

RECENT DEVELOPMENT IN THAI TAX ON FOREIGN-SOURCED INCOME

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"If enacted and upon it becoming into effect, a Thai Tax Resident will be liable for PIT when their Foreign-Sourced Income is brought into Thailand, regardless of the tax year in which the income was earned."

On 15 September 2023, the Revenue Department of Thailand issued an instruction as guidance for revenue officers with regards to foreign-sourced income brought into Thailand by a Thai tax resident. The Departmental Instruction No. Paw 161/2023 states that, effective from 1 January 2024, the foreign-sourced income derived by a Thai tax resident will be subject to Thai personal income tax when such income is brought into Thailand, regardless of where and when the foreign-sourced income is earned. If enacted and upon it becoming effective, this will affect the tax liability of a Thai tax resident, who earned and brought a foreign-sourced income into Thailand, from the current interpretation of Section 41 of the Thai Revenue Code.

CURRENT INTERPRETATION OF SECTION 41 OF THE THAI REVENUE CODE

An individual, whether Thai or foreigner, who resides in Thailand at one or more times for an aggregate period of 180 days or more in any tax (calendar) year will be deemed as a resident of Thailand for Thai income tax purposes ("Thai Tax Resident") and thus subject to personal income tax ("PIT") on income derived from sources outside Thailand. Income from sources outside Thailand includes income from employment, a post or office held outside Thailand, income from a business carried outside Thailand, income from a property situated outside Thailand ("Foreign-Sourced Income").

A Thai Tax Resident is subject to PIT at the progressive rate of 5% – 35% on their net income (income after deduction of expenses and allowances), with an exemption for the first THB 150,000.

Foreign-Sourced Income would only be subject to tax if the following conditions are met (§41, the Thai Revenue Code):

- (i) the income earner is Thai Tax Resident; and
- (ii) Foreign-Sourced Income is brought into Thailand within the same year in which it was derived/earned.

IMPLICATION FROM THE DEPARTMENT INSTRUCTION NO. PAW 161/2023

"It is worth noting that at this stage the Departmental Instruction is an internal guidance for revenue officers, rather than law."

If enacted and upon it becoming into effect, a Thai Tax Resident will be liable for PIT when their Foreign-Sourced Income is brought into Thailand, ***regardless of the tax year*** in which the income was earned.

A press release issued by the Revenue Department on 18 September 2023 further added that the amount of tax paid in the source country that acceded to a double tax treaty ("DTA") with Thailand could be applied as a tax credit as Thai PIT payable, in accordance with rules stipulated under an applicable DTA.

Whilst this new instruction could have significantly affected PIT implications, it is worth noting that at this stage the Departmental Instruction is an internal guidance for revenue officers, rather than law. As such, it is anticipated that this proposed instruction will be escalated to legislative channel before it is officially implemented as law.

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