



## **The Revenue Department of Thailand is preparing to Use Blockchain for Tracking VAT Payments.**

The Revenue Department of Thailand (“RD”) is preparing to use blockchain in order to deal with VAT payments with an aim to use this technology to prevent VAT refund fraud by using blockchain as an assisted measure to verify VAT and eliminate the counterfeit invoices for VAT claims. The RD will use the blockchain as its’ goal to learn and use artificial intelligence (“AI”) in order to be capable with all tax-cheating practices and, also to conclusively enforce more people to be under the tax system.

## **Thailand Transfer Pricing Law is applicable.**

The Amendment No. 47 to the Revenue Code of Thailand in relation to the transfer pricing (“TP” law) was published in the Royal Gazette on 21 November 2018. The TP law is applicable to an accounting period of 1 January 2019. As the result, the first transfer pricing disclosure form shall be prepared and filed by a taxpayer before 30 May 2020 for the fiscal year-end 31 December 2019. The key features of the TP law are similar to those mentioned in our Legal insight Vol October 2018. In the near future, the Ministry of Finance will issue new guidelines for determining the revenue and expenses including transfer pricing documentation. In addition, exemptions and the revenue threshold will be issued by the Ministerial Regulation for the corporations to prepare and fill a transfer pricing disclosure form.

## **The Cabinet of Thailand has approved Two Laws in relation to Exemption of the Tax on Building and Land.**

On 13<sup>th</sup> December, 2018, the cabinet has approved a draft of a ministerial regulation on Building and Land Tax and a draft of a ministerial regulation on

land exempted from the land and building municipality tax. The significant points of the drafts are to state types of land and building and the land of the Foreign Economic and Trade Office established under the obligations of the agreement between the Government of Thailand and a foreign country which are exempt from building and land tax. The law shall come into force from the day following the date of its publication in the Government Gazette.

## **Online Vendors shall soon prepare for the tax payment.**

The National Legislative Assembly (“NLA”) has approved the Amendment to the Revenue Code of Thailand in relation to the E-payment on 4<sup>th</sup> December, 2018 (“Law”). The Significant points of this Law are that financial institutions and digital financial service providers shall report transactions of customer accounts of more than 3,000 transactions and more than 200 transactions a year with a total value of at least 2 million baht to the Revenue Department.

The financial institutions and the digital financial service providers shall prepare and submit the first report by 31 March 2020 and the next report shall be submitted every year by 31 March thereafter. Under this Law, there are punitive sanctions for the financial institutions and digital financial service providers that do not comply with this requirement within the specified period. A violator can subject to a penalty of the initial fee of Baht 100,000 and the daily fee of Baht 10,000 for a financial institution for violation of law on report of 3,000 transactions or 200 transactions worth Baht 2 million.

## **The BOI has approved Measures to Stimulate Large Investment, Grassroot Economy and Capital Market.**

The Board of Investment of Thailand (“BOI”) has approved measures to stimulate large investment, grassroots economy and capital market.

Details of measures to boost investment across all levels from large projects in targeted industries to grassroots economy are as follow;

1. The BOI has approved a local investment promotion measure to stimulate investment at a grassroots level. The measure will be effective from 2 January 2019 to the end of 2020.

This measure is to stimulate large enterprises to jointly develop and follow plans with their selected local organizations for “supports on machinery purchase, product and packaging design, assistance for the implementation of IOT in developing tourist attraction, etc.”.

The minimum financial support must be at least one million Baht for each project.

The incentives for the large enterprises that support local organizations are:

(1) 3 years tax exemption for their business activity; and

(2) The total tax exemption value is not more than 120% of the investment capital or the actual expenses.

2. The BOI also approved investment incentive scheme for Smart City in three business activities as follows;

(1) Smart City Development

The Investor must provide smart environment such as smart mobility, smart people or smart energy.

(2) Smart City System Development

The Project must be part of the Smart City Development Project approved by an organization responsible for Smart City Development Project.

(3) Smart Industrial Estate or Zone of the investment project must provide all the seven smart systems

A promoted company will be exempted from corporate income tax and tax reduction will be given to the promoted company after the original tax holiday period ends.

3. The BOI also approved investment promotion measure to support the development of innovation and digital ecosystem. Moreover, the BOI also approved a new investment promotion category for a maker of fabrication space or and co – working Space.

4. The BOI introduces a measure to encourage BOI promoted companies to be listed on SET. The promoted companies listed on SET will receive corporate tax exemption for another 100% of the investment capital. The measure is effective from 19 November 2019 to the end of 2020.

From 1 January 2019 onwards, the BOI allows promoted projects to hire any type of legal foreign workers, not limited only to those under MOU.

