



Draft law on Pillar Two in Thailand issued for public consultation

The following report may be of interest to:

All clients

In brief:

On 1 March 2024, the Revenue Department published a consultation paper in the form of a proposed draft law concerning the Pillar Two global minimum tax rules for Thailand. The draft law closely follows the guidance issued by the Organisation for Economic Co-operation and Development (OECD) under the Global Anti-Base Erosion (GloBE) Rules and proposes that three tax-charging mechanisms be included which will be applicable to Thai taxpayers falling within the scope of the rules. They are (i) Domestic Minimum Top-up Tax (DMTT), (ii) Income Inclusion Rule (IIR), and (iii) Undertaxed Payments Rule (UTPR).

Under the draft law, a multinational enterprise (MNE) with consolidated revenue of more than Euro 750 million per annum will be subject to a minimum effective tax rate (ETR) of 15%. The ETR will be calculated on a jurisdictional basis which is in line with the OECD model rules.

In detail:

Scope

The draft law will apply to Constituent Entities located in Thailand that are members of an MNE group with consolidated revenues of at least the amount in THB that is the equivalent of EUR 750 million.

Similar to the OECD model rules, the draft law excludes governmental entities, international organisations, non-profit organisations, pension funds, investment funds that are an ultimate parent entity, and certain other juristic entities from the scope of the law.

Determination of the Top-up Tax

The draft law introduces a jurisdictional top-up tax to be determined by applying the top-up tax percentage to the jurisdictional excess profit, which is then adjusted to include any additional current top-up tax that arises out of special defined circumstances and exclude the jurisdiction's Qualified DMTT, which is in line with the OECD model rules.



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The jurisdictional top-up tax percentage is determined by subtracting the jurisdictional ETR from the minimum rate of 15%. The jurisdictional excess profit is determined by subtracting the Substance Based Income Exclusion from the Net GloBE Income of a jurisdiction. The mechanism of the calculation proposed under the draft law provides for the framework of determining the top-up tax amount which follows that of the model rules; however, it leaves out the detailed adjustments, which will be addressed in additional ministerial regulations.

Charging provisions

Once determined, the top-up tax amount to be paid in Thailand will include:

- the DMTT to be paid by the Thai Constituent Entities of an MNE group on the top-up tax amount arising in Thailand
- the top-up tax under the IIR to be paid by a Thai ultimate parent entity, a Thai intermediate parent entity in certain cases, or a Thai partially-owned parent entity in certain cases, as defined under the model rules for the top-up tax arising in low tax jurisdictions where the Thai entity has direct or indirect ownership, and
- the top-up tax under the UTPR, which is to be paid by Thai Constituent Entities of an MNE group on the top-up tax allocated to Thailand from low tax jurisdictions that remains uncollected after the application of the Qualified IIR or Qualified DMTT rules.

Under the draft law, in the event that more than one Constituent Entity in an MNE group is located in Thailand, the top-up tax allocable to Thailand is to be distributed to each Constituent Entity; however, the group may collectively assign a single entity to be responsible for the tax liability. If the entity assigned incurs tax arrears, all Constituent Entities in Thailand will be jointly liable for the outstanding tax arrears.

Tax administration

Based on the draft law, taxpayers falling within its scope will be required to submit to the Revenue Department, within 15 months from the last day of the reporting fiscal year, a notification providing detailed information on the MNE group, the GloBE information return, the top-up tax information return and the top-up tax payment.

If there is evidence or reason to suspect that the taxpayer has filed tax incorrectly, or the filing is incomplete, the Revenue Department may issue a summons requiring the taxpayer to respond to questions within five years from the date of filing the top-up tax return. This may be extended by an additional two years. The statute of limitations for the top-up tax is ten years from the date of filing.

Taxpayers who incorrectly file the top-up tax returns will be subject to a penalty of 100% of the tax shortfall, and those who fail to file the returns will be subject to a penalty of 200% of the shortfall. In addition, failure to make a payment, or an incomplete payment, would also result in an additional 1.5% surcharge per month, which is in line with the domestic rules under the income tax law.



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Our observations:

While the proposed draft law is mostly in line with the OECD model rules, there are some details that are left out, which may affect how the rules are effectively implemented in Thailand. Most notably the following:

- As the draft proposes that the top-up tax is governed under this new law and does not form a part of the Revenue Code, the mechanism of the UTPR application will unlikely be by way of denial of deduction but instead will be by an alternative equivalent adjustment mechanism that imposes the top-up tax to the Constituent Entity.
- The draft law does broadly provide that the mechanism of the domestic law is to be aligned with the model rules, which is defined to include the OECD model rules, the OECD Commentary on the model rules, and Agreed Administrative Guidance issued by the Inclusive Framework.
- The draft law does not include any provisions that would delay the application of the UTPR, which likely means that, if enacted, all three tax-charging provisions would be brought into effect together.
- The draft law still leaves out of the provisions the details of the adjustments under the GloBE calculation, including the various mechanisms under the model rules, such as transitional rules and safe harbour rules.

Importantly, the draft law does not specify the tentative effective date. However, based on the prior Cabinet resolution announced on 7 March 2023, it is likely that Thailand will attempt to bring the rules into effect on 1 January 2025. Taxpayers falling within the scope of the law, whether part of an MNE group headquartered in Thailand or an MNE group headquartered abroad, should quickly evaluate the upcoming impact of the rules in Thailand on their organisation and prepare for compliance.



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