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Thailand's Implementation of Top-Up Tax: Aligning with Global Tax Standards

Thailand has introduced significant tax reforms aimed at aligning with global tax standards, particularly the OECD's Global Minimum Tax under Pillar Two of the Base Erosion and Profit Shifting (BEPS) 2.0 framework. Effective January 1, 2025, the Emergency Decree on Top-Up Tax B.E. 2567 (2024) (the "Decree") establishes a 15% global minimum effective tax rate for multinational enterprises (MNEs) operating in Thailand. These reforms are designed to combat tax avoidance, improve Thailand's tax competitiveness, and ensure a fairer tax environment for all businesses.

The introduction of the Top-up Tax addresses long-standing tax avoidance practices by MNEs, many of which have been shifting profits to low-tax jurisdictions or tax havens. This tax ensures that Thailand can retain the right to tax these entities, protecting the country from revenue loss. If Thailand didn't implement this law, MNEs could face additional taxes in their home countries under the Income Inclusion Rule (IIR), which could lead to lost tax revenue.

The key points of the Decree are summarized below:

1. Scope of Application and Taxpayer Responsibility

The Decree apply to the entities within Thailand that are part of MNE groups with consolidated revenue from their UPE exceeding the threshold of EUR 750 million. This consolidated 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

January 2025

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entities, pension funds, and investment vehicles with specific tax characteristics.

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

2. Top-up Tax: Domestic and International Mechanisms

The Decree focus on the introduction of the Top-up Tax, including both a domestic and international mechanism, designed to ensure that MNEs are not shifting profits to jurisdictions with lower tax rates. The tax will be applicable to businesses linked to foreign entities, and aims to bring the overall effective tax rate up to 15% for MNEs operating in Thailand.

The mechanisms to collect the Top-up Tax are as follows:

- Domestic Top-up Tax: This mechanism targets MNEs operating within Thailand whose local effective tax rate is below 15%. If the rate is lower, Thailand will impose an additional tax to bring the rate up to the minimum threshold.
- Income Inclusion Rule (IIR): This rule applies to Thai-based entities with ownership stakes in low-tax foreign jurisdictions, requiring them to include foreign income in the parent company's taxable income. The law also ensures that if MNEs with foreign subsidiaries are paying a tax rate lower than 15% in Thailand, they will be required to pay additional taxes to comply with the global minimum tax rate.

3. Reporting and Payment Obligations

MNEs within the scope are required to meet specific reporting obligations set by the Thai Revenue Department. The submission deadline falls 15 months after the ultimate parent entity's (UPE) accounting period concludes. Entities must provide relevant MNEs documentation, the GloBE Information Return, and a Thai Top-up Tax return, along with any necessary payments. Entities liable for the top-up tax may request an installment plan for up to three years.

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.

The required reports must include, among other things, details about the UPE of the MNEs, specifying its jurisdiction, as well as information on MNEs required to file reports under base erosion and profit shifting prevention measures and the jurisdictions where their affiliated entities are based.

The Thai Revenue Department is in the process of drafting subordinate legislation to establish detailed regulations in line with OECD standards. The submission of tax returns, payment procedures, the GloBE Information Return, and related notifications will be facilitated entirely through an electronic filing system.

4. Authority of the Assessing Officer

The assessing officer has the authority to assess Top-up Tax within a period of 10 years from the final deadline for filing the GloBE Information Return.

If there are reasonable grounds to believe that any person has submitted an inaccurate or incomplete tax return, the assessing officer has the power to issue a summons to the filer and witnesses within five years from the date of filing. The Director-General may approve an extension of the summons issuance period beyond five years, but it must not exceed seven years from the filing date.

5. 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.

In cases where the disagreeing entities exercise their right to dispute resolution under an international agreement related to the GloBE rules to which the Thai government is a party, they may submit a written request to the Tax Appeals Committee to temporarily suspend the appeal review until the dispute resolution process has been concluded.

However, filing an appeal or initiating dispute resolution under an international agreement does not postpone the obligation to pay the top-up tax.

6. Surcharges, Additional Charges, and Criminal Penalties

If a taxpayer fails to pay the Top-up Tax within the prescribed deadline, they shall be subject to a surcharge of either:

- **100% of the unpaid tax** if they have submitted the GloBE Information Return but underpaid the tax, or
- **200% of the unpaid tax** if they failed to submit the GloBE Information Return or did not file the top-up tax return within the deadline.

Additionally, if the tax remains unpaid or is only partially paid, an extra charge of 1.5% per month or fraction thereof (excluding the surcharge) will be imposed. However, the Director-General, with the approval of the Minister, may issue an order to waive or reduce the surcharge. The surcharge and additional charges shall be treated as part of the top-up tax liability.

Beyond these financial penalties, the Decree also prescribes criminal liability for certain violations related to Top-up Tax obligations.

Conclusion

In conclusion, while the implementation of the Top-up Tax is aimed at ensuring tax fairness, it also represents a broader effort by Thailand to foster a more competitive and transparent investment climate. By aligning with the OECD’s BEPS 2.0 framework, Thailand is positioning itself as a forward-thinking economy within the global tax landscape.

As a result, MNEs must address these challenges, which require preparedness in areas such as knowledge, resources, Top-up Tax computation, and compliance with reporting obligations. MNEs considering group restructurings should carefully assess how these transactions might impact their Pillar Two profiles. Strategic planning will be essential to manage risks and ensure alignment with the new tax framework. Consulting with tax professionals is recommended to effectively navigate and address the challenges posed by these changes.

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