

Deloitte Forum 2022

Tax and Legal – Highlights and Key Developments

23 November 2022



Global Employer Services Remote Work

23 November 2022

Remote Work



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The Employment Trends

REMOTE WORK

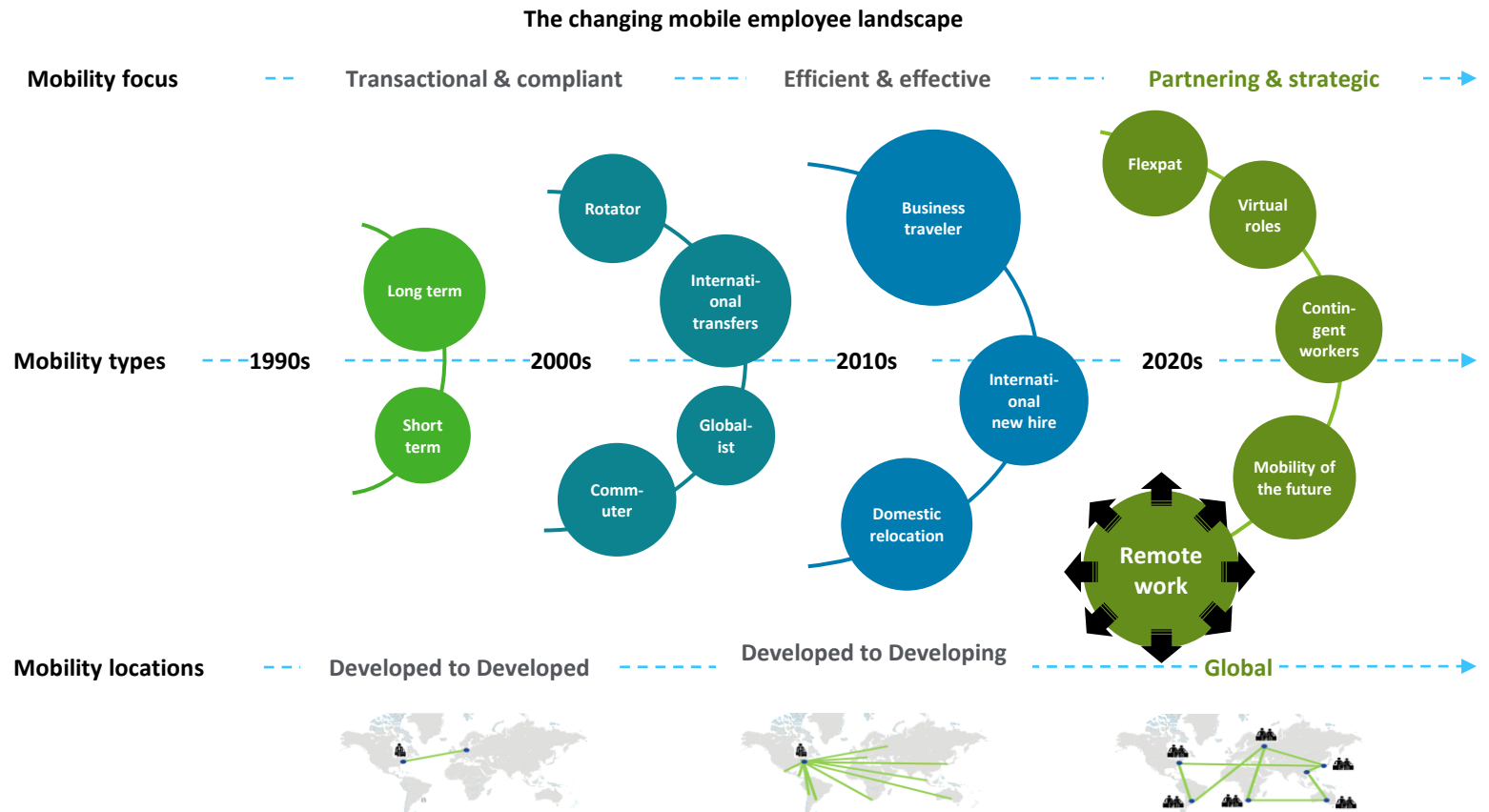
Global Mobility continues to evolve

Global Mobility plays a critical role in supporting their organizations with effectively integrating remote work into policies and programs.

Future of Global Mobility

The changing mobile employee landscape has accelerated towards remote work at an unprecedented pace. Major aspects of organizations have already shifted. If the pandemic occurs in waves, these shifts are even more likely to become permanent, and the world of Global Mobility we know today will be changed.

To remain relevant, Global Mobility programs can proactively incorporate remote work into their purview and begin to solve some of the organization's greatest challenges and open doors to significant talent opportunities.



Overall Considerations

REMOTE WORK

Global Mobility has an opportunity to lead from the front

These circumstances for remote work are unprecedented and require resilient Global Mobility leaders to evolve the organization's thinking and approach.

OWNING A REMOTE WORK PROGRAM

Why Global Mobility...

Global Mobility is in a unique position to define, lead, and manage the strategy and implementation of remote work through their compliance and global talent deployment experience.

Leveraging its multi-faceted nature and understanding of multiple aspects of the organization, Global Mobility is able to create a broad, human-centric remote work response to the current environment.

Various stakeholders – from Process Partners to Customers to Subject Matter Experts – will also be engaged under Global Mobility's leadership to create and refine remote work programs and policies.



Points of Focus

REMOTE WORK

Personal Income Tax



Does employee have a liability to file PIT return is working in Thailand?



What if employee is working in Thailand for another country?



Are there any exemptions for the individual (such as a DTA)?



Does the employer have an obligation to file any returns?



What are other risks to be considered if employee is working here remotely (i.e. PE, work permit)?

Work permission and Immigration

Is Remote working in Thailand possible? What is the requirements?

1

Can oversea employer be a sponsoring for a work permit?

2

How can the remote worker obtain a work permit?

3

What is the requirements after obtaining work permit?

4

What are penalties for working without the right documents?
(for the employee and employer)

5

Long-Term Resident Visa: LTR Visa

REMOTE WORK

Category



The Conditions



Wealthy Global Citizens

Must meet all 3 conditions

1. Invests in Thailand
2. Assets in Thailand and overseas
3. Personal Income



Wealthy Pensioners

Must meet all 3 conditions

1. over 50 years old
2. Being a retiree
3. Income



Work-Form-Thailand Professionals

Must meet all 2 conditions

1. Current Employer (Overseas companies)
2. Personal
 - Experiences
 - Personal Income



Highly Skilled Professionals

Must meet all 2 conditions

1. Employer in 14 Target Industries
2. Personal
 - Experiences
 - Personal Income

Exemption on experience and income for personal requirements

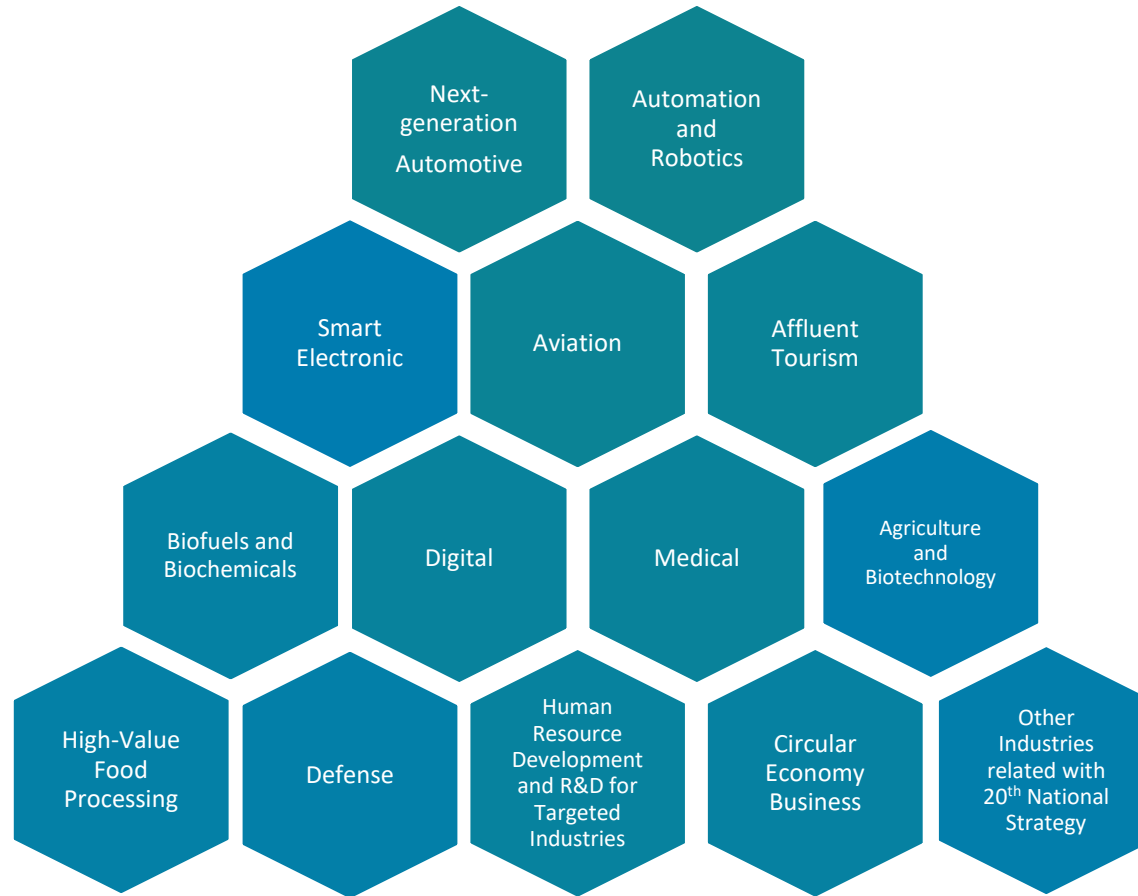


Dependent family

Must meet all conditions

- | | |
|-----------------|---|
| Spouse | <ul style="list-style-type: none"> • Registered Marriage as Recognized by Thai Law |
| Children | <ul style="list-style-type: none"> • Under 20 years old • Legal child |

Highly Skilled Professionals – Targeted Industry



Immigration Aspect

- 10-year Visa
 - Given for an initial 5 years and extended another 5 years, for a total 10 years.
 - Spouse and Children under 20 years old (maximum 4 dependents) also get a visa for a period of 10 year.
- No limitation in the Number of Entries into the Country
- The LTR Visa Holder and Spouse can apply for a work permit and will be exempted from the standard ratio requirement of 4 Thais to 1 foreigner.
- 1-year Report to the Immigration Bureau
 - No requirement for the 90 days Report
- Facilitate Services at One Stop Service Center, Bangkok
- Fast-Track Service at International airports in Thailand