### **International Business Center (IBC) is promoted by the Board of Investment of Thailand (“BOI”).**

On 11 December 2018, the BOI has suspended the new application for tax intensive of the International Headquarters (IHQ) and the International Trading Center (ITC) and issued the regulation no Sor.6/251 to grant the incentive to the International Business Center (“IBC”) that has one of the scopes of business plan of a company for service to its affiliated company as follows: general administration or business planning or business coordination, procurement of raw materials and parts, research and development, technical support, marketing and sale support, Personnel and training management, financial advisory, economic and investment analysis and research, credit management and control, treasury center service, and international trade activities.

However, the regulation requires that the IBC under this law shall have registered capital at least 10 million baht of the company on the date of obtaining the promoted certificate from the BOI and that the IBC must have annual expenditure of at least of 60 million baht. Furthermore, the IBC shall employ at least 10 skillful employees with direct experience. Any IBC that is qualified by the aforementioned requirements will receive the incentives which can be summarized as follows:

1. Receive the reduction of corporate income tax for any income from service provision or financial management for the affiliated companies located in or outside of Thailand, at the rate of 8 or 5 or 3 percent on the net profit;
2. Receive the exemption of corporate income tax on dividends received from associated

enterprises incorporated under the law of Thailand, or the laws of foreign country;

3. Receive the exemption of corporate income tax on the dividends or interest receiving by the IBC from a foreign company which is not operated in Thailand;
4. Receive the exemption of Specific Business Tax on income arising from financial management for the affiliated companies located in or outside of Thailand; and
5. Qualifying expatriates working regularly in the IBC shall receive the deduction of income tax rate at the rate of 15 percent of income before deducting expense.

### **All provinces of Thailand, beside Bangkok, have become the investment promotion zone.**

The Board of Investment (“BOI”) of Thailand has issued its announcement No.10/2561 on 11<sup>th</sup> December, 2018, to stimulate the investment in Thailand by expanding the promoted areas, which covers all provinces in Thailand beside Bangkok Metropolis.

The Announcement will grant additional tax incentive for the promoted activity, that is, after a period of tax exemption was expired, the approved project is eligible for a 50 percent deduction of corporate income tax for a period of 3 years.

Qualifications of promoted project eligible for this special measure shall be in accordance with the following;

1. The project shall be an activity, which is categorized in Group A1, A2 and A3, and shall have place of business in Thailand.
2. The project shall have the capital at least 1,000,000,000 Baht (excluding cost of land and working capital).
3. The promoted project shall be requested for operation within designated time frame in order to allow the BOI to review the business.
4. A period of tax incentives and amount of tax incentives shall remain.

The special measures will be effective for an applicant to submit an application from 19 November 2018 to 30 December 2019 to the BOI.

### **The Draft of Amendment to Labor Protection Act (No.7) B.E. 2561 has been approved.**

On 13<sup>th</sup> December 2018, the National Legislative Assembly (“NLA”) has enacted the Act on amendment to Labor Protection Act (No.7) B.E.2561 of Thailand with the significant changes as follows:

1. An employee shall be entitled to personal leave of not less than 3 working days.
2. An employer shall pay wages to an employee for personal leave equivalent to wages of a working day throughout the leave period, but not exceeding three days per year.
3. A pregnant employee shall be entitled to maternity leave (included leave for antenatal care) of not more than ninety-eight days for each pregnancy.
4. In case the employee has been working for an uninterrupted period of twenty years or more, he or she shall be entitled to receive payment of not less than his or her last rate of wages for four hundred days, or of not less than his or her wages for the last four hundred days for an employee who receives wages on a piece rate basis.

This Act will come into effect 30 days after it is published on the Royal Government Gazette of Thailand.

### **The proposed Amendments to Public Companies Limited Act.**

The cabinet approved in principle Bill of the amendments to the Public Companies Limited Act, B.E. 2535 (“the Bill”) which was proposed on 26<sup>th</sup> November 2018 to the Parliament for its approval in. There are six key amendments to the Act:

1. Reduce the requirement on publication in the newspaper from 3 days to 1 day;
2. Allow any person who has the duty under this Act to send any document of the public company through an electronic system to another person;
3. Grant ministerial power to the Minister of Commerce to issue ministerial regulations and notifications;

4. A Meeting of the Board of Directors can be held by electronic devices and the directors are no longer required to physically appear in the meeting;
5. At least 2 directors of the company are now able to call for a Board of Directors' Meeting, in case the ignorance or absence of the Chairman; and
6. Allow any shareholder to authorize a person as proxy to attend a meeting of shareholders and vote on behalf of the shareholder via e-proxy.

In case the National Legislature Assembly passes the Bill into the Act, the details of the methods in relation to the Act will be prescribed by ministerial regulations.

