



## Tax & Legal Newsletter

### February 2022

#### **“Shop Dee Mee Kuen 2022” program provides tax deduction for certain payments made for goods or services**

A ministerial regulation (No. 379) issued on 30 December 2021 and a notification from the Director-General of the Thai Revenue Department on income tax (No. 418) issued on 10 January 2022 provide that a person who is liable to personal income tax (other than an ordinary partnership or non-juristic body of persons) is entitled to an income tax deduction under the “Shop Dee Mee Kuen 2022” program for certain expenses incurred for the purchase of goods and services from VAT registrants, provided that a full tax invoice is retained as evidence to support the amounts claimed as a deduction. The tax deduction also is available for expenses incurred for certain purchases from sellers that are not VAT registrants, including purchases of books in a physical format and subscription fees for e-books obtained via an electronic system, as well as expenses incurred for the purchase of a type of goods that has been registered with the Department of Community Development under the “One Tambon One Product” (OTOP) program. The deduction is granted for the amount of qualifying expenses actually paid from 1 January 2022 to 15 February 2022, but may not exceed THB 30,000 in total. The personal income tax deduction covers only purchases of goods or services for domestic consumption and excludes non-qualifying goods and services, such as liquor; beer; wine; smoking tobacco; petrol and gasoline for vehicles; tour guide services; hotel accommodations; utility, water, and electricity services; and premiums for non-life insurance, etc.

#### **Rules and criteria provided for additional tax deduction with respect to investments in computer software by SMEs**

A notification from the Director-General of the Thai Revenue Department on income tax (No. 417) issued on 30 December 2021 provides rules and

criteria for the additional deduction for corporate income tax purposes that is allowed by a royal decree (No. 725) issued on 7 November 2021 with respect to investment expenditure incurred to purchase or develop computer software or license fees for the right to use computer software. The additional tax deduction of 100% (i.e., a total deduction of 200%) is available for amounts paid from 1 January 2021 to 31 December 2022 by companies or juristic partnerships whose registered capital on the last day of a relevant accounting period does not exceed THB 5 million and whose gross income in that accounting period does not exceed THB 30 million. The additional deduction is equal to the amount of the actual expenses incurred, up to THB 100,000 for each accounting period. The key rules and criteria are summarized below:

- To qualify for the additional deduction, expenses must be directly related to the purchase, development, or licensing of computer software and must be paid to computer software sellers, developers, or licensors that are registered with the Digital Economy Promotion Agency. Qualifying expenses do not include annual maintenance fees and other expenses that are not directly related to the use of computer software.
- The computer software must be created and developed in Thailand and used to manage aspects of business activities.
- Computer software purchased or developed internally must be a type of asset that qualifies for tax depreciation and amortization under section 65 Bis (2) of the Thai Revenue Code and must be in “ready-to-use” condition by the end of the accounting period in which the payment for the purchase or development is made.
- The computer software expenses that qualify for the additional deduction do not include expenses incurred for the same type of computer software for which an additional deduction has previously been claimed in a prior accounting period (i.e., only expenses relating to accounting periods commencing on or after 1 January 2021 and up to 31 December 2022 are taken into consideration for purposes of the additional deduction introduced by Royal Decree No. 725).

### Country-by-country reports required to be submitted via Revenue Department website

On 12 January 2022, the Director-General of the Thai Revenue Department issued a notification on income tax (No. 419) that is effective for accounting periods beginning on or after 1 January 2021 and that amends a previous notification from the Director-General of the Thai Revenue Department on income tax (No. 408) that provides certain rules regarding country-by-country (CbC) reporting. The new notification requires companies or juristic partnerships that are within the scope of Thailand’s CbC reporting requirements to submit the CbC report electronically via one of the following channels:

- By logging on to the CbC reporting portal directly from the website of the Revenue Department ([www.rd.go.th](http://www.rd.go.th)) using a username and password registered with the Revenue Department; or

- By logging on to the CbC reporting portal on the website of the Revenue Department ([www.rd.go.th](http://www.rd.go.th)) through the “Tax Single Sign On” system via the Ministry of Finance website (<https://etax.mof.go.th>) using a username and password registered with the Ministry of Finance for the Tax Single Sign On system.

As a reminder, based on a 23 December 2021 notification issued by the Ministry of Finance, the deadlines for the submission of CbC reports for accounting periods beginning on or after 1 January 2021 are as follows:

1. For a company or juristic partnership that is within the scope of Thailand’s CbC reporting requirements and that is the ultimate parent entity (UPE) of its group, and for the UPE’s representative, the submission deadline is 12 months following the end of the accounting period; and
2. For a company or juristic partnership carrying on business in Thailand (other than an entity covered by item (1) above), the submission deadline is within 60 days following the date of receipt of a notification letter from the tax assessment officer regarding the submission of the CbC report.

