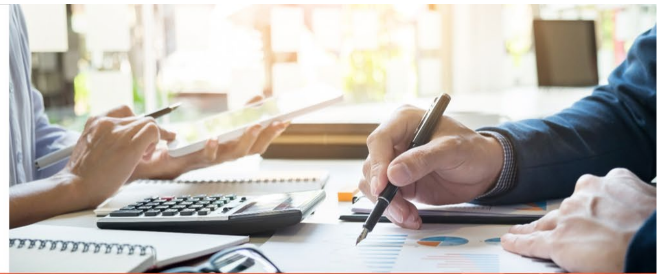
KUDUN & PARTNERS



Legal Alert I Tax

Cabinet Approves Global Minimum Tax in Thailand: A Step Towards Adopting BEPS 2.0 Pillar Two

On December 11, 2024, Thailand's Cabinet approved two key Emergency Decrees related to tax increases for multinational corporations (MNEs)to align with global standards set by the Organisation for Economic Co-operation and Development ("**OECD**"). The draft laws, forming part of Thailand's commitment to international tax reforms, include provisions for a global minimum tax (Pillar Two) and a redistribution of tax revenues to enhance Thailand's competitive capabilities in targeted industries.

The key points of the draft laws are summarized below:

1. **Affected Entities**

   The draft laws apply to legal entities within Thailand that are part of MNE groups with consolidated revenue from their Ultimate Parent Entity (UPE) of no less than EUR 750 million.

2. **Key Features of the Draft Laws**

   The draft laws aim to implement the "Top-up Tax" (a supplementary tax) in accordance with the Global Anti-Base Erosion (GloBE) rules set by the OECD. The main provisions are as follows:

   (1) General Information

   The proposed tax is classified as an "assessed tax, " distinct from corporate income tax. The collection of this tax will be under the purview of the Revenue Department.

   (2) Scope of Application

   As mentioned, the draft laws apply to entities within Thailand that are part of MNE groups with consolidated revenue from their UPE exceeding the threshold of EUR 750 million. This consolidated

December 2024

Get in touch

Kudun Sukhumananda
Partner
kudun.s@kap.co.th

Chanattorn Thunyaluck
Senior Associate
chanattorn.t@kap.co.th

Kudun and Partners

34/3 Vivre Langsuan, 4th, 5th, and 6th Floor, Soi Langsuan, Lumpini, Pathumwan, Bangkok 10330, Thailand
contact@kap.co.th

revenue is to be evaluated over a period of at least two accounting periods within the four fiscal years before the relevant tax period. However, certain entities are exempt from these provisions, such as state agencies, international organizations, non-profit entities, pension funds, and investment vehicles with specific tax characteristics.

(3) Taxpayer Responsibilities

Each constituent entity within Thailand, part of an MNE group, is responsible for paying the Top-up Tax.

(4) Tax Base and Determination of Low-Tax Jurisdictions

The Top-up Tax is designed to address situations where the profits of an MNE group are taxed in jurisdictions with low "Effective Tax Rates" (ETRs). A jurisdiction is considered a "low-tax jurisdiction" if its ETR is below 15%. The formula to determine the ETR is as follows:

ETR = Adjusted Covered Taxes / Net GloBE Income

Adjusted Covered Taxes: This refers to the total amount of taxes paid by each constituent entity of the MNE group, after adjustments, for the relevant accounting period.

Net GloBE Income: This is the total income of the MNE group, as determined by the GloBE rules, for the relevant accounting period.

If an MNE group operates in a jurisdiction with an ETR below 15%, the Top-up Tax may be levied to ensure the group meets the global minimum tax requirements.

(5) Additional Provisions

The draft laws also outline specific guidelines for various corporate structures, such as corporate restructuring, joint ventures, multi-parent MNEs, flow-through entities, and investment entities. Additionally, provisions for tax elections and how entities may opt to comply or opt out of the provisions under certain circumstances will be included in the subordinated laws.

(6) Top-up Tax Calculation

The amount of Top-up Tax to be paid by an MNE group entity is the sum of domestic Top-up Tax and Global Minimum Tax (GMT), as

About Us

Tax Practice Group

Businesses often need proper tax planning and an efficient structure to sustain and enjoy long-term success. Our main goal is to provide a "one-stop service" where we can seamlessly connect with other practices to provide the most appropriate advice to our clients.

We have extensive experience in tax issues related to M&A, restructuring and wealth management, especially when clients are faced with new business models, IPOs, as well as buying or selling assets to ensure tax mitigation and optimization. We conduct due diligence to determine whether tax planning is possible or required. This involves sharing information about specific tax privileges for which our clients may or may not know they are qualified.

Our clients extend to a wide spectrum of sectors: corporations, family businesses and high net worth individuals / ultra-high net worth individuals, who we believe require attentive services and a responsive team, a value we strive for and for which we are known.

determined under the Income Inclusion Rules or Undertaxed Payment Rules, depending on specific situation.

3. **Appeal Process**
   Entities disagreeing with the assessment of their Top-up Tax can appeal to the Tax Appeal Committee within 30 days of receiving the assessment notice. If the entities disagree with the decision of the appeal to the Tax Appeal Committee, the entity may file a lawsuit with the Tax Court within 30 days of receiving the decision from the Tax Appeal Committee. Furthermore, the draft law includes provisions for resolving disputes through international agreements potentially suspending the appeal process until the dispute is resolved. However, it is important to note that appealing or utilizing international dispute resolution rights will not suspend the obligation to pay the Top-up Tax.

Conclusion

The introduction of these draft laws mark Thailand's commitment to international tax reforms. These measures align Thailand with the OECD's BEPS initiatives, which aim to create fairer, more effective global tax systems for MNEs. The laws could significantly impact large MNEs operating in Thailand, especially regarding the enforcement of the global minimum tax rate and its implementation through domestic tax legislation. With the global minimum tax set to take effect in early 2025, MNEs must prepare to address these challenges, requiring readiness in inter alia, knowledge, resources, Top-up Tax computation, and compliance with reporting obligations. MNEs planning group restructurings should carefully evaluate how these transactions may impact their Pillar Two profiles. Strategic planning will be crucial to manage risks and ensure alignment with the new tax framework. Consulting with tax professionals is advisable to effectively navigate these changes.

For more information, please get in touch with our tax practice, or alternatively, please contact the author.

All information, content, and materials contained in or referred to in this article do not, and are not intended to constitute, legal advice and are purely provided for general informational purposes only. For more information, please contact the authors.