Technical update in Thailand

November 2023

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Tax

Further guidance from the Revenue Department on Foreign Sourced Income

On 20 November 2023, the Revenue Department issued Departmental Instruction No. Paw.162 ("DI Paw. 162"), which provides further guidance that ***the interpretation under the Departmental Instruction Paw.161/2566 ("DI Paw.161") shall not apply to any foreign-sourced income earned by Thai tax residents before 1 January 2024.***

By virtue of this DI Paw. 162, Thai tax residents will not be required to include their foreign-sourced income earned before 1 January 2024 in their personal income tax returns, even if such income will be brought into Thailand from 1 January 2024 onwards.

The Revenue Department subsequently published another FAQ on its website discussing scenarios where taxpayers will or will not be required to include income from a foreign source as their assessable income when calculating personal income tax.

Scenarios	Income earning period		No. of days staying in Thailand in the year the foreign sourced income is earned		Income remittance period		Taxable?
	Before 1 Jan 2024	From 1 Jan 2024 onwards	Less than 180 days	180 days or more	Before 1 Jan 2024	From 1 Jan 2024 onwards	
1		✓		✓		✓	Yes
2		✓	✓			✓	No
3	✓			✓		✓	No
4	✓		✓			✓	No

In addition to examples of scenarios in which taxpayers should be exempt from Thai tax on foreign-sourced income, the FAQ also clarifies several points, including:

- “Remittance of income into Thailand” is defined as any action in bringing the income sourced abroad into Thailand, including wiring money from a bank account, transferring money via e-banking, or physically carrying cash into Thailand. However, the FAQ did not confirm whether spending money in Thailand from an offshore bank account, credit card, or debit card could be considered a remittance of income into Thailand.
- In cases where a taxpayer transfers capital money out of Thailand to invest in overseas assets and subsequently transfers it back to their bank account in Thailand, the capital money is not considered to be an assessable income subject to personal income tax.
- Deposit interest incomes earned from saving money in an offshore bank account is considered assessable income subject to personal income tax.
- Unrealised gains from investments in assets abroad are not taxable. For example:
  - Mr. A is a Thai tax resident (i.e., staying in Thailand for 180 days or more) in 2024. On 15 March 2024, Mr. A buys shares of A Co, a company in Ireland, at the price of THB 1,000 per share, in an amount of 100 shares, resulting in a total investment of THB 100,000. At the end of December 2024, the value of A Co's shares increases to THB 1,100 per share, giving rise to an unrealised gain of THB 10,000 for Mr. A. However,

Mr. A has yet to sell the shares, hence the unrealised gain is not considered to be an assessable income under the Revenue Code ("TRC").

- In 2025, Mr. A stays in Thailand for more than 180 days. On 1 June 2025, Mr. A sells 80 shares of A Co's shares at the price of THB 1,200 per share and earned a realised gain of THB 16,000. The realised gain of THB 16,000 is considered to be a "capital gain", which is assessable income under Section 40(4)(g) of the TRC. The unrealised gain from the rest of the unsold shares is not considered to be an assessable income.
- In 2026, Mr. A transfers the capital gain money realised from selling 80 shares in 2025 to his bank account in Thailand. Mr. A must include such capital gain of THB 16,000 as his assessable income in calculating his personal income tax for the year 2026.

Our observation

The Revenue Department appears to be aware of the challenges encountered by taxpayers from the new protocol concerning foreign-sourced income. DI Paw. 162 resolves the difficulties taxpayers may have in distinguishing assessable income and savings incurred in years before 1 January 2024. Taxpayers with foreign-sourced income, which has yet to be realised, should consider realising income or gains before the end of this year so that such foreign-sourced income will not be taxable if remitted into Thailand on or after 1 January 2024.

Reference:
https://www.rd.go.th/fileadmin/user_upload/kormor/newlaw/dn162A.pdf

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Legal

Employers deducting the value of annual holiday already taken when paying compensation to terminated employees

Under Section 67 of the Labour Protection Act, 2541 B.E. (1998) ("the LPA"), when employers terminate employees for reasons other than the fault of the employee as set out in Section 119 of the LPA, the employer is required to pay compensation to the employee for any unused annual holiday, in proportion to the length of time they were employed for that year. However, in some cases, the employee has already used annual holiday in excess of what they would be entitled to as of the date that the employer terminates employment.

