Legal article

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Service PE in Thailand: Day Thresholds under Thailand's Tax Treaties

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> This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at https://eksiamtax.com/en/articles/service-pe-day-count-tax-treaties.html

Key points

- A service PE arises from the length of time services are provided in Thailand, not from a place, so a foreign company with no office in Thailand can still have a permanent establishment.
- The threshold depends on the applicable treaty: more than 90 days for the United States, more than 183 days for Singapore, and more than six months for Japan and Hong Kong, within any twelve-month period.
- The Thailand-United States treaty has a second route that does not count days: services performed in Thailand for an associated enterprise within the meaning of Article 9, paragraph 1.
- All four treaties count only activities for the same or a connected project, whereas the UN Model Convention removed that condition in 2017.
- With a permanent establishment, the foreign company is taxed on net profit from business carried on in Thailand under Section 66, paragraph two, and Section 76 bis makes its employee or agent in Thailand responsible for filing the return.

This page is an English translation of the Thai original. The Thai text prevails, and quotations of Thai legal provisions and treaty texts are unofficial translations.

A service PE (a permanent establishment arising from the furnishing of services) exists where a tax treaty treats a foreign company as having a permanent establishment in Thailand because it sends employees or other personnel to provide services in Thailand for longer than the number of days the treaty allows, even though the company has no office or branch in Thailand. The threshold differs from treaty to treaty: more than 90 days under the Thailand-United States treaty, more than 183 days under the Thailand-Singapore treaty, and more than six months under the Thailand-Japan treaty and the agreement with Hong Kong, in each case within any twelve-month period. Once the threshold is exceeded, the foreign company pays Thai corporate income tax on the profit from its business carried on in Thailand. This article explains the wording of the four treaties, how to read the day thresholds, and the tax consequences under the Thai Revenue Code.

What Is a Service PE?

A service PE is a permanent establishment created by a tax treaty from the furnishing of services, including consultancy services, through employees or other personnel of a foreign enterprise, where those activities continue in the other state for longer than the period the treaty sets. It differs from a fixed-place permanent establishment, which requires a "fixed place of business" such as an office or a branch.[1]

Common examples are a foreign company that sends engineers to install and test a system, consultants to set up an accounting or IT system, or a team to train the staff of a Thai customer. The foreign company rents no office and registers no branch, but if its personnel stay in Thailand beyond the threshold, the treaty treats it as having a permanent establishment.

This topic follows on from the guide What Is a Permanent Establishment, which explains the four types of permanent establishment. This article focuses only on the day thresholds for services.

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Service PE Day Thresholds in Thailand's Tax Treaties

Thailand's tax treaties do not use the same threshold. The Thailand-United States treaty uses more than 90 days, the Thailand-Singapore treaty signed on 11 June 2015 uses more than 183 days, and the Thailand-Japan treaty and the Thailand-Hong Kong agreement use more than six months. Every one of them aggregates one or more periods within any twelve-month period.[2]

Article 5, paragraph 3 (b), of the Thailand-United States treaty has two routes. The first counts days: activities for the same or a connected project must continue in Thailand for more than 90 days within any twelve-month period, and no permanent establishment exists in a taxable year in which the services total less than 30 days. The second does not count days: services performed in Thailand for an associated enterprise within the meaning of Article 9, paragraph 1.[2] A US parent company that sends staff to provide services to its Thai subsidiary must therefore check the second route before counting days.

Article 5, paragraph 3 (b), of the Thailand-Singapore treaty uses a threshold of "more than 183 days within any twelve-month period" and requires the activities to "continue for the same or a connected project".[3] The same treaty treats a building site or construction project as a permanent establishment only if it lasts more than twelve months, which is longer than the services threshold. Withholding tax rates and the other articles of this treaty are explained in the Thailand-Singapore Double Tax Agreement.

