

Q & A on the New Practice of Thai Tax Authorities Collecting Income Tax on Foreign-Sourced Income

by N-Able Group



N-Able Group

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Background

Under Section 41 of the Thai Revenue Code, a Thai tax resident individual who derived foreign-sourced income in the preceding tax year shall pay Thai income tax upon remitting that income into Thailand.

The Thai tax authorities used to interpret the section in such a way that for foreign-sourced income (earned by a Thai tax resident) to be taxable in Thailand, it had to be remitted into Thailand within the same calendar year in which it was earned. Yet, as many taxpayers have been aware, the tax authorities have changed how they interpret that law. Under their new interpretation (the “**New Interpretation**”), foreign-sourced income derived by a Thai tax resident shall be taxable in Thailand in the year it was remitted into Thailand, even though the year of remittance and the year the income was received differ. This basis shall apply to foreign-sourced income derived from 2024 onward.

So far, we have received numerous inquiries about the New Interpretation. Therefore, we have summarised those inquiries in this Q&A as follows:

1. Do Thai tax authorities seek to collect income tax on MONEY remitted into Thailand under their New Interpretation?

No, this is the issue that MANY taxpayers MISUNDERSTAND.

The tax authorities only seek to collect tax on foreign-sourced income (derived by a Thai tax resident) remitted into Thailand (NOT on other forms of money, such as savings, loans, etc. brought into the country).

Income has a different meaning than money. Money’s meaning is more comprehensive than income. Its forms can include savings, capital, or principal amounts of loans. Of course, if someone remitted those forms of money (that we underlined) into Thailand, that money is not considered income and thus NOT taxable.

2. If I remit money into Thailand, how can I justify whether that money is savings or income?

The Thai tax authorities have not clarified or explained how to distinguish income and savings (and other funds). Therefore, if you remit funds to Thailand, proving whether such money is your income or savings may be challenging. However, based on our research and discussion with several economists, it is our view that income is a fund you have earned for a certain period. After that period has passed, it will become your savings. Given that the Thai personal income tax is an annual tax, one might argue that once the income has been derived for more than a year, it would transform into savings, not income.

3. Is the New Interpretation a law?

No, this is another issue that MANY taxpayers MISUNDERSTAND.

The New Interpretation was announced through Departmental Instruction No. Paw. 161/2566, which does NOT have a law status. Therefore, since it is not a law, the New Interpretation allows taxpayers to DISAGREE with it or even NOT abide by it. If a taxpayer does not follow the New Interpretation, it DOES NOT mean they have done anything illegal. Sadly, while numerous publications from tax experts and consulting firms have addressed the New Interpretation, very few mention that it is not a law.

Given that the New Interpretation is NOT a law, if any instruction in the New Interpretation is against the principle of the primary law, that instruction would be considered VOID. In other words, the principle under the primary law would override that instruction under the New Interpretation.

We believe that the New Interpretation is against the primary law. Please see Question 4 below for more details about this opinion.

4. What are your (N-Able) views on the legitimacy of the New Interpretation?

We think the New Interpretation is AGAINST the principles and intentions of the primary laws and thus NOT legitimate. The New Interpretation differs from Section 41 of the Thai Revenue Code and Section 56, where both sections are the primary taxation law. So, let's discuss both of them.

Section 41 of the Thai Revenue Code

Let's divide Section 41 of the Revenue Code into three parts as follows:

According to this section, (1) a Thai tax resident individual who (2) derived foreign-sourced income in the preceding tax year shall pay Thai income tax on that income upon (3) remitting that income into Thailand.

When enforcing Section 41, the law must be strictly interpreted. Additionally, the Thai income tax is an annual tax, where the law determines the tax implications of a taxpayer on a year-by-year basis. Thus, when strictly interpreting Section 41 of the Revenue Code, all three events mentioned (i.e. the three events) must occur within the same calendar year for foreign-sourced income to be taxable in Thailand. In simpler terms, for Thailand to tax foreign-sourced income, ALL of the following events must occur in the SAME calendar year:

- (1) an income earner is considered a Thai tax resident for a year;
- (2) the taxpayer (i.e. that income earner) derived foreign-sourced income; and
- (3) that income was remitted into Thailand.

If not, that foreign-sourced income shall not be taxable in Thailand.

The New Interpretation does not align with the principle above. It seeks to tax the foreign-sourced income of a Thai tax resident when that income was remitted into Thailand, even though the year of remittance is later than the year that the income was derived.

