



11 July 2017

Mr. Prasong Poontaneat  
Director General  
The Revenue Department  
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Phaholyothin Road  
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Kingdom of Thailand

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Dear Mr. Prasong:

The US-ASEAN Business Council (US-ABC) and its member companies are grateful for the opportunity to submit comments on the *Draft Act Amending the Revenue Code to Support Collection of Taxes from e-Business Operators* ("the Draft Act"). The US-ASEAN Business Council represents over 150 of the largest U.S. companies doing business in Southeast Asia. Our members cross all sectors and include major manufacturers, shipping companies, online services providers, e-commerce companies, and retailers who will all be affected by the Draft Act.

The Council and our members recognize the importance of ensuring a level playing field between foreign and domestic companies and ensuring tax compliance. As Thailand works to address the new challenges for tax enforcement that have been created by the digital economy, we strongly encourage the government to study and adopt newly developing international standards and best practices on treatment of cross-border e-commerce sales. OECD principles on tax neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility should also be prioritized. Thailand should consider how the Draft Act, especially where it would alter the legal residency of a company, may affect the enforcement of Thailand's own bilateral tax treaties and consistency with the OECD's Base Erosion and Profit Shifting (BEPS) Project. As you know, these measures are still being developed and implemented and will continue evolving as more advanced taxation techniques are developed and more lessons are learned. We encourage Thailand to take a similarly innovative and forward-looking approach to developing its new policies.

We suggest that the OECD's 2015 International VAT/GST Guidelines, the European Union's 2016 VAT Digital Single Market Package, and the OECD BEPS project could provide useful examples for how to approach this complex subject. These initiatives phase in the tax changes over several years (with the EU's rules not fully entering force until 2021) and take a cautious approach to taxing electronic purchases and services. At the same time, they make proposals to reduce compliance costs and create new electronic systems to facilitate simple payments of taxes. South Korea, for example, has created a centralized system for tracking electronic receipts. This allows merchants to automatically declare sales and corresponding tax payments to authorities. The EU meanwhile is creating a one-stop shop for goods and services taxes on e-commerce transactions and simplified import declaration forms.

A critical point of these international best practices is to create *de minimis* levels for tariffs, VAT, and income taxes that are high enough that small businesses from all countries are not overburdened. The EU has set the income threshold at which companies will have to be fully compliant with standard EU income tax rules at EUR 100,000, allowing foreign small business to continue to operate without being burdened by certain difficult regulatory requirements. We recommend that Thailand and all other countries adopt similar rules.

For similar reasons, we also encourage Thailand to examine carefully the costs that will be incurred from removing the VAT *de minimis* on imports with a value lower than 1,500 Baht and compare this to the revenue that would be gained. In addition to being a burden on small businesses and importers, removal of this *de minimis* would also be burdensome to the Thai Customs Department which will have to spend more time and resources inspecting large volumes of low-value shipments. The Customs Department would likely have to shift resources away from more critical valuation, compliance, and security operations to implement this rule and would likely require additional funding. These challenges and inefficiencies have led some other jurisdictions to maintain or even raise their *de minimis* levels as cross-border e-commerce has become more common. For example, the United States recently raised its *de minimis* from US\$ 200 to US\$ 800 to grow cross border trade, reduce prices for U.S. consumers, and reduce enforcement costs.

Specifically regarding cross-border electronic services, we would advise caution on the application of significant new taxes. Many countries have agreed in the WTO that some of these flows, especially business-to-business transactions, should not be taxed for the moment, while methods for valuation and fair treatment are being developed. The OECD has laid out a consultation timeline through 2021 for creating effective coordination and policies on this topic. We suggest that Thailand actively participate in these deliberations.

Some specific feedback and questions regarding the essential principles proposed on the Revenue Department's website are provided on the following pages.

The Council and our members look forward to working with Thailand to develop the most efficient and fair system possible. We hope to continue to engage as these important changes to the Revenue Code are considered. Praab Pianskool, our Senior Representative in Thailand, will be happy to provide further clarification on our interests. He can be reached at [praab@usasean.org](mailto:praab@usasean.org) or via telephone at (66) 2-649-1119.

Sincerely,



Amb. Michael W. Michalak  
Senior Vice President and  
Regional Managing Director

## Essential principles

*3.1: To deem any juristic person established under foreign laws, operating a business through electronic means, and such business operation falls under either of the following natures which generates earnings or profits in Thailand, as operating the business in Thailand and is required to pay income tax in Thailand specifically in respect of said earnings or profits.*

- 1. Using a local domain of Thailand;*
- 2. Creating a payment system in Thai currency or transferring money from Thailand;*
- 3. Other cases as determined by the Director-General.*

### Responses and questions for further consideration:

Please clarify the application of these conditions to foreign businesses. This section seems to set much broader standards than the requirements for tax compliance set forth in the other essential principles below. Use of local domains or local payments systems do not seem directly related to the tax compliance needs.

Payments and remittance services are already regulated by the Bank of Thailand and other authorities. Inclusion of payment system standards here may cause unnecessary regulatory overlaps and confusion.

Would this create a Permanent Establishment / Legal Residency requirement for the service provider in Thailand with attendant Income Tax implications?

