is paid.

Dividends paid to a non-resident company

Under domestic law, dividends paid to a non-resident company are subject to WHT of 10%. The DTA with Singapore does not reduce the rate below 10%.

Capital reduction

Under domestic law any payment received as a result of a reduction of capital is treated as income of the recipient, to the extent that the payment does not exceed the sum of “profits and reserves” of the company undergoing the reduction.

“Profits and reserves” means the retained earnings or amounts set aside from retained earnings, which would include a “general reserve” and the “legal reserve” (as defined under Section 1202 of the Civil and Commercial Code).

Where payment is made to a non-resident a WHT of 15% applies under domestic law (to the income element of the payment). Under a DTA the payment should fall under the “dividend” article and is subject to WHT at the rate specified in the DTA. In the case of the DTA between Singapore and Thailand, this is 10%.

Liquidation

Under domestic law, the proceeds of liquidation are treated as taxable income to the extent that they exceed the cost of investment in the company. Domestic law applies a 15% WHT to the income element. Under a DTA the payment should fall under the “dividend” article and is subject to WHT at the rate specified in the DTA. In the case of the DTA between Singapore and Thailand, this is 10%.

Tax on disposal of investment

Taxation of capital gains

Section 70 of Thai Revenue Code provides that if a non-resident company not carrying on business in Thailand receives a capital gain that is paid either from or in Thailand, it shall be subject to 15% WHT in Thailand. The payer of the assessable income is liable to deduct such tax upon making the payment.

A transfer of shares (in a Thai company) between two non-resident companies would generally not involve a payment 'from or in' Thailand and would not, therefore, be subject to withholding tax.

Paragraph 5 of Article 13 of the DTA between Singapore and Thailand grants the right to tax capital gains on the sale of shares to the country of residence (see Appendix 6). Thus, a resident of Singapore deriving a gain from the sales of shares in a Thai company should not be subject to Thai WHT if the gain is paid in or from Thailand.

However, under Paragraph 2 of Article 13, an exception applies if the Thai company derives a significant part of its value from immovable property in Thailand.

In such cases, the gains derived by the Singapore resident from the sale of shares of a company "deriving at least three-quarters of their value directly or indirectly from immovable property" situated in Thailand may be taxed in Thailand. In such circumstances, 15% Thai capital gains WHT applies if the gain is paid in or from Thailand.

The wording on the DTA (see Appendix 6) refer to disposal of "shares in a company" rather than "shares in a company resident in the other Contracting State". The DTA would, therefore, permit Thailand to impose tax on disposal of shares in a company resident in Singapore if at least 75% of the value of the shares in that company is derived directly or indirectly from immovable property situated in Thailand.

Strictly private and confidential

Capital gains on disposal of shares by a Thai company

Capital gains of a Thai company are subject to Thai CIT at normal rates (currently 20%).

Stamp Duty

A share transfer document that is executed in Thailand, or executed outside Thailand but brought into Thailand, is subject to Thai SD. The SD rate is 0.1% of the greater of (i) the paid-up value of the shares; or (ii) the sales proceeds.

Although the seller is the party that is primarily liable to SD, in the case of an instrument executed outside Thailand, the SD may be collected from any person who brings the original share transfer document into Thailand (i.e. the "first holder" of the original document in Thailand)

We note that a certified photocopy of the share transfer document is not regarded as a document subject to SD in Thailand. A certified photocopy (instead of the original share transfer document) may be brought into Thailand for the purpose of effecting the change in name in the Thai company's shareholders' register without attracting SD.

Extracts from DTA

Article 10: Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

Article 13: Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares traded on a recognized Stock Exchange, deriving at least three-quarters of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

Limitation of DTA benefits

Substance Requirements in Thailand

Thailand has no specific substance requirements. Application of relevant double tax treaties with Thailand is generally based solely on the requirements that the recipient of income is

- a tax resident of the treaty country in which it is incorporated
- the legal owner of the income

In very limited circumstances, where there is reference to 'beneficial ownership' under a double tax treaty, Thailand may deny treaty benefits if the legal owner/recipient of income is not the beneficial owner.

Limitation of benefits

Certain double taxation agreement contain a Limitation of Benefits/Relief provisions which seek to limit the application of the DTA in specific circumstances. In the case of Thailand, these generally limit relief only where income is taxed on a remittance basis in the other state.

There is no Limitation of Benefits clause in the DTA between Singapore and Thailand.

BEPS

Action 6 of the Base Erosion and Profit Shifting (BEPS) initiative introduced a "principal purpose test" (PPT) aimed at countering the abuse of DTA.

Under the test, tax authorities may deny any benefit of a DTA if one of the principal purposes of actions taken by a taxpayer (e.g. establishing an entity in a particular jurisdiction) was to obtain a benefit under the DTA.

As an inclusive member of the BEPS framework, Thailand has committed to taking steps to counter the abuse of DTA. In 2022, Thailand signed the multi-lateral instrument (MLI).

The introduction of a PPT could present a risk to SGHC that the Thai Revenue Department does not apply the DTA between Singapore and Thailand (including the MFN provision) resulting in higher WHT on interest and tax on capital gains which would otherwise be exempt under the DTA.

Any risk should be reduced if SGHC meet substance requirements in Singapore.

Abbreviations

Abbreviation	Definition
SGHC	Singapore holding companies
THHC	Thailand holding company
THOC	Thailand operating company
BEPS	Base erosion and profit shifting
CIT	Corporate income tax
DTA	Double Taxation Agreement
GST	Goods and Services Tax
MFN	Most Favoured Nation
MLI	Multilateral Agreement
SD	Stamp Duty
VAT	Value Added Tax
WHT	Withholding Tax

Limitations of Scope

This report (“this advice”) is based on the general interpretation and application of the relevant law and regulations prevailing as at the date of this advice. As laws and regulations are subject to change at any time, and those changes may be retroactive in effect and may be applicable to this advice, we cannot give assurance that those changes would not adversely affect this advice. We accept no responsibility to advise you of any new developments in the application or interpretation of the law occurring after the date of this advice.

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This advice has not been reviewed by a professional in any location other than Thailand and Singapore. No representation, whatsoever, is therefore given about the consequence of the proposals in any jurisdiction outside Thailand and Singapore. We strongly recommend that, before any action is taken on the subject matter of this advice, professional advice is obtained on the specific issues applicable in any relevant locations other than Thailand and Singapore.