For example, Mr. A is a Thai tax resident for the tax year 2024 and received foreign-sourced income in that year. He remitted that income into Thailand in 2025 and earned no other foreign-sourced income that year. Under the New Interpretation, Mr A must declare income taxable for 2025 when he brings that income into Thailand. However, by strictly interpreting Section 41 of the Revenue Code, that income shall NOT be taxable in Thailand, whether in 2024 or 2025. The explanation is that 2025 is NOT the year that he derived that income (i.e. it is merely the year that he remitted that income into Thailand); thus, event number 3, as per the above, does not occur in 2025. Also, 2024 is NOT the year that he brought that income into Thailand (i.e. it is merely the year that he derived that income), and thus, event number 2, as per the above, does not take place in 2024. Therefore, we are of the view that, by applying Section 41 of the Revenue Code, Mr A shall have a full legal right to choose NOT to comply with the New Interpretation (thus NOT to declare that foreign-sourced income as taxable income of either 2024 or 2025), as the conditions under the primary law that make such income being taxable in Thailand are not entirely met in either year.

Section 56 of the Thai Revenue Code

According to Section 56 of the Revenue Code (another primary law), within March of every calendar year, an individual shall declare his/her taxable income that he/she received **IN THE PRECEDING TAX YEAR** by filing the applicable tax return form. For example, within March 2026, taxpayers must declare the taxable income they received in 2025 **ONLY**. In other words, when that taxpayer files his/her income tax return for the tax year of 2025, by interpreting Section 56 of the Revenue Code, they must declare the taxable income that they received in 2025 **ONLY** (i.e., NOT including the income that they received in the earlier years, e.g. 2024, 2023, etc.).

For us, the wording “PRECEDING TAX YEAR” under Section 56 of the Revenue Code would **ONLY** mean the “PREVIOUS” tax year. Otherwise, it would **MAKE NO SENSE** if someone was required to pay tax on income that they earned 20 years ago, for instance.

However, under the New Interpretation, for example, if someone who is considered a Thai tax resident for the tax year of 2024 received foreign-sourced income in that year and remitted that income into Thailand in 2026, they would have to declare that income as their taxable income for the tax year of 2026 and pay income tax on it. Therefore, it is our opinion that this is **CLEARLY AGAINST** the principle of Section 56 of the Revenue Code.

The New Interpretation is **NOT** a law; therefore, if any instruction of the New Interpretation is against the principle of the primary law, that instruction would be considered **VOID**. In other words, the principle under the primary law would override that instruction under the New Interpretation. Hence, if a dispute arose between the taxpayer and tax authorities due to that taxpayer not following the instruction under the New Interpretation, and if the issue became a case, it is our view that the taxpayer would win the lawsuit.

While publications from various consulting firms discuss the New Interpretation, we don't expect any of them to have the same opinion on this issue as ours. However, we have been hoping to see some comment on the legitimacy of the New Interpretation by relating it to the primary law. Unfortunately, these are scarcely found.

Irrespective of the legitimacy of the New Interpretation, how well it would be enforceable in practice needs to be investigated. For instance, how could Thai tax authorities be aware that someone transferred funds into their Thai bank accounts from abroad since the banks **DO NOT** disclose taxpayers' account information to the tax authorities unless certain conditions are met? Please see Questions 5 through 7 below for more details about this issue.

5. Do you (N-Able) think the New Interpretation is enforceable in practice?

Regardless of its legitimacy, the Thai tax authorities will find it very challenging to enforce the New Interpretation. In other words, it would be impossible for them to detect that someone earned foreign-sourced income and brought that income in Thailand.

Currently, in practice, there's **ONLY** one way for the tax authorities to detect that a person remitted funds from abroad into Thailand, which we are aware of. That way is to audit that person's Thai bank accounts. However, Thai banks do **NOT** automatically share the bank account information of their customers with the Thai tax authorities. They only do so if certain conditions are met. Please refer to question 7 below concerning those conditions. Nonetheless, we want to point out that the fact that the bank disclosed the information about a taxpayer's bank accounts to the tax authorities is still **VERY FAR** from such a taxpayer being assessed with tax or even performed a tax audit by the tax authorities. Please refer to Question 7 below for more details about this view.

Also, please highlight that the fact that someone remitted funds into Thailand from abroad but did not declare the remitted amount as taxable income differs from the reason that makes them auditable by the tax authorities. There must be other factors that trigger the tax audit. Please refer to Question 6 below for more details about the scenarios in which the Thai tax authorities would conduct a tax audit on a taxpayer.

Please note that there is another situation in which the tax authorities would ask the taxpayer to share their Thai bank account information. That situation occurs when the taxpayer applies for a tax certificate (either a certificate of tax residence or a certificate of income tax payment). Please refer to Question 7 below for more details about this situation.