### **Marijuana is legalized in Thailand for the use of medical use and research purpose.**

On 25<sup>th</sup> December, 2018, the National Legislative Assembly ("NLA") approved the Bill concerning the use of marijuana and kratom ("Bill"). The essential key of the Bill is that Thailand has become the first country in Asia after the NLA has approved the Bill to unlock marijuana from category 5 of the drug law of Thailand and legalize the use of marijuana and kratom for medical use and research purposes. When the Bill is effective, a producer or a researcher will require a license to manage these products as well as the use of the products for the end-users. However, the use of the aforementioned products for recreation with the contained quantities is still illegal and anyone, who uses the products for this purpose, shall be subjected to imprisonment and fine.

### **The cabinet of Thailand has unlocked aviation industry to be owned by foreign ownership.**

On 25<sup>th</sup> December, 2018, the cabinet approved the principle legislation relating to amend Thai Air Navigation Act which opens up the opportunity for

foreign investors to set up the foreign companies in relation to aviation industry regarding aircraft manufacturing, aircraft parts manufacturing, and maintenance, repair and overhaul aircraft. The significant change is to allow foreign investors to set up a foreign ownership company, with company shares being held probably up to 100 percent by the foreigner, if the company's activities are relating to the aforementioned business categories, while under the current Act at least 51% of the total shares shall be owned by Thai nationals or Thai government agencies, or Thai companies. Furthermore, the authority in business management of the director, which is now under control of Thai nationals, might be amended soon by the Bill.

### **The SEC of Thailand plans to relax the strict rule on ICO.**

The office of Securities and Exchange Commission ("Office of the SEC") of Thailand conducted a public hearing with the aim of reduce the strict rules that form a barrier to initial coin offerings ("ICO") after the Royal Decree regarding the framework of cryptocurrency and digital token has come into effect in May, 2018, which regulates various players such as seller, dealer and investor. The current law requires all sellers of digital asset of tokens, all domestic crypto exchanges as well as independent digital asset brokers and dealers to register with the Office of the SEC, no matter the digital token sales are offered via private placement or not. After the law has been used for months, it has barriers for ICO fundraising, therefore, the current strict rules for issuers to begin fundraising may be eased up, although there may be caps on participation. The significant point of the new change is that irrespective of submission of registration statements and a draft prospectus to the Office of the SEC, the private digital token sales may be permitted to start the business and the burden for a digital token service provider may be reduced as well.

## The Bill to amend Electronic Transaction Act B.E.2544 is now considered in the NLA.

On 13 December 2018, the Bill to amend Electronic Transaction Act B.E.2544 (the “Draft”) has been accepted by The National Legislative Assembly. According to the Draft, limitations and loopholes of the Electronic Transaction Act B.E. 2544 (the “Act”) are eliminated and fulfilled in order to response to changes of commercial practices as well as the United Nations Convention on the Use of Electronic Communications in International Contracts (the “Convention”).

Firstly, a definition of “Automated message system”, of which it has the same meaning described in the Convention, is added into the Draft. the Draft additionally regulates that Electronic Transactions Development Agency (the “ETDA”) shall be the main authority who is responsible for regulating electronic transactions.

It is specifically affirmed under the Draft that in any case required by the law to be made in writing, is evidenced in writing or is supported by a document, yet, that case does not comply with either of the said legal requirement, as the case may be. If that information is generated in the form of a data message which is accessible and usable for subsequent reference without its meaning being altered, it shall be deemed that such information is legally made.

Furthermore, the Drafts provides that the electronic signature will have legal binding if the method of making that signature is capable of identifying the signatory and declaring intention of the signatory relating to the information contained in the electronic data by which a method specified in the Draft. It should be note that differently from the Act, that method is not further required to be able to indicate that the signatory has approved the information contained in such data message as being his own.

The Draft also mimics provisions concerning invitations to make offers and use of automated message systems for contract formation from Article 11 and Article 12 of the Convention. In particular, any proposal to conclude a contract made through one or more electronic transactions which is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders, shall be considered as an invitation to make offers. In addition, due to the Draft, there is a provision prohibits a person from denying, validity or enforceability of a contract formed by the interaction of automated message systems with or without a natural person. If a natural person makes an input error in an electronic transaction exchanged with the automated message system of another party of which there is no opportunity for that person to correct the error, that person shall has the right to withdraw that declaration of intention in the portion of the electronic transaction in which the input error was made. An intention to withdraw the error must be made to the other party promptly after having learned of the error. For another requirement to withdraw the error, that person shall yet use nor receive any material benefit or value from the goods or services, if any, received from the other party.

Under the Draft, electronic transactions are clearly divided into three types based on restrictive conditions; (a) transactions required to be informed to the authority; (b) transactions required to be registered with the authority; and (c) transactions required to be licensed by the authority. If any person does not comply with the said restrictive conditions, that person shall be subject to fine up to one million Baht and two million Baht respectively. Otherwise, the authority may instead seize assets of that person.

Should you have any question, please do not hesitate to contact us via [info@bglballaw.com](mailto:info@bglballaw.com)

