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Thailand publishes emergency decree on top-up tax to align with OECD's BEPS 2.0 Pillar Two global minimum tax framework in the Government Gazette

Introduction

Further to KPMG Thailand’s Tax News Flash Issue 137, a public consultation document detailing the principles of the draft Top-up Tax Act in Thailand was open for public consultation from 1 to 15 March 2024.

On 26 December 2024, the Emergency Decree on Top-up Tax, B.E. 2567, was published in the Government Gazette, and has become effective from 1 January 2025, marking a significant step in Thailand’s tax reform. It aims to implement additional tax measures to align Thailand's fiscal policies with the international standards set by the Organisation for Economic Cooperation and Development (OECD), specifically focusing on the OECD’s Base Erosion and Profit Shifting (BEPS) 2.0 – Pillar Two framework.

Key updates

BEPS 2.0 Pillar Two mandates a global minimum tax rate of 15% for multinational enterprises (MNEs). Affected entities in Thailand include subsidiaries, branch offices, and in-scope joint ventures — together with their joint venture subsidiaries (as determined by the GloBE Model Rules) — that belong to an MNE group with consolidated revenues of at least EUR750 million per year for two out of the four preceding fiscal years.

The emergency decree covers the imposition of a top-up tax under various rules initiated by the OECD: (i) the Income Inclusion Rule, (ii) the Undertaxed Payments Rule, and (iii) the Domestic Minimum Top-up Tax Rule. Although the emergency decree does not specify how the numerator and denominator should be adjusted to arrive at the effective tax rate for Pillar Two purposes, it mentions that these details will be prescribed in a ministerial regulation. The emergency decree also lacks safe harbor provisions and expresses expectations that these will be prescribed in a future Royal Decree, allowing the top-up tax to be deemed zero in various circumstances pursuant to the OECD guidance.

The emergency decree also provides administrative details in broad alignment with the OECD’s GloBE Model Rules, which include the requirement for taxpayers to file returns and pay top-up tax within 18 months after the end of the first reporting year and within 15 months for subsequent reporting periods. Under the emergency decree, one or more in-scope entities can be nominated as being responsible for top-up tax filing and payment on behalf of other in-scope entities that are liable to top-up tax. The emergency decree also includes various provisions for top-up tax payment in installments and refunds. Penalties and surcharges for failure to comply with the emergency decree in various situations are also specified.

Our observation

In-scope MNEs in Thailand should prepare for the anticipated impact of the Emergency Decree on Top-up Tax, which has become effective from 2025, by:

- analyzing the extent to which their entities in Thailand fall within the Pillar Two scope pursuant to the emergency decree;
- determining whether there would be any top-up tax exposure for in-scope entities in Thailand under the emergency decree;

- addressing new financial disclosure requirements;
- preparing for additional top-up tax reporting and filing obligations under the emergency decree, which will be separate from existing corporate income tax return filing obligations under the Revenue Code; and
- planning stakeholder communication, including those regarding mergers and acquisitions and rationalization of tax incentives in Thailand.

KPMG in Thailand has relevant experience in helping Thai and foreign MNEs navigate the impact of Pillar Two on group structures, financing and value chains. If you have any questions, please feel free to contact us.

Key Contacts

Abhisit Pinmaneekul
Head of Tax
KPMG in Thailand
Pongsapak Prajakfueangfu
Director

Global Compliance Management Services (GCMS)	Global Mobility Services (GMS)	International Tax / M&A Services
Nipawan Passarapark Partner **Matthew Evan Jeamjit** Director **Visuth Apiraks** Director **Waraporn Dhammasawangkij** Director	**Ito Susumu** Director **Panisa Srihera** Director **Tanittha Cha-Um** Director	**John Andes** Partner **Tatiana Bespalova** Partner **Thanita Pubordeepong** Partner **Janejai Chavanavesh** Partner **Pongsapak Prajakfueangfu** Director **Supanich Taweesuksirianan** Director

Transfer Pricing Services	Trade & Customs Services
Abhisit Pinmaneekul Partner **Burin Yenthanakorn** Partner **Chollatip Santitorn** Partner **Akira Sorajja** Director **Kanazawa Manabu** Director **Ruji Brepson** Director **Nattaphon Dejchanchaiyut** Director	**Malika Bhumivarn** Partner **Sophon Dulyarassamee** Director

kpmg.com/th

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This e-mail was sent by KPMG Phoomchai Tax Ltd., Empire Tower, 49th Floor, 1 South Sathorn Road, Yannawa, Sathorn, Bangkok 10120. Tel: +66 2 677 2000. Tel: +66 2 677 2000. For enquiries, please click here.

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