

Proposed Legislation in Thailand for e-Commerce Businesses



In the past few years, the Thai Revenue Department (TRD) has launched several attempts to include e-commerce business operators into the Thai tax system. A team was formed to research and evaluate the tax treatment of e-commerce and digital businesses in other countries.

For international e-commerce transactions, the current Thai tax regulations do not provide the TRD with an adequate basis to impose Thai taxes since

the foreign operators may not have a presence in Thailand under domestic rules.

Draft legislation was recently released and is now in the process of public consultation, following which, the draft will be passed to the National Legislative Assembly for enactment. All public stakeholders are encouraged to submit their comments on the draft legislation, which is open until 11 July 2017.

Impacts that the draft legislation will have on foreign e-commerce companies

It appears that the draft legislation will impact many foreign e-commerce operators through Thai corporate income tax, withholding tax and/or VAT.

The changes to the corporate income tax provisions extend to foreign companies concluding sales of tangible and intangible goods as well as service related transactions.

From a VAT perspective, however, the changes are only aimed at intangible goods and service related transactions since presumably, the current laws of importing tangible goods already provides the TRD with an adequate basis to impose VAT.

The key highlights in the draft legislation are summarised below:

- A foreign company that operates a business by using electronic media and has either:
 - i. a local domain in Thailand;
 - ii. a payment in Thai currency or money is transferred from Thailand; or
 - iii. meets any other conditions as prescribed by the Director-General (the details of which have not yet been released),

will be regarded as having a taxable presence in Thailand and will be subject to Thai corporate income tax at 20% on the net income or profits attributable to that permanent establishment.

- This amendment effectively seeks to expand the domestic definition of a “permanent establishment” in Thailand. It is not clear how this expanded definition of a “permanent establishment” will be considered in the context of foreign companies operating in a jurisdiction that has a Double Tax Agreement (DTA) with Thailand.
- It is also likely that an income tax permanent establishment will trigger VAT registration requirements.
- A foreign company that operates its business by using electronic media, but does not meet the requirements of creating a “permanent establishment” in Thailand, will be subject to 15% withholding tax on income derived in Thailand from online advertising, providing space on a webpage or other income specified by the Ministerial Regulations (the details of which have not yet been released).

The payer of the income will have the obligation to withhold the tax at the rate of 15% and remit it to the TRD. Presumably, this rate can be reduced under an applicable DTA between Thailand and the tax jurisdiction of the foreign company.

- A foreign company that sells intangible goods or renders services through electronic media to a non-VAT registered person in Thailand (presumably an individual – the details of which have not yet been clarified) will be required to register for VAT and will be subject to VAT on the Thai sales it concludes.



This could apply, for example, to companies that sell downloadable material such as newspaper publications, e-books, music, TV content and similar electronic materials to persons living in Thailand. It is worth noting however that under the current law, a company is only required to register for VAT if the income earned is more than Thai Baht 1.8 million per year. This threshold will be retained. Therefore, foreign companies concluding sales under Thai Baht 1.8 million should not be required to register nor will they be liable for Thai VAT.

- In the case of a foreign company that sells intangible goods or renders services through a website or application of another provider, the owner of the website or application will be treated as an agent of the foreign company seller. In that instance, the owner of the website or application will be responsible to register for Thai VAT and administer the VAT liabilities on behalf of the foreign company.
- Currently the importation of tangible goods with a customs value of less than Thai Baht 1,500 is exempt from VAT. The draft legislation removes this exemption threshold since it is perceived as creating unequal competition for local business operators in Thailand who are subject to 7% VAT regardless of the value of the goods.

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Contact us

Chiu Wu Hong

Head of Tax

T: +65 6213 2569

E: wchiu@kpmg.com.sg

Simon Clark

Regional Tax Partner

ASPAC Lead – Alternative Investments

T: + 65 6213 2152

E: simonclark1@kpmg.com.sg

Gordon Lawson

Head of International Tax

T: +65 6213 2864

E: glawson1@kpmg.com.sg

Lam Kok Shang

Head of Indirect Tax

T: +65 6213 2596

E: kokshanglam@kpmg.com.sg

KPMG

16 Raffles Quay

#22-00 Hong Leong Building

Singapore 048581

T: +65 6213 3388

F: +65 6220 9419

E: tax@kpmg.com.sg

Find out more about our services at kpmg.com.sg

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