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THAI STAMP DUTY GOES DIGITAL

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Stamp duty is traditionally a tax payable on specific types of documents. Certain types of transaction could previously be implemented on a "duty-free" basis simply by doing without the local documentation that attracted stamp duty, or by keeping the executed documentation offshore.

Many tax authorities, keen to avoid a reduction of their revenue base, make it mandatory for physical documents to be executed for certain types of transactions, thereby preventing novel stamp duty avoidance structures. However, the Thai Revenue Department (the "RD") has gone one step further by extending stamp duty to agreements entered into electronically, even if no physical document exists and there is no obligation to execute such a document.

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Five dutiable E-Instruments

The notification issue by the RD [1] ("Notification") requires stamp duty to be paid on the following five classes of "E-Instruments":

- hire of work contracts;
- loans and overdraft agreements;
- powers of attorney;
- shareholder proxy forms; and
- guarantees

"E-Instruments" include instruments which: (i) relate to the prescribed categories of instruments listed in the stamp duty schedule of the Thai Revenue Code as being subject to stamp duty; and (ii) are made electronically in accordance with the Electronic Transactions Act (the "ETA"). An agreement signed electronically with reliable digital signatures is likely to satisfy the requirements of the ETA.

The stamp duty schedule lists 28 categories of an instrument subject to stamp duty and, although the Notification imposes stamp duty on E-Instruments for only five of those categories, the RD can be expected to extend stamp duty to other classes if it expands its tax base to online transactions.

Extraterritoriality

The Notification expands the territorial reach of E-Instrument liability to Thai stamp duty by requiring stamp duty to be paid even if physical copies of the E-Instruments are not brought into Thailand.

Offshore execution of an E-Instrument will not have the effect of avoiding or delaying stamp duty liability as the ETA regards electronic signatures made in a foreign country as having the same legal effect as an electronic signature made in Thailand as long as the reliability standards meet the requirements of the ETA. An electronic signature made offshore by a Thai party is likely to be regarded as having the same effect as a signature made in Thailand. Before the Notification, the obligation to pay stamp duty on instruments listed in the stamp duty schedule was triggered by them being executed in or being brought into Thailand.

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No more paper stamps?

The party liable to pay stamp duty on the E-Instrument must file an application through the RD website or through the RD's Application Programming Interface.

Once the request to pay stamp duty has been made, the person liable to pay stamp duty must transfer the stamp duty fees to the RD electronically.

The application to pay stamp duty must be filed either before the execution of the E-Instrument or within fifteen days from the day following the execution of the E-Instrument.

Implications for foreign parties to E-Instruments

Although it is common for agreements to specifically address which party pays stamp duty, some agreements fail to properly allocate stamp duty liability. Before executing an E-Instrument, foreign parties should obtain advice on which party is liable under Thai law for stamp duty on the E-Instrument (it varies from one class of instrument to the next) in order to avoid unexpected stamp duty liability and penalties for late payment.

[1] RD Director-General Notification No 58 dated 24 June 2019

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