

Newsletter:

Thailand's Top-up Tax Decree: Aligning with Global Standards while Supporting Investment

In Brief

On January 8, 2025, the Minister of Finance proposed the Emergency Decree on Top-up Tax, B.E. 2567 (2024) ("Top-up Tax Decree") to Parliament for consideration and affirmation of the Cabinet's approval. This proposal follows the legislative process required for parliamentary affirmation. The Parliament subsequently affirmed the decree as proposed.

The Top-up Tax Decree has been in effect since January 1, 2025. It establishes a mechanism to ensure that Multi-National Enterprises ("MNEs") with consolidated financial statement revenues of at least €750 million are subject to an effective tax rate of at least 15%. This rate applies to income in each jurisdiction where constituent entities of an MNE group operate. This measure aligns with the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), an international initiative addressing tax base erosion and profit shifting, of which Thailand became a member following the Cabinet's resolution on May 16, 2017.

Key Takeaways

The key provisions under the Top-up Tax Decree are summarized below:

1. Tax imposed under the Top-up Tax Decree

Constituent entities of an MNE group operating in Thailand must pay a top-up tax if their effective tax rate is below 15%. This applies regardless of whether the low-tax constituent entities operate domestically or in foreign jurisdictions, under the following principles:

1.1. Domestic Top-up Tax

Constituent entities of an MNE group operating in Thailand with an effective tax rate below 15% ("Low-Tax Constituent Entities") are required to pay a top-up tax in Thailand to bring their effective tax rate up to 15%.

Example: If Companies A, B, and C operate businesses in Thailand and collectively have an effective tax rate below 15%, a coordinated tax charge will be imposed by Thailand to ensure the 15% minimum rate is met.

1.2. Foreign Top-up Tax

If constituent entities of an MNE group operating in foreign jurisdictions have an effective tax rate below 15% ("Low-Tax Constituent Entities"), the constituent entity of the MNE group in Thailand must pay the top-up tax under the following circumstances:

- ◆ If the Thai entity is the Ultimate Parent Entity (UPE), Intermediate Parent Entity, or Partially-Owned Parent Entity, it will be responsible for the top-up tax of Low-Tax Constituent Entities to meet the 15% threshold under **the Income Inclusion Rule**.
- ◆ Any unallocated amount of top-up tax after the Income Inclusion Rule will be assigned under **the Undertaxed Payment Rule**.

Example: If Super Company operates in Thailand and its Companies A, B, and C operate in a country without a domestic top-up tax, causing Companies A, B, and C to have an effective tax rate below 15%, then Super Company (as the UPE) must pay the top-up tax for these entities in Thailand.

Example Calculation for Top-up Tax:

The MNE group has an Ultimate Parent Entity named Super Company. (Number of income is for the purpose of easing calculation only)

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About us

ILAWASIA is a full-service, Thai law firm based in central Bangkok. Mr. Somphob Rodboon, an acclaimed expert in business law and litigation in Thailand, founded ILAWASIA since 2007. A visionary Managing Partner, he expanded the firm's operation into Myanmar through acquisition of an experienced and respected local law firm in June 2018. Additionally, the firm established an office in Cambodia in August 2019 and incorporated a branch in Laos in January 2021.

We offer services in business and international law ranging from corporate and commercial law, litigation, intellectual property and due diligence to immigration, real estate and labour law. Our teams are individually experienced in legal practice and always combine cutting-edge understanding with a unique sensitivity to international clients' business needs. With pride, we take our ethical standards seriously, ensuring responsibility, care and respect in all aspects of our operations.

Constituent Entity	GloBE Income (Baht)	GloBE Net Income (Baht)	Effective Tax Rate	Top-up Tax Calculation (Baht)
Company A	500,000	1,000,000	0%	$(500,000/1,000,000) * 150,000 = 45,000$
Company B	200,000		0%	$(200,000/1,000,000) * 150,000 = 18,000$
Company C	300,000		20% (60,000)	$(300,000/1,000,000) * 150,000 = 27,000$

In this case, Companies A, B, and C collectively have a GloBE Income of 1,000,000 Baht and have paid a total tax of 60,000 Baht, resulting in an effective tax rate of 6%, which is below the 15% Global Minimum Tax (or 150,000). Therefore, they are liable for a top-up tax of 9% of GloBE Net Income (or 90,000), proportionally allocated as shown above.

2. Submission of Documents and Tax Filing

Constituent entities of an MNE group operating in Thailand are responsible for submitting the notification form, the GloBE information return, and filing the top-up tax with the Revenue Department within 15 months from the end of the UPE's fiscal year. For the fiscal year 2025, the deadline is extended to 18 months.

Additionally, if the total taxes paid by an MNE group reach the 15% minimum rate, constituent entities of an MNE group operating in Thailand must still submit the notification form and the GloBE information return, even if they are not required to pay the top-up tax.

Measures to Encourage Foreign Investment

Thailand has previously implemented tax incentives to promote investment, including corporate income tax exemptions. With the implementation of the Top-up Tax Decree, companies classified as MNEs will now be subject to the Global Minimum Tax. To mitigate the impact and maintain Thailand's investment appeal, the government has introduced the following measures:

◆ Adjustment of Tax Incentives by the Board of Investment (BOI)

Under the BOI Notification No. 1/2566 Re: Investment Promotion Measures to Mitigate the Impact of the New Taxation Regime, constituent entities of MNE groups currently receiving tax exemptions can choose to adjust their benefits from a full exemption (0%) to a 50% corporate income tax reduction. The reduction period may also be extended to double the remaining duration of the original exemption, up to a maximum of 10 years.

◆ Allocation to the National Competitiveness Enhancement Fund

Revenue generated from the top-up tax will soon be allocated to the National Competitiveness Enhancement Fund, which is an upcoming policy. This fund is expected to provide financial support for investment and research activities by constituent entities of MNE groups operating in Thailand.

CONCLUSION

In conclusion, the Top-up Tax Decree represents a significant step in aligning Thailand's tax regime with international standards. By enforcing the Global Minimum Tax, it addresses profit shifting while ensuring compliance with global practices. Although the decree impacts MNEs benefiting from tax incentives, the government's measures, such as adjusted tax benefits and funding support, aim to balance compliance with maintaining Thailand's attractiveness as an investment destination.

For businesses eager to dive into this new tax obligations and legal compliance, ILAWASIA offers expert legal counsel to navigate the complex regulatory landscape. ILAWASIA is a one-stop service for legal consultation, providing a comprehensive range of services, leveraging available government measures to minimize impacts while ensuring legal compliance.

Remark: This newsletter is not intended to provide legal advice. It is for informational purposes only and should not be considered a substitute for professional legal consultation.