TMI EYES

TMI Associates (Thailand) Co., Ltd.

TMI EYES No. 7 Change in BOI Tax Incentives

Thailand's Board of Investment ("BOI") recently announced changes to corporate income tax incentives to better align the country's rules with the development of the global tax framework, which also provides for the introduction of a global minimum tax ("GMT"). Along with the implementation of these changes, existing BOI companies and new applicants for BOI promotion in Thailand will now have their choice between different tax incentive schemes.

The author of this article recently had the privilege to speak on this subject at a conference hosted by the International Fiscal Association of Singapore and would like to use this opportunity to share some further insights into new developments in both international and Thai tax law.

BEPS 2.0

Base Erosion and Profit Shifting ("BEPS") refers to the practice of multinational enterprises ("MNEs") exploiting global tax rules to avoid paying tax, and the OECD/G20 Inclusive Framework on BEPS is a collaboration between the Organization for Economic Cooperation and Development ("OECD") and the Group of Twenty ("G20") to tackle such global issue of tax evasion. We are currently in the BEPS 2.0 era, which is comprised of two (2) pillars of policy, and Thailand is among the 138 countries that have signed onto and are committed to the implementation of BEPS 2.0.

Pillar One aims to ensure a fairer distribution of taxing rights among countries. This article will not go into detail regarding the provisions of Pillar One, as they have not yet impacted companies, but the following is a brief summary of Pillar One's implications:

Pillar Two consists of the Global Anti-Base Erosion ("GloBE") Rules and the treaty-based Subject to Tax Rule ("STTR"). The GloBE Rules introduce a **15% GMT** applicable to MNEs with consolidated revenues of at least EUR 750 million (approximately THB 28,000 million as of the time this article was published). Pillar Two provides a coordinated system of rules under a common framework to ensure that in-scope MNEs pay at least the agreed minimum level of tax on their income earned in all jurisdictions in which they operate. The minimum level of tax may also be imposed locally under a qualified domestic minimum top-up tax.

BEPS 2.0 and Thailand

As Thailand has committed to implementing BEPS 2.0, the relevant key authorities, i.e. the BOI and the Revenue Department, have been made responsible for drafting and implementing new rules. As the 15% GMT will also apply within Thailand, the companies that could be most affected are the BOI-promoted companies that are group companies of in-scope MNEs. In other words, such BOI-promoted companies may have to start paying corporate income tax (CIT) in Thailand; otherwise, their ultimate parent entities (UPEs) will be subject to the 15% GMT and would be obligated to pay that exempt CIT in their home countries.

Accordingly, the BOI has recently announced changes to its CIT exemption scheme in *BOI Announcement No. 1/2566 re: Investment Promotion Measures to Alleviate Impact from New Taxing Scheme* dated 16 May 2023 (effective from 20 March 2023) (the "Announcement").
To briefly explain, the Announcement and the measures therein will apply only to BOI companies that are group companies of the in-scope MNEs (i.e., a group of companies with consolidated group revenue of no less than THB 28,000 million, subject to additional scrutiny). The following measures will apply to such companies:

	Existing BOI Companies	**Companies Applying for BOI Promotion**
CIT Incentives	<u>The option to change</u> the companies' CIT exemption scheme to a 50%-reduced CIT scheme for an extended period of up to two (2) times the remainder of the current CIT exemption period. However, once BOI companies change their tax incentive schemes, they cannot reverse such changes.	<u>The options to choose between</u>: (1) A CIT exemption scheme for the standard duration (in years) of the exemption, with the option for conversion into a 50%-reduced CIT scheme in the future. Under option 1, once BOI companies change from a CIT exemption scheme to a 50%-reduced CIT scheme, they cannot reverse such changes; or (2) A 50%-reduced CIT scheme for twice the standard duration (in years), but for no more than 10 years. Under option 2, no changes are allowed to be made to the companies' CIT scheme.

Concurrently, the Revenue Department is drafting new tax laws, **domestic minimum tax ("DMT")** to cope with the provisions of BEPS 2.0. The Revenue Department aims to complete the draft legislation by the end of 2023, with the aim of implementing the new tax laws in early 2025.

<u>TMI's Note</u>

The development of global tax schemes is moving at an incredible pace, and these developments are sure to impact a number of companies. BOI companies will need to check if BEPS 2.0, and especially the 15% GMT provision, will apply thereto. First, they should examine if they fall within the scope of MNEs subject to Pillar Two provisions. If so, they will need to perform an impact assessment if required to pay the 15% GMT in their parent countries. In such a case, these BOI companies must consider if they should change their tax incentive schemes as outlined above. As for new BOI applicants, they should first determine whether the tax exemption or tax reduction scheme is more appropriate for them. Lastly, all companies going forward should keep themselves up to date with developments and proactively respond to the ever-changing global taxation rules.

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