

Tax Newsletter, Issue no. 03/2021

VAT on digital services

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As mentioned in a previous issue of PwC Tax Newsletter No.02/2021, the Digital Services Tax Law (The Act amending the Revenue Code No. 53, 2021 (B.E. 2564)) came into force on 11 February 2021.

Under the law VAT will now be payable on the revenue received by (a) overseas digital service providers and (b) operators of electronic platforms, on the services provided to Thai consumers who are non-VAT registrants. VAT will be imposed on revenues received from 1 September 2021 onwards and the due date of the first VAT submission is 25 October 2021.

On 7 July 2021, the Revenue Department released the first edition of the “Guide on VAT on Electronic Services Provided to Non-VAT Registrants in Thailand by Non-resident Business Persons.” This

guideline is intended to explain in more detail the application of the digital services tax law, and to address the compliance procedures to be undertaken by non-resident suppliers. This guideline is available on the Revenue Department’s website as linked below.

<https://www.rd.go.th/fileadmin/download/eService.pdf>

The Revenue Department also recently introduced a database called “VAT for Electronic Service” (VES). This replaces the Simplified VAT System for E-Service (SVE).

The key takeaways from the recent development are summarised below:

Topic	Key issues
Scope	<p>Non-resident electronic service providers and electronic platform operators, who receive income of more than Baht 1.8 million per year from providing electronic services to non-VAT registered customers in Thailand, must register for VAT, file VAT returns and pay VAT by calculating output tax (without deducting input tax).</p> <p>These taxpayers are not required to issue tax invoices or prepare input tax reports.</p>
Key elements	<p>The guideline gives more insight into the following:</p> <ul style="list-style-type: none"> • <u>The definition of 'electronic services'</u>: the guideline provides a non-exhaustive list of services which are included (e.g. mobile applications, online advertising) and excluded (e.g. telecommunication services, money transfer services) from the definition. <p>Interestingly, distance teaching via pre-recorded media is treated as an electronic service. However, a live teaching course is excluded from the definition of electronic services.</p> <ul style="list-style-type: none"> • <u>Location determination</u>: The rules for determining whether a service is 'used in Thailand' are clarified. The service should be treated as used in Thailand if the customer information indicates that the customer is in Thailand. The non-resident service provider should determine the location of the customer based on one of the following items of customer information. <p>(1) Payment information (2) Residence information (3) Access information</p> <p>If the above information is not consistent, the taxpayer should obtain at least two pieces of non-conflicting evidence of where the customer is located or the service is used.</p> <ul style="list-style-type: none"> • <u>Determining the VAT registration status of customer</u>: By default, non-resident electronic service providers and electronic platforms can treat the customer as a non-VAT registrant (and must charge VAT). If VAT registration information is provided by the customer, the non-resident service provider is not required to completely verify the customer's VAT registration. The guideline indicates that the non-resident service provider may request and rely on a Tax ID number provided by the recipient of the service. <p>The non-resident service provider can also visit the Revenue Department's website (as linked below) to verify the validity of the customer's VAT registration and tax identification number.</p> <p>https://vsreg.rd.go.th/VATINFOWSWeb/jsp/V001.jsp</p>