Article 5, paragraph 4, of the Thailand-Japan treaty uses a threshold of "more than 6 months within any twelve-month period" for the same or a connected project, and Article 5, paragraph 3, treats a construction project as a permanent establishment if it lasts more than three months.[4] A reading of the whole Thailand-Japan treaty, including the protocol and the changes made by the MLI, is in the Thailand-Japan Double Tax Agreement. Article 5, paragraph 3 (b), of the Thailand-Hong Kong agreement likewise uses "more than six months within any twelve-month period".[5]

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Treaty	Provision	Services threshold	Project condition	Special rule
Thailand-United States	Art. 5(3)(b)	More than 90 days in any 12 months	Same or connected project	No PE in a taxable year with less than 30 days, services for an associated enterprise count without days
Thailand-Singapore (2015)	Art. 5(3)(b)	More than 183 days in any 12 months	Same or connected project	Construction more than 12 months
Thailand-Japan	Art. 5(4)	More than 6 months in any 12 months	Same or connected project	Construction more than 3 months
Thailand-Hong Kong	Art. 5(3)(b)	More than 6 months in any 12 months	Same or connected project	Construction more than 6 months

Thailand's other treaties may use different thresholds from those in this table, so Article 5 of the treaty with the service provider's country must be read in every case. The list of treaties and how they apply is in the guide Thailand Double Tax Agreements (DTA).

How to Count Days and Months for a Service PE

Counting a service PE threshold turns on three points in the treaty wording: whether the unit is days or months, that the window is any twelve-month period rather than a calendar year, and that only activities for the same or a connected project are aggregated where the treaty contains that condition.

Unit. The Thailand-United States and Thailand-Singapore treaties count days, while the Thailand-Japan and Thailand-Hong Kong treaties count months. A six-month threshold should therefore not be treated automatically as equal to 183 days. Entry and exit dates and working days of every person should be recorded from the first day.

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Window. The words "within any twelve-month period" mean any continuous period of twelve months, not the accounting year or the calendar year. A project that straddles two accounting periods must therefore be counted across both.

Project condition. All four treaties aggregate only activities for the same or a connected project. Two unrelated assignments for different customers may therefore be counted separately, but splitting one contract into several contracts so that each falls below the threshold does not turn the work into unconnected projects. The facts about the customer, the deliverables and the management of the project must be examined case by case.

Thai Tax Consequences of a Service PE under the Revenue Code

Once a foreign company has a permanent establishment in Thailand, it pays Thai corporate income tax "on net profits from the business or in consequence of the business carried on in Thailand" under Section 66, paragraph two, of the Revenue Code. If the company has an employee or agent in Thailand through whom it derives income in Thailand, Section 76 bis treats the company as carrying on business in Thailand and makes that employee or agent responsible for filing the return and paying the tax.[6]

Tax treaties take effect in Thai law through Section 3 of Royal Decree No. 18 (B.E. 2505), which exempts persons under a double tax agreement from tax under the Revenue Code.[7] The reverse consequence is equally important: if the services stay below the threshold and the foreign company has no other kind of permanent establishment, its business profits fall outside the taxing right of the source state under the structure of the treaty.[8]

If the person responsible for filing cannot compute the net profit, Section 76 bis, paragraph two, applies the assessment method in Section 71 (1) mutatis mutandis and preserves the right to appeal the assessment.[6] A foreign company that expects to exceed the threshold should therefore keep separate accounts of the income and expenses of its Thai work from the start. The withholding duty of the payer in Thailand is a separate issue, explained in Thailand Withholding Tax on Payments to Foreign Companies under Section 70.

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In Supreme Court Judgment No. 7323/2560 (2017), the court held that where a double tax agreement "conflicts with the provisions of the Revenue Code, the agreement must prevail", and read Article 7 (3) of the Thailand-Germany agreement as allowing a permanent establishment to deduct executive and general administrative expenses incurred outside Thailand, but the taxpayer "bears the burden of proving" that the allocated expenses are of a reasonable amount. The plaintiff in that case could not prove this, so the expenses could not be deducted.[9] A company with a service PE in Thailand should therefore keep the documents supporting head-office cost allocations from the start.