Tax Aspect

- 17% Personal Tax rate for employment income for the employer in Thailand in the targeted businesses for
 - ✓ Highly Skilled Professional
- Tax exemption for Overseas Income earned in the previous tax year if brought into Thailand in the following calendar year for
 - ✓ Wealthy Global Citizen
 - ✓ Wealthy Pensioner
 - ✓ Work-From-Thailand Professional



Transfer Pricing

Thailand Transfer Pricing Update

23 November 2022

Contents

I Thai Transfer Pricing Regulations Update

II Country-by-Country Reporting (“CbCR”)

III APA in Thailand

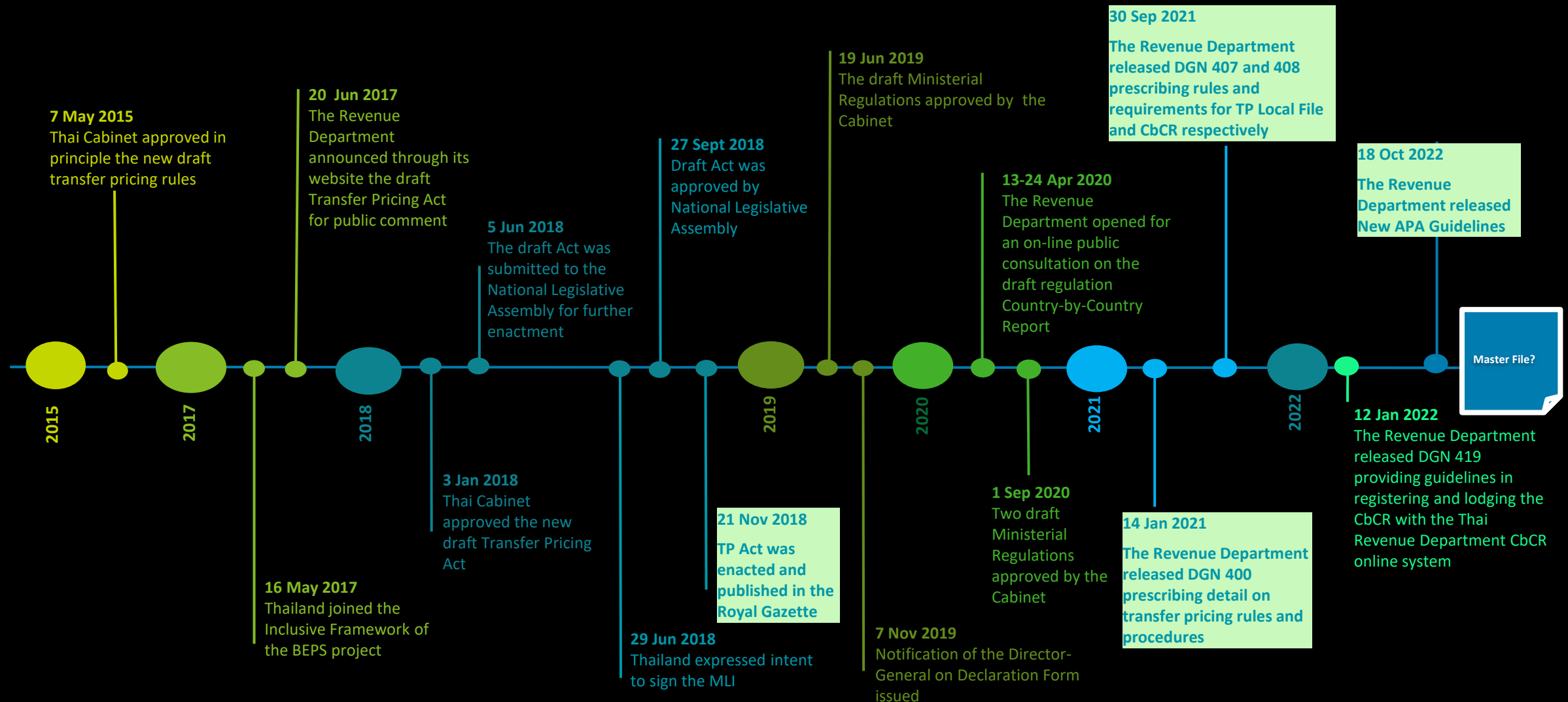
IV Q&A



Thai Transfer Pricing Regulations Update



Transfer Pricing Law Development in Thailand



Thailand TP regulations

Key features

New TP laws are effective for accounting periods commencing **on or after 1 January 2019** onwards. The key features of the laws are as follows:

1. The following reports are required:

- A **disclosure form** to be filed with the annual corporate tax return, which provides information on the relationship between entities and the value of intercompany transactions.
- **Transfer pricing documentation** based on the OECD approach:



Country-by-Country Template

Key financial information on all group members on an aggregated basis, with activity code for each member



Masterfile*

Key information about the group's global operations, including an overview of the company's structure from a transfer pricing perspective



Local File

Detailed transfer pricing analysis of the transactions undertaken by the local taxpayer

Disclosure Form & Local File
Exempted for taxpayers
with total revenue less than
Baht 200 million

* The Thai Revenue Department has not yet issued regulations in relation to the preparation and lodgment of the Master File.

Thailand TP regulations (Cont.)

2. Taxpayers with total revenue **not exceeding Baht 200 million are exempted** from the requirement to lodge the disclosure form and transfer pricing documentation (Local File).
3. The TP laws require that transactions between related parties be determined on an “arm’s length” basis and these related party transactions are required to be disclosed in the disclosure form and transfer pricing documentation. The **definition of related companies** is:
 - i. A juristic person who holds **shares** or becomes a partner of another juristic person, directly or indirectly, with no less than 50 percent of the total equity;
 - ii. A shareholder or a partner who directly or indirectly holds **shares** or is a partner of a juristic person with no less than 50 percent of the total equity, who directly or indirectly holds shares or is a partner of another juristic person with no less than 50 percent of the total equity; or
 - iii. Juristic persons who are related by way of shareholding, **management, or control** whereby one juristic person is not able to act independently from one other juristic person as defined in the Ministerial Regulation.

The Thai Revenue Department has not yet issued the Ministerial Regulation to define “management and control” for the purposes of iii) above.

4. For the purpose of testing whether testing whether a (material) related party transaction is determined on an arm’s length basis, the Thai Revenue Department follows the OECD based **TP methods (DGN 400)**:
 - Comparable Uncontrolled Price Method
 - Cost plus Method
 - Resale Price Method
 - Transactional Net Margin Method
 - Profit Split Method

If another TP method is used, then it will be necessary to submit a letter to the Thai Revenue Department within the accounting period in which the method commenced being used providing a preliminary explanation for the use of the method.

Thailand TP regulations (Cont.)

5. The Thai Revenue Department has provided a required list of the information, which is required to be included in the TP documentation (**Director-General Notification on Income Tax No. 407**).

Business Overview	Related Party Transactions and TP Analysis
<ul style="list-style-type: none">• A description of business operations, value chain including key trading partners, key competitors, business strategies and industry analysis• Local organization chart, including the number of employees• Shareholding structure for the related companies or juristic partnerships that have transactions with the reporting entity• Description of any business restructuring which took place between the related parties during the accounting period or prior period and the impact on profitability of the restructuring.• Description of intangible property transfers between related parties and the impact on profitability on the reporting entity.	<ul style="list-style-type: none">• List of related party transactions showing category, counterparty and their country and amount of transaction. Material related party transactions should also include a description of the transactions and pricing policies.• List of the all the agreements for the material related party transactions, including summary of the main information and pricing conditions.• Analysis of the functions, assets and risks for the reporting entity and related parties in relation to material related party transactions and any differences compared to the prior accounting period.• Rationale for the selection of TP method(s) for the material related party transactions, including reasons for the rejection of other TP methods, and identification of the tested party for the purposes of applying the TP method.• Details of the benchmarking analysis to apply the selected TP method(s), including:<ul style="list-style-type: none">✓ Search process and sources for identifying the comparable transactions or companies/partnerships✓ List of the final set of comparable transactions or companies/ partnerships✓ Arm's length range based on the profit level indicator selected <p><exemption may be applied></p>

The tax assessment officer may also request other information apart from that listed above for the purposes of the transfer pricing analysis in notification letters approved by the Director-General of the Revenue Department.

New Local File Requirements

Required Information	Paw 113/2545	DGN 407 (FYE 2021 onwards)
Language	Not identified	THAI
Information regarding business operations		
Shareholding Structure and business operations	•	•
Business strategies	•	•
Budgets, business plans and financial projections	•	
Sales amount and financial results of reporting entity	•	
Pricing policies, profitability by products, market information and profit allocation of each party	•	
Organization chart including the number of employees		•
Value chain analysis		•
Key trading partners and key competitors		•
Industry analysis		•
Business restructuring		•
Transfer of Intangibles and impact on profitability		•

New Local File Requirements (cont.)

Required Information	Paw 113/2545	DGN 407 (FYE 2021 onwards)
Information regarding controlled transactions		
Reasons for entering into intercompany transactions	•	
Evidence of negotiation basis and negotiation process with contractual parties	•	
List of all intercompany transactions (categories, amounts, contractual parties, tax jurisdictions)		•
<i>< Below is for material intercompany transactions only ></i>		
Description of intercompany transactions, their pricing policies and assumptions used to set prices		•
List of intercompany agreements and summary of their key terms		•
Function, risk and asset analysis of reporting entity	•	•
Function, risk and asset analysis of contractual party(ies)	•	•
TP methodologies (including reason for choosing or rejecting particular methods)	•	•
Financial information used for application of the selected pricing method		•
A list and description of comparables, profit level indicator, arm's length range, including comparable search process and source of information (Benchmarking Study) <i><exemption may be applied></i>		•
Other related documentation	•	•

Benchmarking Study Exemption for Local File

(๑) กรณีที่ผู้มีหน้าที่ยื่นเอกสารหรือหลักฐานมีลักษณะดังต่อไปนี้

(ก) มีรายได้จากกิจการหรือเนื่องจากกิจการที่กระทำในรอบระยะเวลาบัญชีไม่เกิน ห้าร้อยล้านบาท

(ข) ไม่มีธุรกรรมที่ถูกควบคุมกับบริษัทหรือห้างหุ้นส่วนนิติบุคคลที่อยู่ในบังคับต้องเสียภาษีเงินได้นิติบุคคลในอัตราที่แตกต่างจากผู้มีหน้าที่ยื่นเอกสารหรือหลักฐาน

(ค) ไม่มีธุรกรรมที่ถูกควบคุมกับบริษัทหรือห้างหุ้นส่วนนิติบุคคลที่จดทะเบียนจัดตั้งในต่างประเทศ และ

(ง) ไม่มีผลขาดทุนสุทธิในรอบระยะเวลาบัญชีก่อน ๆ ยกมาเป็นรายจ่ายในการคำนวณกำไรสุทธิเพื่อเสียภาษีเงินได้นิติบุคคลสำหรับรอบระยะเวลาบัญชีนั้น และคู่สัญญาของธุรกรรมที่ถูกควบคุมต้องไม่มีผลขาดทุนสุทธิในลักษณะเช่นว่านั้นด้วย