Topic	Key issues
	<ul style="list-style-type: none"> • <u>The provision of services through an electronic platform:</u> An electronic platform operator is required to pay VAT on behalf of non-resident service providers who provide e-services through a platform with all of the following processes. <ol style="list-style-type: none"> (1) Offering services (2) Receiving payment (3) Delivering services
VAT registration	<p>The guideline provides more details of the VAT registration date and process. If the non-resident service provider or non-resident electronic platform operator has revenue exceeding Baht 1.8 million in an accounting period (for a corporation) or a calendar year (for an individual), it should register for VAT within 30 days from the day on which the revenue exceeds Baht 1.8 million.</p> <p>For corporations, income should be calculated from the first day of the accounting period that ends after September 1, 2021. For individuals, income should be calculated from January 1, 2021. If the income exceeds Baht 1.8 million before 1 Sep 2021, the VAT registration should be completed by 1 September 2021.</p> <p>All registration documents must be submitted to the Revenue Department through VES on the Revenue Department's website as linked below.</p> <p>https://eservice.rd.go.th/rd-yes-web/landing</p>
VAT point, VAT filing and VAT payment	<p>The VAT liability from the provision of electronic services to customers in Thailand will arise when the service fee is paid either fully or partially. If payment is made using a credit card, the VAT liability arises when proof of the credit card usage is issued.</p> <p>More details are also provided on the exchange rate for converting foreign currency into Thai Baht, VAT filing through the form called "P.P.30.9", the VAT filing due date (i.e. the 23rd day of the following month) and the VAT payment channels via VES.</p>
Output tax report	<p>The guideline provides a sample of the VAT output tax report and stipulates that the non-resident VAT operator must retain the output tax report for at least five years. This is similar to other VAT operators in Thailand.</p>
VAT refund	<p>The guideline clarifies that VAT operators have the right to request a VAT refund if there is an overpayment of VAT. However, the details of the VAT refund process have not yet been disclosed.</p>
Compliance and enforcement	<p>The Revenue Department's Large Tax Administration (LTO) is responsible for supervising and auditing non-resident electronic service providers and electronic platform operators.</p> <p>If the non-resident VAT electronic service providers fail to comply with the law, they will be subject to the same civil and criminal penalties as VAT operators in Thailand.</p>

The guideline does give a more thorough explanation of the application of the new digital services tax law. However, some issues remain unclear as follows:

- Although the guideline clarifies that certain products are not considered as 'electronic services', some aspects remain unclear. For example:
 - Will the transfer of digital tokens/cryptocurrencies (which are intangible properties delivered via the internet network) be considered as electronic services or are they regarded as "money transfer services" or "delivery of E-vouchers" which are excluded?
 - Will this include the activities of an online travel agency (OTA)?
 - Delivery of an electronic voucher to the customer by e-mail or SMS is not considered an electronic service according to the guideline. Does this include the case of electronic platform operators who sell electronic vouchers of sellers via their platforms?
- The guideline does not provide a clear definition of "delivering service" which is one of the three criteria that will trigger VAT liability for the electronic platform operator (on behalf of non-resident electronic service providers). If the electronic platform operator will act only as a marketplace for service providers and service recipients, but service recipients can download the software/apps from the service providers directly, will that trigger a VAT liability for the electronic platform operator?
- The guideline clarifies how foreign currencies should be converted into Thai Baht. However, it is unclear whether conversion is required if the cost of the service is listed in the applications in Thai Baht.
- The guideline does not clearly state that how the non-resident service provider should decide on the location of the customer if there is a conflict in customer information. For example, if one piece of information indicates that the customer is in Thailand, but the other two do not.

As the current guideline does not completely cover all the queries that non-resident electronic service providers and electronic platform operators may have, we will need to await more details from subordinate laws that should be announced by the Revenue Department this year.

If you need any assistance regarding VAT registration or VAT filing services or need more clarification on this matter, please contact: [Paul Stitt](#), [Wutinon Trisrisak](#), [Tuttapong Kritiyutanont](#).

Tax developments between May and August 2021

Regulations issued relating to VAT on digital services

• VAT registration and amendment

The Notification of the Director-General of the Revenue Department on VAT No. 241, which is effective from 16 August 2021, was issued to prescribe the criteria and conditions relating to VAT registration and amendment of non-resident electronic service providers and electronic platform operators.

The non-resident electronic service providers and electronic platform operators, which are subject to VAT for electronic services provided to non-VAT registrants in Thailand under Section 82/13 paragraphs 2 and 3 of the Revenue Code, are required to register for VAT using the form prescribed by the Director-General (P.P.09.9) through the website of the Revenue Department.