For example, an employee is normally entitled to six days of annual holiday. The employee has already worked for one year. The employee is terminated on 30 June 2023, so the proportional amount of annual holiday to which the employee would be entitled is three days. However, the employee already took all six days of annual holiday before being terminated. Therefore, the question arises as whether the employer can deduct the value of the three excess days of annual holiday taken when paying compensation to the terminated employee.

Precedents set by various Supreme Court rulings provide guidance on this issue, as set out below:

1. Section 30, paragraph one, of the LPA states, "An employee who has worked for an uninterrupted period of one year, is entitled to annual holidays of not less than six working days in one year…" The Supreme Court has interpreted this to mean that an employee may take all of his annual holiday from the beginning of the second year, as set out in Supreme Court Rulings Nos. 3629/2529, 6412-6413/2557.

2. Section 67 of the LPA states, "Where an Employer terminates the employment of an employee for any reason other than those set out in Section 119, the employer shall pay compensation to the employee for annual holiday for the year of termination in proportion to the number of days of annual holiday to which the employee is entitled under Section 30". As set out in Supreme Court Ruling No. 8324/2544, Section 67 imposes an obligation on the employer to pay compensation in proportion to the amount of annual holiday not used by an employee upon termination. Section 67 does not impose an obligation on the employee to pay back the employer for any annual holiday already taken in excess of what the employee would have been entitled to at the time of termination.

3. The main focus of Section 30 of the LPA is on the employee's right to take annual holiday, which is not the same as the right to receive compensation upon termination if the employee does not use annual holiday under Section 67 of the LPA. This means that Section 67 should not be interpreted in a way so as to determine the number of days of annual holiday that an employee can take during the year.

4. As set out in Supreme Court Rulings Nos. 6412-6413/2557, if an employer approves annual holiday requested by an employee before termination, the employer cannot deduct the value of any annual holiday from the compensation to be provided to the employee upon termination, even if the number of days of annual holiday already taken exceeds that to which the employee would have been entitled at the time of termination.

Therefore, an employer is not allowed to deduct the value of any excess annual holiday taken from the compensation to be provided to an employee upon termination.

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Accounting

New Department of Business Development notification, 'Definition of the Abbreviated Components Required in the Financial Statements 2023'

<u>Background and objectives</u>

On 17 November 2023, the Department of Business Development issued a notification entitled, 'Definition of the Abbreviated Components Required in the Financial Statements'. This notification becomes effective for the preparation of financial statements for fiscal years beginning on or after 1 January 2024.

Since the first version of this notification was issued 12 years ago, it has been updated periodically to match changes to financial reporting standards made by the Thai Federation of Accounting Professions. This latest version of the notification introduces additional abbreviated components required in financial statements to match the changes made in the latest Thai Financial Reporting Standards for Non-publicly Accountable Entities (TFRS for NPAEs) and the full TFRS. These include aspects such as inventory; the revaluation of land, buildings, and equipment; the measurement of the fair value of investment properties; provisions and contingent liabilities; leases; biological assets; and investments in subsidiaries.

<u>Key changes</u>

1. Replacement of older versions

   This newest version replaces older versions issued in 2011, 2016, and 2019.

2. Financial statement requirements for various entities

   - Registered partnerships, limited companies, legal entities established under foreign law, as well as joint ventures, which, under the Revenue Code, do not meet the conditions for being a non-publicly accountable entity under the TFRS for NPAEs, must prepare financial statements with abbreviated components using Form 3 (that for a public company limited).
   - Entities which meet the conditions for being a non-publicly accountable entity under TFRS for NPAEs must use Form 1, 2, 4, and 5, but those which intend to prepare financial reports in accordance with the full TFRS must also use Form 3 for abbreviated components.

3. Options for statement of comprehensive income

   Individuals responsible for preparing financial statements with abbreviated components using Form 3 can choose to present the statement of comprehensive income in one of the following ways:

   a. by the nature of expenses in a single statement;
   b. by the nature of expenses in a separate statement;
   c. by the function of expenses in a single step in a single statement;
   d. by the function of expenses in a single step in a separate statement;
   e. by the function of expenses in multiple steps in a single statement; or
   f. by the function of expenses in multiple steps in a separate statement.