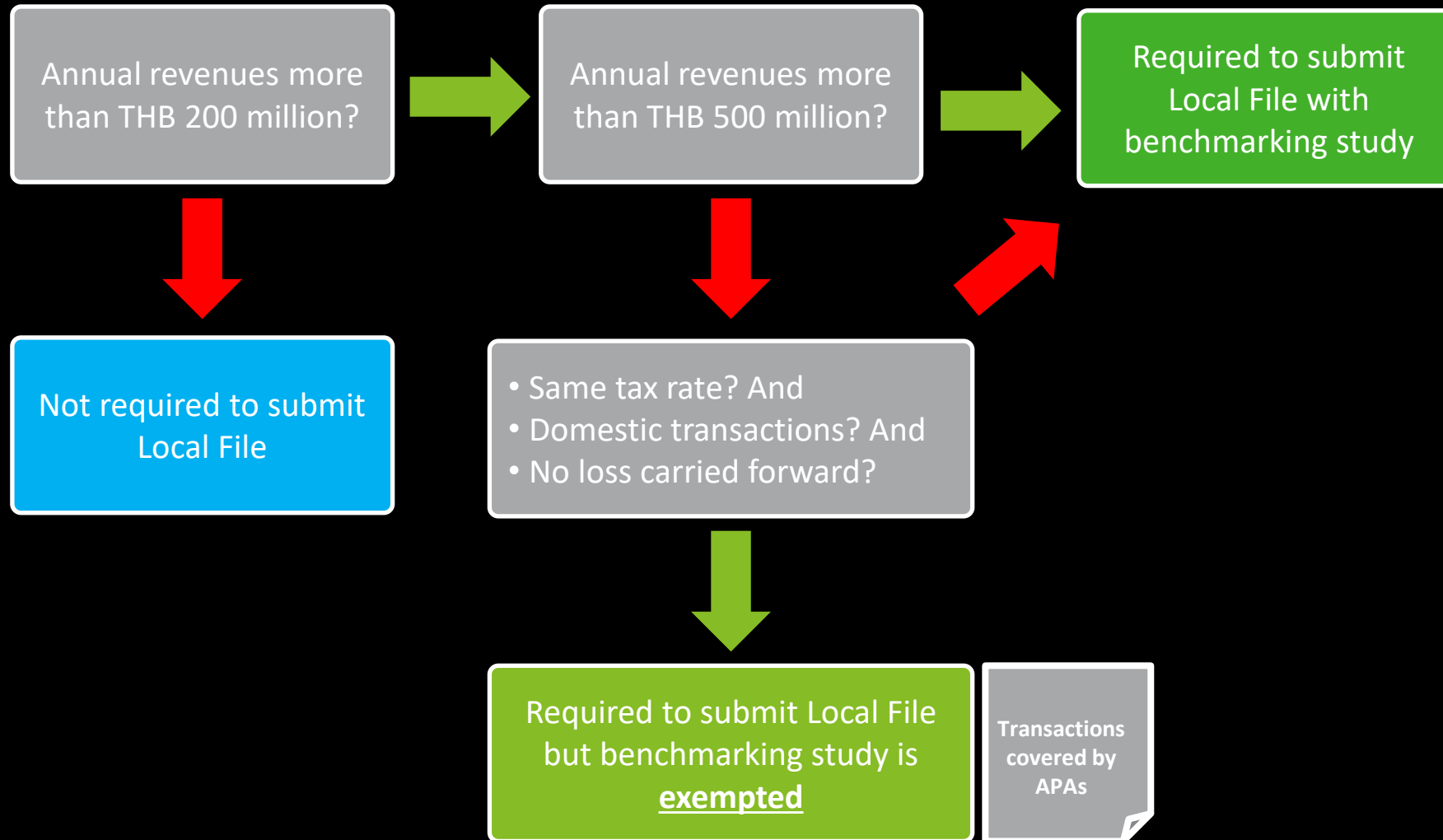
(๒) กรณีที่ผู้มีหน้าที่ยื่นเอกสารหรือหลักฐานได้ร้องขอให้การจัดทำข้อตกลงการกำหนดราคาล่วงหน้าตามสัญญาหรือข้อผูกพันว่าด้วยการเว้นการเก็บภาษีซ้อน และเจ้าหน้าที่ผู้มีอำนาจของประเทศไทยหรือสำนักงานการค้าและเศรษฐกิจไทยได้มีการจัดทำข้อตกลงดังกล่าวกับเจ้าหน้าที่ผู้มีอำนาจของต่างประเทศหรือสำนักงานเศรษฐกิจและการค้าของต่างประเทศตามที่ผู้มีหน้าที่ยื่นเอกสารหรือหลักฐานร้องขอแล้ว ทั้งนี้ เฉพาะข้อมูลที่เกี่ยวข้องกับธุรกรรมที่ถูกควบคุมที่อยู่ภายใต้ข้อตกลงการกำหนดราคาล่วงหน้าดังกล่าวที่ยังมีผลบังคับใช้อยู่สำหรับรอบระยะเวลาบัญชีตามกำหนดเวลาของข้อตกลงนั้น

I. The following criteria are met:

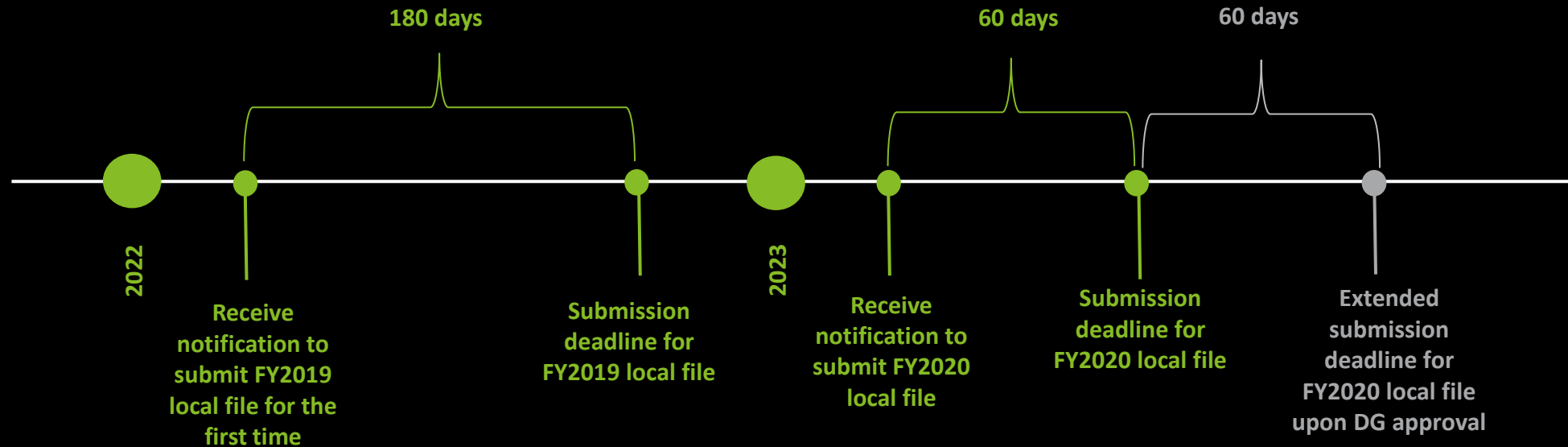
- **Rev < 500MB.;**
- **Counterparties have same tax rate;**
- **Only domestic transactions; and**
- **No LCF (both tested party and counterparties)**

II. Existing APA in place

Filing Requirements for Local File Benchmarking Study Exemption



Filing Timeline and Penalty for Local File



Penalty for late submission:

- Submission within 15 days after the due date, a fine of THB 50,000 would apply.
- Submission after 15 days after the due date, a fine of THB100,000 would apply.
- Submission after receiving a late submission notice, a fine of THB200,000 would apply.

Penalty for inaccuracy of information:

- A fine of THB 25,000 before receiving a notice.
- A fine of THB 50,000 after receiving a notice.

** Note: Inaccurate information can be amended before the submission deadline without any penalty.*

Penalty for TP Disclosure Form

Penalty for late submission (Manual filling):

- Submission within 7 days after the due date, a fine of THB 50,000 would apply.
- Submission after 7 days after the due date, a fine of THB100,000 would apply.
- Submission after receiving a late submission notice, a fine of THB200,000 would apply.

Penalty for late submission: (E-filing)

- Submission within 30 days after the due date, a fine of THB 10,000 would apply.
- Submission after 30 days but within 60 days after the due date, a fine of THB 25,000 would apply.
- Submission after 60 days after the due date, a fine of THB 50,000 would apply.
- Submission after receiving a late submission notice, a fine of THB 200,000 would apply.

Penalty for inaccuracy of information:

- A fine of THB 25,000 before receiving a notice.
- A fine of THB 50,000 after receiving a notice.

