

30 April 2020

We welcome the enactment of changes to the Revenue Code concerning eCommerce Tax (the Law) and the opportunity to provide suggestions in order to achieve the most workable solutions.

In these recommendations we include matters of 'Policy' as we believe there are open issues in the Law, and thus it is not just the administrative or operational aspects which need to be considered.

While the amending law is quite short, we ask whether a consolidated version of the Law as it stands is available, as this would enable a better understanding of the updated law.

We would urge providing comprehensive guidelines in English as well as Thai. English as a first additional default language is standard. Examples within Asia Pac are the [Singapore Overseas Vendor Registration regime](#) and the [Australian Simplified GST Registration regime](#) - simply written guidelines.

The Law targets foreign e-commerce companies which are willing to comply with this new law and which, in many cases, already comply with similar laws in other countries.

In order to ensure successful implementation (for both the Thai government and for taxpayers), administrative burdens need to be minimised, the rules/compliance obligations need to be in line with the OECD guidelines, and sufficient time should be allowed to have systems ready. With a 1 September compliance commencement date quite close, taxpayers do not yet have answers to some critical issues which will require clarity before preparation of systems and processes can be completed.

### Policy issues

#### **1. Foreign companies should be able to charge VAT to Thai customers**

The Law explicitly states that foreign companies providing e-services cannot issue tax invoices to non-VAT registered service recipients (referred to as "consumers" for simplicity). This should not preclude foreign companies from charging VAT to consumers and remitting that VAT to the Revenue Department. For example, assuming a foreign company's service fee is 100 baht, after 1 September 2021 it should be able to charge 100 baht + 7 baht to consumers and remit 7 baht to the Revenue Department, leaving effectively the same revenue for the foreign operator. This is in line with the fundamental principle of VAT being a tax on consumption, which is ultimately paid by final consumers and collected by businesses which then remit it to the Revenue Department. Importantly, this treatment would achieve the level playing field for both Thai and foreign providers of e-services that is one of the primary objectives of the Law.

*Clarification sought:*

- A. *Will foreign companies subject to the Law be able to charge VAT to non-VAT registered service recipients?*
- B. *Will foreign companies be able to disclose VAT separately from service fee on their commercial invoices and other relevant communication (websites, email confirmation to customers, etc)?*

**2. In-scope services**

Section 5 of the Law provides a broad definition of “electronic service”.

*Clarification sought:*

- A. *Clear and comprehensive guidance is needed for what services are in-scope of the Law. For registration, a drop down menu could be useful, with an ‘other’ category*
- B. *Consideration should be given to exempting certain e-services, such as e-books, online training and educational courses, etc, in line with traditional VAT rules.*

**3. VAT liability point**

We understand that the point at which VAT liability arises should follow the normal VAT rules, which define that as being the earlier of receiving payment, the issuance of a tax invoice, or the use of the service. Since the tax invoice cannot be issued by foreign companies, the tax liability should occur at either the time of receiving payment or upon use of the service. However the nature of e-services sometimes makes it difficult to determine when the service is used.

*Clarification sought:*

- A. *Does determination of when the tax liability arises follow the normal VAT rules?*
- B. *Subject to the above, it is suggested that the rules under this eCommerce Tax should be simplified to allow foreign companies to account for VAT upon receiving the payment in every instance, as this would provide certainty and ease the administrative burden for taxpayers.*

**4. Determination of where the service is used**

The nature of e-services often makes it difficult to determine where the service is used. This is critical for VAT purposes as it dictates which jurisdiction the taxpayer must remit their VAT liability to, especially considering that many taxpayers will be providing services to customers in multiple jurisdictions, and it is possible one customer may use services provided through a single point, in more than one jurisdiction.

*Clarification sought:*

- A. *Clear criteria needs to be provided so that foreign companies can determine where the services that they provide are used.*
- B. *Ideally there would eventually be a jurisdictional resolution means for indirect taxes.*

## 5. Transitional rules

Compliance obligations are to commence from 1 September 2021. It is currently unclear how to apply the law during the transitional period. Some examples of this include (a) payments received prior to 1 September but services provided after 1 September; (b) payments received prior to 1 September and services provided over a period of time which straddles the 1 September commencement date (i.e. subscription type services); (c) payments received prior to 1 September and refund received after 1 September (with the service provided partially); (d) service provided prior to 1 September but the payment received after 1 September.

*Clarification sought:*

- A. *Clear and comprehensive guidance is needed for various transitional issues and scenarios.*

## Administrative issues

### 1. Reduced compliance burden

Thailand has made headway with the 'Ease of Doing Business' approach and on-going efforts at reducing unnecessary and burdensome overhead. We ask that creation of additional and potentially unnecessary burdens be avoided.

Foreign companies that are subject to the Law have to comply with similar laws in many countries. To improve the rate of compliance by taxpayers with their obligations under the Law and hence maximise revenue collection for the Revenue Department, it is important that compliance burden and cost are minimised. This can be achieved through reduction or elimination of some current compliance requirements.