Documents in English are also required to be submitted, which are a corporate certificate for a corporate operator and a copy of the passport or identification card for an individual operator, which have been certified for not exceeding six months by the Ministry of Foreign Affairs or a notary public or other organisation, together with the tax resident certificate (if any) of the corporate or individual operator.

The aforementioned operators will be approved as VAT registrants from the date on which the application for VAT registration has been filed. For those who apply before 1 September 2021, they will become registered operators from that date. A list of the approved VAT registered operators will be announced on the website of the Revenue Department.

For an amendment of the VAT registration, such as a change of name of the VAT operator, business email address, business website, temporarily cessation of business for a period in excess of 30 days, are required to be notified using the form prescribed by the Revenue Department (P.P.09.9) through its website within 15 days from when amendment took place.

• VAT report

From 1 September 2021, non-resident electronic service providers and electronic platform operators subject to VAT for electronic services provided to non-VAT registrants in Thailand will be required to prepare an output VAT report with details of the transactions attached to the report according to the items and contents in the form attached to the Notification of the Director-General of the Revenue Department on VAT No. 239.

Reduction of withholding tax rate

Ministerial Regulation No. 373, which was published in the Royal Gazette on 11 June 2021 and the Regulation of the Revenue Department No. Taw Paw 336/2564, which was issued on 11 August 2021 grant a reduction, and an extension of the reduction, of the withholding tax rate when the tax

is remitted via the e-withholding tax system, as follows:

- Reduction of the withholding tax rate from 5% to 2% from 1 October 2020 to 31 December 2022 on the following payments of assessable income:

Assessable income	Payer	Recipient
Rental of assets under Section 40(5) (Gor), excluding rental of ships under the law that are used for international carriage of goods	Corporate entities	<ul style="list-style-type: none"> - Corporate entities carrying on business in Thailand, except foundations and associations - Individuals
Prizes won in contests, competitions, lucky draws, or other like activities	<ul style="list-style-type: none"> - Corporate entities - Individuals 	<ul style="list-style-type: none"> - Corporate entities carrying on business in Thailand, except foundations and associations - Individuals
Remuneration for public actors	<ul style="list-style-type: none"> - Corporate entities - Individuals 	Individuals who have domicile in Thailand

- Extension of the period of reduction of the withholding tax rate from 3% to 2% for payments of assessable income by corporate entities, which was originally from 1 October 2020 to 31 December 2021, to be until 31 December 2022.

Details of the assessable income and the recipients eligible for this reduced rate are shown in the table below.

Assessable income	Recipient
Income under Section 40(2), e.g. hire of work, service rendered	Corporate entities carrying on business in Thailand, except foundations and associations
Goodwill, copyright or any other rights under Section 40 (3)	Corporate entities carrying on business in Thailand, except foundations and associations
Income under Section 40 (6), e.g. income from liberal professions, such as law, medicine, engineering, architecture, accountancy and fine arts	<ul style="list-style-type: none"> - Corporate entities carrying on business in Thailand, except foundations and associations - Individuals who are residents of Thailand
Income from hire of work under Section 40 (7) or (8)	<ul style="list-style-type: none"> - Corporate entities established under Thai law, except foundations and associations - Corporate entities established under a foreign law and carrying on business in Thailand with a permanent branch office in Thailand - Individuals

Assessable income	Recipient
Income from the provision of services under Section 40 (8), excluding remuneration for public actors (other than those as noted above), advertising, non-life insurance premiums and transportation.	<ul style="list-style-type: none"> - Corporate entities carrying on business in Thailand, except foundations and associations - Individuals
Prizes, discounts, or any benefits given for the purpose of sales promotion.	<ul style="list-style-type: none"> - Corporate entities carrying on business in Thailand, except foundations and associations - Individuals