6. What scenarios result in the Thai tax authorities conducting a tax audit on a taxpayer?

Thai tax authorities do NOT conduct a tax audit on every taxpayer. Their resources and manpower are limited. Taxpayers outnumber them. Therefore, we list below the situations that generally trigger a tax audit to be performed by the tax authorities:

- (1). The amount of taxable income the taxpayer declares (via filing their income tax return) is lower than the amount recorded in the system of the tax authorities. However, this **ONLY** applies to the case where the taxpayer received Thai-sourced income, where the income payer deducted withholding tax upon payments and reported that income payment to the tax authorities. This scenario does NOT apply to the case of a taxpayer receiving foreign-sourced income;
- (2). The taxpayer claimed the actual amount of deductible expenses when they filed their income tax return.
- (3). The taxpayer claimed some tax deductions (such as a deduction for insurance premium payments), but the tax authorities could not find the information about those deductions in their records.
- (4). The taxpayer claimed an income tax refund. However, this case would not apply to a situation where the taxpayer only received foreign-sourced income.
- (5). The tax authorities received information from third parties, reporting that such a taxpayer could have underpaid tax or failed to comply with other areas of taxation laws.
- (6). The taxpayer applied for a tax certificate (either a certificate of tax residence or a certificate of income tax payment).
- (7). The taxpayer conducts a business that is publicly visible, such as an online trading or having a physical shop, and the tax authorities suspect that such a taxpayer could

have under-declared taxable income.

Unless any of the situations above apply, we see no reason why the Thai tax authorities would audit a taxpayer. The fact that someone remitted funds into Thailand from abroad but did not declare that remitted amount as their taxable income does not fall into any of those situations. Therefore, that person would not be subjected to a tax audit because of that (only) fact.

In addition, as mentioned in Question 5, the Thai tax authorities may be aware that someone remitted funds into Thailand from abroad by inspecting their Thai bank accounts. However, we want to repeat that the fact that Thai banks disclosed the information about a taxpayer's bank accounts to the tax authorities is still **VERY FAR** from such a taxpayer being assessed with a tax or even having a tax audit by the authorities. Please refer to Question 7 below for more details about this view.

Regarding situation no. 6, when a taxpayer applies for the tax certificate, the tax authorities may ask that such a taxpayer submit bank statements of their Thai bank accounts. If so, the tax authorities may deem all the amounts deposited/transferred into their bank accounts during the year as taxable income. We, N-Able Group, have a practical solution to this issue. Please contact us if you need details about this solution.

7. Under what circumstances do Thai banks report a person's bank account information to the Thai tax authorities?

Under Thai law, the (Thai) banks are required to disclose the information about a person's bank account to the Thai tax authorities **ONLY** if either of the following conditions is met:

- (1) The total transfer-in (whether a transfer from abroad or within Thailand) amount in their Thai bank account in one calendar year is 2 million baht or more, **AND** the total transfer-in transactions in one calendar year are 400 transactions or more:

OR

- (2) The total number of transfer-in transactions in their Thai bank account in one calendar year must be 3,000 or more, regardless of the amount.

Please note that if a person has opened several accounts with one bank, the numbers (whether the monetary amounts or transactions) of the accounts with the same bank shall be combined for this purpose. However, if they have opened several accounts with multiple banks, those numbers of the accounts with the different banks shall **NOT** be combined.

The bank would only disclose information about its customers' accounts to the Thai tax authorities if either of the above conditions were met. Although the tax authorities could directly request that the bank share information about a person's bank account, this is unlikely true.

We also want to point out that in the case where the bank reports the account information of a taxpayer to the Thai tax authorities, it does NOT mean that the tax authorities would conduct a tax audit on such a taxpayer and seek to impose income tax on all amounts that were deposited or transferred into their bank account. Please remember that when the funds were transferred or deposited into a person's bank account, they could be in other forms (rather than income), such as savings, loans borrowed from others, or capital, which are NOT taxable. This is to say that the tax authorities would only use the information about a taxpayer's account that the bank shared as a preliminary source of information to monitor the taxpayer. The tax authorities would need other information, facts, or evidence leading to a suspicion that such a taxpayer could have underpaid tax or failed to comply with taxation law and thus conduct a tax audit on that taxpayer. Hence, we believe that when the bank discloses the information about a taxpayer's account to the tax authorities, it is still VERY FAR from such a taxpayer being assessed with tax or even performed the tax audit by the tax authorities.

We also received several inquiries that asked whether “using a credit card issued abroad to spend in Thailand is considered remitting funds into Thailand or not?”. So far, the tax authorities have provided no answer to this question. Regardless, we are unaware of Thai tax authorities' mechanisms to track the taxpayers' use of credit cards, even if a Thai bank issued the card.

