

Tax Newsletter, Issue no. 02/2021

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Possible issues arising from Digital service tax

The Digital Services Tax Law came into force on 11 February 2021. The VAT liability under this law will affect overseas digital service providers or operators of electronic platforms on revenue received from 1 September 2021 onwards. As a result, the digital service providers and the electronic platforms will be required to register and pay 7% VAT on revenue generated from the electronic services used in Thailand.

Subordinate laws will need to be issued to clarify details and guide implementation but, as we wait, we foresee these possible issues:

1. The definition of 'electronic services': The amended Revenue Code defines electronic services as services, including intangible assets, delivered via the internet network. However, the scope of intangible assets delivered via the internet network isn't apparent. For example, electronic services may or may not include digital asset trading such as with cryptocurrency or digital tokens. Electronic transfers of a right to use a physical service is also unclear whether it falls within the scope of electronic services. Due to

the complexity of these services, the definition needs to be clarified so that proper implementation of the law can follow.

2. Location determination: The law only takes effect when the services are used in Thailand, but in some cases, it might be hard to determine what the statute means by the location of the service. For example, a Thai individual may book a hotel via an accommodation provider platform, and the overall online booking process and payment may take place in Thailand while the hotel booked is in the U.S. or vice versa. In such a case, it's unclear whether the transactions would be considered as a service used in Thailand and thus subject to VAT. Location determination is therefore one of the crucial elements that needs to be further detailed.
3. Registration channel and payment options: If a non-resident electronic service provider, or a non-resident electronic platform, which provides electronic services used in Thailand earns more than THB 1.8m per year, it will need to register with the Revenue Department and pay

VAT via the department's online system. The question may arise if a non-resident electronic service provider provides both direct services to their customers and services through an electronic platform - if they have the option to pay all VAT relating to their services themselves, including VAT for the services provided through the electronic platform, or the VAT needs to separately be paid by the non-resident electronic service provider and electronic platform providers, according to the channel of services.

4. VAT mistakenly paid: When VAT is mistakenly paid in any circumstance, e.g. fees are overpaid by users due to the error of credit cards, it is not clear how a VAT registrant could recover the amount overpaid. The Revenue Department should clarify if offsetting will be allowed as it

would be less burdensome to the taxpayer. If not, it is likely that the VAT registrant would be required to claim a refund from the Revenue Department which will result in a tax audit. Getting a refund would likely take longer than simply offsetting the overpaid VAT against future VAT. The guidance for the tax refund process needs to be further detailed.

There are also other issues related to the digital services tax, such as the exchange rate to be applied, the payment method etc.

Subordinate laws and regulations have yet to be announced, and perspectives may change when they're issued. Since the legislation is recent and hasn't yet taken effect, we'll continue to monitor the impacts and implementations as they come.

Tax developments between January and April 2021

Request e-filing of tax returns through the Department of Business Development

The Notification of the Director-General of the Revenue Department dated 18 January 2021 was issued to enable corporate entities to request filing their tax returns and paying tax via the internet through the Department of Business Development's website according to the application form prescribed in the regulation. This will be treated as a request to the Revenue Department.

The officials of the Revenue Department will deliver the username and password to the corporate entities after they have confirmed and accepted the agreement for the filing of the tax returns and paying tax via internet through the Department of Business Development.

This Notification is effective from 1 February 2021.

Reminder – deadline for submission to the Revenue Department

Royal Decree No. 710 granted an additional 100% expense deduction to corporate entities for investment in machinery and computer programs connected with the machinery under the automation system, further details of which were included in our Tax Newsletter No. 3/2020.

According to the Notification of the Director-General No. 391, corporate entities that are planning to utilise the above incentive must comply with the condition that requires them to prepare an investment project and payment plan in the form prescribed in the above notification via the website of the Revenue Department by 31 May 2021.

The following regulations have already been included in our earlier Tax Insights

- Amendment to the criteria and conditions for writing off bad debts for tax purposes approved by the Cabinet (Tax Insight No. 1/2021)
- Extension of period for filing stamp duty returns for certain e-instruments and instruments in hard copy (Tax Insight No. 2/2021)
- COVID-19 pandemic: Reduction of contribution rate to the Social Security Fund for employers and insured persons (Tax Insight No. 3/2021)
- Various tax measures approved by the Cabinet to provide relief for taxpayers due to the COVID-19 pandemic (Tax Insight No. 4/2021)
- Detailed rules for transfer pricing adjustments (Tax Insight No. 5/2021)
- Mandatory online filing of Transfer Pricing Disclosure Form (Tax Insight No. 6/2021)
- COVID-19 pandemic – extension of deadline for filing tax returns online and reduction in tax rates and fees – regulations issued (Tax Insight No. 7/2021)
- Digital service tax law has been enacted (Tax Insight No. 8/2021)
- The Philippines intends to set retaliatory tariffs on products from Thailand (Tax Insight No. 9/2021)
- COVID-19 pandemic: Reduction of rate of contribution to the Social Security Fund for employers and insured persons (Tax Insight No. 10/2021)
- Update on Thai Customs COVID-19 relief measures (Tax Insight No. 11/2021)
- New criteria and conditions for writing off bad debts for tax purposes (Tax Insight No. 12/2021)

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