Service PE Checklist before Sending Personnel to Thailand

A service PE risk review has five steps: identify the applicable treaty, read the threshold in Article 5 of that treaty, check whether the customer is an associated enterprise, plan and record working days in Thailand, and prepare separate accounts for the Thai work where the threshold may be exceeded.

1. **Applicable treaty.** In which country is the service provider resident for tax purposes, and does it hold a certificate of residence?
2. **Threshold in Article 5.** Is the unit days or months, how many, is there a same-project condition, and is there a special rule like Article 5, paragraph 3 (b), of the Thailand-United States treaty?
3. **Relationship with the customer.** Is the Thai customer a company in the same group? Some treaties do not count days in that case.
4. **Working-day records.** Entry and exit dates, actual working days and the project each person works on, recorded per person and per project.
5. **Accounts for the Thai work.** Income, costs and expenses of the Thai work, so that net profit can be computed if a filing duty arises.

The firm's service on this subject is described on the page Permanent Establishment (PE) Risk Analysis in Thailand.

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Comparative Law: the UN and OECD Model Conventions

Article 5, paragraph 3 (b), of the 2021 United Nations Model Double Taxation Convention uses a services threshold of more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned, without a same-project condition. The OECD Model Convention has no service PE provision in Article 5, as the United Nations commentary itself notes.[10]

The wording of the UN Model is "the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose", where the activities continue within a Contracting State "for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned".[10]

Paragraph 1 of the UN Commentary on Article 5 states that Article 5 of the UN Model "is based on Article 5 of the OECD Model Tax Convention but contains several significant differences", one of which is the service PE in paragraph 3 (b).[11] Paragraph 23 explains that the former threshold was "more than six months within any twelve-month period" before it was changed to 183 days, and paragraph 24 records that the 2017 revision removed the words "(for the same or a connected project)".[12]

The four Thai treaties discussed in this article were signed before the 2017 revision and therefore keep the same-or-connected-project condition. The Thailand-Japan and Thailand-Hong Kong treaties use the six-month threshold of the earlier UN wording, the Thailand-Singapore treaty uses 183 days as in the later wording, and the Thailand-United States treaty uses 90 days, shorter than both models.

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Law and Economics of Service PE Thresholds

The day threshold of a service PE is an administrative dividing line, not a measure of where profit is earned. Devereux and Vella (2014) argue that the allocation of taxing rights between residence and source states, which uses the permanent establishment as the trigger for the source state's right to tax business profits, lacks a firm theoretical foundation, and that for multinational groups there is no clear conceptual basis for locating where profit arises.[8]

The authors consider the reasons usually given for this allocation, namely ability to pay for the residence state and the benefit principle for the source state, and conclude that neither withstands close scrutiny, because the burden of corporate income tax may fall on shareholders outside the residence state.[8] Read alongside the 90-day, 183-day and six-month thresholds in Thailand's treaties, the differences in the numbers reflect the outcome of each pair of negotiations rather than differences in the amount of profit earned in Thailand. This is the author's interpretation, not a conclusion that Devereux and Vella draw about Thailand's treaties.

Paragraph 31 of the UN Commentary gives the policy reason for removing the project condition: it "was easy to manipulate" and created fact-finding burdens for tax authorities, particularly in developing countries.[13] In transaction-cost terms, this reflects a trade-off between precision and enforcement cost. A more detailed test may track real activity better, but it is harder to verify and invites contract structuring to stay below the threshold. Managers planning a project in Thailand should therefore expect the splitting of a contract into several contracts to be one of the first points a tax officer examines.

Frequently Asked Questions about Service PE in Thailand

Frequent questions about a service PE concern its meaning, the number of days under each treaty, aggregating several projects, the Thai tax consequences, and services between companies in the same group.

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What is a service PE?