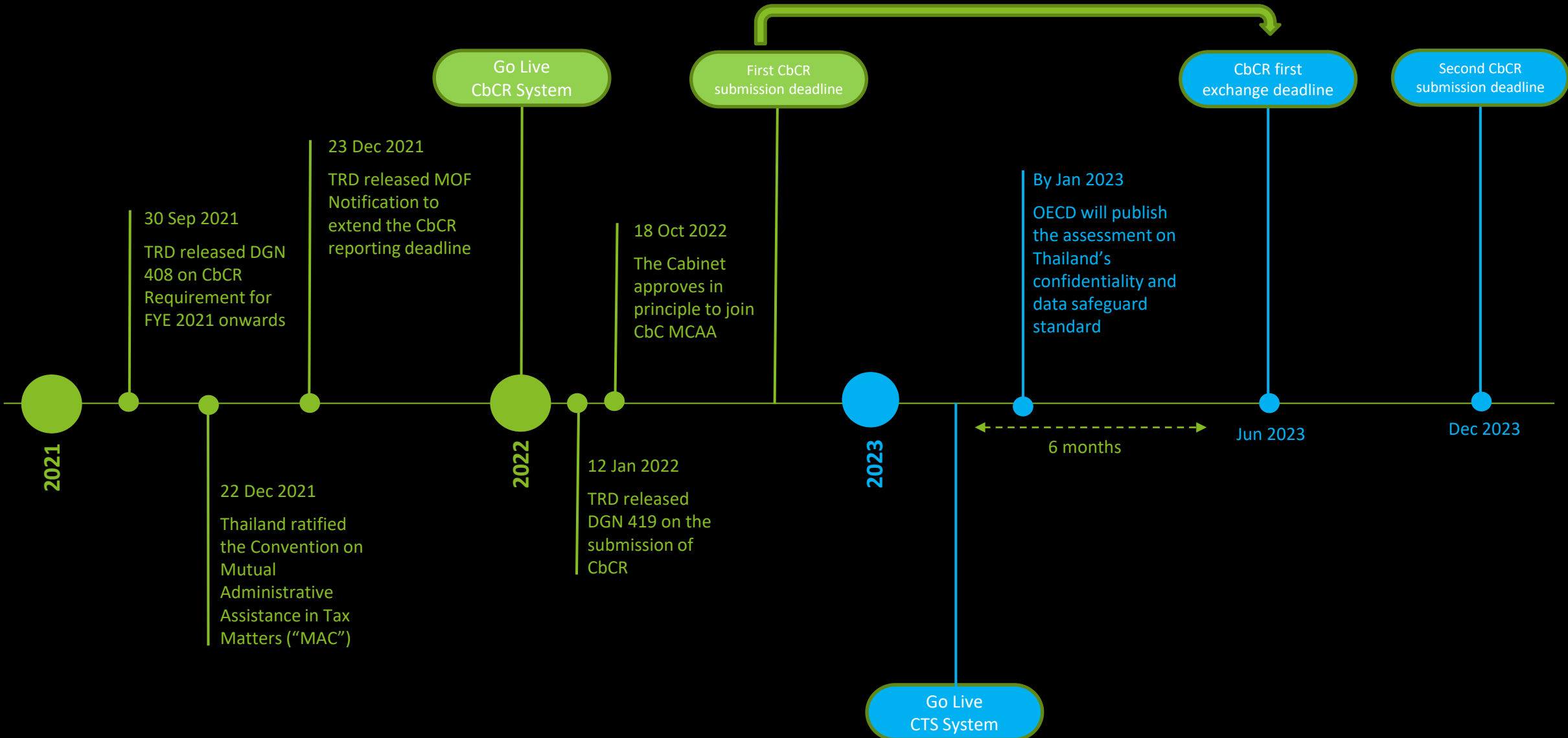
** Note: Inaccurate information can be amended before the submission deadline without any penalty.*

Penalty rates are based on
internal practice or
TRD's announcement

Country-by-Country Reporting (“CbCR”) Requirements under DGN408 dated 30 Sep 2021



Thailand CbCR Implementation Timeline



Status of Thailand CbCR MCAA

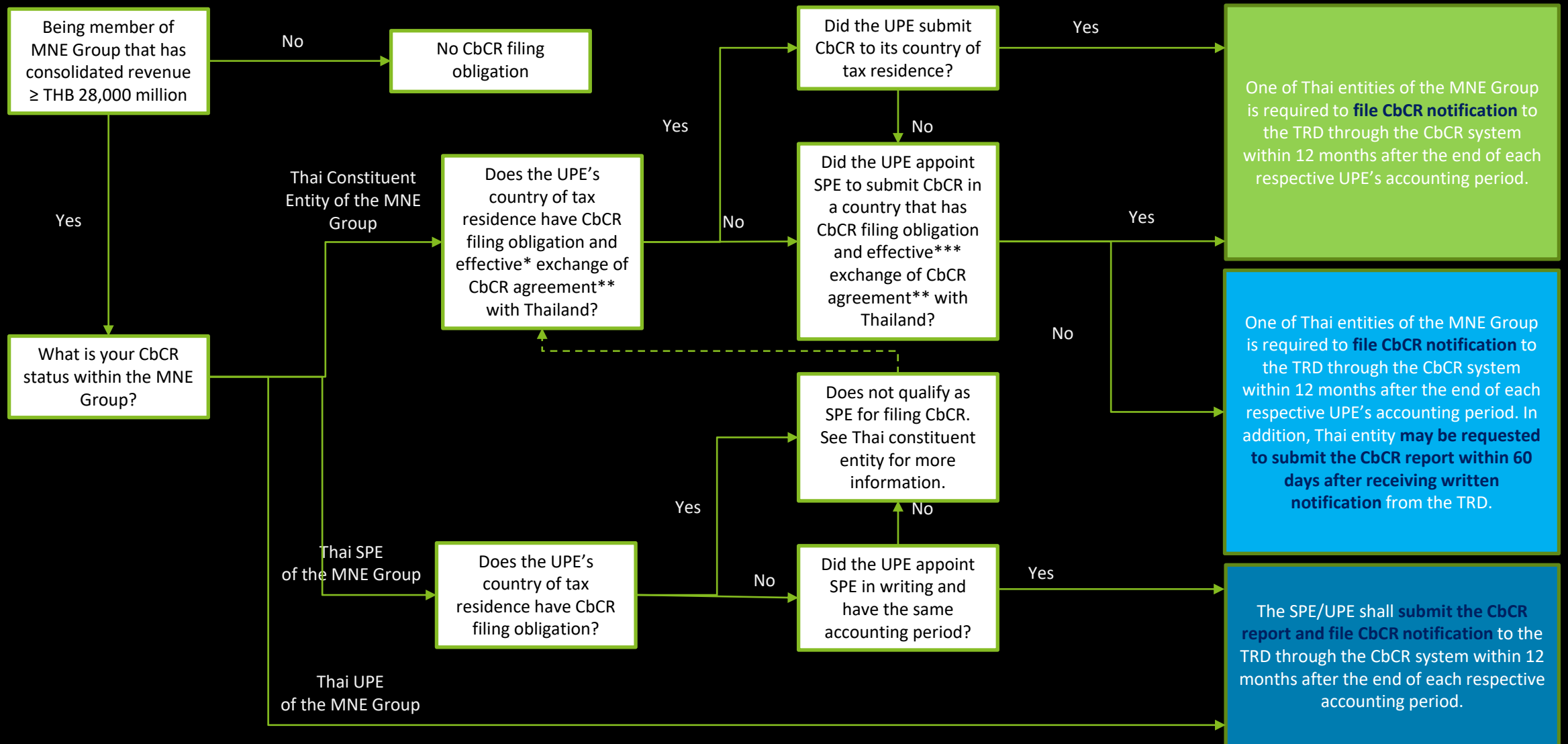
Current Status

- The Cabinet approves in principle for Thailand to join the CbC MCAA on 18 October 2022.
- The Revenue Department has submitted the letter of intent to the OECD to join the CbC MCAA in November 2022.
- The OECD has acknowledged the intention of Thailand to join the CbC MCAA and requests additional information from the TRD.
- The OECD is preparing the declaration document for Thailand to join the CbC MCAA.

Next Step

- After receiving the CbCR declaration from the OECD, the TRD will propose the declaration to the MoF for signatory.
- The OECD will publish the official result of the confidentiality and data safeguard standard for Thailand (tentatively January 2023).
- The TRD will send the notification letter to the OECD to activate the CbC MCAA.
- The TRD will exchange first batch of CbC reports for FY 2021 by June 2023 (18 months after the end of fiscal year concerned).

Thailand Country-by-Country Reporting (“CbCR”) Requirements



* Agreement is place for the reporting accounting period and no systematic failure in exchange

**Exchange of CbCR agreement including, but not limited to, CbCR MCAA and Bilateral TIER with respect to CbCR.

*** Agreement is in place by the end of the prescribed period for CbCR lodgment and no notification of obstacle of failure to exchange

CbCR Template

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned: Currency used:										
Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued – Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)												
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity Instruments	Dormant	Other ¹
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

CbCR Notification

Revised Disclosure Form for FY 2022

ส่วน ค รายละเอียดอื่นๆ
(Part C Other Information)

1. ผู้ยื่นแบบรายงานฯ อยู่ในกลุ่มบริษัทหรือห้างหุ้นส่วนนิติบุคคลข้ามชาติที่อยู่ในบังคับต้องแจ้งข้อความตามรายงานข้อมูลรายประเทศ (Country-by-Country Report) ใช่ (Yes) ไม่ใช่ (No)
(Taxpayer is a part of a multinational companies or juristic partnerships group obliged to file Country-by-Country Report.)

ถ้าใช่ บริษัทหรือห้างหุ้นส่วนนิติบุคคลใดในกลุ่มบริษัทหรือห้างหุ้นส่วนนิติบุคคลข้ามชาตินั้นเป็นผู้แจ้งข้อความ
(If yes, which company or juristic partnership in the group is designated to file report:

ชื่อ ประเทศหรือเขตเศรษฐกิจที่แจ้งข้อความ ประเทศไทย อื่น ๆ (ระบุประเทศหรือเขตเศรษฐกิจ)
(Name) (Jurisdiction of Filing) (Thailand) (Other: please specify the jurisdiction)

CbCR Notification Template for Uploading thru CbCR System

Excel TemplateEng - View-only

File Home Insert Draw Page Layout Formulas Data Review View Help Viewing

Calibri 11 B I Merge General

A	B	C	D	E	F	G	H	I	J
1	Tax Identification Number	Constituent Entity in Thailand (English name)							
2	1459900253927	Company A							
3	1234545453927	Company B							
4	3459900123456	Company C							
5									
6									

Notification Accounting Period 2564

Ultimate Parent Entity Country: Thailand

Ultimate Parent NID: []

Name of Ultimate Parent Entity: []

CbCR reporting Entity: Ultimate Parent Entity (UPE) Surrogate (SPE)

Fiscal Year Concerned Starting: [mm/dd/yyyy] Ending: [mm/dd/yyyy]

List of Constituent Entity to be included in this Notification: [File size must not exceed 3 MB. Browse]

APA in Thailand



Guideline on APA process

The TRD issued revised Guideline on APA process

- **Eligible Applicants:** Thai companies transacting with related companies in countries that have DTA with Thailand
- Provides **list of documents** required for APA application
- **Pre-filing Meeting** required
- **APA Period**
 - Generally, between 3 to 5 accounting periods
 - Last day of the first accounting period must be within or after the date of the submission of APA application
 - “Roll Back” cannot be more than 2 accounting periods
- Provides **criteria for the rejection** of an APA application



Legal

Updates on Amendments of Corporate Laws

23 November 2022

Legal | Updates on Amendments of Corporate Laws

- Overview of traditional and alternative fundraising for corporate fundings



Pacharaporn Pootranon

Partner | Tax & Legal



Veerakorn Samranweth

Senior Managing Associate | Tax & Legal



Natcharee Aphichotsuraratsamee

Managing Associate | Tax & Legal

Updates on amendments of corporate laws and Overview of traditional and alternative fundraising for corporate funding

Topics:

- Recent update on Corporate Laws
- Fundraising
 - Update on Financial Statements Requirement for IPO company
 - PP of Equity/Convertible Debentures
 - Update on Debt Market
 - ICO



Recent update on Corporate Laws

- The latest amendment to the Public Limited Company Act B.E. 2535 (the “PLCA”) and Civil Commercial Code (“CCC”) became effective on 24 May 2022 and 7 February 2023, respectively.
- Key amendments are as follows;

Private Company

- Reduce number of promoters from 3 persons to only 2 persons and minimum number of shareholders from 3 to only one person.
- Electronic notices/meetings allowed and cease publishing the notice letter to the local newspaper.
- Clarifies the practice that a minimum of 2 shareholders is required for any general meetings.
- Introducing entire business transfer: EBT as one of the mergers in addition to amalgamation of companies.
**In this regard, reduction of timing for creditors’ objection from 60 days to 1 month.*

Public Company

- Electronic notices / meetings allowed.
- E-advertisement is also allowed, details are elaborated in DBD’s notification.
- 2 or more directors can now call meeting by themselves if Chairman not cooperate.
- Shorten notice period for calling BOD meeting from 7 days to 3 days.



