

Thailand proposes new VAT bill on foreign e-business

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Executive summary

On 17 January 2018, the Thai Revenue Department issued a draft value added tax bill (the Draft VAT Bill) to amend the current VAT law related to services rendered by e-business operators in foreign countries. This VAT specific development follows the draft tax proposal on foreign e-business activities, introduced and opened for a public consultation last year. The amendment primarily focuses on the collection of VAT on services rendered by foreign e-business operators to individuals in Thailand due to the limitations in enforcing a reverse charge mechanism under the current VAT law.

Under the Draft VAT Bill, foreign operators who provide services through an electronic media or foreign-based digital platform (Foreign E-business Operator) to non-VAT registrants in Thailand for a use of the services in Thailand will be required to register for VAT in Thailand and pay VAT to the Thai Revenue Department, if they derive annual service income exceeding THB1.8 million (US\$56,000) from non-VAT registrants in Thailand. Unless certain conditions are met, the rule also applies to foreign-based digital platform operators (Foreign-based Digital Platform Operators) whose platform (e.g., website, application or online marketplace) is used by a Foreign E-business Operator to provide services to non-VAT registrants in Thailand.

Failure to comply with the rules will subject a Foreign E-business Operator to VAT liability, penalties, surcharges and fines. The Draft VAT Bill is opened for public comments until 9 February 2018 prior to the enactment.

This Alert summarizes the key features of the Draft VAT Bill.

Detailed discussion

Persons subject to VAT registration

The following foreign operators will be required to register for VAT in Thailand and pay VAT to the Thai Revenue Department if they derive annual service income exceeding THB1.8 million from non-VAT registrant in Thailand:

- ▶ Foreign E-business Operators who provide services through an electronic media or foreign-based digital platform to a non-VAT registrant in Thailand for a use in Thailand.
- ▶ Foreign-based Digital Platform Operators whose platform (e.g., website, application or online marketplace) is used by Foreign E-business Operators to provide services to a non-VAT registrant in Thailand for its use in Thailand. An exception exists when all of the following conditions are met to shift the VAT taxability of service income to the Foreign E-business Operators:
 - There is a document issued to a service recipient, indicating that the services are provided by Foreign E-business Operator, not the Foreign-based Digital Platform Operator.
 - There is an agreement between the Foreign E-business Operator and Foreign-based Digital Platform Operator, stating that Foreign E-business Operator is responsible for the Thai VAT.

- The Foreign-based Digital Platform Operator is not a party approving a service fee collection from the service recipient.
- The Foreign-based Digital Platform Operator is not a party approving the delivery of services to the service recipients.
- The Foreign-based Digital Platform Operator is not a party determining terms and conditions of the provision of the services.

VAT rate and VAT base

The current VAT rate is 7%. The VAT tax base is the service fee that Foreign E-business Operators derive from non-VAT registrants in Thailand plus the VAT amount.

VAT registration procedure and compliance

The VAT registration will be done electronically through the Thai Revenue Department's website. As Thai VAT registrants, Foreign E-business Operators and/or Foreign-based Platform Operators are liable to prepare output tax reports and electronically file VAT returns together with the VAT payment. They are not allowed to issue tax invoices, recover input tax incurred, or collect VAT from their Thai service recipients.

Effective date

Subject to the public hearing and subsequent legislative procedure, the law will become effective 180 days after it is published in the *Royal Gazette*.

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