



## **Latest updates on Thailand's Top-up Tax Bill in Response to Implementation of Pillar II**

For the past years, Pillar 2 as the initiative of the Base Erosion and Profit Shifting or BEPS project by the Organization for Economic Cooperation and Development (the 'OECD') has been widely contemplated in more than 140 member countries, including Thailand. In Marh 2024, the Revenue Department of Thailand (the 'RD') proposed a draft of new legislation in response to implementation of Pillar II of the BEPS, known as the '**Top-up Tax Bill**', for a public hearing.

As for a brief background of the BEPS action plans, these plans are principally aimed to minimize gaps in the international tax agreements that allow multinational entities (MNEs) to shift profits to a low or no-tax jurisdiction. The OECD prepared two Pillars. Specifically, 'Pillar I', focuses on re-allocation of profits and taxation rights on large MNEs' profits, and Pillar II initiated the global minimum corporate income tax of not less than 15% on the MNEs' profits, which must be calculated at the Effective Tax Rate (ETR).

The objective of the Top-up Tax Bill is basically to regulate collection of the top-up tax. This top-up tax under the Bill is considered as a type of assessment tax excluded from income tax in accordance with the Global Anti-Base Erosion or the GloBE Rules. At least 50% but not exceeding 70% of such revenues will be allocated to the National Competitiveness Enhancement Fund for the targeted industries managed by the Board of Investment of Thailand (the 'BOI').

In term of the applicable scope of the Bill, a constituent entity as a member of an MNE Group having the aggregate turnover of its ultimate parent entity, in Thai Baht that is equivalent to Euro 750,000,000, shall be subject to the Bill. However, government entitles, international organizations, non-profit organizations, pension funds, an ultimate parent entity who is a real estate investment entity, and other juristic persons specified in a Royal Decree are excluded.

In addition to the above, comprehensive criteria and rules for determining low-tax jurisdictions, the jurisdictional top-up tax and the top-up tax payable amount are covered in the Bill for clarity in enforcement.

With regard to the obligations imposed on the constituent entities in scope, they are obliged to submit the following documents:

- i. an information report declaring information of the constituent entities, the MNE Group, and the country where the constituent entities are located;
- ii. GloBE Information Return; and
- iii. Top-up Tax Return together with the top-up tax payments for the corresponding tax amount.

The afore-listed documents must be submitted to the RD within 15 months since the last date of the accounting period as determined by each entity of which the top-up tax is considered.

Last but not least, for any constituent entity who fails to comply with the Bill, it shall be subject to penalties, on a case-by-case basis, as follows:

- Any taxpayer, who fails to pay the top-up tax within the specified period, shall be subject to the penalty equivalent to 1 time of the top-up tax amount.
- Any taxpayer, who fails to submit the GloBE information Return and the Top-up Tax Return within specified period, shall be subject to the penalty equivalent to 2 times of the top-up tax amount.
- In addition, if the taxpayer fails to pay the top-up tax or partly pay the top-up tax, such taxpayer shall be subject to the extra charge of 1.5 percent per month.
- On top of the abovementioned penalties, criminal penalties could also be imposed on any taxpayer who fails to comply with its provisions and causes damage to the financial stability of Thailand, or commits any relevant criminal offence like making a fake statement or evidence.