Fundraising

Update on Financial Statements Requirement for IPO company

- Any IPO issuers having the financial statement or the consolidated one ending in or after 31 December 2023 are required to submit the audited consolidated financial statements of the last three-year period, instead of 1-year period.
- Those financial statements must be in accordance with PAEs accounting standard.



Fundraising

PP of Equity/Convertible Debentures

- On 1 November 2022, the Notification of the SEC on the private placement of securities by private company becomes effective.
- This new regime allows all private company to conduct private placement, not only SMEs.

Topics	Details
Eligible Issuers	<ul style="list-style-type: none"> • All private company • If it is small or medium enterprise, must be registered in joint program between SEC and OSMEP. • The larger scale company from SME is not subject to this registration requirement.
Eligible Investors	<ul style="list-style-type: none"> • Institutional investors: including private equity, venture capital and angel investors • ESOP: Can be directors/employees of the issuer and subsidiaries • Others: Not more than THB 50 million AND 10 investors at any time (collectively counting shares and convertible debentures).
Approval and Filing of Prospectus to SEC	Not required, but to file transfer restriction with the Thai SEC on convertible debentures
Key Documents Required	<ul style="list-style-type: none"> • Factsheet (SEC template). <i>*Factsheet will mainly elaborate summary on description of business, shareholding and management structures, use of proceeds and risk factors.</i> • Transfer Restriction (For Convertible debentures) • Terms & Conditions of the Debentures (for convertible debentures) • Placement Agreement / Subscription Agreement with Investors
After-Sales Report	Yes, with 15 days from the offering period
Other practical remarks	Capital increase registration should be handled carefully and need to discuss with DBD



Fundraising

PP of Equity/Convertible Debentures (Cont'd)

Benchmark of being SMEs to apply with co-program of SEC and OSMEP

Business Type	Small enterprises		Medium enterprises	
	Number of employees	Amount of income	Number of employees	Amount of income
Manufacturing	Not more than 50 person	Not more than THB 100 million	51 – 200 person	More than THB 100 million but not more than THB 500 million
General trading and services	Not more than 30 person	Not more than THB 50 million	31 – 100 person	More than THB 50 million but not more than THB 300 million



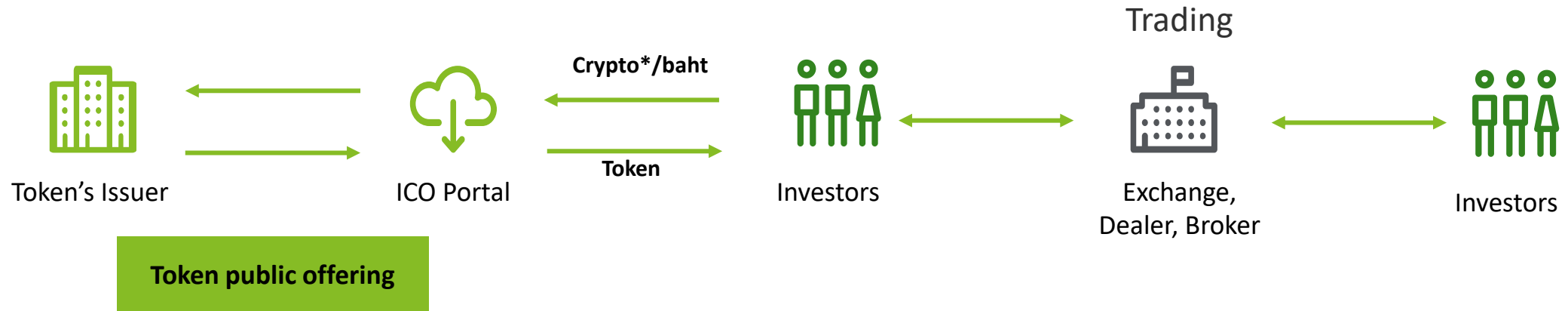
Fundraising

Update on Debt Market



- Another alternative corporate funding for is debt capital market
- On October 2022, the SEC has revamped the notifications on offering of debentures as one of the mission under “regulatory guillotine”.
- Private placement of debentures, which were quite recently restricted, have been updated to be more relaxed and provide more flexibilities for corporates to raise funds.
- Set forth below is the key requirements on private placement of debt instruments

Topics	Details
Types of Securities	Debentures, Bills of Exchange, Promissory Notes (collectively B/E and P/N called “Bills”)
Targeted Investors	<ul style="list-style-type: none"> • PP10: (1) 10 Institutional Investors, or (2) 10 Ultra High-Net-Worth or High-Net-Worth Investors with the offering amount not exceeding 50 million. <i>*For the offering of Bills, the number of certificates shall not exceed 10.</i> • II: Debentures without limit <p><i>Note: Offering to UNW and HNW which is not qualified as PP 10 will require approval and filing, but less complicated from public offering.</i></p>
Required Documents	<ul style="list-style-type: none"> • Standard Ts&Cs • Transfer Restriction (for debentures) • Trustee Appointment Agreement (for Secured Debentures only) • Certificates • Underwriting Agreement / Placement Agreement with underwriters
Required Reporting	<ul style="list-style-type: none"> • Pre-Selling: To file the transfer restriction and supporting documents to SEC • Post-Selling: To file the after sales report.
Prospectus Requirement	<ul style="list-style-type: none"> • PP 10: Not required • II/UNW/HNW: Required but less disclosure than public offering
Credit Rating	Not required
Underwriter	Required if offering to UHNW/HNW.

Bitcoin Fundraising
ICO



Which digital asset must undergo the ICO?

 Investment token	 Not ready to use utility token
---	---

- Another fundraising option
- No mandatory content of whitepaper
- No track record required
- ICO Portal is needed to assist disclosure and tokenization

***Remark:** Transactional payment made in cryptocurrency can only be made by Bitcoin (BTC), Ethereum (ETH), Ripple (XRP), and Stellar (XLM).



Global Trade Advisory

Customs and Trade Updates: Case Studies Covering

23 November 2022

Customs and trade update: Interesting cases sharing



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Deloitte Thailand



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One-stop Services for Additional Duty Payment Program (OSS)

One – stop Services for Additional Duty Payment Program (OSS)

What is OSS program ?

Previous Program

Voluntary Audit Program (VAP)

โครงการตรวจสอบการเสียภาษีอากรให้ผู้ประกอบการ

- Inviting entities that may have inadvertently underpaid import duties to self-disclose pay such duties/VAT **without any additional duty surcharges or duty fines**
- Submit application to Customs Post-clearance Audit Division
- Ended in 2018

VS

Current Program

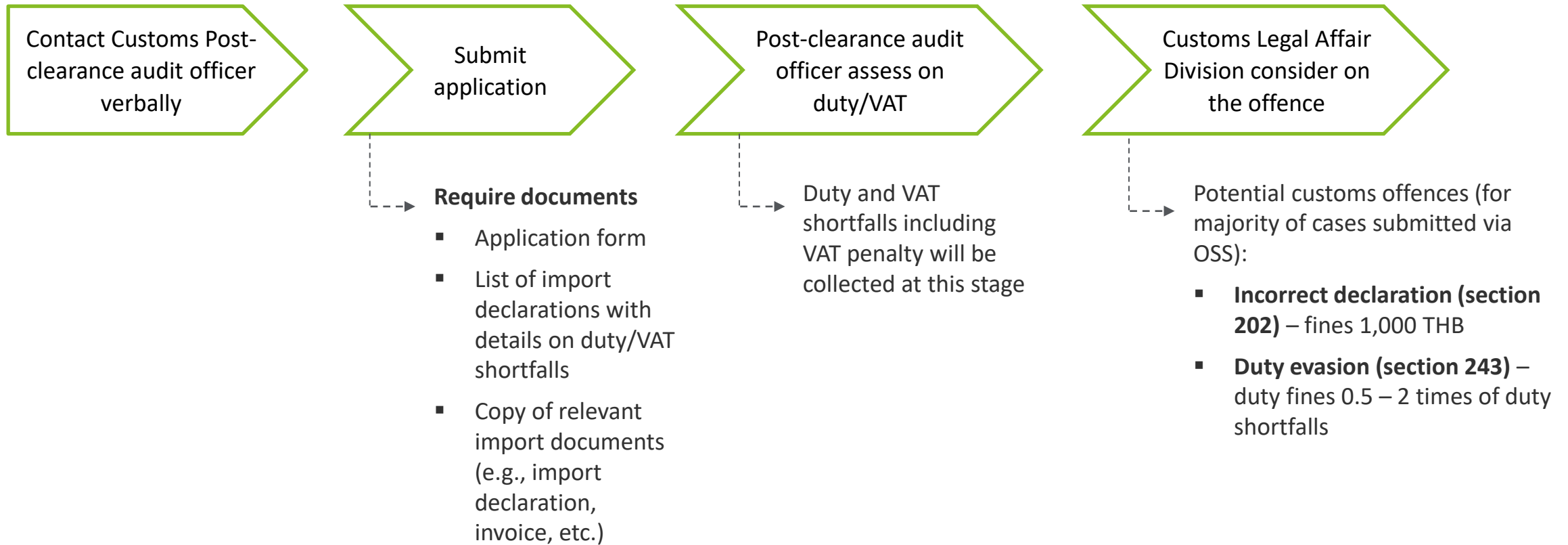
One-stop Services for Additional Duty Payment Program (OSS)

โครงการรับชำระค่าภาษีอากรเพิ่ม ณ จุดเดียว

- Facilitating importers/exporters to self-disclose wrongful declarations/under declared duty and request to pay additional duty/VAT without self-disclosing each shipment at the port of entry (per shipment basis)
- Waiver of duty fines and potential reduction of duty surcharge (reduced to 0.25 – 0.75% per month if self-disclose within 3 years from the date of importation), **if the wrongful declarations/under declared duty is not considered as “intend to defraud duty” (subject to duty evasion offence under section 243 of Customs Act)**
- Submit application at Post-clearance audit division. The application period is open until **30 September 2026**

One – stop Services for Additional Duty Payment Program (OSS)

Overview of the process of OSS program



One – stop Services for Additional Duty Payment Program (OSS)

Concerns on OSS program

Concerns in practice

- Most importers interested to join OSS program expect waiver of duty fines and reduction of duty surcharges
- However, duty fines are **not automatically waived**, but depends on the offence charged
- Legal officer tends to consider the case as “**with intention to defraud duties**” and charge importers with “**duty evasion**” under section 243 of Customs Act B.E. 2560, especially **customs valuation** cases
- Post-clearance audit officers likely refuse to accept customs valuation cases, unless the importer understand that there is potential risk on duty evasion offence with duty fines.