It is a permanent establishment that a tax treaty deems to exist when a foreign company provides services, including consultancy services, in Thailand through employees or other personnel for longer than the threshold in the treaty, without needing an office or branch in Thailand.

How many days can a foreign company send staff to provide services in Thailand before it has a permanent establishment?

It depends on the applicable treaty: more than 90 days under the Thailand-United States treaty, more than 183 days under the Thailand-Singapore treaty, and more than six months under the Thailand-Japan treaty and the Thailand-Hong Kong agreement, in each case within any twelve-month period.

Can days spent on several projects be added together?

The Thailand-United States, Thailand-Singapore, Thailand-Japan and Thailand-Hong Kong treaties aggregate only activities for the same or a connected project. The UN Model Convention removed this condition in its 2017 revision.

What Thai tax applies if there is a service PE in Thailand?

The foreign company pays corporate income tax on net profit from business carried on in Thailand under Section 66, paragraph two, and Section 76 bis makes its employee or agent in Thailand responsible for filing. If net profit cannot be computed, the assessment method in Section 71 (1) applies mutatis mutandis.

Does a US parent company that sends staff to serve its Thai subsidiary need to count days?

Article 5, paragraph 3 (b), of the Thailand-United States treaty treats services performed in Thailand for an associated enterprise within the meaning of Article 9, paragraph 1, as a permanent establishment without the 90-day test, so the relationship between the two companies must be checked before counting days.

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Notes

1. Thailand-Singapore Agreement (signed 11 June 2015), Article 5, paragraph 1 (unofficial translation of the Thai text): "For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on." The services provisions of each treaty are quoted in notes 2 to 5. (Revenue Department, singapore_th_dta_v2.pdf, page 7, in Thai; checked 29 September 2026)

2. Thailand-United States Convention, Article 5, paragraph 3 (b) (unofficial translation of the Thai text): "the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if (1) activities of that nature continue (for the same or a connected project) within that State for a period or periods aggregating more than 90 days within any twelve-month period, provided that the permanent establishment shall not exist in any taxable year in which such services are rendered for a period or periods aggregating less than 30 days in that taxable year, or (2) the services are performed within that State for an associated enterprise within the meaning of paragraph 1 of Article 9". The English text of the Convention should be consulted for the authentic wording. (Revenue Department, rd.go.th/2664.html, in Thai; checked 29 September 2026)

3. Thailand-Singapore Agreement (signed 11 June 2015), Article 5, paragraph 3 (b) (unofficial translation of the Thai text): "the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue for the same or a connected project within the other Contracting State for a period or periods aggregating more than 183 days within any twelve-month period"; and paragraph 3 (a), a building site or construction project, "but only where such site, project or activities last more than twelve months". (Revenue Department, singapore_th_dta_v2.pdf, page 7, in Thai; checked 29 September 2026)

4. Thailand-Japan Convention, Article 5, paragraph 4 (unofficial translation of the Thai text): "An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes services, including consultancy services, through employees or other personnel, provided that such activities continue (for the same or two or more connected projects) for a period or periods aggregating more than 6 months within any twelve-month period"; and paragraph 3: "A building site, a construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment if such site, project or activities continue for a period of more than 3 months". (Revenue Department, japan_th_dta.pdf, page 4, in Thai; checked 29 September 2026)

5. Agreement between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of the Kingdom of Thailand, Article 5, paragraph 3 (b) (unofficial translation of the Thai text): "the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than six months within any twelve-month period"; and paragraph 3 (a), a construction project "lasting more than six months". (Revenue Department, hongkong_th_dta.pdf, page 8, in Thai; checked 29 September 2026)

6. Revenue Code, Section 66, paragraph two (unofficial translation): "A company or juristic partnership organised under foreign law and carrying on business elsewhere, including in Thailand, shall pay tax on net profits from the business or in consequence of the business carried on in Thailand in the accounting period ...". Section 76 bis, paragraph one: "Where a company or juristic partnership organised under foreign law has an employee, an agent or a go-between for carrying on business in Thailand, through whom it derives income or profits in Thailand, the company or juristic partnership shall be deemed to carry on business in Thailand, and the employee, agent or go-between, whether an

