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Thailand | Tax & Legal | 18 March 2024

TAX Alert

Thai Revenue Department released Draft Act on Top-Up Tax for public consultation

On March 1, 2024, the Thai Revenue Department has released a summary of a draft Act concerning top-up tax under Pillar 2 for the purpose of public consultation. This draft offers insights into the forthcoming implementation of the Global Minimum Tax (“GMT”) policy in Thailand which introduced three main rules: Income Inclusion Rules (“IIR”), Undertaxed Payment Rules (“UTPR”) and Qualified Domestic Minimum Top-Up Tax (“QDMTT”). Aligned closely with model rule and guidance for Pillar 2 issued by the Organisation for Economic Cooperation and Development (“OECD”), this draft represents a significant step towards GMT implementation in Thailand, which is anticipated to take place in 2025.

To date, more than 140 countries, including Thailand, collaboratively working within the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (“BEPS”), have endorsed a Two-Pillar Solution as a global initiative to tackle tax challenges arising from the digital economy. This reform encompasses two pillars: Pillar One, focusing on nexus and profit allocation, and Pillar Two, ensuring that in-scope multinational enterprises (“MNEs”) subject to taxation at a minimum effective tax rate of 15% in each of the jurisdictions where they operate. Thailand's commitment to adopting Pillar 2 was noted in a resolution by the Thai Cabinet on March 7, 2023.

The public consultation in Thailand took place from March 1 to 15, 2024. Subsequently, the Draft Act will be presented to the cabinet for review alongside feedback gathered from public consultation, tentatively by the end of March 2024. Upon approval, it will undergo further review and approval by Office of the Council of State and the cabinet before enactment. The Revenue Department has been collaborating with relevant stakeholders, such as the Board of Investment of Thailand (“BOI”) to ensure alignment on any future changes to incentive regimes to comply with Pillar Two and maintain the competitiveness of Thailand. Additionally, this collaboration extends to other relevant stakeholders such as the Thailand Federation of Accounting Professions (“TFAC”), Thailand-headquartered MNEs, as well as accounting and tax advisors, with the goal to address any implementation challenges when releasing secondary laws before the end of 2024.

Deloitte's Observations

Despite the absence of detailed implementation specifics in the provided summary at the current stage, the Revenue Department has confirmed that Global Anti-Base Erosion ("GloBE") rules shall be treated as a common approach. This means that Thailand will execute and administer the rules consistently with the outcomes outlined in Pillar Two, guided by the model rules and guidance issued by the OECD. While the legislative process is still in progress, impacted MNEs can refer to the OECD's model and guidance to prepare themselves for future compliance purposes.

Variations in implementation approach are expected for Thailand in areas where the model rules or guidelines are not prescriptive. For instance, this includes the proposed allocation of UTPR collected to each Constituent Entity ("CE") based on profit ratios and imposition of 1-2 times penalty and 1.5% monthly surcharge in case of non-compliance.

To navigate the legislative changes and implementation challenges, in-scope MNEs should proactively prepare appropriate action plans to ensure compliance. This would include conducting impact assessments, safe harbor tests, preparing top-up tax simulations, and ensuring readiness for data collection and filing obligations.

Contacts

Anthony Visate Loh
International Tax & Legal
Tel: +66 (0) 2034 0000 ext 40112
Email: aloh@deloitte.com

Alisa Arechawapongsawat
Transfer Pricing
Tel: +66 (0) 2034 0000 ext 40171
Email: aarechawapongsawat@deloitte.com

Chairak Trakhulmontri
Transfer Pricing
Tel: +66 (0) 2034 0000 ext 40157
Email: ctrakhulmontri@deloitte.com

Darika Soponawat
Business Tax (Tax Compliance)
Tel: +66 (0) 2034 0000 ext 40115
Email: dsoponawat@deloitte.com

Dr. Kancharat Thaidamri
Transfer Pricing
Tel: +66 (0) 2034 0000 ext 40118
Email: kthaidamri@deloitte.com

Korneeka Koonachoak
Business Tax (Value Chain Alignment)
Tel: +66 (0) 2034 0000 ext 40122
Email: kkoonachoak@deloitte.com

Mark Kuratana
Global Employer Services
Tel: +66 (0) 2034 0000 ext 40125
Email: mkuratana@deloitte.com

Nu To Van
Indirect Tax (Customs & VAT)
Tel: +66 (0) 2034 0000 ext 40163
Email: ntovan@deloitte.com

Patcharaporn Pootranon
Legal - Corporate
Tel: +66 (0) 2034 0000 ext 40173
Email: ppootranon@deloitte.com

Pornpun Niyomthai
Global Employer Services – Immigration
Tel: +66 (0) 2034 0000 ext 40175
Email: pniyomthai@deloitte.com

Stuart Simons
Transfer Pricing
Tel: +66 (0) 2034 0000 ext 40135
Email: ssimons@deloitte.com

Wanna Suteeraporchai
Business Tax (M&A)
Tel: +66 (0) 2034 0000 ext 40144
Email: wsuteerapornchai@deloitte.com

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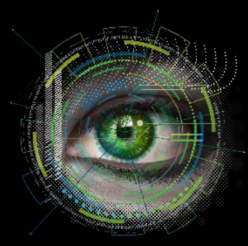

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