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THAILAND

Newsletter

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Thailand Revenue Department's Latest Order Expanding the Tax Assessment of Individuals' Foreign Source Income

On 15 September 2023, the Thai Revenue Department (RD) issued RD order no. Por. 161/2566 (the "New Order") providing new guidelines for income tax assessment per Section 41 of the Revenue Code. The notable change is that, going forward, a resident of Thailand would have the obligation to assess income from foreign sources as a part of assessable income of the tax year (i.e., calendar year starting from 1 January to 31 December of such year) which it is brought into Thailand. This New Order will be effective on 1 January 2024.

Please see below for more details and how this New Order could potentially break the traditional tax planning scheme.

A. Before the New Order

Thailand currently operates two schemes of taxation which are:

- (1) **Source of income:** An individual would be subjected to taxation if a source is from Thailand.
- (2) **Residency:** An individual would be subjected to taxation if such individual resides in Thailand for at least a total of 180 days within one tax year and has a **foreign source income** which is brought into Thailand. A foreign source income means income from employment, property, or business carried overseas.

To clarify, a foreign source income is taxable under the current law if an individual (i) resides in Thailand for at least 180 days in total in one tax year, (ii) has a foreign source income derived in that tax year, and (iii) brings such foreign source income into Thailand in the same tax year of which the income is generated.

A long-established solution to avoid taxation for foreign source income is for an individual to wait a year and bring the money back in to Thailand a year after, to avoid meeting element (iii) regarding the time scope of "**the same tax year**".



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B. After the New Order

The Revenue Department finally decided that it is time to fix such a problematic loophole. The time scope of bringing the foreign source income into Thailand "within the same tax year of which the income is generated" would now be expanded to "whenever".

Any foreign source income which is brought into Thailand, regardless of **whenever** it is generated, would be subject to taxation in Thailand starting from the date the Order is effective, 1 January 2024 and going forward.

C. Conclusion

Although the New Order is not considered as law, it is a long-established custom that people in the tax business rely on the Revenue Department's orders and guidelines to manage business and taxation strategy. This New Order and its concept are considered groundbreaking for the tax-planning ecosystem as a whole. People with cross-border business would be heavily affected from the new direction that this New Order is leading us all to.

If you have any questions in relation to the topic raised in this briefing, please contact the authors listed in the left-hand column.

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