*Recommendations:*

- A. *Reducing the amount of information required for VAT registration process*
- B. *Eliminating the requirement to prepare an output tax report on a monthly basis; a quarterly basis should suffice*
- C. *Allowing flexibility in choosing foreign exchange rates to be used for VAT reporting and payment purposes*
- D. *Providing multiple options for tax liability payment*
- E. *Eliminating the current practice of an automatic tax audit if a tax refund is sought.*

### 2. Validation of customer VAT registration status

It is currently unclear whether foreign companies will have an obligation to verify their customers' VAT status and if so, how this would have to be done. In accordance with the OECD guidelines and practices in other jurisdictions, we recommend that the Revenue Department implements the approach that taxpayers must make reasonable efforts to obtain appropriate evidence of the VAT status of their customer (for example by requesting the customer's VAT ID number if applicable), and if they are still unable to establish the customer's status then they should presume that the customer is a non-

VAT registered customer. The taxpayer should not be liable for any penalties as a result of incorrect information provided by their customers. This is one of the more critical compliance issues requiring clarification, as foreign companies will need to ensure that their systems are modified well in advance of 1 September in order to start collecting the relevant information when compliance obligations commence.

*Clarification sought:*

- A. *Will it be sufficient for foreign companies to enquire about the VAT registration status of their customers and rely on the customers' representations?*
- B. *If not, will it be sufficient for foreign companies to ask their customers to provide a VAT ID number without an obligation to validate that VAT ID number?*
- C. *If validation is required, will it be sufficient to validate the format only? Foreign operators should not be required to check the correctness of the VAT ID number provided by customers unless the Revenue Department provides an electronic database, in English as well as Thai, that taxpayers' systems can access for automated verification. (The current database would require a manual search of a VAT ID number. Furthermore, it is available in Thai language only.)*

### **3. VAT adjustments and errors**

It is understood that foreign operators will be required to amend a previously filed VAT return in case any errors or adjustments occur. If this amendment results in overpayment of VAT, foreign operators can request a refund (which may trigger a tax audit). VAT adjustments can be distinguished from VAT errors. An adjustment generally occurs in the normal course of business, for example, where a customer cancels a booking/subscription and the service provider has to make a refund to the customer. Whereas, an error can occur, for example, where tax was charged or calculated incorrectly.

*Recommendation:*

- A. *To ease an administrative burden for taxpayers and the Revenue Department, it is suggested that VAT adjustments and errors can be adjusted for in the current period's VAT return (rather than requiring a re-filing of the prior period's VAT return). An exception can be introduced for material errors (e.g., greater than 10% of the VAT).*
- B. *The platform (see comments later) should accommodate adjustments and error rectification.*

### **4. Data privacy concerns**

Certain customer information that foreign companies are required to provide (primarily in connection with the output VAT report) is confidential personal information. Foreign companies would be at risk of breaching foreign data privacy laws if forced to provide such information. To illustrate, even a special exemption (should there be one) of liability for breach of Thailand's Personal Data Protection Act, and even taking into account the extra-territorial reach of the Thailand PDPA (s.5), would not absolve a company from liability under foreign privacy laws.

*Recommendation:*

- A. *Foreign companies should not be required to provide detailed customer information.*

**5. Enforcement**

In our understanding, there are no specific enforcement provisions for the eCommerce Tax. Rather, the existing rules in the Revenue Code would apply. However there are some special features of the eCommerce tax which warrant consideration. We urge that fair means of enforcement be developed. For example groups of companies may have affiliates or even partners seemingly using the same brand name, one of which may have a presence in Thailand, but the business may be otherwise unrelated. We urge that great care be taken in formulating enforcement procedures to avoid sanctioning firms which actually have no business relationship with the taxpayer. The platform should support warnings with advance notice of any possible non compliance aspects to give time to rectify or appeal.

*Recommendation:*

- A. *Fair and rules-based procedures for enforcement, supported by the platform.*

**6. The registration form**

Tax ID Number – for a foreign registrant which has no prior dealings with Thailand, is it clear that the 'Tax ID' is meant to be a Thai tax ID, if in fact that is the intention? Note that there is a separate field later in the registration for tax identification in country of incorporation.

Electronic service description.

What is the difference between Electronic Platform and Electronic Vendor?

Directors, Partners and Manager information – this should be modified to simply request 'Primary contact' (suggest who this should be) and 'Secondary contact'. There should be no need to provide full details of the registrant's board and management.

*Recommendation:*

- A. *Explain what information is expected for 'Tax ID Number'*
- B. *Explain what is meant by 'electronic service'. In addition to a guideline, would a drop down menu be better, with an 'other' category?*
- C. *How are 'Electronic Platform' and 'Electronic Vendor' defined? What is the difference?*
- D. *Request only one primary contact, one secondary contact.*

**7. The system and platform**



Registrants need to be able to access the system and update their data. It should also include a clear and detailed record, with security and a help desk.

*Recommendation:*

*A. Platform features should include:*

- i) Record of registration and transactions recorded, with reports available for download by authorised users, including record of tax paid*
- ii) The system should be user-accessible for updates*
- iii) Clear record of transactions with information integrity protocols including authorised, structured sign on*
- iv) High platform security to ISO or other relevant standards*
- v) A Help Desk function with a high level of service*