The following regulations have already been included in our earlier Tax Insights

- COVID-19 pandemic - extension of deadline for online filing of corporate income tax returns and related information ([Tax Insight No. 13/2021](#))
- Customs focuses more on the use of FTA privileges ([Tax Insight No. 14/2021](#))
- COVID-19 pandemic - extension of deadline for filing tax returns online ([Tax Insight No. 15/2021](#))
- Reduced customs duty surcharge to 0.25% for companies making a self-disclosure ([Tax Insight No. 16/2021](#))
- Various additional expense deductions ([Tax Insight No. 17/2021](#))
- COVID-19 pandemic: Reduction of rate of contribution to the Social Security Fund for employers and insured persons from June to August 2021 ([Tax Insight No. 18/2021](#))
- Customs duty surcharge reduced to 0.25% for companies making a self-disclosure ([Tax Insight No. 19/2021](#))
- Justifiable grounds for transaction at lower than market value ([Tax Insight No. 20/2021](#))
- Reduction of withholding tax rate ([Tax Insight No. 21/2021](#))
- COVID-19 pandemic: Various tax measures ([Tax Insight No. 22/2021](#))
- Additional relief measures for deferred duty payments when appealing Customs disputes ([Tax Insight No. 23/2021](#))
- Tax benefit for asset warehousing programme ([Tax Insight No. 24/2021](#))

Contact us

Tax Mergers and Acquisitions

- Paul B.A. Stitt, Partner ext. 1119
- Vanida Vasuwanichchanchai, Partner ext. 1303
- Orawan Phanitpojjamarn, Associate Partner ext. 1017

Tax Reporting & Strategy

- Somsak Anakkasela, Partner ext. 1253
- Sudarat Isarakul, Partner ext. 1024
- Wutinon Trisrisak, Associate Partner ext. 1294

Indirect Tax Services

- Somsak Anakkasela, Partner ext. 1253
- Wutinon Trisrisak, Associate Partner ext. 1294

Financial Services

- Orawan Fongasira, Partner ext. 1302
- Nopajaree Wattananukit, Associate Partner ext. 1396

Legal Services/ BOI Services

- Somboon Weerawutiwong, Lead Partner ext. 1247
- Vunnipa Ruamrangsri, Partner ext. 1284

U.S. Tax Desk

- Vanida Vasuwanichchanchai, Partner ext. 1303

Global Mobility Services

- Jiraporn Chongkamanont, Partner ext. 1189

Tax Structuring

- Paul B.A. Stitt, Partner ext. 1119
- Vanida Vasuwanichchanchai, Partner ext. 1303
- Orawan Phanitpojjamarn, Associate Partner ext. 1017

Transfer Pricing

- Peerapat Poshyanonda, Partner ext. 1220
- Janaiporn Khantasomboon, Partner ext. 1437
- Niphan Srisukhumbowornchai, Partner ext. 1435
- Panachai Anontanut, Associate Partner ext. 1295

Business Process Outsourcing Services

- Somsak Anakkasela, Partner ext. 1253

Tax Dispute Resolution

- Niphan Srisukhumbowornchai, Partner ext. 1435
- Sudarat Isarakul, Partner ext. 1024

Japanese Business Desk

- Atsushi Uozumi, Partner ext. 1157
- Jun Takebe, Associate Partner ext. 1209

Chinese Tax Desk

- Vanida Vasuwanichchanchai, Partner ext. 1303

Customs & Trade

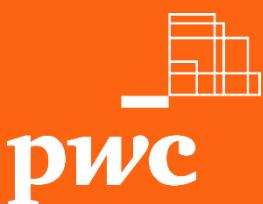
- Paul Sumner, Partner ext. 1305

15th Floor Bangkok City Tower
179/74-80 South Sathorn Road
Bangkok 10120
Tel: +66 (0) 2844 1000
Fax: +66 (0) 2286 6666
Website: <http://www.pwc.com/th>

Editor

Paul B.A. Stitt, Partner ext. 1119
E-mail: paul.stitt@pwc.com

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