



Tax & Legal Services Newsletter

Taxation of Digital Asset Business

Two emergency decrees issued on 13 May 2018 and that apply as from 14 May address businesses engaged in the trading of “digital assets” and the tax treatment of cryptocurrency and digital tokens.

The emergency decree on businesses engaged in the trading of digital assets contains a definition of such assets, and requires operators (that include intermediaries, brokerages, providers of platforms and dealers) to obtain approval from the Securities and Exchange Commission of Thailand, with a view to preventing money laundering and/or fraud. The second emergency decree, i.e. Emergency Decree Amending the Revenue Code (No. 19), imposes a 15% personal income withholding tax on payments of profit distributions or gains derived from the holding of digital tokens, as well as gains arising from the transfer of cryptocurrency or digital tokens provided their value in monetary terms exceeds the cost of the investment.

Tax Exemptions for Commercial Bank Mergers

On 17 April 2018, the Thai Cabinet approved, in principle, a measure that would provide tax exemptions for mergers of commercial banks. Exemptions from corporate income tax, VAT, specific business tax and stamp duty would be available for banks undergoing mergers or transferring their entire business to another bank. In addition, shareholders of commercial banks would be granted an income tax exemption on benefits received from such mergers/transfers where the appraisal value exceeds the capital. The exemptions are designed to facilitate the Financial Sector Master Plan formulated by the Bank of Thailand to enhance the capacity of Thai commercial banks that are preparing for overseas expansion.

Tax Exemption for Angel Investors

Ministerial Regulation No. 337 that applies as from 20 April 2018 allows a personal income tax allowance for angel investors if the following conditions are fulfilled:

- The investment is made in a company/partnership that carries out business in a targeted industry (e.g. food and agriculture, energy saving, etc.) that has been approved by the National Science and Technology Development Agency.
- The company/partnership is set up between 1 October 2015 and 31 December 2019, its registered capital does not exceed THB 5 million and the revenue derived from the company/partnership's supply of goods and services does not exceed THB 30 million in the fiscal year the incentive is used.
- At least 80% of the total revenue of the company/partnership is derived from the sale of goods and/or the provision of services in the targeted industry.

In such cases, the investor will be entitled to an allowance of up to THB 100,000 for payments made during the period 1 January 2018 and 31 December 2019 for a participation in the targeted company/partnership, provided the individual holds the participation for at least two consecutive years from the date of the investment.

Eligibility to Benefit from Tax Measures to Encourage Tourism in "Secondary" Tourist

Provinces

Ministerial Regulation No. 335 that applies as from 10 April 2018 sets out the rules governing the personal income tax allowance for tourism in secondary tourist provinces as follows:

- Accommodation fees for hotels in the secondary tourist provinces or other tourism areas to be announced by the Director-General of the Revenue Department (DGRD) must be paid to hotel operators under the laws governing the hotel business or Thai homestays located in secondary tourist provinces that have been certified by the Ministry of Tourism and Sports.
- Service fees must be made only to tour operators under the laws governing the business of tour operators and tour guides for tourism within secondary tourist provinces, other tourist areas to be announced by the DGRD and other tourist trails certified by the Ministry of Tourism and Sports.

A deduction is allowed for the actual amount of qualifying accommodation fees and/or service fees paid during calendar year 2018 up to a maximum of THB 15,000, provided the taxpayer has complied with all rules and conditions of the DGRD.

Income Tax Exemption for Persons with Disabilities

Ministerial Regulation No. 336 that applies as from 2 April 2018 grants a personal income tax exemption of up to THB 190,000 for foreign disabled individuals under the age of 65 that reside in Thailand. The exemption applies to income received as from 1 January 2017, and the individual must obtain a disability certificate from the Department of Empowerment of Persons with Disabilities of the Ministry of Social Development and Human Security and comply with all rules and conditions of the DGRD.

Supreme Court Rules on Goodwill from Business Transfer

Company A transferred its entire business to Company B, and registered for dissolution and liquidated in the same accounting period as the dissolution. Pursuant to the business transfer agreement, the transfer price was THB 998 million, although the actual net asset value at the transfer date was only THB 293 million, resulting in a discrepancy of THB 705 million. Company A took the position that the THB 705 million was “goodwill,” which should not be included in the corporate income tax computation under a transfer of an entire business transfer according to section 74 of the Revenue Code. The assessment office disagreed, taking the view that such goodwill consideration must be included as taxable income in computing corporate income tax.

The Supreme Court held that the “goodwill” had not been recorded in Company A’s audited financial statements as part of the transfer of an entire business. The THB 705 million gain did not qualify for beneficial treatment under the transfer of an entire business transfer scheme, which requires a market value assessment. Accordingly, the gain must be included as taxable income for corporate income tax computation.

Revenue Department Rulings – Tax Invoices in Change of Name and Address

Partnership C registered a change to its legal status into a limited company (Company C) and a change of address with the Department of Business Development, Ministry of Commerce in July 2016. The Thai Revenue Department was notified of the registration as a limited company and the address change in August and September 2016, respectively. In the meantime, Company C received input tax invoices from its suppliers under its previous name and address. Company C subsequently requested permission from the Thai tax authorities to use its old name on the tax invoices due to the substantial impact on Company C’s trading partners if all of the documentation had to be revised.

The Revenue Department ruled that Company C, as the purchaser of goods, was not entitled to utilize the input tax on invoices issued under its previous name for its VAT computation on the grounds that the invoices contained incorrect or inadequate information, and that the issuer of the tax invoices (i.e. its suppliers) also will be liable under the Revenue Code. As a result, permission was denied.

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