### **Nature and conditions specified for consideration eligible for VAT exemption relating to electricity consumption in 2020**

On 10 January 2022, the Director-General of the Thai Revenue Department issued a notification on VAT (No. 243) that is effective as from the date of issuance, to amend a previous notification of the Director-General of the Thai Revenue Department (No. 40) by providing a VAT exemption to certain VAT registrants in relation to the consumption of electricity in 2020. Consideration charged for the use of electricity by household users with electricity meters not exceeding five (or 15) amperes and with electricity consumption under the limits prescribed by cabinet resolutions dated 7 April 2020 and 21 April 2020, as well as discounts granted to such users, will be exempt from the VAT base under section 79 (4) of the Thai Revenue Code. The VAT exemption will apply only in respect of payments for electricity due from April to June 2020 and discounts granted in April 2020.

### **Rules updated for payment of stamp duty in cash for certain electronic instruments**

On 13 January 2022, the Director-General of the Thai Revenue Department issued a notification on stamp duty (No. 65) that amends a previous notification from the Director-General of the Thai Revenue Department on stamp duty (No. 60) to expand the types of instruments for which stamp duty may be paid in cash via the application form for payment of stamp duty in cash for electronic instruments (Form Or.Sor.9). The expanded list now includes the following types of instruments/transactions:

- Rentals of land, buildings, other construction, or floating houses;
- Transfers of shares, debentures, bonds, and certificates of debt;
- Hire-purchase agreements for property;

- Insurance policies;
- Bills of exchange (or instruments used in a similar manner as bills of exchange) and promissory notes (or instruments used in similar manner as promissory notes);
- Bills of lading;
- Share or debenture certificates or certificates of debt issued by any company, association, body of persons, or organization, and bonds of any government sold in Thailand;
- Checks or any written order used in lieu of a check (stamp duty is payable for each instrument);
- Receipts for interest-bearing fixed deposits in a bank;
- Letters of credit;
- Traveller's checks;
- Certain receipts issued in connection with the carriage of goods;
- Pawn broking;
- Warehouse receipts;
- Delivery orders;
- Agency agreements;
- Partnership contracts; and
- Certain types of receipts.

The notification applies to instruments executed or issued from 29 September 2020 to 31 December 2022. A person liable to stamp duty must submit Form Or.Sor.9 online through the Revenue Department's website and must follow the rules and criteria prescribed under the notification.

### Guidance published on personal income tax treatment of income from digital assets for 2021

On 31 January 2022, the Thai Revenue Department published the "Guidance for Collection of Personal Income Tax on Digital Assets" to provide guidelines for individual taxpayers that derive income from digital assets on the preparation and submission of annual personal income tax returns (Form PND.90 and PND.91) for 2021. The guidance provides certain clarifications for taxpayers, and the key rules and criteria are summarized below:

- Individuals deriving income from cryptocurrency or digital tokens must submit personal income tax returns for 2021 that classify the relevant income as follows:
  - The net gain derived from the sale or transfer of cryptocurrency or digital tokens (i.e., the amount of sales proceeds exceeding the cost of the investment) must be classified as assessable income under section 40(4)(i) of the Thai Revenue Code. No further expenses are allowed as a deduction against the amount of assessable income under section 40(4)(i).
  - Income derived from the sale of cryptocurrency or digital tokens that were acquired from mining must be classified as assessable income under section 40(8) of the Thai Revenue

Code. The actual costs incurred for mining are allowed as a tax deduction.

- A share of profits or any benefits derived from holding or possessing digital tokens, e.g., from yield farming or staking, must be classified as assessable income under section 40(4)(h) of the Thai Revenue Code.
- Passive income generated from cryptocurrency, e.g., from yield farming or staking, must be classified as assessable income under section 40(8) of the Thai Revenue Code.
- Taxpayers may calculate the cost of cryptocurrency or digital tokens in accordance with generally accepted accounting practices, such as the moving average cost method, the first-in first-out (FIFO) method, or other appropriate approaches. Once adopted, the same practice must be applied throughout the relevant tax year, and a change of practice will be allowed for the following tax year.
- In a case where a loss from cryptocurrency or digital tokens is incurred in the same tax year as gains from such assets, the loss may be allowed to offset the gains derived in the same tax year. However, this is allowed only for trading transactions executed via the digital assets exchange that is under the supervision of the Thai Securities and Exchange Commission (SEC).

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