Should the Thailand proceed with a foreign vendor registration model, we seek clarity on what the intended role of border intermediaries such as air express companies and postal operators would be in the VAT collection process. We urge the Department to keep in mind the potential impact of any such measures on customs clearance performance and efficiency, and the need to ensure that any requirements applied to air express operators should equally be applied to postal operators and other border intermediaries. Exempting postal articles from these processes would be anti-competitive and would simply create a loophole for consumers to take advantage of and avoid paying VAT on purchases.

*3.2: To require any juristic person established under foreign laws, operating a business through electronic means, and does not operate the business in Thailand, but earns assessable incomes from said business operation, which incomes are categorized as on-line advertisement fees, website space utilization fees, or what to be determined by ministerial regulation, the payer shall deduct income tax from such payment at the rate of 15 per cent and remit it to the Revenue Department.*

### Responses and questions for further consideration:

Would the deduction qualify as With-Holding Tax for the purposes of Income Tax? If so, please clarify if it would qualify for double-taxation agreement purposes and whether the payee (service provider) would receive double taxation credits in its country of legal residence. Does this application of tax withholdings to all intangible goods and services expand Thailand's definition of royalties? If so, how will Thailand approach amending its bilateral tax treaties to account for this change?

The challenges that this rule is attempting to address are also being addressed under the OECD BEPS project Task Force on the Digital Economy. The Council recommends that Thailand follow and participate in this process to build international consensus on a sustainable solution that facilitates trade.

*3.3: To require any entrepreneur situated outside the Kingdom, selling intangible goods or providing services through electronic means to buyers or service recipients other than value-added tax registrants, it earning more than 1.8 million Baht per year from selling such goods or providing such services, to apply for value-added tax registration and to pay value-added tax, in accordance with rules, procedures and conditions prescribed by the Director-General.*

Responses and questions for further consideration:

As noted in our letter above, we believe that the 1.8 million Baht threshold is too low and may exclude small businesses from the market. We encourage Thailand to consider the higher levels being developed internationally so that small businesses across all countries can continue to access each other's markets. The EU has set the income threshold at which companies will have to be fully compliant with standard EU income tax rules at EUR 100,000, allowing foreign small business to continue to operate without being burdened by difficult regulatory requirements. We recommend that Thailand and all other countries adopt similar rules. We also recommend that Thailand follow the OECD's 2021 consultation timeline on how to properly tax business-to-business cross-border electronic services. Many countries have agreed in the WTO that some of these flows, especially business-to-business transactions, should not be taxed for the moment, while methods for valuation and fair treatment are being developed.

Does Thailand plan to take additional actions to ensure efficiency and reliability in confirming the VAT-registration status of consumers, registering and filing taxes, and filing for tax refunds?

Would this requirement create a Permanent Establishment / Legal Residency for otherwise a non-resident companies with attendant Income Tax implications?

Would this trigger any changes in With-holding Tax norms? If so, please explain those changes and their effect on Thailand's bilateral tax treaties.

How will Thailand approach enforcing this threshold, since companies may avoid it by transacting through different legal entities in order to remain under the threshold?

*3.4: In case any entrepreneur situated outside the Kingdom sold intangible goods or provided services via a website or application of other party, the owner of the website or the application shall be deemed agent of the entrepreneur and shall be required to apply for value-added tax registration on the entrepreneur's behalf, and, once registered, shall have the same rights, duties and liabilities as those of the entrepreneur.*

Responses and questions for further consideration:

Does Thailand intend to apply this requirement to online marketplaces and other websites that act as third parties in hosting transactions? Third party seller marketplaces are not suppliers and not hold goods, process transactions, or ship goods. This business model would simply be

unable to comply with a requirement to handle the taxes for sales that occur on its platforms and would be completely blocked from the Thai market by this requirement.

*3.5: To cancel the exemption from value-added tax for goods with a price lower than 1,500 Baht imported via mail.*

Responses and questions for further consideration:

As noted in our letter above, the VAT exemption threshold is based on the concept that at a certain point, the costs involved in assessing and collecting duties and taxes can exceed the revenue gained. The Government should consider holistically whether there are likely to be bigger losses in efficiency from trying to provide equal VAT treatment by collecting taxes on all imports than from the distortions created by the non-taxation of imports below 1,500 Baht. In addition, the government should consider the potential impact to customs clearance times of cancelling the VAT exemption, which would affect not only consumers making online purchases from overseas, but also local businesses that would be disproportionately impacted by customs holds and late deliveries. Assessing and collecting VAT as part of the border clearance process, especially considering growing volumes of low-value shipments, will also exacerbate manpower and warehousing constraints. We expect these additional administrative tasks to also impact service competitiveness levels for air express companies and postal operators and slow down rather than facilitate trade. The Council is excited by customs reforms that are currently being undertaken in Thailand and we encourage the government to not take actions that may limit these expected improvements and constrain trade.

While the Council recognizes that the non-taxation of goods with a value lower than 1,500 Baht imported via mail may create an uneven playing field between domestic and overseas entrepreneurs, it should be recognized that this may not always be true. The cost of shipping and insurance makes up for some of the price distortion, similarly to the non-taxation of goods purchased abroad by travelers and the cost incurred from travel. The Council supports a tax system that is fair and predictable. However, we urge the government to examine holistically the economic and customs implications of cancelling the VAT exemption and consider leaving the *de minimis* as is.