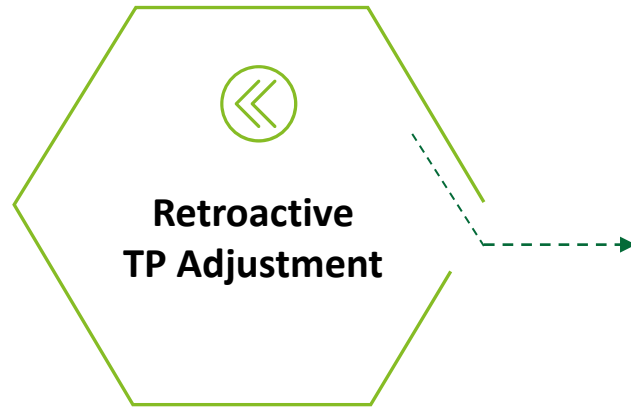
What should be considered before choosing OSS

- What are the non-compliance issues
- Self-assess on potential exposures
- Consider on pros and cons between:
 - Self-disclose at the port of entry
 - Self-disclose through OSS
 - Not self-disclose

Customs value and TP adjustments

Customs value and TP adjustments

Retroactive TP adjustment from Customs perspective



What is a retroactive TP adjustment ?

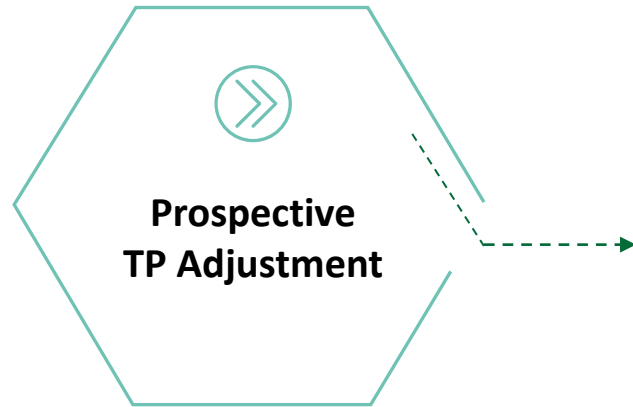
- Implementing TP adjustment **by retroactively adjust selling price of the previously imported goods after importation**
- Where the price of the previously imported goods is increased, Thai Customs expects the importer to request to adjust the customs value and pay additional duty and VAT
- Mostly, Thai Customs detects retroactively increased price based on debit note and payment documents to related company overseas
- In most cases, the adjustment will be detected during Customs audit process (e.g., Post-clearance audit)

Best practice to be audit ready

- Consider to self-declare the adjusted price which affects the previously declared customs value in order to pay additional duty and VAT and mitigate risks of fines and penalties
- Importers should be aware that there may be a risk on duty evasion offence

Customs value and TP adjustments

Prospective TP adjustment from Customs perspective



What is a prospective TP adjustment ?

- Implementing TP adjustment by **adjusting the price of goods to be sold and imported into Thailand**
- If the adjusted price is **significantly higher than the price previously declared** upon importation of the same goods, Thai Customs may question whether the price of the previous shipment is undervalued
- In practice, the adjusted price is likely to be acceptable upon importation, but the risk would be higher during the Customs audit where the shipments imported during the audit period (3-5 years) would be reviewed

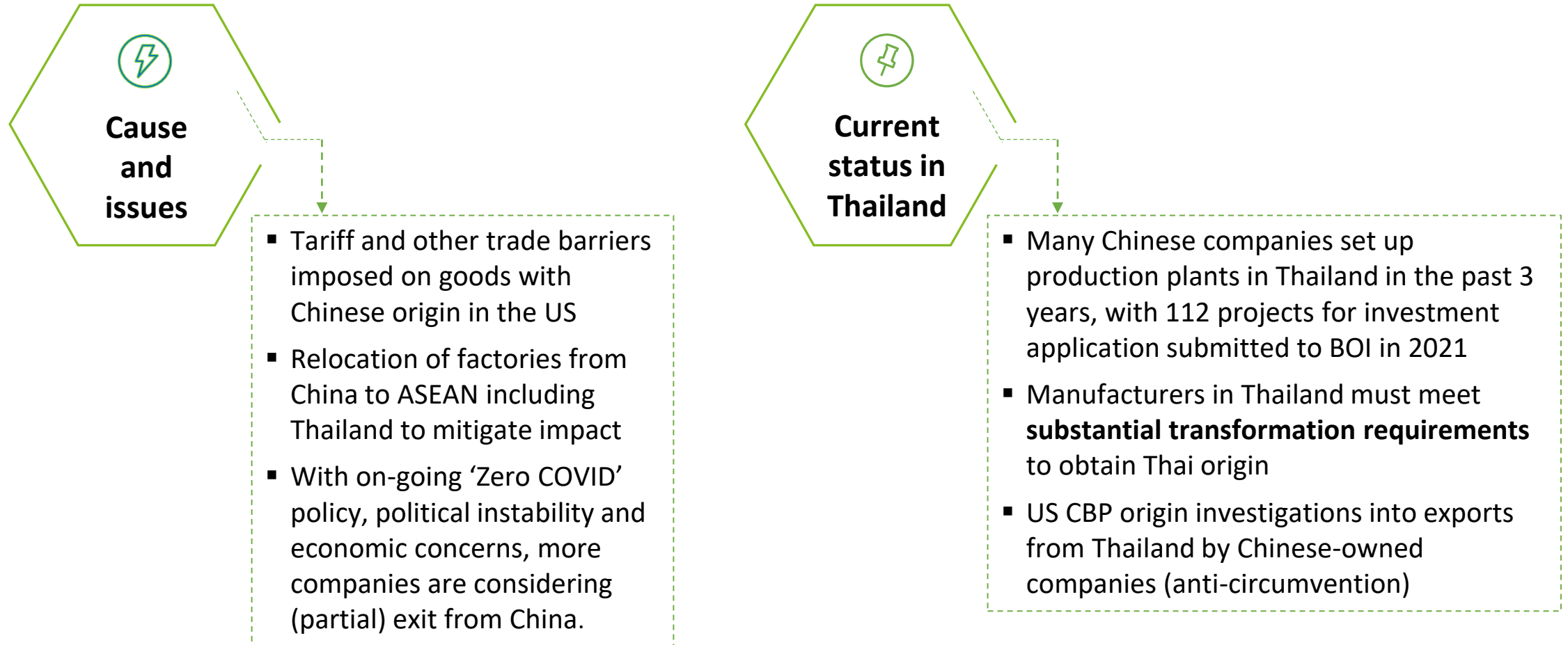
Best practice to be audit ready

- Prepare an explanation on the reason behind the prospective price adjustment
- Keep supporting documents in-place to support the explanation, such as: -
 - Transfer Pricing documentation
 - Invoices
 - Commercial Agreement
 - Supplier information

Origin Investigations

Origin investigations

US – China Trade / Political Tensions and Economic Downturn



Origin investigations

DFT measures on anti-dumping

บัญชีรายการสินค้าเข้าระวางการแอบอ้างถิ่นกำเนิดสินค้า

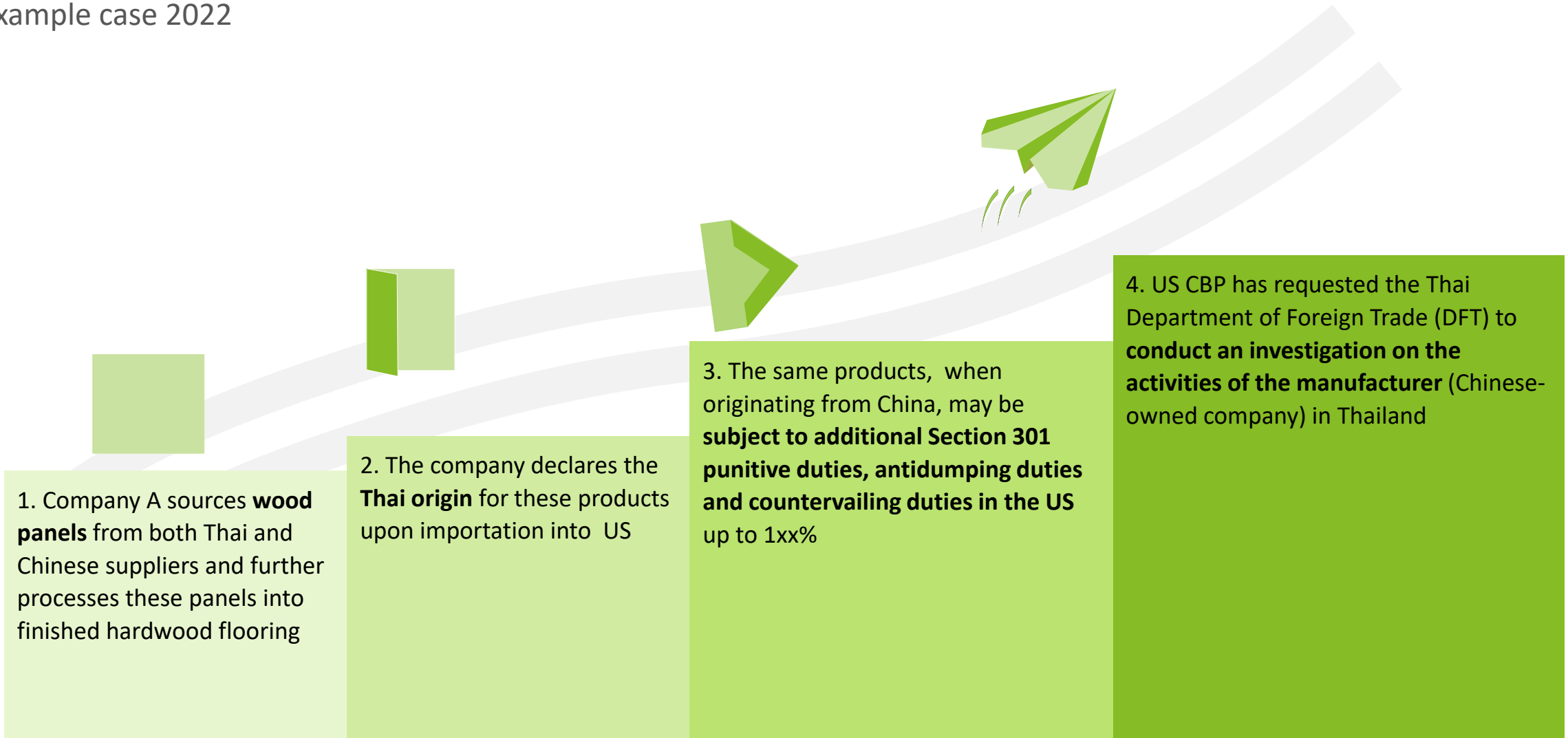
ลำดับที่	รายชื่อสินค้า	พิกัดศุลกากร
รายการสินค้าซึ่งสาธารณรัฐประชาชนจีนถูกดำเนินการตอบโต้การทุ่มตลาดจากสหรัฐอเมริกา		
1	Natural Honey	0409.00
2	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel	7304
3	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel	7306.19
4	Stainless steel, sinks and wash basins	7324.10
5	Aluminum, foil, w/thickness r/o 0.01 mm, rolled but not further worked	7607.11
6	Hard disk drives	8471.70.20
7	Relays for switching, protecting or making connections to or in electrical circuits, for a voltage not exceeding 60 V	8536.41
8	Insulated (including enameled or anodized) winding wire, other than of copper	8544.19
9	Crystalline silicon photovoltaic cells, whether or not assembled into modules, Electric motors and generators, Solar Panel and Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:	8501.61, 8501.31, 8507.20, 8541.40
10	Forged Steel Fittings	7307.92, 7307.93
11	Wooden cabinets and vanities and component thereof:	9403.40, 9403.60, 9403.90
12	Certain chassis and subassemblies thereof:	8716.39, 8716.90
รายการสินค้าซึ่งสาธารณรัฐประชาชนจีนถูกดำเนินการตอบโต้การทุ่มตลาดหรือถูกดำเนินการตามมาตรา 301 ของพระราชบัญญัติการค้า ค.ศ. ๑๙๗๔ (The Trade Act of 1974) จากสหรัฐอเมริกา		
13	Nonwoven glass fiber webs, mattresses, boards and similar articles of nonwoven glass fibers, nesoi	7019.39
14	Tanks, casks, drums, cans, boxes and similar containers of stainless steel (beer kegs)	7310.10
15	Machining centres, unit construction machines (single station) and multi-station transfer machines, for working metal: Machining centres	8457.10
16	Mattresses: Of cellular rubber or plastics, whether or not covered	9404.21
17	Mattresses: Of other materials: e.g. of cotton	9404.29
18	Pillows, cushions and similar furnishings:	9404.90
19	New pneumatic radial tires, of rubber, of a kind used on buses or trucks	4011.20



