



Tax update

Thailand Tax – Foreign-sourced income to become taxable from 2024

On 15 September 2023, the Revenue Departmental instruction number Paw. 161/2566 (“DI. Paw. 161”) was issued, which provides a new interpretation of the personal income tax treatment of foreign-sourced income derived by a Thai individual tax resident under the Revenue Code (the “Code”). In short, it provides that **any income from a foreign source derived by a Thai individual tax resident is subject to Thai personal income tax upon bringing it into Thailand, regardless of the tax year the income is received**. The interpretation change will apply to taxable income brought into Thailand **from 1 January 2024** onwards.

DI. Paw. 161 was issued as new guidance for Revenue Department officers in interpreting Section 41 of the Code and overrules the previous interpretation. Section 41 of the Code rules that an individual shall pay personal income tax in Thailand under the following two rules:

I. Source rule: A taxpayer who derives income from employment, a business carried on in Thailand, a business of an employer residing in Thailand, or from a property situated in Thailand shall pay Thai personal income tax on such income.

II. Resident rule: A Thai tax resident who derives income from employment or business carried on abroad or from a property situated abroad shall pay tax in Thailand upon bringing such assessable income into Thailand.

Any person staying in Thailand for a period or periods aggregating 180 days or more in any tax year shall be deemed a resident of Thailand.

The Code broadly states that a Thai tax resident must pay tax on foreign-sourced income derived in the previous tax year upon bringing it into Thailand. The Revenue Department, in 1987 (BE2530), issued a tax ruling to extend a condition for Thailand to impose tax on income from a foreign source, that the assessable income must be brought into Thailand in the same calendar year that the income is received (the Revenue Department's tax ruling no. Gor. Kor. 0802/696 dated 1 May 1987). Since then, the Revenue Department and Thai resident taxpayers have relied on this interpretation that foreign-sourced income is exempt from Thai personal income tax if the income is brought into

Thailand in a calendar year following the year in which the income is received. This long-standing interpretation has also significantly influenced tax planning for individuals with offshore businesses and assets.

The new interpretation provided in DI. Paw. 161 is likely to significantly impact Thai resident individuals who derive income from employment, business and assets abroad. For example, Mr. A, a Thai tax resident, had income from selling shares in a Singapore company in 2020 and kept the share consideration, including the capital gain in a bank account in Singapore. If Mr. A brings the proceeds from the capital gain into Thailand in 2024, he must include the capital gain from selling Singapore shares as his assessable income and pay personal income tax for the calendar year 2024.

Alternatively, if Mr. A transfers the capital gain proceeds to his bank account in Thailand within 2023, the capital gain is still exempt from Thai personal income tax under the current interpretation.

The new rule raised concerns from multiple stakeholders, for example:

- There are concerns from small to medium individual investors investing in overseas stocks. One point raised is that it appears unfair for investors who invest in overseas stocks if the capital gain will be subject to Thai personal income tax at progressive rates, while capital gain from trading Thai stocks via the Stock Exchange of Thailand is tax-exempt.
- Expatriates living in Thailand also raised concerns about unclear tax conditions on taxable foreign-sourced income. One point raised is whether the pension fund they receive from their home country's government will also be taxed when remitting into Thailand. Under the new interpretation, the pension fund is likely to be considered income from a foreign source that is taxable if it is related to the employment or business of the taxpayer overseas. Therefore, if an expat receives a pension in 2024 from their work or business in the past, the pension will be taxable in the year that the expat remits income into Thailand.
- One issue that needs clarity is whether spending in Thailand from earnings kept in a bank account overseas via e-banking or debit cards will be considered remitting income into Thailand and, as a result, taxable in Thailand. If this point of deemed remitting of income is still unclear, it will eventually impact Thailand's economy since foreigners will be cautious about bringing money to spend in Thailand.
- It is also important to mention the taxpayer's burden in providing proof of foreign tax credit. Where Thai domestic law is still silent about a foreign tax credit available for individual taxpayers under this circumstance, a provision under double tax treaties could provide relief from any double tax arising. However, the conditions, methodologies, and documents supporting the claim are still unclear.

According to the Revenue Department, it will seek opinions from the stakeholders affected by the new rule and issue guidelines to provide more clarity. The plan includes an amendment of the personal income tax return form to facilitate the foreign tax credit claim.

During the period of unclarity, we recommend that Thai resident taxpayers review their income from a foreign source that has been kept in an offshore bank account and consider bringing such income into Thailand within December 2023.

Please feel free to reach out to Mazars Thailand if you have any questions or require further information.

Source: https://www.rd.go.th/fileadmin/user_upload/kormor/newlaw/dn161A.pdf

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