

Preface

Recommended Tax Optimization Strategy for a Germany Company with a Subsidiary in Thailand

This document outlines a structured tax optimization strategy for an Germany incorporated company operating through a Subsidiary in Thailand. The strategy leverages four principal mechanisms, carefully structured in accordance with the Thailand–Germany Double Taxation Agreement (DTA) to mitigate double taxation risks and optimize cross-border tax exposure:

1. Dividend Distributions
2. Royalties and Licensing Arrangements
3. Shareholder Loan Financing
4. Management and Service Fee Allocation

Each lever is analyzed with consideration of withholding tax implications, transfer pricing requirements, deductibility rules, and treaty relief provisions under the Thailand–Germany DTA.

1. Dividends (The 95% Exemption Strategy)

For a German *Kapitalgesellschaft* (GmbH or AG), bringing dividends home from Thailand is highly tax-efficient.

- Thai Withholding Tax (WHT): Under the DTA, the WHT on dividends is capped at 10% (provided the German HQ owns at least 25% of the Thai subsidiary).
- German Side (95% Exclusion): Under Sec. 8b of the German Corporate Income Tax Act (*KStG*), 95% of the dividend is exempt from German Corporate Tax and Trade Tax (*Gewerbesteuer*).
 - The 5% "Add-Back": Technically, 100% is exempt, but 5% is deemed a non-deductible business expense, resulting in an effective German tax rate of approx. 1.5% on the dividend.
- Condition: The German HQ must hold at least 10% of the Thai subsidiary at the start of the calendar year to qualify for the Corporate Tax exemption, and 15% for the Trade Tax exemption.

2. Royalties and License Fees

German "Mittelstand" and industrial firms frequently use royalties to recover R&D costs.

- DTA Tiered Rates: The WHT in Thailand varies by type:
 - 5%: For copyrights of literary, artistic, or scientific work.
 - 10%: For "industrial, commercial, or scientific equipment" (Equipment Rental) or

"Know-How."

- 15%: For patents and trademarks.
- **Tax Shield:** These payments are fully deductible in Thailand (reducing 20% CIT).
- **German Side:** Royalties are fully taxable in Germany, but you can claim a Foreign Tax Credit for the Thai WHT paid. This "offsets" the German tax, ensuring you aren't taxed twice.

3. Shareholder Loans (Interest)

- **DTA Rate:** WHT on interest is 10% if the lender is a German bank (e.g., Deutsche Bank, Commerzbank) and 15% for the corporate parent.
- **Interest Barrier (*Zinsschranke*):** Germany limits interest deductions to 30% of EBITDA if net interest expense exceeds €3 million. While this usually applies to the *payer*, the German HQ must ensure its income is classified correctly to maximize its own deduction limits at home.
- **Transfer Pricing:** The interest rate must be "arm's length." If the German HQ lends at 1% while the market is 6%, German authorities may "impute" income and tax the HQ on interest it never actually received.

4. Management and Service Fees

- **WHT Rate:** Generally 0% under the DTA "Business Profits" article, provided the services are performed in Germany and no "Permanent Establishment" (PE) is triggered in Thailand.
- **The "German Engineer" Trap:** If German technicians travel to Thailand for more than 6 months in a year to provide services, the Thai Revenue Department may claim a "Service PE" exists, making those fees subject to 20% Thai CIT.

Summary Table: Germany-Thailand Repatriation (2026)

Method	Thai WHT (DTA)	Thai CIT Deductible?	German Tax Impact
Dividends	10%	No	95% Exempt (Effective ~1.5% tax).
Royalties	5% – 15%	Yes	Taxable (with Foreign Tax Credit).
Interest	10% – 15%	Yes	Taxable (with

			Foreign Tax Credit).
Service Fees	0%	Yes	Taxable as ordinary business income.

2026 Critical Compliance for German HQs

1. CFC Rules (*Hinzurechnungsbesteuerung*): This is your biggest risk. In 2026, Germany's "Low Tax" threshold is 15%. If the Thai subsidiary's effective tax rate falls below 15% (e.g., due to BOI incentives) and it earns "passive" income (like interest or certain royalties), Germany will tax that income at the HQ level *even if it isn't remitted*.
2. Pillar Two / Global Minimum Tax: If your group turnover exceeds €750 million, Germany's *Mindeststeuergesetz* (Minimum Tax Act) requires a 15% minimum tax. If Thailand grants a "Tax Holiday," Germany will collect the "Top-up Tax" at the HQ.
3. Section 50d (3) EStG: To avoid 15% WHT on services or higher rates on royalties, the German HQ must prove it has its own "substance" in Germany (offices, employees). You cannot use a "letterbox" holding company in Germany to own the Thai subsidiary.

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