4. Options for statement of income or comprehensive income

   Registered partnerships, limited companies, legal entities established under foreign law, as well as joint ventures, which meet the conditions for being a non-publicly accountable entity under the TFRS for NPAEs and are not responsible for preparing financial statements with abbreviated components using Form 3 can choose to present the statement of income or statement of comprehensive income in one of the following ways:

a. a statement of income by the nature of expenses;
b. a statement of comprehensive income by the nature of expenses in a single statement;
c. a statement of comprehensive income by the nature of expenses in a separate statement;
d. a statement of income by the function of expenses in a single step;
e. a statement of comprehensive income by the function of expenses in a single step in a single statement;
f. a statement of comprehensive income by the function of expenses in a single step in a separate statement;
g. a statement of income by the function of expenses in multiple steps;
h. a statement of comprehensive income by the function of expenses in multiple steps in a single statement; or
i. a statement of comprehensive income by the function of expenses in multiple steps in a separate statement.

5. Omission of abbreviated components

   If the nature or conditions of the business do not require the need to report certain abbreviated components, those abbreviated components can be omitted from the financial reporting documents.

6. Adherence to financial reporting standards

   When financial reporting standards require that items be presented other than as specified in the notification, the financial standards must be followed. Alternatively, these items can be grouped as outlined in the notification, taking into account the appropriateness of the type and nature of the items. Any additional details should be provided in the notes to the financial statements.

Reference (in Thai):
https://ratchakitcha.soc.go.th/documents/11932.pdf

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IFRS

IFRS IC decision on premiums receivable from an intermediary

At the end of October, the international Accounting Standards Board (IASB) approved the IFRS IC's September decision not to add a standard-setting project to its work plan to clarify whether the premiums receivable from an intermediary fell within the scope of IFRS 17 or IFRS 9.

The Committee was asked about the standard to be applied to the premiums receivable of an insurer from its intermediary when the policyholder has already paid the insurance premiums to the intermediary (discharging itself of its obligations under the contract, and obliging the insurer to provide its insurance contract services), but the intermediary has not yet paid the premiums to the insurer.

IFRS 17 is silent as to when future cash flows recognised in an insurance contract (excluding the simplified PAA model) are removed from the measurement of insurance contracts: when they are recovered or settled in cash or when the policyholder's obligation under the insurance contract is discharged?

In the first case, the insurer would apply IFRS 17; in the second case, the insurer would have a financial asset (IFRS 9).

The Committee concluded that, under these circumstances, the insurer develops and applies an accounting policy in accordance with IAS 8 to determine when cash flows are removed from the measurement of insurance contracts. It observed that both standards would provide users with useful information. It also observed that adding a standard setting project to the work plan would involve assessing whether changes to the accounting standards would have unintended consequences, which may take considerable time and effort to complete. Consequently, a project would not be sufficiently narrow in scope that the IASB or the Committee could address it in an efficient manner, which ultimately led them not to add a standard-setting project to the work plan.

The decision, which allows entities to apply either standard, should therefore not disrupt the practices adopted by insurers for the first-time application of IFRS 17 (and often IFRS 9 as well) this year.

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Sustainability

Brazil adopts ISSB's IFRS Sustainability Disclosure Standards

On 20 October, the IFRS Foundation issued a press release (available here) stating that the IFRS Sustainability Disclosure Standards published by the International Sustainability Standards Board (ISSB), namely IFRS S1 – General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 – Climate-related Disclosures will be incorporated into the Brazilian regulatory framework, setting out a roadmap to move from voluntary use starting in 2024 to mandatory use on 1 January 2026. Since these two standards were published at the end of June 2023, Brazil has been the first country to announce its formal decision to adopt IFRS S1 and S2.

This move coincides with discussions between the IFRS Foundation Trustees and representatives of the region's key stakeholders (in particular financial institutions) on the need to build a more resilient, sustainable and competitive financial environment in Latin America given the increasing climate risk in these markets.

This approach is also in line with a series of initiatives launched by a number of jurisdictions in the region to standardise sustainability-related financial disclosures. Both Chile and Colombia have mandated use of the Task Force on Climate-Related Financial Disclosures (TCFD) recommendations and SASB Standards, which the ISSB's Standards build upon. Public discussions are also ongoing in Mexico concerning the adoption of IFRS Sustainability Disclosure Standards.

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