8. Would the validity of double tax agreements (DTA) be affected by the New Interpretation?

No.

Generally, the provisions under the DTA override the domestic taxation law. But look! The new Interpretation is NOT even a law. Therefore, it will NEVER impact the application and validity of the DTAs.

Therefore, if the DTA only allows the sourced country of the income to collect income tax on that income, that foreign-sourced income (derived by a Thai tax resident) would be exempt from Thai personal income tax under the DTA, even though it was remitted into Thailand.

9. Would the tax benefits provided under other special Thai regimes (such as tax benefits offered to an LTR visa holder) be affected by the New Interpretation?

No.

Generally, the provisions under the special regimes override the regulations under the general laws (but look again! The New Interpretation is NOT EVEN a law). Therefore, the New Interpretation shall NOT affect those benefits if you are entitled to tax benefits under other special Thai regimes, such as the tax privileges provided to the LTR visa holders.

Hence, if you are an LTR visa holder entitled to an exemption from Thai income tax on your foreign-sourced income, that exemption shall remain even though the Thai tax authorities have started to apply the New Interpretation. In other words, the tax benefits derived from holding an LTR visa shall prevail over the instructions of the New Interpretation. As such, you don't have to declare your foreign-sourced income as taxable income if it was exempt from Thai income tax due to holding the LTR visa, even if you remitted that income into Thailand, even if in the same year the income was received.

10. Do you (N-Able) expect the primary law (the law that imposes income tax on foreign-sourced income) to change soon?

Recently, a newspaper article reported the Thai Revenue Department's proposed change of Section 41 of the Thai Revenue Code based on the information they received from interviewing the Director-General of the Revenue Department. That change would collect income tax from a Thai tax resident on their worldwide income, whether their foreign-sourced income was remitted into Thailand or not.

It may be true that the Revenue Department is considering that change. However, that law is the primary taxation law. Amending this law takes time and is not that straightforward. There are multiple steps, and several parties are involved, such as the cabinet, Council of State, parliament, etc. Therefore, the process of revising this law takes a year or years.

It is our view that if the proposed change becomes law, the earliest it can come into force is 2025.

Summary

We, N-Able Group, strongly oppose the New Interpretation. We believe that it contradicts the principles and spirit of several sections of the primary taxation law and is thus NOT legitimate.

Many people have published information about the New Interpretation, claiming to be "tax experts" or part of consulting firms. Unfortunately, few have provided in-depth analysis of the New Interpretation from a legal perspective in their publications. Sadly, most of those publications only present one aspect of the New Interpretation, e.g. what the implications are or what the Thai tax authorities would do after they started applying it. They tend to persuade the readers to comply with the requirements of the New Interpretation **WITHOUT** offering an alternative way of viewing it.

Regardless of its legitimacy, we don't believe the New Interpretation will be enforceable in practice. Thus, it should not be an exaggeration to state that the New Interpretation may end up being the mere announcement that the Thai Revenue Department uses to scare taxpayers so that the taxpayers voluntarily comply with it, leading to the Revenue Department earning more tax.

Indemnity

Most of the content in this publication is our opinions, which were given based on our experience. Also, various facts mentioned in the publication are based on what we have seen primarily in taxation practice. Therefore, we do not guarantee that they will apply the same to all individuals' cases. Thus, we take no responsibility or hold liabilities due to relying on any information in this publication.

In addition, the law, interpretation of law, and practices of the Thai tax authorities are subject to change occasionally. Any amendments can affect the accuracy of the content in this publication. Yet, we assume no responsibility for updating this publication.

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Danuch is a co-founder and Partner in the Taxation Services Department of N-Able Group (a group of companies in Thailand that provide various professional services, e.g. taxation, accounting, auditing, etc.). Danuch is also a lecturer and guest speaker, teaching taxation subjects at leading universities in Thailand, such as Chulalongkorn University, Thammasat University, Silpakorn University, etc.

Danuch is a licensed Thai tax auditor (TA, which the Revenue Department of Thailand governs) and investment consultant (IC, which is governed by the Securities and Exchange Commission (SEC) of Thailand). He has over 15 years of taxation experience working at various large multinational professional firms, such as KPMG Thailand, KPMG Taiwan, and Deloitte Thailand, as well as international organisations, such as Schneider Electric.

Danuch has extensive expertise in tax advisory work for Thai and cross-border investment issues (both inbound and outbound), considering Thai and international tax laws (such as double tax agreements). He also has intensive experience in providing services to individuals. Danuch's expertise extends to corporate clients' tax compliance and advisory work.

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