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Thailand's New Subordinate Legislation Implementing the OECD Global Minimum Tax

In 2024, Thailand enacted the Emergency Decree on Additional Tax B.E. 2567 (2024) to implement the OECD Global Minimum Tax under the Global Anti-Base Erosion (GloBE) framework. To give effect to the Emergency Decree, the Cabinet has approved in principle four items of subordinate legislation addressing (i) the scope of in-scope multinational enterprise (MNE) groups, (ii) the exclusion of certain entities from constituent entity status, (iii) the allocation of residual top-up tax within Thailand, and (iv) detailed adjustments to income, expenses, and covered taxes for GloBE purposes.

In the case of business combinations, a merged group is deemed to meet the threshold where the aggregate consolidated revenue of the ultimate parent entities of the merging groups equals or exceeds EUR 750 million (or its Thai Baht equivalent) in at least one of the four accounting periods preceding the merger. Similar treatment applies where a standalone entity merges with an MNE group, based on the combined or consolidated revenue in the accounting period prior to the merger. For demergers, a newly formed group is subject to the Additional Tax if the revenue threshold is met in the first post-demerger period, or, in the second to fourth periods, in at least two accounting periods since the demerger year.

A separate Draft Royal Decree clarifies entities excluded from the definition of "constituent entity." Exclusions apply to certain holding or investment entities of the Emergency Decree (excluding pension service entities) where ownership thresholds of 95 percent or 85 percent are met, and where activities or income consist almost entirely of asset holding, investment, or excluded dividends and capital gains.

The Draft Ministerial Regulation on the Allocation of Residual Additional Tax prescribes a formula for allocating residual top-up tax to Thai constituent entities of the same MNE group where none reports accounting profit. Allocation is based equally on (i) the proportion of employees in Thailand, calculated on a full-time equivalent basis, and (ii) the proportion of tangible assets located in Thailand. Detailed rules govern the treatment of employees, independent contractors, permanent establishments, and the measurement of tangible assets based on average net book value, excluding cash and financial assets.

Finally, the Draft Ministerial Regulation on Adjustments to Income, Expenses, and Covered Taxes establishes comprehensive rules on Adjusted GloBE Income, Adjusted Covered Taxes (including deferred tax adjustments), restructuring and flow-through entities, distribution tax systems, investment entities, prior-period adjustments, transitional rules, and the Domestic Minimum Top-up Tax (DMTT). These provisions are expressly aligned with the OECD Model GloBE Rules, Commentary, and Administrative Guidance.

Should you have any question, please do not hesitate to contact us via info@bgloballaw.com