- The US and EU have imposed a number of anti-dumping measures on imports of various Chinese goods
- The authorities expressed concerns about Chinese suppliers potentially circumventing the anti-dumping measures by **rerouting** the goods through **Thailand**
- Therefore, the Department of Foreign Trade released an announcement on additional verification requirements **for exporters of selected products who wish to request for a non-preferential certificate of origin (CO) for export to the US and EU**
- These additional requirements aim to minimize the possibility for exporters to falsely claim that their goods originate from Thailand.
- **DFT has listed a total of 42 products** which are covered by antidumping duties in the US (34 products) and the EU (8 products)

Origin investigations

Example case 2022



Origin investigations

How to mitigate risks and exposures when facing investigation on origin of goods

What companies should do to mitigate risks and exposures



- Prepare for surprise audit/investigation on origin of goods
- By preparing for audit/investigation on origin of goods, companies may start with following:
 - **Conduct an internal review** whether the products meet non-preferential rules of origin requirement (i.e., **substantial transformation requirement**)
 - Ensure that the non- preferential Certificates of Origin (if any) and supporting customs documents are **consistent and meet all the formalities**
 - **Monitor and record supporting documents / evidence** (e.g., list of materials and suppliers, invoices, import declarations, flowchart of production process, etc.) as evidence that the products meet the origin rules, if requested.



Global Investment and Innovation Incentives (Gi3)

Update of New 5-year Investment Promotion Strategy

23 November 2022

Speaker



Nont Nijanantra

Manager, Global Investment
and Innovation Incentives (Gi³)
Deloitte Thailand



Update on New 5-year Investment Promotion Strategy

Update on New 5-year Investment Promotion Strategy (2023-2027)

Under the framework of the new investment promotion strategy, the BOI will emphasize on 7 core pillars in order to articulate its future investment promotion policies.

1. Upgrade the industries

2. Accelerate Thailand's transition to green and smart industries

3. Promote Thailand as a main business center

4. Enhance the competitiveness of SMEs & Start-ups

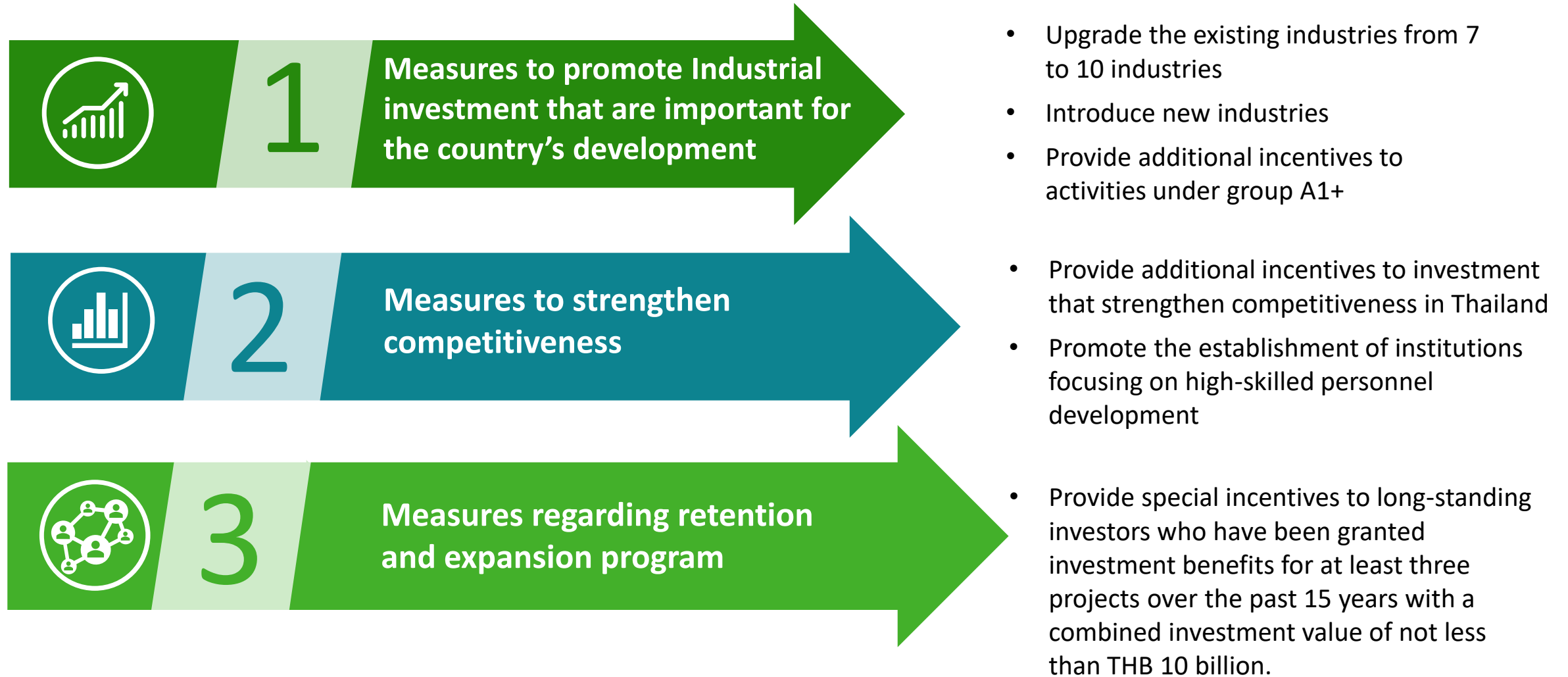
5. Promote investment in different regions

6. Stimulate investment

7. Boost Thailand's overseas investment

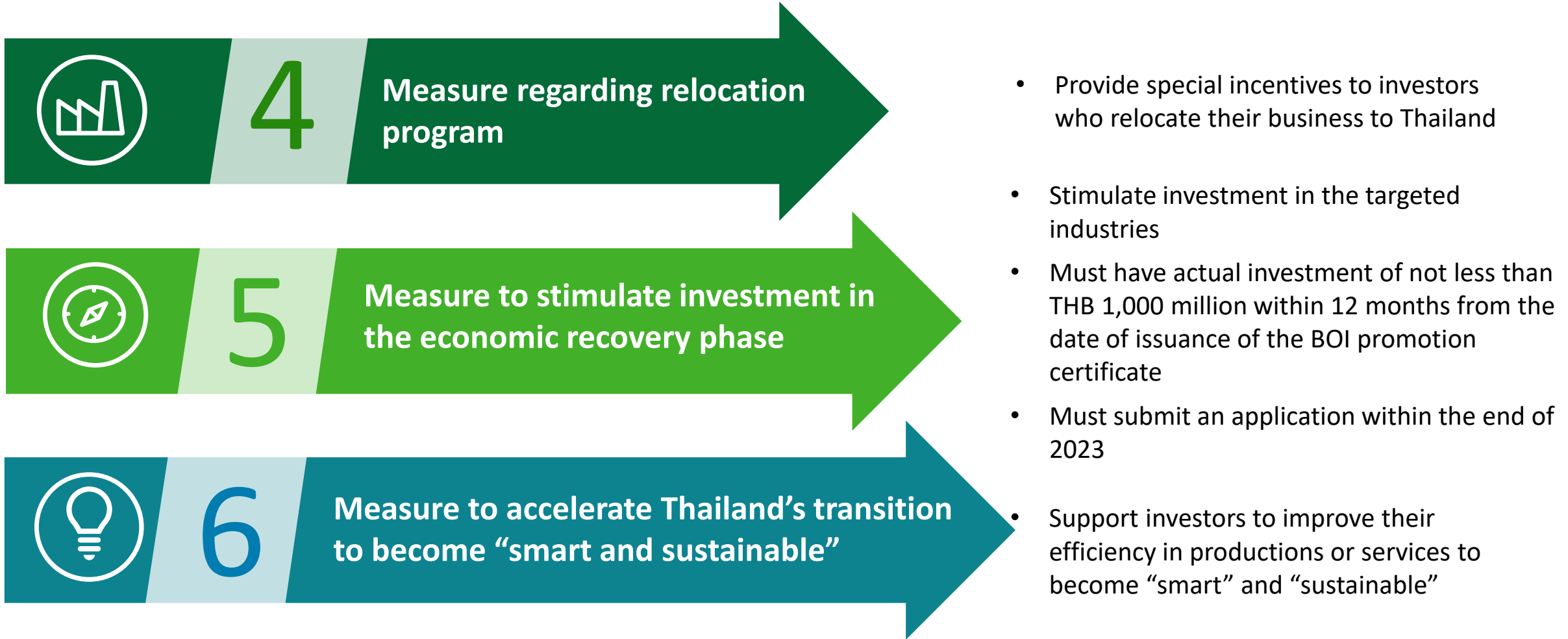
BOI's New 5-year Investment Promotion Strategy (2023-2027) (cont.)