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individual or a juristic person, shall be deemed to be its representative and shall have the duty and liability to file returns and pay tax under this Part, in respect only of such income or profits." Paragraph two: "In the case under paragraph one, if the person with the duty and liability to file returns and pay tax cannot compute the net profit for the purpose of tax under this Part, the provisions on assessment under Section 71 (1) shall apply mutatis mutandis, and an appeal may be made against an assessment under this Section." (Revenue Department, rd.go.th/5939.html, in Thai; checked 29 September 2026)

7. Royal Decree issued under the Revenue Code on Tax Exemption (No. 18) B.E. 2505 (1962), Section 3 (unofficial translation): "Persons under agreements for the avoidance of double taxation that the Thai Government has concluded or will conclude with foreign governments shall be exempted from tax under the Revenue Code." (Revenue Department, rd.go.th/2374.html, in Thai; checked 29 September 2026)

8. Michael P. Devereux and John Vella, "Are We Heading towards a Corporate Tax System Fit for the 21st Century?", Fiscal Studies 35(4): 449-475 (2014), DOI 10.1111/j.1475-5890.2014.12038.x. Read in the working-paper version, Oxford University Centre for Business Taxation WP 14/25 (October 2014), pages 2-5, on Article 7 of the OECD Model giving the source state the right to tax business profits once the permanent establishment threshold is met, the ability-to-pay and benefit principles, and the absence of a clear basis for locating the profit of multinational groups. The text above paraphrases because the working paper asks not to be quoted. (oxfordtax.sbs.ox.ac.uk; checked 29 September 2026)

9. Supreme Court Judgment No. 7323/2560 (2017) (unofficial translation): "if the terms of the agreement between the Kingdom of Thailand and the Federal Republic of Germany conflict with the provisions of the Revenue Code, the agreement must prevail as an exception to the provisions of the Revenue Code", and "the plaintiff therefore bears the burden of proving that the amount of expenses allocated from the head office and the regional office is reasonable and not excessive, and to what extent it was necessary for the business of the branch in Thailand, but the plaintiff could not prove this ... so the expenses cannot be deducted in computing net profit". (Supreme Court, deka.supremecourt.or.th, in Thai; checked 29 September 2026)

10. United Nations Model Double Taxation Convention between Developed and Developing Countries 2021, Article 5, paragraph 3 (b): "the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned." Page 11. (United Nations, financing.desa.un.org; checked 29 September 2026)

11. United Nations Model 2021, Commentary on Article 5, paragraph 1: "Article 5 of the United Nations Model Tax Convention is based on Article 5 of the OECD Model Tax Convention but contains several significant differences. In essence these are that under the United Nations Model Tax Convention: ... the furnishing of services by an enterprise through employees or other personnel results in a permanent establishment where such activities continue for a total of more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned (paragraph 3 (b)) ...". Page 178 (same source as note 10).

12. United Nations Model 2021, Commentary on Article 5, paragraph 23: "... the Committee agreed to a slight change in the wording of paragraph 3(b), which was amended to read: “but only if activities of that nature continue ... within a Contracting State for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned”, rather than, “but only if activities of that nature continue ... within a Contracting State for a period or periods aggregating more than six months within any twelve-month period”, as it formerly read." Paragraph 24: "In the 2017 revision, the Committee made a further change to paragraph 3(b) to remove the words in parenthesis “(for the same or a connected project)”." Page 200 (same source as note 10).

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13. United Nations Model 2021, Commentary on Article 5, paragraph 31: "This wording was removed as the “project” limitation was easy to manipulate and created difficult interpretive issues and factual determinations for tax authorities, which in particular for developing countries is an undesired administrative burden." Page 208 (same source as note 10).

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