9 measures to support the implementation of the new strategy



BOI's New 5-year Investment Promotion Strategy (2023-2027) (cont.)

9 measures to support the implementation of the new strategy



BOI's New 5-year Investment Promotion Strategy (2023-2027) (cont.)

9 measures to support the implementation of the new strategy



7

Measure to enhance the competitiveness of Small and Medium-sized Enterprises

- Relax certain conditions required for SMEs



8

Measure to promote investment in targeted areas

- Promote new economic corridors as special Investment zones in 4 regions of Thailand



9

Measure to stimulate investment that will enhance community and society development

- Must have total investments or expenses of not less than THB 5 million
- Must support local organizations of not less than 500,000 baht per organization
- Will be granted with CIT exemption 200% of the amount of fund supporting to local organization



Indirect Tax VAT Updates

23 November 2022

Advance Preparation for VAT refund audit



Tax controversies trend and current situation

Tax collection of the Thai Revenue Department for FY2022

Latest tax collection information

Unit: Million Baht

	FY2022
Estimated tax collection	1,876,000
Actual tax collection	2,166,311
Surplus on tax collection	290,311

Source:

- ผลการจัดเก็บรายได้ของรัฐบาล | ระบบบริการและเผยแพร่ข้อมูลการคลัง (mof.go.th)
- <https://www.prachachat.net/finance/news-1043322>

Tax collection by type of taxes

Unit: Million Baht

Revenue Collection	FY2022
Personal Income Tax	368,079
Corporate Income Tax	728,108
Petroleum Income Tax	62,858
Value Added Tax	930,121
Specific Business Tax	59,286
Stamp Duty	16,899
Other Revenue	490
Total	2,166,311

Source:

- ผลการจัดเก็บรายได้ของรัฐบาล | ระบบบริการและเผยแพร่ข้อมูลการคลัง (mof.go.th)

Tax controversies trend and current situation

What could trigger a tax audit?

- Request for CIT or VAT refund
- Business restructuring which results in significant profit reduction from previous years
- Reduction of tax payment amount from previous years
- Significant intercompany transactions as disclosed in the transfer pricing disclosure (“TPD”) form
- Continued losses from operation / Negative gross margin
- Never been subject to a tax audit but being triggered by TRD’s system

Tax controversies trend and current situation

Preparation in advance before submitting a refund

- Sales reconciliation
- Employee benefits reconciliation
- Interim stock count
- Ensure completeness of original input tax invoices
- Gather supporting documents for export (e.g., export entry having a company as EOR, Airway bill, PO, etc.)
- Sample of documents for sales process to collection and purchase to payment process
- Supporting documents or agreements for major purchase of fixed assets
- Reconciliation tool

e-Tax Invoice trends in SEA



e-Tax Invoice trends in SEA

Thailand

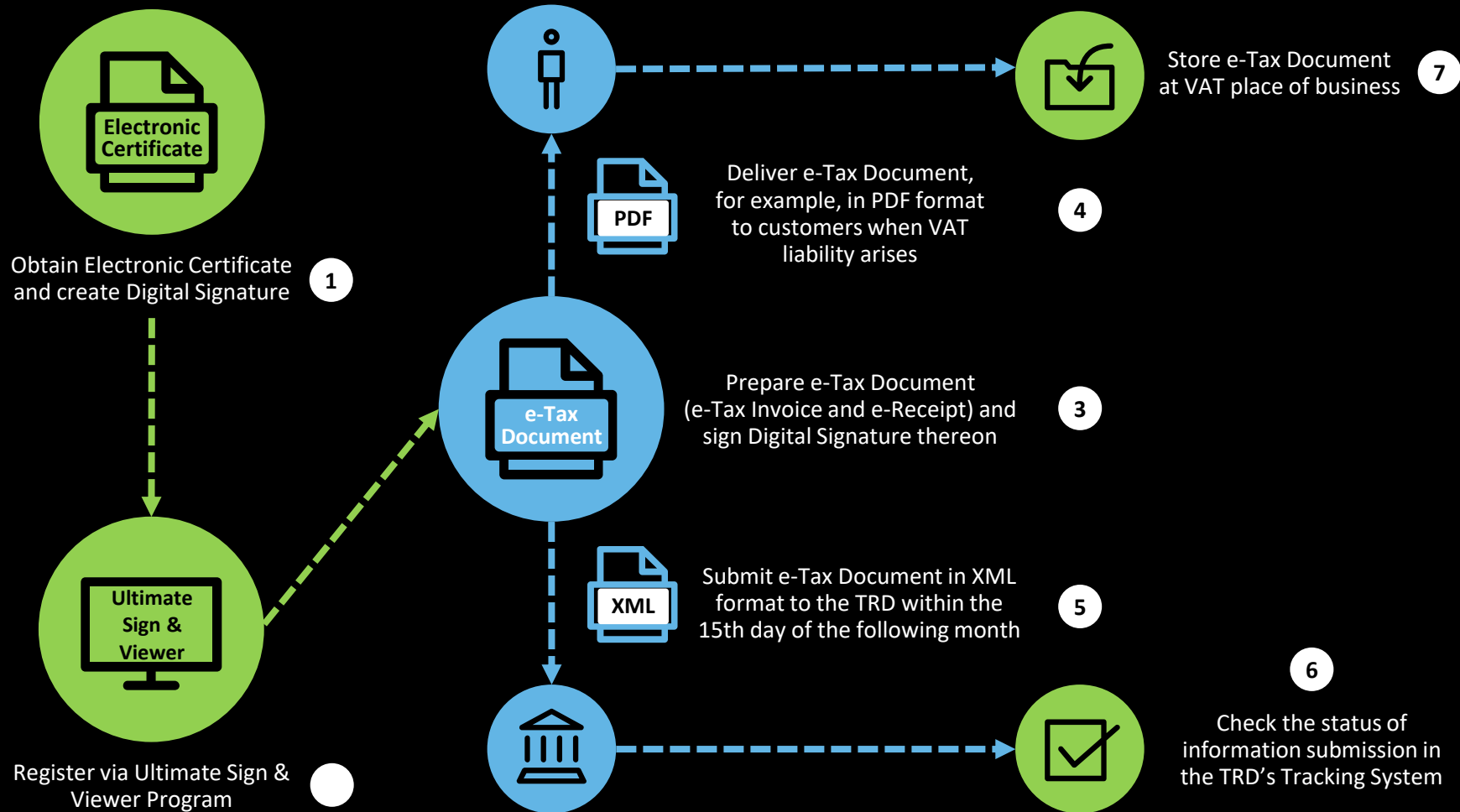
Thai Revenue Department (“TRD”) has announced the Notification of the Director-General of Revenue Department (“DGN”) on VAT no.15 determining the rule, procedure, and conditions for preparing, delivery and maintain the e-tax invoice and e-receipt.

Currently, only on a voluntary basis.



e-Tax Invoice trends in SEA

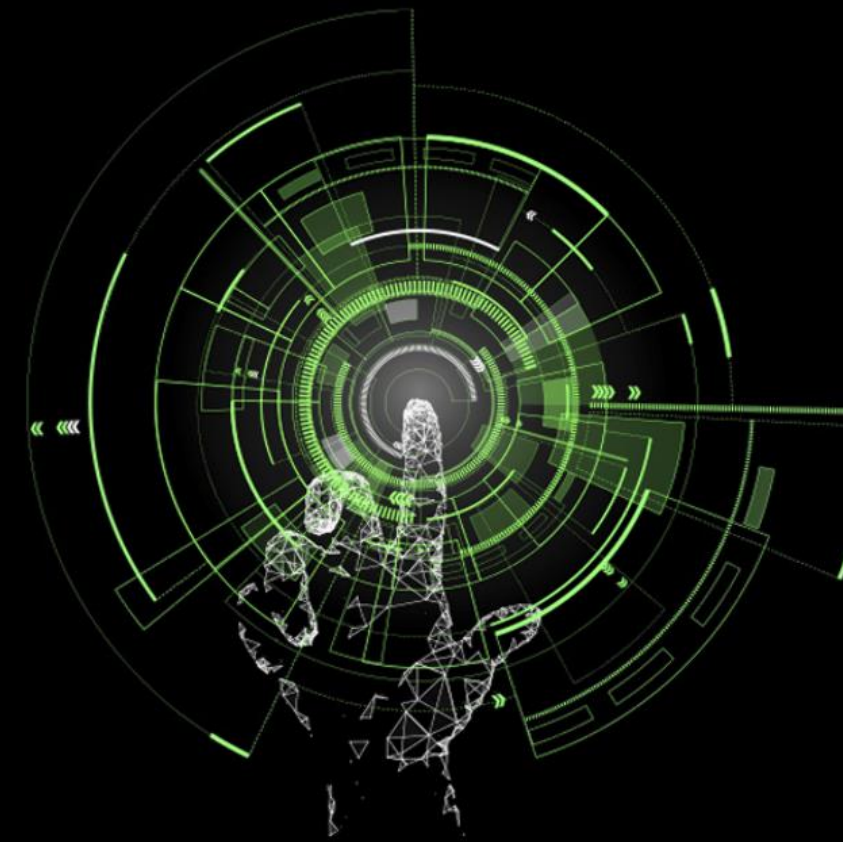
Overall process



e-Tax Invoice trends in SEA

Qualifications of the operators eligible for adopting e-Tax Invoice & e-Receipt

- Being a Thai VAT registrant or a person responsible for issuing receipts under the Thai tax law, or a government agency.
- Having an Electronic Certificate.
- Having an effective internal control system and being able to prove that e-Tax Documents (e-Tax Invoice and e-Receipt) issued to the recipients contain the information which is as accurate and complete as when they are prepared, delivered and received, by using reliable means which can illustrate the identical information afterwards and also having a system to verify that there is no trackless modification or any modification of details of the e-Tax Documents in transit.
- Not being an operator in the process of obtaining approval or was granted an approval for adopting e-Tax Invoice by Email.



e-Tax Invoice trends in SEA

Conclusion

e-Tax invoicing is now trending across the regions due to the efficiency of the tax collection from creating the taxpayers' database. By using the database, the Revenue Department can retrieve the needed data for tax analysis which helps enhance government's tax policies including tax transparency.

Why joining e-Tax invoicing?

- As a result of e-Tax invoicing trend among SEA countries, there is a possibility that Thailand will change the practice of e-Tax invoicing from voluntary basis to mandatory basis. Therefore, to mitigate the possible risks arising from the digitalization in tax, business sector may have to be prepared for the upcoming change.





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